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December 17, 1996

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2 This matter came on to be heard on this the 17th day of
3 December, 1996 before the Virginia Gas and Oil Board at the
4 Southwest Virginia 4-H Center, Hillman Highway, Abingdon,
5 Virginia pursuant to Section 45.1-361.19.B and 45.1-361.22.B
6 of the Code of Virginia.

7 MR. CHAIRMAN: Good morning. My name is Benny Wampler. I'm
8 Deputy Director for the Virginia Department of Mines,
9 Minerals & Energy and chairman of the Gas and Oil Board.
10 I'll ask the Board members to introduce themselves this
11 morning.

12 MR. BRENT: I'm Mason Brent from Richmond and I represent the
13 gas and oil industry.

14 MR. HARRIS: I'm Bill Harris from Big Stone Gap. I represent
15 the public.

16 MR. LEWIS: Max Lewis from Buchanan County. I'm a citizen
17 member.

18 MS. RIGGS: Sandra Riggs from the Office of the Attorney
19 General.

20 MR. KING: Clyde King from Abingdon and I represent the
21 public.

22 MR. GILLUM: Richard Gillum, coal industry representative
23 from Abingdon.

24 MR. FULMER: Tom Fulmer, Department of Mines, Minerals &
25 Energy.

ITEM I

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3 MR. CHAIRMAN: The first agenda item this morning is the
4 Board will consider a petition from Equitable Resources
5 Energy Company for modification of a pooling order for a
6 coalbed methane unit identified as VC-3594. This is
7 docket number VGOB-96/08/20-0552-01. We'd ask the
8 parties that wish to address the Board in this matter to
9 come forward at this time.

10 MR. WILHOIT: Mr. Chairman and members of the Board, my name
11 is Tony Wilhoit. I'm an attorney with Hunter, Smith and
12 Davis here representing Equitable Resources Energy
13 Company today. We've filed an application for a modifi-
14 cation of a previous order entered by this Board. The
15 hearing was held here on August 20th, 1996 and thereafter
16 the Board granted the relief requested and entered an
17 order on September 5th, 1996 which is recorded in Book
18 320, Page 146. Since the entry of that order and the
19 filing thereof title examination has revealed that some
20 of the unleased interests in that order have changed. At
21 this point we have a -- we have two new owners and one
22 previously unleased owner. The new owners have been
23 leased but the unleased owners is diminished by the title
24 report. So at this point we'd ask the Board -- and have
25 filed an application for a modification of the previous

1 so we might notify that unleased owner of the reduction
2 in his interest so he can make an informed decision as to
3 whether or not he wants to participate or be carried in
4 this. So at this time I would present two witnesses to
5 the Board in support of this application.

6 COURT REPORTER: (Swears witnesses.)

7 MR. CHAIRMAN: You may proceed.

8 MR. WILHOIT: I call Mr. Dennis Baker first.

9

10 DENNIS BAKER

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

13

14 DIRECT EXAMINATION

15

16 BY MR. WILHOIT:

17 Q. Would you state your full name, please, for the record?

18 A. Dennis Baker.

19 Q. How are you employed, Mr. Baker?

20 A. I'm employed by Equitable Resources Energy Company as
21 senior land man.

22 Q. What do your responsibilities include there as senior
23 land man?

24 A. The acquisition, supervision of unleased oil and gas
25 interests.

1 Q Sir, in connection with your employment there are you
2 familiar with the Board's order that was entered in
3 connection with well VC-3594, the order dated July 18th,
4 1996?
5 A. Yes.
6 Q. Is Equitable seeking to modify that order?
7 A. Yes, we are.
8 Q. Does Equitable own drilling rights in that unit?
9 A. Yes, we do.
10 Q. Is it in the Nora Coalbed Field Rules?
11 A. Yes.
12 Q. Is that where the location is?
13 A. Yes, it is.
14 Q. What is the interest of Equitable in the gas estate in
15 that unit?
16 A. At the time of the application to modify we had a 62.09
17 percent interest leased. Currently as of today we have
18 32.51 percent interest leased.
19 Q. Are you familiar with the ownership of the drilling
20 rights that are unleased in that unit?
21 A. Yes.
22 Q. What are they?
23 A. At the time of the application to modify we had a 37.91
24 percent unleased interest. Currently we have 17.49
25 percent unleased and the coal estate being 100 percent

1 leased at both time of application and currently.

2 Q. Can you explain to the Board then why this modification

3 is necessary?

4 A. On the well plat that was submitted with the appli-

5 cation originally the tract shown as Tract #7 comprised

6 both tracts identified as Tract #6 and #7 being the

7 Quinton McCoy tracts. Subsequent to the order the

8 title opinion was reviewed and established to try to

9 find some additional boundaries and as it turns out we

10 have some additional owners now shown as being Tract

11 #6, the David Rowe and Virginia Vandergriff tract.

12 Those individuals are now leased and we have reduced

13 the interest of Mr. McCoy based on the identification

14 of this tract.

15 Q. Now, in connection with this application an Exhibit #B

16 was filed which set out the leased and unleased

17 interests. Do you have a revised Exhibit #B to submit

18 to the Board here today?

19 A. Yes, we do.

20 Q. Does that revised Exhibit #B set out the ownership

21 interest as it currently exists?

22 A. Yes, it does.

23 Q. It shows the reduction in the interest owned by Mr.

24 Quinton McCoy?

25 A. Yes.

1 Q. The only respondent being on the revised Exhibit #B
2 would be the unleased interest of Quinton McCoy, is
3 that correct?
4 A. That and also Tract #2, the Nancy Hale heirs being
5 unleased.
6 Q. Subsequent to the filing of this application have you
7 continued to try and reach an agreement with those
8 people?
9 A. Yes.
10 Q. Have you had any success?
11 A. Not with Tract #2 and Tract #7 interest.
12 Q. Are the addresses set out on revised Exhibit #B the
13 last known addresses for those respondents?
14 A. Yes.
15 Q. Are you asking the Board to modify its previous order
16 and to force pool all the unleased interests that are
17 listed on revised Exhibit #B?
18 A. Yes, we are.
19 Q. Do you seek to force pool the drilling rights of each
20 individual respondent whether living or deceased,
21 unknown or known?
22 A. Yes.
23 Q. Now, you've previously testified to this Board on
24 previous occasion as to the terms that you have offered
25 the respondents?

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A. Yes.

Q. Are those fair and reasonable in the area where you're drilling?

A. Yes, they are.

Q. Your testimony previously before the Board was that you are asking an order be sent out to these people setting out their respective rights under the statute?

A. Yes.

MR. WILHOIT: We would ask the Board to incorporate that previous testimony as far as the statutory rights, the election rights and so forth of the respondents to save a little time, instead of going through all that?

MR. CHAIRMAN: That will be fine.

Q. (Mr. Wilhoit continues.) Who should be named the operator under this new force pooling order?

A. Equitable Resources Energy Company.

MR. WILHOIT: Thank you. That's all I have of this witness.

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

(Witness stands aside.)

MR. WILHOIT: I call Mr. Bob Dahlin.

ROBERT A. DAHLIN, II

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

IMPECCABLE EXAMINATION

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BY MR. WILHOIT:

Q. Mr. Dahlin, would you state your name for the record, please?

A. My name is Robert A. Dahlin, II.

Q. Where are you employed and what do you do there?

A. I'm employed by EREX as a production specialist.

Q. Did you previously testify in the hearing that was held on August 20th, 1996 in connection with Equitable Resources' application for a pooling order?

A. Yes, I did.

Q. Has that testimony changed in light of the new development?

A. No. There are no revisions to my testimony.

Q. Are you still planning on drilling to 2,650 feet?

A. That's correct.

Q. And do you expect the estimated reserves to still be 375 million cubic feet?

A. Yes, sir.

Q. The well costs have not changed since your previous testimony?

A. No, they have not.

MR. WILHOIT: That's all I would have of this witness.

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

(Witness stands aside.)

1
2 MS. RIGGS: It's my understanding that Quinton McCoy is the
3 only party being given a new right of election, is that
4 correct, because of the reduction of his interest?

5 MR. WILHOIT: Yes.

6 MS. RIGGS: And that the heirs of Nancy Hale already
7 received their rights?

8 MR. WILHOIT: Yes.

9 MR. CHAIRMAN: So there's no change in Nancy Hale?

10 MR. WILHOIT: No change.

11 MR. CHAIRMAN: Any other questions? Do you have anything
12 further?

13 MR. WILHOIT: No, sir.

14 MR. HARRIS: Mr. Chairman, I move we grant the petition.

15 MR. LEWIS: I second it.

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

17 All in favor signify by saying yes. (ALL AFFIRM.)

18 Opposed say no. (NONE.) Unanimous approval.

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ITEM II, III

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3 MR. CHAIRMAN: The next item -- there's two items on the
4 Board's agenda I am going to propose for consolidation
5 if there's not any objection to doing that. The
6 Virginia Gas and Oil Board will consider a petition
7 from Buchanan Production Company for pooling of a
8 coalbed methane unit identified as N-13. This is
9 docket number VGOB-96/09/17-0555 continued from
10 October. I would also go ahead and call the petition
11 from MacConstruction, Incorporated for pooling and
12 designation as unit operator for the unit identified as
13 N-13 in the Oakwood Coalbed Methane Fields I and II,
14 South Grundy District. This is docket number VGOB-
15 96/12/17-0559. We'd ask the parties that wish to
16 address the Board in these matters to come forward at
17 this time, please. Consolidating these cases is not
18 intended in any way to get -- it's just to get the
19 common ground of the issues before the Board.

20 MR. SWARTZ: Mark Swartz and Claude Morgan appearing for
21 Buchanan Production Company and Consol, Inc.

22 MR. YEARY: Emitt Yeary and Mike Bragg for MacConstruction.

23 MR. CHAIRMAN: I'd ask the parties if they -- if you don't
24 want to do this we can brief the Board, but to just
25 briefly summarize for the Board about where we are.

1 We'll start with Mr. Swartz since you asked for the
2 subpoena record initially and then go to Mr. Yeary or
3 whomever.

4 MR. SWARTZ: My client, Buchanan Production, filed an
5 application to force pool unit N-13. It was filed on
6 August 16th. So we're now about four months since the
7 date of filing. It was mailed to MacConstruction
8 contemporaneously with the filing. If it was the same
9 day it was certainly within a matter of a day or two.
10 As originally filed it was set for hearing on September
11 17th. There was, in fact, a hearing in this location
12 on September 17th. Mr. McClannahan who is here this
13 morning in person showed up in person at that hearing
14 and requested that the Board continue the Buchanan
15 Production application. I objected but the Board was
16 inclined to give him a continuance and it was continu-
17 ed. It was continued to the October hearing which was
18 at the Breaks and I don't really recall the date of
19 that hearing. But there was a hearing in mid to late
20 October at the Breaks. At that hearing the first order
21 of business was a motion to continue again and we spent
22 a considerable amount of time on that and ultimately
23 the -- my recollection is that the Board denied that
24 motion to continue and we proceeded with Buchanan
25 Production's pooling application. There was testimony

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on behalf of the application and there was examination by MacConstruction and its counsel and there was quite a bit of legal argument associated with it and exhibits and so on and so forth. And the hearing actually concluded in the sense of the argument and testimony on Buchanan Production's application at the Breaks. And my recollection is that at the point in time when you normally would expect the Board to make a motion there was a request by counsel for MacConstruction to be given some additional period of time within which to file Mac's own pooling application. The request as I recall was for roughly 60 days to get it on the December docket which is today. That request was favorably entertained and as a consequence essentially the Buchanan Production pooling application got continued for another 60 days because there was really no point in having a hearing in December if you were going to act on the application then. So that's why this is continued. At some point in -- I'm thinking November, although I really didn't dig that data out, I requested that the Board on behalf of Buchanan Production issue a subpoena for certain records and direct that subpoena to MacConstruction. As I reconstruct the paperwork I think that the subpoena was issued around December 4th and that there was by the Board and that

1 there was an attachment to the subpoena (Inaudible.)
2 At least the cover letter to me was dated the 4th. I'm
3 not sure when it was served. Well, I guess it was
4 served on December 4th on MacConstruction. There's an
5 Exhibit #A attached which is essentially a list of
6 items that I had requested a subpoena be issued for.
7 The theory being that I felt that these items were at
8 least potentially in play based on cross-examination of
9 my witnesses at the prior hearing and statements that
10 were made at the prior hearing and would certainly be
11 of interest to me in defending against the pooling
12 application that had been filed by Mac. At some point
13 MacConstruction objected to the subpoena that had been
14 issued around December 4th in writing and the Board
15 issued its own subpoena, which it has the power to do,
16 basically for the same items. And I gather there's
17 been an objection to that and motions to quash both of
18 those subpoenas. Last Friday I understand that
19 MacConstruction requested -- and I mean like three days
20 ago -- requested that the Board issue a subpoena
21 directed to Buchanan Production returnable today. I'm
22 not sure when it was issued but it was served on Les
23 Arrington this morning when we got here. So that's --
24 obviously since he was served with the subpoena this
25 morning I'm not going to produce documents today in any

1 cont. The way I look at this in terms of what ought
2 to happen this morning, I completed my presentation
3 with regard to my pooling application. At the time I
4 presented testimony with regard to that pooling
5 application there was no second competing pooling
6 application and the issue of who was going to be
7 designated operator was really not in play. So I
8 didn't spend a lot of time on that. But I'm willing at
9 least at this juncture, since that is the only pooling
10 application at the time which testimony has been heard
11 and the evidence has at least been concluded as of the
12 last hearing, to at least for the time being stand on
13 that. I would encourage the Board to call the next
14 pooling application and let's get that in the record
15 and have them proceed with that. To the extent that
16 witnesses are called I am prepared to cross-examine
17 them with regard to the issues that I think would be
18 pertinent to a Board decision comparing the appli-
19 cations and the operators and the proposed development
20 plans to make a decision and kind of pick one over the
21 other, which ultimately is where we're headed here.
22 I'm prepared to proceed. My understanding is that
23 we're not going to see any of the documents that I had
24 requested the Board subpoena this morning. Well,
25 that's their decision, to not bring them here, to move

1 to quash, whatever. My view is I'd rather proceed with
2 the hearing than fight about that. I don't need those
3 things to proceed. I think some of the information is
4 the kind of information you would expect the applicant
5 to show up with. So we'll be talking about it. But if
6 it's not here it's not here. That's something that you
7 can factor in I suppose in your decision. I will also
8 tell you I have -- this is a personal problem, but I
9 can never never leave town without being annoyed by my
10 office. I was in New York for my wife's 40th birthday
11 last week, Thursday, Friday, Saturday. My secretary --
12 unfortunately hotels now have voice mail so I can't
13 even get away from that. So my secretary from Charles-
14 ton is frantically trying to reach me on Thursday and
15 Friday. I get a ton of voice mail Friday morning at my
16 hotel which is to call Sandy Riggs and to call Mike
17 Bragg. So I talked to both of them on Friday morning
18 and I learned that there is yet another request for a
19 continuance. So as of Friday I'm being told by Sandy
20 that Mr. Bragg is requesting a continuance of this
21 hearing today. I called Mr. Bragg and yes, in fact, he
22 is requesting that I agree to a continuance and my
23 response is it always seems to me these days -- no, I
24 just as soon go forward. So I assume that at some
25 point this morning you're going to get another request

1 for another continuance. That's kind of where I think
2 we are. What I would hope would happen this morning is
3 that the application of MacConstruction will be called
4 for hearing and that you learn whether or not they are
5 prepared to proceed and whether or not they need
6 another continuance and if they want one why do they
7 want one. I think that's where we are and I think
8 that's where we need to be and that's what we need to
9 address.

10 MR. CHAIRMAN: Thank you, Mr. Swartz. Mr. Bragg.

11 MR. BRAGG: May it please the Board, first let me correct
12 something. I did speak to Mr. Swartz on Friday after I
13 had spoken with Ms. Riggs on Thursday. I had been
14 trying to reach you. You were in a meeting. We were
15 not requesting a continuance. We were informing Mr.
16 Swartz that we were filing objections to the request
17 for the subpoenaed documents and that those documents
18 would not be here today. I wanted to know from him
19 whether he would be asking for a continuance if those
20 documents were not produced. Mr. Yearly is a member of
21 the Virginia Aviation Board which is meeting as we
22 speak. He rearranged his schedule. He could address
23 that in more detail. But there was a special meeting
24 and he was rearranging his schedule to appear today and
25 it was what we consider to be a shame for him to avoid

1 that meeting in order to appear here to have Mr. Swartz
2 then ask for a continuance if those documents were not
3 available. Mr. Swartz indicated that he wanted to go
4 ahead whether or not we produced the documents and so
5 we are here. It is the wrong impression to leave with
6 the Board that we were trying to reach him or trying to
7 reach Mr. Wampler in order to ask for a continuance.
8 We just did not want to be left out hung in limbo
9 preparing for this in the context that we were going to
10 exercise our rights under the statute, object to the
11 subpoenas and that the documents would not be produced
12 today. We wanted to know if Mr. Swartz was going to be
13 demanding a continuance. We're here today and prepar-
14 ed. But if we can put some context on this, first, a
15 subpoena was issued in a Consol, Inc. on behalf of
16 Buchanan Production force pooling application, which as
17 Mr. Swartz has indicated the evidence was closed on at
18 the October meeting. The subpoena as originally issued
19 called for production of the documents on, I believe,
20 December 19th. There was then corrections delivered to
21 MacConstruction. We filed an objection on several
22 grounds. Among those was that since the evidence was
23 closed on that application that that material would be
24 totally immaterial and irrelevant. The evidence was
25 closed. There are some further objections to the

1 's of the request. We filed that objection on
2 Wednesday. That original subpoena on its face indicat-
3 es that it was issued at the request of Buchanan
4 Production which as a party to that proceeding -- that
5 application -- under the statute it would be entitled
6 to a subpoena from the Board under 9.60-14:13. On
7 Wednesday when we filed our written objections to that
8 subpoena Mr. Fulmer apparently immediately then issued
9 another subpoena for the identical items in the
10 MacConstruction application that's on the docket for
11 this morning. On the face of that subpoena it does not
12 indicate that it was issued on behalf of Buchanan
13 Production. Mr. Swartz, as I understand him this
14 morning, is confirming that that subpoena was not
15 issued at his request, that it was, as he said, issued
16 by the Board. We have filed an objection to that
17 subpoena as well. Among our objections are that we're
18 questioning Mr. Fulmer's authority to issue a subpoena
19 for documents on behalf of the Board on his own. We're
20 assuming that the Board did not meet on Wednesday and
21 vote to issue a subpoena for this case. We should also
22 point out that the subpoena was issued on Wednesday
23 afternoon, was served on MacConstruction around 11:00
24 or 11:30, shortly before noon, Thursday. If you look
25 at the subpoena there are substantial documents that

1 are requested, some that deal with the asphalt plant
2 owned and operated by MacConstruction, that cover a
3 substantial period of time. There's a lot of records
4 and using best efforts it is impossible to review all
5 of the records over such a long period of time to find
6 what records are available, to then go over them with
7 counsel to determine what are confidential and not
8 subject to production, to determine what might be
9 protected by the attorney/client privilege or work
10 product privilege and make a reasonable response to the
11 Court. So as we are allowed to under the statute we
12 filed an objection. As I understand the statute the
13 next step when a party responds by an objection then
14 the Board would then vote on whether to continue with
15 the subpoena demanding that documents be produced and
16 if they so are requiring the party to produce the
17 documents the parties have a right to immediately
18 appeal to Circuit Court. In the context of that we
19 were trying to reach Mr. Swartz and Mr. Wampler to
20 indicate we were not going to have the documents today,
21 that we would be exercising our rights. Beyond that,
22 if I can come back to some of the merits of that
23 subpoena just a moment to give you a little bit more
24 chronology --

25 MR. SWARTZ: I think I can save some time here. I do not

1 want a ruling on the original subpoena that was issued
2 at my request because I see that a ruling in my favor
3 would result in an appeal to the Circuit Court and a
4 continuance of today's hearing. And a ruling against
5 me, I would not appeal that. I mean, I don't want a
6 ruling. I am not seeking today -- the documents are
7 not here. I was told they weren't going to be here.
8 So with regard to the subpoena that was issued at my
9 request please ignore it. I guess I'm asking that it
10 be withdrawn. So to the extent the Board feels that
11 the information that it subpoenaed is relevant then I
12 guess this is of interest to you all. But I don't want
13 a ruling on my subpoena because I see that that could
14 potentially cause a further continuance here. I'm
15 prepared to proceed without those documents. If they
16 put a witness on the stand I can ask him about the
17 subject matter of those issues.

18 MR. BRAGG: If we could just proceed with our position.

19 MR. CHAIRMAN: Go ahead, Mr. Bragg.

20 MR. BRAGG: If I can return to some of the matters that are
21 requested in subpoena just to put a context on the
22 chronology. Looking at the type of information that
23 Buchanan Production was requesting and anticipating,
24 perhaps, where Mr. Swartz might be going, we saw some
25 issues that could arise in regard to Buchanan Produc-

1 tion. So on Friday pursuant to our rights under the
2 statute we requested that a subpoena be issued and
3 served on Consol and Buchanan Production. This is one
4 day after the "Board subpoena" was served on Mac-
5 Construction. We indicated to the Board office that
6 we would be willing to provide process servers to serve
7 that subpoena on Friday. I was told by Mr. Fulmer
8 yesterday that they didn't have anyone to serve it, so
9 he was issuing the subpoena this morning. So it was
10 not issued on Friday as was our statutory right and we
11 will not be having that information as well today as
12 Mr. Swartz has indicated. We are not asking for a
13 continuance based upon that either but we want you to
14 understand the context of that as well. Now, without
15 taking the Board's time unless you want me to I will
16 not go through each of the items requested in the
17 subpoena extensively issued by the Board. Of interest,
18 I think, we have, for example in Item 1, they're asking
19 for writings that state the date, contain information
20 which date may be inferred or which the well identified
21 as CGB-N-13C in the June, 1996 well work application
22 submitted by MacConstruction, Inc. in June of 1996 was
23 drilled.

24 MR. CHAIRMAN: Mr. Bragg, let me stop you and tell you, Mr.
25 Swartz has withdrawn the subpoena. If the Board is

1 prepared -- and I don't know how to vote -- to quash
2 its own subpoena where do you see that puts us?
3 MR. BRAGG: It will save the argument.
4 MR. CHAIRMAN: Does anybody on the Board have a problem
5 quashing it's own subpoena which was issued to carry
6 out, as I understand it, fulfill the information
7 requested on the original subpoena?
8 MR. KING: Mr. Chairman, I move that we do accept the
9 the motion to quash.
10 MR. LEWIS: I second it.
11 MR. CHAIRMAN: Motion and second. Any further discussion?
12 All in favor signify by saying yes. (ALL AFFIRM.)
13 Opposed say no. (NONE.) That takes that off the
14 table. Now are you prepared to present your case for
15 the pooling?
16 MR. BRAGG: Yes, we are.
17 MR. CHAIRMAN: You may proceed.
18 MR. BRAGG: I call Mark McClannahan. I don't believe he's
19 been sworn.
20 COURT REPORTER: (Swears witness.)
21
22 MARK McCLANNAHAN
23 a witness who, after having been duly sworn, was examined
24 and testified as follows:
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DIRECT EXAMINATION

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BY MR. BRAGG:

Q. Would you please state your name, sir?

A. Mark Leon McClannahan.

Q. Are you an officer and shareholder of MacConstruction, Inc.?

A. Yes.

Q. Is MacConstruction, Inc. a Virginia corporation?

A. Yes.

Q. How long has MacConstruction, Inc. been in business?

A. Approximately 37 or 38 years.

Q. Are the shareholders of MacConstruction, Inc. individuals?

A. Yes.

Q. Are they primarily members of your family?

A. Yes.

Q. What business is MacConstruction, Inc. in?

A. Grading and paving, concrete.

Q. And where is your business located?

A. Oakwood.

Q. What is your position with MacConstruction?

A. Secretary/treasurer.

Q. Did you participate in the preparation of the force pooling application filed by MacConstruction, Inc.?

1 A. Yes, somewhat.

2 Q. Are you familiar with it?

3 A. Yes.

4 Q. Mr. McClannahan, was notice sent to Yukon Pocahontas
5 Coal Company and to Buchanan Production?

6 A. Yes.

7 Q. And was notice published in the Bristol Herald Courier?

8 A. Yes.

9 Q. The affidavit of that publication with the paper and
10 the return receipts showing delivery of the notices to
11 Buchanan Production and to Yukon Pocahontas have been
12 filed with Mr. Fulmer, is that correct?

13 A. Yes.

14 Q. Mr. McClannahan, what is your education and your
15 background?

16 A. I received a Bachelor of Arts degree from Emory & Henry
17 College and I've received a Bachelor of Science degree
18 from Montana College of Mineral Science and Technology
19 in engineering science.

20 Q. What job do you have with MacConstruction?

21 A. I'm an estimator, general foreman, just working with
22 the day to day business.

23 Q. Does MacConstruction own and has it operated a gas
24 well?

25 A. Yes.

1 Q. Is that gas well located within this unit N-13?
2 A. Yes.
3 Q. Approximately how long has that gas well been in place?
4 A. At least thirteen years.
5 Q. Has it produced gas during that period of time?
6 A. Yes, it has.
7 Q. Have you been involved in the operation of that gas
8 well?
9 A. Somewhat.
10 Q. Are you familiar with the well?
11 A. Yes.
12 Q. Does MacConstruction claim an interest in the methane
13 gas within this unit N-13?
14 A. Yes.
15 Q. And without getting into the legal issues what are some
16 of the basis for your claims?
17 A. There's several reasons. Among these is we own the
18 only gas well within unit N-13. We have title and
19 interest in two vertical ventilation holes in unit N-13
20 and we also have the consent for stimulation. We have
21 captured the gas. We have used it. And we own 75
22 percent of the surface and supporting rock strata just
23 to name a few.
24 Q. The well that MacConstruction drilled and has captured
25 gas from, what strata is it producing gas from?

1 A. The well bore stopped in the rock strata between the
2 Pokie 4 and 5.

3 Q. And as I believe the Board probably is already aware,
4 remembering the testimony from October on Buchanan
5 Production's application, is there a dispute as to
6 ownership of the methane gas within this unit?

7 A. Yes.

8 Q. Has MacConstruction filed a declaratory judgement
9 action in Buchanan County regarding the title to the
10 gas?

11 A. Yes.

12 Q. Mr. McClannahan, I have handed to the Board a document
13 that I'm asking to be admitted as MacConstruction's
14 Exhibit #1 which is -- this exhibit is a copy of a
15 motion for declaratory judgement filed in the Circuit
16 Court of Buchanan County on October 14th, 1996,
17 MacConstruction, Inc. versus Yukon Pocahontas Coal
18 Company, Georgia-Pacific Corporation, Buchanan Coal
19 Company, Sayers Pocahontas Coal Company, Island Coal
20 Company, Consolidation Coal Company and Buchanan
21 Production Company. Is this the copy of the motion
22 which your company has filed with the Circuit Court of
23 Buchanan County asking that Court to determine the
24 ownership interest in the methane gas?

25 A. Yes.

1 Q. The gas well, if we can go back to a little history on
2 how it came to be drilled. Who was the coal lessee on
3 this property at the time that the well was drilled?
4 A. Island Creek Coal.
5 Q. Were they aware that the well was drilled?
6 A. Yes, they were.
7 MR. SWARTZ: I object to that question as calling for the
8 mental state of mine of somebody else. Were they
9 aware? Hopefully there are some documents or other
10 witnesses that they can call. But that's hearsay and
11 in addition it is an opinion as to what somebody else
12 knew, thought, whatever. I object to that.
13 MR. CHAIRMAN: Sustained.
14 Q. (Mr. Bragg continues.) Did Island Creek participate
15 with you or cooperate with you in any way in the
16 drilling of that well?
17 A. Yes.
18 Q. What did they do
19 A. Alvin Richie helped my father in getting the elevations
20 of where we were going to drill the well and also made
21 sure that we did not drill into their existing mine
22 works, the VP-1.
23 Q. The VP-1 is the mine works that is underneath this
24 unit?
25 A. Yes.

1 Q To your knowledge is work continuing within VP-1?

2 A. No.

3 Q. Has work ceased in VP-1?

4 A. Yes.

5 Q. Mr. McClannahan, I've now handed the Board copies of
6 two agreements of which I ask to be admitted as
7 Applicant's Exhibit #2 and #3. These are agreements
8 dated October 30th, 1992 and November 4th, 1992 between
9 Island Creek Coal Company and MacConstruction, Inc.
10 Could you give the Board some history on how these
11 agreements came to be entered into?

12 A. In the late 80s Island Creek was mining and I guess
13 they were being gased off and they needed to drill some
14 vertical ventilation holes in which they came to
15 MacConstruction and we worked with them, worked out an
16 agreement where they drilled a vertical ventilation
17 hole on our property. They carried on with their
18 mining. MacConstruction carried on with its business.
19 A few years later they were being gased off again.
20 This was in 1993. And they approached us and said that
21 they needed to drill a couple of more -- a few more --
22 they drilled three vertical ventilation holes on our
23 property and we worked up more agreements with them,
24 which these are the agreements for those wells, so they
25 could continue mining. They basically said we could

1 have the gas wells when they had mined out -- when they
2 finished mining VP-1. Right about the time they were
3 -- I guess in the spring of when they were mining out
4 we were working with OXY, USA. Marty Wirth was the
5 gentleman we had spoken with. And since they were
6 getting ready to shut down the mining operations OXY
7 said that they would work with us in preparing well
8 permits for these wells. So I worked with Larry Conrad
9 in OXY's offices in the Mullins Building in Richlands
10 to get these prepared while Island Creek was on their
11 last -- while they were mining out. OXY sold out to --
12 I guess Island Creek sold to Consol and somehow OXY
13 sold out to Buchanan Production also and we continued
14 to try to negotiate. We went to Mr. Morgan in Blue-
15 field to further pursue this in which we were, I
16 guess, made to think that they were going to work with
17 us and were going to try to work out an agreement. And
18 then basically it ended there.

19 Q. Mr. McClannahan, I want to ask you to go through a
20 couple parts of these two agreements. The first one
21 I'd ask you to refer to is the compensation agreement
22 dated October 30th, 1992. MacConstruction, Inc. is
23 identified as the party. Who is identified as the
24 party of the second part?

25 A. Island Creek Coal Company.

1 Q. Does it also indicate its successors and assigns?
2 A. Yes.
3 Q. In the first paragraph does it indicate that whereas
4 Island Creek is the lessee of the minerals?
5 A. Yes.
6 Q. So was Island Creek entering into this agreement with
7 you as the coal lessee?
8 A. I would think it was as the mineral owner.
9 Q. Or as the lessee of the minerals?
10 A. Yes.
11 Q. Presently is it your understanding that Island Creek
12 has assigned its interests under the mineral or coal
13 lease to some other parties? Excuse me. It is your
14 understanding that Island Creek has leased its -- has
15 assigned its interest under the coal lease to other
16 parties, namely Consol, Inc. -- Consol, Inc. who is the
17 applicant in this case?
18 A. Yes.
19 Q. On behalf of Buchanan Production?
20 A. Yes.
21 Q. And that occurred after this agreement was entered
22 into?
23 A. Correct.
24 Q. I'd ask you to direct your attention to Page 5 of that
25 October 30th, 1992 agreement and Paragraph 5. Would

1 you please read into the record Paragraph 5?

2 A. "Upon termination of this agreement or if Island Creek
3 shall cease to both use or need the VVH 1.303 and VVH
4 1.303B and VVH 1.303C they he shall so notify surface
5 owner. If owner so requests within three months of
6 mailing such notice Island Creek shall transfer its
7 right, title and interest in VVH 1.303, VVH 1.303B and
8 VVH 1.303C to surface owner provided that surface
9 owner has obtained all necessary permits to operate VVH
10 1.303 and 1.303B and 1.303C as gas wells or coalbed
11 methane gas wells."

12 Q. Has MacConstruction also filed an action in Buchanan
13 County against Buchanan Production attempting to
14 enforce that agreement?

15 A. Yes, we have.

16 Q. Are there legal issues pending before the Court?

17 A. Yes.

18 Q. Now I'm going to ask you to turn to Page 6 of the
19 agreement and Paragraph 8. Mr. McClannahan, I'd ask
20 you to read Paragraph 8 into the record.

21 A. "Surface owner hereby agrees to indemnify and hold
22 harmless Island Creek Coal Company, Georgia-Pacific
23 Corporation, Buchanan Coal Company, Sayers Pocahontas
24 Coal Company, Yukon Pocahontas Coal Company, OXY USA,
25 Incorporated, and Buchanan Production Company and their

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successors, sub-lessees or assigns, officers, directors and employees from all claims, demands, actions, fines or penalties asserted by surface owner, any governmental agency or any third party related to, resulting from or arising out of the gas operations or other operations or actions of the surface owner or its successors, sub-lessees or assigns."

Q. Mr. McClannahan, I'm going to ask you to direct your attention to the second agreement which has been handed to the Board dated November 4th, 1992. Who is the first party to that agreement?

A. Island Creek.

Q. Read the full name, please, for the record.

A. Island Creek Coal Company.

Q. Its successors and assigns?

A. Island Creek and MacConstruction, Inc.

Q. Is it Island Creek Coal Company, a Delaware corporation, its successors and assigns?

A. Yes.

Q. And is this an amendment to that October 30th agreement we've just referred to?

A. Yes.

Q. What is the purpose of this agreement?

A. This amended agreement was to get the consent for stimulation so that when we came before the Board we

1 would not be shut down on our well permit application
2 due to the fact we did not have consent for stimu-
3 ation.

4 Q. And this amendment provides that Island Creek Coal
5 Company, its successors and assigns would provide any
6 stimulation required by this Board?

7 A. Yes.

8 Q. Did that November 4, 1992 agreement occur prior to the
9 sale of the coal leases and rights thereunder from
10 Island Creek to Consol?

11 A. Yes.

12 Q. To the best of your knowledge was Consol aware of these
13 agreements prior to them acquiring the Island Creek
14 properties?

15 A. After speaking with them, no, I do not think they knew.

16 Q. In terms of the well that you have had there in place
17 for some years what use has been made of the gas
18 produced?

19 A. We have made attempts to operate our asphalt plant in
20 which it has not produced enough gas to do so. We have
21 been able to heat our liquid and a few of our build-
22 ings.

23 Q. If you are designated unit operator what are your
24 intentions?

25 A. We would like to either deepen the well or permit one

1 of the vertical ventilation holes or both and to be
2 able to operate our well we can even expand our company
3 and become more competitive in the business and field
4 that we're in.

5 Q. What are your intentions in regards to expanding the
6 company?

7 A. There's numerous things. Anything that requires energy
8 like kilns -- wood kilns. There's quite a bit of
9 logging going on in our area. There are saw mills.
10 There's no kilns very close. We could -- we are in the
11 pre-cast concrete business but we could upgrade it and
12 do quite a bit better. It's endless. Distillery. Wet
13 Branch has quite a bit of water. We could even distill
14 water.

15 Q. Mr. McClannahan, you're saying that that could be done.
16 Is it your company's intention to do such things --

17 A. Yes.

18 Q. -- if this energy resource is available?

19 A. Yes.

20 Q. You have attached an Exhibit #C to your application
21 regarding the estimated costs of acquiring existing
22 well and the estimated cost of converting a VVH -- one
23 of the vertical ventilation holes. Are those reason-
24 able estimates of what it would cost your company?

25 A. I think so, yes.

1 Q. When you are referring to acquiring an existing well
2 are you referring to the well that you now have?
3 A. Yes.
4 Q. And deepening that well?
5 A. Yes.
6 Q. And you're estimating the cost of that being \$99,000?
7 A. Correct.
8 Q. Is that substantially less than the cost that Buchanan
9 Production has estimated would be their cost of
10 drilling a well?
11 A. Yes.
12 Q. You've estimated your cost of converting a VVH at
13 \$91,500?
14 A. Yes.
15 Q. Do you believe those are reasonable amounts?
16 A. Yes, I do believe they're reasonable but if it happened
17 to be more MacConstruction would absorb that cost.
18 Q. In terms of the use of the gas, is it your intention to
19 use any gas produced at your company?
20 A. Yes.
21 Q. Are you willing to escrow royalties and/or fair market
22 price of the gas as directed by the Board pending
23 resolution of the title questions before the Circuit
24 Court of Buchanan County?
25 A. Yes.

- 1 Q. If you are using the gas at the company are you willing
2 to have the escrowed royalties and/or escrowed price of
3 the produced gas escrowed at a fair market value
4 determined by whatever formula this Board would impose
5 pending resolution of the title issues?
- 6 A. Yes.
- 7 Q. Mr. McClannahan, you are able to utilize this methane
8 as an energy source for your asphalt operations and
9 your contemplated expansions of your business, wood
10 kiln, water distillery and so forth. How would that
11 affect the number of employees that MacConstruction
12 would be employing in Buchanan County?
- 13 A. We could probably employ fifteen to twenty more people
14 and also the people -- we operate a seasonal type
15 business in which we would be able to utilize the
16 people that we have to lay off in the winter in other
17 areas to where they would not have to be laid off. It
18 would be very good for our employees and MacCon-
19 struction.
- 20 Q. In other words, is your asphalt business a seasonal
21 business?
- 22 A. Yes, it is.
- 23 Q. The expansions of your business, would you consider
24 them to be year round businesses?
- 25 A. Yes.

- 1 Q. So the employees would stay employed instead of being
2 laid off during the winter months?
- 3 A. That's correct.
- 4 Q. Would the availability of this gas for use at just your
5 asphalt plant make your asphalt plant business more
6 competitive?
- 7 A. Very much so.
- 8 Q. And how so?
- 9 A. We have bid on state contracts for the Virginia
10 Department of Transportation in which the separation
11 between first and second bid has been less than one
12 percent. We're speaking of seven cents on a ton. We
13 are kind of isolated to Buchanan County just due to the
14 fact of where our plant is located and where our
15 material comes from. If we were able to get the
16 methane gas enough to run our plant we could probably
17 be -- we would be more competitive to where we could
18 expand into Russell County, Tazewell County and
19 Dickenson County and not necessarily be isolated to
20 Buchanan County.
- 21 Q. What variables in terms of your costs are there that
22 make a difference in your competitiveness?
- 23 A. Our production costs and basically our labor as far as
24 getting the job done.
- 25 Q. What do you mean by production costs?

1 / Costs per ton of producing the asphalt. Our large
2 cost is energy to heat the asphalt.

3 Q. Mr. McClannahan, why are you asking that MacConstruc-
4 tion be named as the designated unit operator instead
5 of Consol?

6 A. MacConstruction feels that we have a right for the fact
7 that I've explained before, we have drilled the well.
8 Several years ago we captured the gas and produced it.
9 We own the vertical ventilation holes and the consent
10 for stimulation. We own 75 percent of the surface
11 within that unit. We own the rock strata supporting
12 the surface and we feel --

13 Q. I want to clarify one thing. Does that rock strata
14 produce methane gas?

15 A. Yes. There is gas within the rock strata.

16 Q. Is that where the gas from your well has been produced?

17 A. I'm sure some of it has, yes. But it would be very
18 good for MacConstruction to be able to have to use this
19 gas. It would be good for Buchanan County and the
20 employees and citizens of Buchanan County if we could
21 have the opportunity to use this.

22 Q. During the time that you were dealing with Island
23 Creek, OXY, and then Consol, up to the time that Consol
24 filed their application for force pooling had any of
25 those companies shown any interest in developing the

1 gas and producing the gas within this unit?

2 A. No, they hadn't. OXY said that they were not interest-

3 ed in developing that area. Even when we spoke with

4 Consoi our first meeting -- I guess our first and only

5 meeting with Mr. Morgan, he had stated that Buchanan

6 Production had really no interest in producing this

7 area.

8 Q. And, in fact, was there testimony at the previous

9 hearing that the reason that they filed their appli-

10 cation was in response to your law suit attempting to

11 enforce your agreements?

12 A. That's correct.

13 Q. It was just a ploy on their part?

14 A. It was a ploy on their part to shut our application

15 down.

16 MR. SWARTZ: I'm going to object. This is speculation as to

17 my client's motivation.

18 MR. BRAGG: That was the testimony.

19 Q. (Mr. Bragg continues.) Mr. McClannahan, can Mac-

20 Construction operate this unit if it is designated as

21 unit operator?

22 A. Yes, we can.

23 Q. Will the company make whatever investments that are

24 necessary?

25 A. Yes.

1 Q. Does MacConstruction have a bond posted with the Board?
2 A. Yes.
3 Q. Can you operate this well more economically and provide
4 a better return to whoever would be entitled to the
5 royalty interests?
6 A. Yes, we can.
7 Q. And why is that?
8 A. We feel that we could operate it more cost effectively.
9 We're a small company. We have a lot less overhead and
10 as far as the money to be recouped it would not be near
11 as much as would be if Buchanan Production tried to
12 develop this.
13 Q. Is that because you have the rights to the existing
14 well and those vertical ventilation holes?
15 A. That is correct.
16 Q. Has Buchanan Production or Consol approached Mac-
17 Construction at any time inquiring about acquiring
18 your existing well or your rights to those ventilation
19 holes?
20 A. As of yesterday.
21 Q. They made a proposal for a potential settlement?
22 A. Correct.
23 Q. Is that the first time?
24 A. Yes.
25 Q. In response to that did your company reject the

1 overtures?

2 A. No, we haven't. It was very -- it came very quick.

3 The president of the corporation was out of town. My

4 father was not back in town until after 2:00. I had a

5 bid due for the Department of Transportation at 9:00

6 this morning which I was working on. It's a very

7 substantial contract we hoped that we could receive.

8 And we really did not have time to sit down and work it

9 out.

10 Q. Are those ventilation holes available for transfer? In

11 other words, are you intending to transfer those

12 ventilation holes or your well to Buchanan Production

13 if Buchanan Production is designated unit operator?

14 A. No.

15 MR. BRAGG: May I have just one moment. (Pause.) That's

16 all.

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

18 MR. HARRIS: I have a question about your application. If

19 we take all of the conflict about ownership and all and

20 we put that aside and just look at the application, in

21 the application you all are asking the Board to pool

22 this and to designate MacConstruction -- I'm reading

23 from your application -- MacConstruction as unit

24 operator providing that the operator shall have the

25 right to drill, develop, produce, market and sell

1 produced methane gas. You're also asking someone to
2 participate with you in the production of this gas for
3 some percent of royalties. I heard royalties mention-
4 ed. But when asked about the use of the gas that's
5 produced or the plans it's to deepen the well, to
6 permit the VVH and expand the company or whatever,
7 where does anyone else benefit from this? Do you all
8 have some plan for reporting how much was extracted for
9 use for the company? Is the rest going to market?
10 What's happening to the gas? I haven't heard yet
11 anything -- some of the things you asked about.

12 MR. BRAGG: I attempted to elicit that and if I can clarify
13 it. MacConstruction's intentions are to utilize the
14 gas for their operations. To the extent necessary it
15 could potentially and wants to reserve the right to
16 sell to another company which would have the franchise
17 rights in Buchanan County. For the gas that is
18 produced and utilized we are willing to have the Board
19 establish some records until the title issue is
20 resolved so that MacConstruction would pay a fair
21 market price for the gas it produced, would report to
22 the Board or whoever and would follow and pay into an
23 escrow at a fair market price based upon some reference
24 that this Board thought was appropriate to determine
25 the fair market price, to escrow that amount. So it

1 would be as if they were purchasing that from them-
2 selves at this independently established fair market
3 price with those amounts escrowed, with that fair
4 market price to be utilized A) To determine the
5 royalties that would be due to anyone who might be
6 determined by a circuit court to be entitled to
7 royalties or to be entitled to the price, you know, if
8 it's determined that someone other than MacConstruction
9 owns the gas.

10 MR. HARRIS: My question really is that you've asked us to
11 include other -- a pooling order says I want these
12 other people to participate in the costs of the
13 operations. Well, when someone participates there's
14 some reasonable expectation, I would expect, that
15 they're going to get something out of this. I'm just
16 saying that I wonder in the plan where is that they get
17 something that the other folks who are being included
18 are going to benefit at some point. I know you said
19 you may sell the gas or whatever, but I'm saying if it
20 isn't enough, if it's just enough to provide heat for
21 the building as it is now, even if it's drilled deeper,
22 expanded or whatever. Again, you're asking someone to
23 join you in this venture and I guess I'm waiting to
24 hear -- I don't mean to be difficult but I'm waiting to
25 hear at the end where this is going to benefit the

1 other people that you all are asking us to include with
2 you. Do you understand?

3 MR. BRAGG: Their participation would derive from that fair
4 market value. So it would be as if MacConstruction is
5 purchasing the gas based upon a fair market value. And
6 we're submitting it to the Board saying we would be
7 willing to accept a formula that the Board utilizes for
8 determining that fair market value which would be the
9 basis for anyone who participates to also --

10 MR. KING: Mr. Bragg, participate and pooling are two
11 different things. Am I correct?

12 MR. BRAGG: To my understanding.

13 MR. KING: So, in other words, you're saying you might ask
14 them to participate rather than pool?

15 MR. BRAGG: Well --

16 MS. RIGGS: If I might. The pooling order issued by the
17 Board normally in a pooling application names all the
18 parties who may have or claim an interest in the gas
19 within the unit. That could be coal. It's the parties
20 named by the applicant in the schedules attached. And
21 the order will give all those parties a right of
22 election and their afforded three or four potential
23 elections. One is to participate with a working
24 interest and that's tied to the estimated cost of
25 completing this drilling unit so that any of those

1 folks can come in and pay their proportionate share of
2 the cost of participation and become a working -- have
3 a working interest in the well which is an entitlement
4 to the seven-eighths interest. The other way is if
5 they make no election they're deemed to be leased and
6 they get a royalty which is a one-eighth interest. In
7 any event all of this has to be escrowed. I think what
8 you're confusing as participating interest versus a
9 royalty interest under the pooling. But the pooling
10 application affords both of those elections. So any of
11 the parties names can either elect to participate and
12 take a working interest or they can be deemed to leased
13 and take a royalty interest. In any event the order
14 provides for escrowing of the participation and the
15 royalties until the ultimate issue of ownership is
16 decided in the courts or where ever it's decided.

17 MR. HARRIS: I'm not sure that was my question about the
18 ownership. What I'm saying is that the end result of
19 the gas, what's to happen to the gas and who would
20 stand to benefit from happens with the gas? I'm just
21 not clear if other people -- I guess where I got the
22 participation in is of people asking to join in this
23 venture they would have some reasonable expectation of
24 profit --

25 MS. RIGGS: You're talking about the marketing of the gas.

1 HARRIS: I'm talking about the marketing of the gas,
2 yes. I haven't heard anything about --
3 MS. RIGGS: Due diligence and marketing and --
4 MR. HARRIS: On that end of it I haven't heard anything. If
5 you include someone else and say if you're going to
6 work with me or you're going to have some interest
7 we're going to pay you X amount of dollars. Where does
8 the X amount of dollars come from? I know you've just
9 said that MacConstruction will actually purchase gas
10 from that that's being produced at some rate or
11 whatever. I think this is a due diligence question.
12 Q. (Mr. Bragg continues.) Mr. McClannahan, do you intend
13 to market whatever gas you do not utilize?
14 A. If we could not utilize it, yes.
15 Q. The gas that you utilize in your operations you are
16 willing to pay the fair market price as determined by
17 the Board?
18 A. Yes.
19 Q. So it's as if it was sold at a fair market price
20 otherwise?
21 A. Yes.
22 Q. And you would expect that price to be comparable to
23 that -- the price that MacConstruction would be paying
24 for the gas, you would expect that to be comparable to
25 the price that the unit operator would receive if it

1 ordinarily laid off would be employed plus they would
2 have additional employment and then any surplus would
3 be marketed. Just to answer Mr. Harris' question, in
4 any event the people would be properly compensated just
5 as under any pooling application. They would receive
6 as much, if not more under Mac's proposal.

7 MR. LEWIS: I know a lot of them here on the Board don't
8 understand a lot of times when you drill a gas well
9 it's metered twice. It's metered at the well and then
10 it's metered at the royalty meter. You have a royalty
11 meter there. What you would do is you would take the
12 amount he uses in his office and deduct it from your
13 royalty meter and that would give you a correct reading
14 for the production of that well. It's not just metered
15 once. You've got to have something there to check your
16 royalty -- how much you're paying for that gas.

17 MR. YEARY: They would intend to -- whatever meters would be
18 appropriate, one or two or whatever, assure the proper
19 measurement and compensation for everyone.

20 MR. HARRIS: I still haven't heard -- my real question
21 involves getting that to market. Are there some plans
22 to do that? I mean, is there somewhere you can tie in
23 -- have you planned to go that far, I guess, is what
24 I'm asking? When I look at the bottom line I'm looking
25 at who's going to benefit. There's no problem with you

1 all benefiting. I have no problem with that. But if
2 you're asking other people to join you where are they
3 benefiting and if they're going to benefit from gas
4 sold to the market then is there someplace to gather --
5 are there gathering lines or some other lines you
6 could feed into to get this into the system.

7 MR. YEARY: I understand someone already has a franchise
8 there made exclusive that they would be available to
9 sell to them. I think Virginia Gas --

10 MR. HARRIS: Have you all approached them at all about
11 whether or not you will be able to sell --

12 MR. YEARY: Not at this point. I'm sure that the market --
13 if anyone else could sell the gas -- if it's a sellable
14 commodity it will be sold to Virginia Gas or to
15 whoever. And certainly they would intend to maximize
16 the use of this gas for their own interest as well as
17 the interest of everyone else, because the more gas
18 that's produced the more they and everyone else would
19 make. So that would be their intention.

20 MR. CHAIRMAN: Mr. McClannahan, are you asking the Board to
21 approve also a deepening of this well?

22 MR. McCLANNAHAN: Yes.

23 MR. CHAIRMAN: To what depth?

24 MR. McCLANNAHAN: The Pokie #3 Seam.

25 MR. CHAIRMAN: Do you know how much deeper that's going to

1 be than where you are?

2 MR. McCLANNAHAN: Approximately 150 to 200 foot would get

3 it.

4 MR. CHAIRMAN: Do your consents to stimulate and everything

5 cover all the appropriate seams?

6 MR. McCLANNAHAN: I do not know.

7 MR. BRAGG: It's our understanding they do. Mr. Chairman,

8 there is an application for a permit of that well

9 that's pending.

10 MR. BRENT: Mr. McClannahan, could you just comment on your

11 experience in producing and marketing gas?

12 MR. McCLANNAHAN: I have no experience in marketing gas but

13 MacConstruction has produced gas for at least thirteen

14 years, possibly more.

15 MR. BRENT: For internal use?

16 MR. McCLANNAHAN: Yes.

17 MR. HARRIS: I think of the questions we're asking are

18 probably questions just normally asked or maybe assumed

19 or somewhere in writing. And I think part of it is if

20 you don't have a background of production experience

21 it's kind of hard to know what to say in what connect-

22 ion with what and I understand that and I'm giving them

23 the benefit of that, that this may be the first time

24 for Mr. McClannahan but I know Mr. Yeary has worked

25 with these things before. And I can see us going

1 someplace and I'm supportive as I can be, but then it
2 kind of just fades out and I'm trying to find out when
3 it fades out what's the plan after that. I'm just kind
4 of disturbed when it got to that point it just kind of
5 got real soft -- got real grey or something. I don't
6 see the end result of this being beneficial to the
7 State and being beneficial to the economy. I think it
8 will be but I don't know. I'm not sure what I'm
9 looking for but something just doesn't click right at
10 the end.

11 Q. (Mr. Bragg continues.) Mr. McClannahan, to the extent
12 that your company cannot utilize all of the production
13 from this unit have you considered what the companies
14 would do with that excess production?

15 A. Yes, we have considered it. Speaking with the manu-
16 facturers of the compressors what we would not use
17 would either be recirculated in the line, put back into
18 the -- back down the well bore or we could -- if I
19 guess Buchanan Production or Virginia Gas would want to
20 buy the excess if we could work out an agreement there
21 we would be willing to sell it.

22 Q. Is it, in fact, true that you are interested in selling
23 the excess?

24 A. Yes.

25 Q. And would you actively market any excess production

1 that there is?

2 A. Yes, we would.

3 Q. Is there a company that has a franchise in Buchanan

4 County?

5 A. Yes.

6 Q. What is that company?

7 A. Virginia Gas.

8 Q. And have you contacted them yet about buying any

9 excess?

10 A. No, we haven't.

11 Q. Have you contacted anyone else in regards to putting it

12 into gathering lines and selling at some spot outside

13 of the county?

14 A. No, we haven't.

15 Q. Is it your intention that if you are granted this

16 permit to actively pursue those possibilities?

17 A. Yes.

18 Q. Have you not done that at this point because it's

19 difficult to negotiate such contracts when you're not

20 in the business of marketing gas and there is this

21 dispute going on over whether you will be a unit

22 operator or not?

23 A. That is correct.

24 Q. Do you understand that you would have one year to get

25 into development from the time of any order designating

1 you as unit operator?

2 A. Yes.

3 Q. How long do you think it would take for you to be into

4 full production?

5 A. April.

6 Q. April of 1997?

7 A. Yes. That's what we would shoot for.

8 Q. And if you are designated unit operator do you also

9 expect that you can have agreements in place for the

10 marketing of any excess gas beyond that that would be

11 utilized by your company?

12 A. We can work toward that.

13 Q. Do you think you could have that accomplished with four

14 to six months?

15 A. I do not know that.

16 Q. Do you think you could do that within the twelve

17 months?

18 A. We can definitely work toward that.

19 MR. HARRIS: Let me ask one last question and I'll be quiet.

20 Do you all have on staff or do you plan to have on

21 staff someone who is a production engineer that would

22 be able to track these things and whatever? Again, I

23 know this is new to you all but I'm just -- I would

24 borrow somebody, hire somebody, contract somebody as

25 whatever -- advice, I guess -- who tracks all of this

1 Because I doubt that I could walk on site and say, "I
2 expect this to happen in six months not knowing
3 anything about it. And I'm not suggesting that that's
4 your case by any means because you've worked with the
5 gas and obviously helped drill the well. I guess
6 there's some questions that I'd like to hear answered
7 and I'm still not hearing answered. And I'm not sure
8 how to ask them. So that's what I'm saying.

9 MR. BRENT: Let me take a stab at it. I think my concern
10 centers around my assumption that the most attractive
11 use of this production for you is in your own business.

12 MR. McCLANNAHAN: That is correct.

13 MR. BRENT: That's the most attractive use. And you
14 mentioned just a few minutes ago about talking to the
15 compressor people or whatever, the capability of
16 cycling this back into the hole if it's not used. You
17 also said that you may work with Virginia Gas Company
18 or someone else in working out a sales agreement if
19 you can work out an agreement that's to your benefit or
20 satisfactory to you. I think my concern is one of the
21 factors that you're going to consider as part of how
22 beneficial is that marketing agreement is your primary
23 use of the gas and that's from your own production.
24 Is it going to be more difficult for you to come up
25 with a mutually agreeable agreement -- sales agreement

1 if your primary use or the most attractive use of the
2 gas is in your own production. Isn't it more to your
3 interest to cycle that gas back for future use by you
4 rather than marketing it?

5 MR. McCLANNAHAN: Well, it would be but Buchanan Production
6 I'm sure in the same sealed area -- say VP-1 I'm sure
7 would have a gas well and what we put back down holes
8 I'm sure they would be sucking and producing two units
9 away or three units away. So it's not as though we
10 would not -- this is in the old VP mine works which it
11 would be in a sealed gob area and so if we were not
12 actually getting it I guess -- if we were not selling
13 it they would be trying to capture it. But I'd say
14 that it would be harder to reach an agreement seeing as
15 how we would want to meet MacConstruction's needs
16 first.

17 MR. YEARY: But if we could assure the Board, whatever
18 guidelines the Board puts on this -- the requirements
19 that they be required to actively in good faith pursue
20 marketing of this. And if there's ever an indication
21 that that is not the case there are the appropriate
22 sanctions taking away the rights to continue or
23 whatever. That would be the type thing that I think
24 would certainly be appropriate to put in any order.

25 MR. BRENT: I don't question for a second that they wouldn't

1 nursue a good honest effort and agreement. My only
2 concern is that the bar for them is a little higher
3 than maybe someone else since they have this other
4 attractive use for the gas. And that is in their own
5 operations.

6 MR. YEARY: But I would think if someone saw that they were
7 not doing that in good faith -- all parties of interest
8 would be called to your attention or whoever's attent-
9 ion. You have all those mining contracts in full
10 faith and all that sort of thing.

11 MR. McCLANNAHAN: I don't really see the concern as why -- I
12 mean, we're concerned with a lot of other people
13 benefiting. I mean, what's wrong with a company in
14 Southwest Virginia to become more competitive and be
15 able to grow and expand that would be equal to more
16 jobs for our area. I don't see why that is not
17 attractive.

18 MR. BRENT: I think that's great but our responsibility, I
19 believe, is to see that everybody involved is treated
20 equally and fairly.

21 MR. YEARY: We appreciate and we would certainly -- we'll
22 have final argument in a moment. But I think you can
23 be assured and you can put down the proper guidelines
24 to make sure that everyone's interest is protected so
25 you have the best of all worlds. This is just the

1 opportunity to do that.

2 MR. BRAGG: If I may point out to go back to my response to
3 Mr. Harris earlier, we're not contemplating that the
4 gas that would be utilized by MacConstruction and its
5 operations would just be out of the lieu in terms of
6 compensations. We're basing -- there will be a fair
7 market price set by some formula that the Board would
8 come to on that. And to a certain extent that might be
9 higher than the price that it could be marketed to to
10 the outside.

11 MR. HARRIS: This will be the last thing. My question was
12 really two questions and I realize it's two questions.
13 One is the mining aspect of it. The other is the
14 safety aspect. What concerns me on the safety aspect
15 of it is that the more you all talk the more I'm
16 wondering, for instance, recycling the gas -- I don't
17 think we can just take it and put it back in the
18 ground. And I'm not picking at things because I don't
19 know what the procedures are and that's why I'm saying
20 if there was an engineer -- I would like to hear you
21 all if we got this petition we would hire someone to
22 come in and conduct this operation for us. I would
23 like to hear that. I haven't heard that.

24 MR. YEARY: Let me state as a representative of MacC-
25 onstruction that that would certainly be the case, that

1 all appropriate technical people, marketing people,
2 everyone that would be necessary to do this because
3 this is such a wonderful opportunity. This is a
4 company that's been in existence 37 to 38 years. So
5 there very responsible people. Among the stockholders
6 is a very prominent attorney. So they're going to see
7 that everything is done to see that all safety require-
8 ments are met, all appropriate engineers are hired to
9 monitor the situation. Whatever the standards are for
10 the industry that they would be met because they do not
11 want to have any liability or to endanger anyone or the
12 environment.

13 MR. HARRIS: The other part of that is that -- then I will
14 be quit. I'm going to tape my mouth shut. The other
15 part of that is that I think when you sit down and plan
16 this and you said, we're going to do this and this and
17 you start looking at what's going to happen to the gas,
18 the royalties then I think you probably have a -- it's
19 like if you haven't done ten or twelve times and know
20 what the pitfalls are and what to expect then it's real
21 easy to say this is my pie in the sky, this is going to
22 do this. I think when engineering really gets into it
23 and you look at the practical aspects of it you realize
24 this is reduced by 60 percent over here, I won't be
25 able to do this at all. Then all of a sudden the whole

1 thing takes on a different appearance. I guess my
2 concern is that I don't want you all to go into this
3 blindly. I'm not even sure what pitfalls are there,
4 but I'm just a little concerned that -- by some of the
5 answers that I've gotten I'm just a little concerned
6 that -- well, that you all might do that, just wonder
7 into it. I'm not saying that someone's not capable of
8 running the plan or the show. I guess that was a
9 suggestion really more than -- it is a concern, though,
10 but you need to have somebody that knows what's
11 happening in the oil and gas industry and how all that
12 ties together because it looks like a real rosy picture
13 up front and then when you get into it it gets messy.
14 And unless you can anticipate that -- nobody can I
15 guess. I think you need some experience on your side
16 when it comes to gas and oil. I would like to recom-
17 mend that you do that.

18 MR. YEARY: And certainly that's going to be the case. I
19 think this gentleman's background alone -- and I think
20 his background, the family background, the people who
21 are stockholders, they're going to see that this is
22 done. It's just common sense plus there could be --
23 that could be part of the conditions of any permit.
24 But this is -- I just happened to see on the Today Show
25 this morning some gentleman out in California -- and

1 times here in America -- and that's the blessing of
2 America, that we don't have to big to start with, that
3 we can realize the dream. But we have to start
4 someplace. There was a gentleman out in California.
5 They got together in 1987 with no experience with
6 \$4,000 pooling their efforts together and I think now
7 they were giving their employees because they are
8 considering themselves as a family. One of them got a
9 bonus of, I think, \$300,000 just in that short period
10 of time -- in less than ten years.

11 MR. HARRIS: My comments are not meant to be criticism.

12 Again, I apologize if they were taken that way.

13 MR. YEARY: Oh, no, sir. I didn't take it that way.

14 MR. HARRIS: But they are concerns. And with all due
15 respect to Mr. McClannahan and the rest they are
16 concerns rather than criticism of your application.
17 You'd like to see this path that it's going to go and ,
18 like I said earlier, it just sort of fades out and it
19 makes me uneasy at that point.

20 MR. YEARY: Yes, sir. If I felt that this were a kind of a
21 pie in the sky hole dream that had no -- I don't think
22 they would be taking the time to be before you as they
23 have hired an engineer to assist in this plan here.
24 They will be hiring additional personnel to carry that
25 out. This will be good for a year. We can always --

1 plus you have the enthusiasm. I don't know if we look
2 at the work ethic of the people with enthusiasm in this
3 country today and those who have been around for a long
4 period of time and we can see who's been successful
5 whether it's a laundry mat to the big companies. It's
6 those with the enthusiasm and the work ethic and those
7 people have that.

8 MR. CHAIRMAN: Mr. Swartz, do you have some questions?

9
10 CROSS-EXAMINATION

11
12 BY MR. SWARTZ:

13 Q. How old a man are you, Mr. McClannahan?

14 A. 35.

15 Q. How old were you when this well was drilled then?

16 A. As long as I can remember it being I would have been
17 22 or younger.

18 Q. Were you working in the business at that point?

19 A. During the summers I was attending Emory & Henry
20 College at that point in time and on my breaks I was
21 working with MacConstruction.

22 Q. So during the summer you would be working for Mac and
23 during the school years at that point in time you would
24 have been at Emory & Henry. Is that what your answer
25 was?

1 A. v

2 Q. Did you ever meet Alvin Richie?

3 A. No, I did not.

4 Q. So when you reported -- when you testified earlier that
5 Alvin Richie from Island Creek Coal had involvement in
6 the drilling of that well you were apparently telling
7 us something that someone had told you?

8 A. That is correct. My father.

9 Q. So you were conveying things that your father had told
10 you as opposed to things you knew of your own personal
11 knowledge?

12 A. Yes.

13 Q. You have indicated at several times during the course
14 of your testimony that it is your view that Island
15 Creek has somehow conveyed leases or agreements or
16 rights that were owned by Island Creek to Consol or
17 Consolidation Coal. Do you remember that testimony?

18 A. Yes.

19 Q. Tell me the basis for that testimony? What is it that
20 causes you to say that?

21 A. Consol came in and bought Island Creek out. I mean,
22 that was the, I guess, general consensus. And that's
23 the way it stands now. Consol is in all of Island
24 Creek's old offices.

25 Q. Do you know if Consol bought the stock in Island Creek

1 and whether or not Island Creek continues to exist and
2 own all of the assets it owned before the stock was
3 sold or do you know if Consol bought assets?

4 A. I do not know that.

5 Q. So you don't know then whether or not the Island Creek
6 leases with regard to this mine under the N-13 unit or
7 the Island Creek interest in the agreements, Exhibits
8 #2 and #3 today, you don't know whether or not those
9 leases or Island Creek rights under those agreements
10 have been assigned to anybody else?

11 A. We believe they have been assigned to Consol.

12 Q. Tell me the basis for that belief?

13 A. Through my counsel.

14 Q. Is that the only reason you're telling us today that
15 you think the coal leases under unit N-13 which were at
16 one point in Island Creek and the Island Creek rights
17 under Exhibits #2 and #3 is the only reason you're
18 saying that those agreements -- it's your opinion that
19 those agreements or rights have been assigned to Consol
20 is because your attorneys have told you that?

21 A. No. I was probably incorrect there. We feel that when
22 Consol bought Island Creek that they bought all, I
23 guess, their interest, leases, assignments.

24 Q. Do you have anything in writing that you could show me
25 or the Board that would be an assignment of a coal

1 from Island Creek Coal Company to Consol or
2 Consolidation Coal or an assignment of Exhibits #2 or
3 #3 that you've offered today from Island Creek to
4 anybody else?

5 A. I could not produce those, no.

6 Q. Well, as we sit here today do you know whether or not
7 Island Creek's rights under Exhibits #2 and #3 have
8 been assigned to anybody or whether they're still in
9 Island Creek?

10 A. Well, this is a matter before the Court and I guess it
11 will come out.

12 Q. I'm asking you whether or not you know of your own
13 personal knowledge if Island Creek has assigned to
14 anyone its interests or obligations under Exhibits #2
15 and #3?

16 A. I do believe that.

17 Q. Based on what?

18 A. My belief, I guess.

19 Q. Nothing in writing?

20 A. No.

21 Q. How much gas does the well currently produce?

22 A. As far as cubic feet per hour or cubic feet per second?

23 Q. Per day or --

24 A. BTUs per day we do not know.

25 Q. Is it producing today?

1 A. Yes.

2 Q. And what's the gas being used for today?

3 A. If they have the heat on in the shop it's heating the
4 shop, possibly heating liquid asphalt.

5 Q. Is there a meter on the well?

6 A. No.

7 Q. Why not?

8 A. We feel that we own the gas and we have not put a meter
9 on it.

10 Q. Look at your pooling application, if you would, and at
11 the plat map of the 80 acre unit. Do you see that? Do
12 you have that in front of you?

13 A. Yes.

14 Q. MacConstruction does not own the surface or any other
15 interests in or under Tract #1 on that plat, is that
16 correct?

17 A. That's correct.

18 Q. So roughly 25 percent of that unit is in the hands of
19 someone else?

20 A. Yes.

21 Q. And 25 percent of the gas that you're using today,
22 would you agree, is owned by someone else?

23 A. Yes.

24 Q. And 25 percent of the gas that you were using last week
25 was owned by somebody else?

1 A. Possibly, yes.

2 Q. Do you understand that this 80 acre -- unit grid, the
3 Oakwood I Rules were originated by this Board?
4 Actually I guess it was the predecessor this Board in
5 1990?

6 A. Yes.

7 Q. And would you agree that you've been using gas since
8 1990?

9 A. Yes.

10 Q. And before?

11 A. Yes.

12 Q. And that you have not had a meter on this gas at any
13 point in time?

14 A. I think -- there has not been a meter on it, but I am
15 pretty sure that they have tried to -- my father has
16 tried to determine the amount of gas that they have
17 used in the past but we don't know how accurate those
18 readings are.

19 Q. What amount of gas do you think you have used in the
20 past year, in 1996?

21 A. I do not know.

22 Q. What?

23 A. I do not know.

24 Q. Can you tell us for any prior year?

25 A. No.

1 Q. You have no idea at all?

2 A. At this point, no.

3 Q. Do you feel -- now that we've talked about the plat map
4 here and the fact that the gas you're using today,
5 roughly 25 percent of it even under your analysis of
6 who owns what is owned by somebody else, do you feel
7 like you probably ought to put a meter on this im-
8 mediately?

9 A. I do feel that we should meter it, but I must say up
10 until three years ago Island Creek Coal Company has
11 vented a considerable amount out of that unit just into
12 the atmosphere and we were keen enough to capture a
13 small portion and be able to use it to our benefit.
14 But --

15 Q. Do you know whether or not Island Creek's coal leases
16 give Island Creek the right to vent in the course of
17 mining without compensation -- without a duty to
18 compensate for the methane venting?

19 A. I do not know that.

20 Q. Do you know whether or not if Island Creek chose to
21 capture the gas it was venting and resell it whether or
22 not their coal leases would give them that right?

23 A. I'm pretty sure they did not. The vents are on our
24 property and very close to our shop and unless -- there
25 is no method or way for them to capture it. It was

1 just released into the atmosphere.

2 Q. Are you really telling me that the reason you don't
3 feel like you need to be accounting to the people who
4 own the methane under Tract #1 -- are you really
5 telling me that you feel like you shouldn't have to
6 account to them because Island Creek vented methane in
7 the course of its mining operations from other holes?
8 I mean, is that your explanation?

9 A. Prior to them shutting down VP-1.

10 MR. YEARY: Also there's another reason. There's a rule of
11 capture that comes into play here that -- this is very
12 technical legal issue but that's my understanding of
13 the rule. In capture you do not have to account to the
14 adjoining landowners.

15 Q. Well, that's all very interesting. I guess my question
16 for the witness is why is it you don't feel that you
17 ought to be putting a meter on this well that's
18 currently producing so that you have an ability to
19 concretely account to the people who own roughly 25
20 percent of this unit?

21 A. It is a very small portion of gas that it being used.
22 Very small.

23 Q. So your answer is it's not enough money to be concerned
24 about from your standpoint?

25 A. Correct.

- 1 Q. And these people should not be concerned that you're
2 using their gas?
- 3 A. Well, maybe they should feel concerned but I cannot
4 answer for them. There has no been no objections to
5 date outside of your all's objections on us using the
6 gas well. So I would assume that they have not really
7 cared.
- 8 Q. So do you think that the obligation of a well operator
9 to pay royalty is contingent upon the people who might
10 be royalty owners coming forward and saying, "You
11 better pay us."?
- 12 A. No. MacConstruction is attempting and trying to comply
13 and to do everything that the Board has set forth. And
14 that is the reason why we are here and we are making an
15 honest effort to do so. And we will be more than glad
16 to royalty or whatever.
- 17 Q. So if you become designated operator you will put a
18 meter on the well, is that what you're saying?
- 19 A. That is correct.
- 20 Q. But until then there's really not enough money to
21 bother with, is that what you're saying?
- 22 A. No, that's not what I'm saying. But if named unit
23 operator and we do get a well permit, yes, we will put
24 a meter on it and go forward.
- 25 Q. The well in the immediate vicinity of your asphalt

1 Q. What is that capable of producing on a daily
2 basis right now?

3 A. I do not know.

4 Q. You've indicated you plan to deepen that well poten-
5 tially into the Pokie #3 Seam?

6 A. Yes.

7 Q. And then you plan to stimulate that well?

8 A. I don't know if we would need to stimulate it if we
9 went down into the Pokie #3. If it is mined out and we
10 hit the #3 Seam I do not think that it would need to be
11 stimulated.

12 Q. And what would you anticipate the production from the
13 well near your asphalt plant would be if it was
14 deepened into the mine works in the mine underlying the
15 property?

16 A. We do not know. Upon our first meeting with Mr. Morgan
17 in Bluefield when my father and I spoke him in negot-
18 iating these wells Mr. Morgan stated that he would
19 have the volume that the vertical vents were producing
20 and have analysis done and get back with us, which he
21 told us that in good faith but I don't know if the
22 calculations ere never done but we never got the
23 results.

24 Q. So your answer, I think, to my question is if your
25 existing well was deepened into the Pocahontas #3 Mine

1 which is where the mine works are, that you don't know
2 what the production would be from that well?
3 A. That is correct.
4 Q. In your application at Paragraph F you have estimated
5 production. Do you see that? A range of production?
6 A. Yes.
7 Q. Where did those numbers come from?
8 A. We hired Terry Calyer with Maxum Engineering to help us
9 in preparing this.
10 Q. But he's not here today?
11 A. No, he's not.
12 Q. Do you know if he actually did an analysis in resulted
13 in calculations that resulted in those numbers that we
14 see at Paragraph F?
15 A. I do not know.
16 Q. Do you know if those numbers were simply copied from
17 Buchanan Production Company's application?
18 A. I do not know that for sure.
19 Q. Would you agree that most of your application appears
20 to be just a retyping of Buchanan Production's applica-
21 tion?
22 A. I would say that it is very similar but we are applying
23 for the same thing in the same unit.
24 Q. Well, do you know if the 125 to 550 numbers in Para-
25 graph F came from your engineer or were simply copied

1) whoever it was that retyped the Buchanan Production
2 application?
3 A. I told you on the previous statement that I did not
4 know that.
5 Q. Do you know the total amount of gas that has been taken
6 from your well from the date of first production till
7 today?
8 A. No, we do not.
9 Q. Can you tell me where the closest pipeline into which
10 you could sell gas is in relation to your well?
11 A. Not exactly, no.
12 Q. Could you tell me sort of?
13 A. No.
14 Q. How much land do you own around the well? I mean, is
15 it shown pretty well on the map here?
16 A. Yes.
17 Q. You own surface 1-A and 1-B and 1-C?
18 A. Yes.
19 Q. Do you own surface 1-D?
20 A. No.
21 Q. Somebody else does?
22 A. Yes.
23 Q. I guess if you don't know where the closest pipeline
24 into which you could sell gas is you have not made
25 inquiries with regard to obtaining or whether or not

1 you need to obtain rights of way to build gathering
2 lines or transmission lines?

3 A. That's correct.

4 Q. And you say you have not spoken with Virginia Gas in
5 terms of whether or not they would be -- their utility
6 would be a potential customer of yours?

7 A. No, we have not.

8 Q. What is the market value of the gas you're using today?

9 A. What is the market value?

10 Q. Right. If we were going to try to figure out what the
11 royalty due on the gas you're using today was what's
12 the market value of that gas?

13 A. I do not know exactly but I would imagine it -- I do
14 not know.

15 Q. Where would you go to figure out what the market values
16 are? Would you go to Virginia Gas and say, "What would
17 you have charged us for the gas today?" and say that
18 that's the market value? I mean, what's the --

19 A. I'd say that would be a good place to start. I would
20 think that that would be not a hard number to come up
21 with.

22 Q. How much gas do you anticipate you, meaning Mac-
23 Construction, would be using to run your asphalt plant
24 and heat your buildings on an annual basis?

25 A. As far as the asphalt plant, if we ran 100 percent

1 production -- well, I'll put it this way. If we
2 manufacture what we've done over the past five years
3 probably ten to twelve million cubic feet per year do
4 what -- would handle the heating needs that we've
5 bought number two diesel fuel for. But we would hope
6 that we could increase that quite a bit just due to the
7 fact of becoming quite a bit more competitive.

8 Q. Is it your plan to find a market so that you can sell
9 gas 365 days a year?

10 A. Yes. We would strive to do that. .

11 Q. Is it your intention to produce maximum potential from
12 any well or wells in this unit 365 days a year?

13 A. Maximum potential. You are asking that we would suck
14 as much gas out of that well as could possibly be
15 pulled from it? We would hope that we could burn every
16 cubic foot as fast as we can get it. But we would
17 strive for that, yes.

18 Q. Do you know what the potential production from the
19 existing well and any VWH you might ultimately convert
20 on an annual basis would be?

21 A. No. As I explained previously, Mr. Morgan was going to
22 do those flow measurements and did not.

23 Q. Did the engineer that you hired to help you with the
24 application tell you what the production potential on a
25 daily basis was?

1 A. No, he did not.

2 Q. And you didn't ask him to do that?

3 A. No.

4 MR. CHAIRMAN: Does the Board want to take five minutes?

5 (AFTER A BRIEF RECESS, THE PROCEEDINGS CONTINUED AS
6 FOLLOWS:)

7 MR. CHAIRMAN: Okay. We'll ask everyone to come to order,
8 please. Mr. Swartz, you were about to ask another
9 question, I believe, when we took a break.

10 Q. (Mr. Swartz continues.) Is it really your intention to
11 put a compressor on one or more of these wells?

12 A. Yes.

13 Q. And is really your intention in the event that Mac-
14 Construction is not able to burn all of the production
15 to then just recycle the compressed gas back into the
16 well?

17 A. Speaking with JW Operating they said that we could just
18 recirculating it back in the line or possible send it
19 back down the hole. We would pretty much confer with
20 them or whoever we bought the compressor off of as far
21 as what would be done with this excess gas when we were
22 not in -- what would be the best thing to do with the
23 excess gas that we were not burning through the burner.

24 Q. Have you ever heard the term "injection well"?

25 A. Yes.

- 1 Q Do you know whether or not putting gas back in the
2 ground would require a completely different kind of
3 permit?
- 4 A. I don't know about putting gas back into the ground but
5 I think or thought that an injection well was where the
6 salt brine was put back down hole and into the well.
- 7 Q. Do you know whether or not your plans to potentially
8 put gas back into the well and therefore back into the
9 ground -- whether or not those plans would require some
10 special permit either from the Department of Mines or
11 perhaps the agency that regulates gas storage?
- 12 A. I am unaware of that. That was just something that the
13 gentleman from JW Operating had mentioned when I was
14 conferring with him.
- 15 Q. Did he mention that you might need a permit for that?
- 16 A. No, he did not.
- 17 Q. If you deepened this well that you currently have by
18 your asphalt plant into the Pocahontas #3 Seam you
19 would actually probably be in an existing entry of the
20 mine, right?
- 21 A. Or a block of coal that has not been mined.
- 22 Q. Have you mapped your well in relation to the mine
23 works?
- 24 A. Mr. Calyer has.
- 25 Q. And is he telling you you're in the entry or in a block

1 of coal or is he telling you that you're definitely
2 here or there?

3 A. He said we were in a block of coal.

4 Q. Do you know if Consol has mapped your well location in
5 relation to their mine work?

6 A. I would imagine so.

7 Q. Obviously you should say that if Island Creek has
8 mapped it in relationship to the Island Creek mine --
9 do you know if they have?

10 A. I would imagine so. I think that you have at the
11 hearing in the Breaks pulled out a copy and said that
12 we were in an entry way if my memory serves me correct.

13 Q. Is there also a longwall panel under part of unit N-13?

14 A. Yes, there is. That's where the vertical ventilation
15 holes are.

16 Q. So would you agree that roughly the south third of unit
17 N-19, the bottom third, is underneath -- underneath
18 that is a mined out longwall panel?

19 A. Yes.

20 Q. Your application is for pooling under both Oakwood I
21 and Oakwood II. Do you understand that?

22 A. Okay.

23 Q. Is it your understanding that Oakwood I would apply to
24 the well by the asphalt plant?

25 A. And as far as the Oakwood II it would be in the mined

1 out area

2 Q. And that would be the vertical ventilation holes over
3 the longwall panel?

4 A. Yes.

5 Q. And I understood from your testimony that your plans
6 were to produce from both the existing well that you
7 have by the asphalt plant and one or more of the
8 vertical ventilation holes that over the mined out
9 longwall panel?

10 A. We would like to, yes.

11 Q. Do you know that if you were to produce from the
12 vertical ventilation holes, one or more of them, over
13 the mined out longwall panel you would have to obtain
14 leases and/or pool five additional Oakwood units so
15 that you could allocate that production?

16 A. No.

17 Q. You understand, though, that if you were producing from
18 that longwall panel you would be taking gas from a
19 panel that extended under units beyond N-13?

20 A. That is correct.

21 Q. Do you know if it's at least six units or how many
22 units would be effected by production from a vertical
23 ventilation hole on the south portion of your unit?

24 A. Exactly, no.

25 Q. Have you undertaken to do title on any of those six

1 units?

2 A. Yes, we have.

3 Q. Which ones?

4 A. I am pretty sure that we have done title on that
5 longwall panel on those units.

6 Q. On the other five units in addition to this one?

7 A. Possibly so, yes. I can't say that for sure.

8 Q. And when did you undertake to do that?

9 A. If I'm correct August a year ago.

10 Q. Do you understand that any production from a gob well
11 over that longwall panel would have to be allocated to
12 all units affected by the panel?

13 A. Yes.

14 Q. And that you either have to lease all of those units or
15 do title and pool all those units?

16 A. I'm unsure.

17 Q. Do you know who you would be required to pay royalty to
18 for production out of an active gob well in the
19 southern part of the N-13 unit?

20 A. No.

21 Q. Do you know if the royalty payments from the well by
22 the asphalt plant which is currently what I'd call a
23 non-gob well, an Oakwood I well, do you know how those
24 payments get calculated?

25 A. No, but I'm sure we could follow the guidelines set

- 1 forth by the Board and be able to do so.
- 2 Q. I think I heard you say that you might want to stimu-
3 late the wells that you're proposing to deepen. Did I
4 hear you correctly?
- 5 A. You asked if we were wanting to stimulate that. If we
6 did go into the VP-3 Seam and it was not in a chunk of
7 coal I do not know that we would necessarily need to
8 have that stimulated. But if we were in a block of
9 coal, yes, it possible may need to be stimulated.
- 10 Q. Could you tell me what it is that would give your
11 company the right to stimulate that well if it wound up
12 in a solid block of coal as opposed to in the mine?
- 13 A. Explain that -- or ask that question again.
- 14 Q. Tell me what agreement that is currently in place would
15 allow you to stimulate that well that is by the
16 asphalt plant if you deepened it and it turned out
17 that it was in a block of coal?
- 18 A. I assume the agreement we had with Island Creek for
19 consent for stimulation would.
- 20 Q. Was the agreement with Island Creek with regard to
21 consent limited to the vertical ventilation holes?
- 22 A. I don't think so.
- 23 Q. Why don't you pull out Exhibit #3.
- 24 A. It grants consent to stimulation for the VVHs.
- 25 Q. So would you agree that you do not currently have in

1 hand a consent to stimulate the well that you drilled?
2 A. By this agreement, no.
3 Q. Do you have any other agreement that you claim gives
4 you consent to stimulate the well that you drilled that
5 is currently near your asphalt plant?
6 A. No.
7 Q. Would you agree that MacConstruction's use of the gas
8 would primarily be in the summer, late spring or early
9 fall?
10 A. At this point in time and in the past it has been
11 winter.
12 Q. You've used most of the gas in the winter?
13 A. To date.
14 Q. And how is it that? Most of your paving jobs have been
15 in the winter?
16 A. No, they have not, but as I explained prior we have not
17 had enough gas to fire the asphalt and we use it to
18 keep the liquid hot which in the summer we bring the
19 liquid asphalt in and it's 300 degrees plus. We just
20 have to maintain it at 275 degrees. We can use two
21 tanker loads -- two tractor and trailer loads in a day
22 in which I'm sure those burners probably never do come
23 on due to the fact of the temperature of the liquid and
24 we have primarily used the gas to heat our buildings in
25 the winter.

- 1 Q The ten to twelve million a year estimate, is that your
2 estimate of the cubic feet of gas that would be used if
3 you could obtain gas production to replace the diesel
4 fuel you say you've been using?
- 5 A. That is correct.
- 6 Q. Would you agree that that ten to twelve million cubic
7 feet going forward would be utilized primarily in the
8 late spring, summer and early fall?
- 9 A. Correct. Yes.
- 10 Q. Do you know enough about gas prices to know whether or
11 not gas prices are lowest in those months historically?
- 12 A. If they are consistent with fuel oil prices I would
13 say, yes, they probably are lower in those months.
- 14 Q. And would you agree that unless MacConstruction were
15 able to find places to sell this gas that the royalty
16 owners would not benefit from gas sales when the prices
17 would be expected to be highest because the usage would
18 be minimal in the wintertime?
- 19 A. Explain that again.
- 20 Q. If you don't find a place to sell gas you're not going
21 to be using much gas or producing much gas in the
22 winter, correct?
- 23 A. We hope to -- we plan to do other things. We could
24 burn quite a bit of fuel in kiln drying wood and
25 concrete processes. But, no, we would not use very

1 much in the production of asphalt during the winter
2 months.

3 Q. Let me ask the question a little differently then.
4 Unless you find someplace to sell gas and/or unless you
5 start some other businesses that use gas would it be
6 fair to assume that very little gas would be produced
7 and used in the winter months?

8 A. Currently the way MacConstruction is we would not use
9 very much in the winter months.

10 Q. Do you agree that you cannot sell gas at retail in
11 Buchanan County because of Virginia Gas' franchise?

12 A. Yes.

13 Q. So you would either have to create businesses that Mac
14 actually owned and operated or you would have to sell
15 into somebody else's pipeline for the gas to leave the
16 county to sell?

17 A. Yes.

18 Q. So unless you create -- you meaning MacConstruction.
19 Unless Mac creates additional need for the gas as a Mac
20 business the gas is going to have to leave the Common-
21 wealth?

22 A. State that again.

23 Q. Well, if you can't sell gas at retail and if Mac
24 doesn't use the gas does the gas have to leave the
25 county if it's going to be sold?

- 1 / No. I do not think so. I do not believe Wyatt
2 Ratcliff's gas is leaving the county and he is selling
3 it to Virginia Gas in which it is used by county
4 residents.
- 5 Q. In the county would you agree that the only person you
6 could sell to or only entity you could sell to -- if
7 you're not using the gas yourself -- would be Virginia
8 Gas?
- 9 A. We could not sell to anyone retail. But if we could
10 possibly -- with your agreement that you offered to us
11 you would sell it to us at a well head price. How can
12 you sell it to people in the county which we would be
13 -- you would be selling the gas to us in the county.
14 How could Buchanan Production do that if Virginia Gas
15 holds the franchise to be the only company to distri-
16 bute and sell gas within the county?
- 17 Q. I guess my question for you is do you know whether or
18 not you could sell gas in Buchanan County to someone
19 other than Virginia Gas from your existing well or the
20 VVHs?
- 21 A. I do not know. We could possibly sell to Buchanan
22 Production but I don't know that we could sell to
23 anyone other than Virginia Gas. You all have the only
24 other pipeline within the county.
- 25 Q. You've indicated that you can produce gas more cheaply

1 than Buchanan Production. Do you remember that
2 testimony?

3 A. Yes.

4 Q. What is your current or anticipated cost of production?

5 A. Reaching toward production or just production cost?

6 Q. What's your production cost?

7 A. I don't -- we haven't really produced. So I guess we
8 do not know what our production cost is.

9 Q. Do you know what it's going to be going forward?

10 A. Do I know when it's going to be going forward?

11 Q. No. What it is going forward. I mean, if you're able
12 to deepen these wells and put compressors on them and
13 build lines do you know what your cost is going to be
14 going forward?

15 A. We have an estimate, yes.

16 Q. What's that estimate?

17 A. As far as our existing well we feel that we could do it
18 for \$99,000.

19 Q. No, no, no. Your operating costs, you know, to produce
20 an MCF of gas, to compress it, to transport it, what
21 are your costs going to be?

22 A. I do not know at this point in time.

23 Q. So when you're comparing your costs to Buchanan
24 Production's costs it's just your opinion for which you
25 have no basis? Is that -- you just assume that you

1 Q. Can they do it more cheaply than they could?

2 A. I feel that we have a considerable amount of less

3 overhead and I do not feel that our costs would come

4 near Buchanan Production's costs.

5 Q. Do you know what costs you can deduct in calculating

6 royalty, if any?

7 A. I am aware that it is in the Oil and Gas Act but to be

8 able to spell that out to you right now, no, I cannot

9 do that.

10 Q. If you would take Exhibit #2 that your lawyers handed

11 to the Board earlier and Mr. Bragg asked you to read

12 part of Paragraph 5 at Page 5. Do you remember that?

13 A. I think I read it. Okay.

14 Q. Would you read the part of Paragraph 5 that you didn't

15 read?

16 A. "Island Creek does not and cannot transfer to surface

17 owner the right to operate for gas or coalbed methane

18 on the property and surface owner shall negotiate with

19 the owners and lessors of such gas or coalbed methane

20 for the right to operate for same."

21 Q. Was this an agreement that someone signed on behalf of

22 MacConstruction?

23 A. Yes.

24 Q. Who signed it?

25 A. Jessie McClannahan.

1 Q. And he's your dad and the president of MacConstruction?
2 A. That's my mother and the president of MacConstruction.
3 Q. Oh, Jessie. What's your father's first name?
4 A. Roger.
5 Q. She signed this on behalf of MacConstruction?
6 A. Yes.
7 Q. And the parties to this agreement are MacConstruction
8 and Island Creek Coal, correct?
9 A. Correct.
10 Q. Can you tell me what efforts MacConstruction has made
11 consistent with this undertaking at Paragraph 5 to
12 negotiate with the owners of the coalbed methane?
13 A. We feel that we own the coalbed methane.
14 Q. Wouldn't you agree that it looks kind of unusual to
15 include this kind of a provision in an agreement --
16 MR. YEARY: I'm going to object to this as argumentative,
17 Mr. Chairman.
18 MR. SWARTZ: Let me finish the question.
19 Q. (Mr. Swartz continues.) Would you agree that this
20 provision requiring Mac to negotiate with regard the
21 right to explore for coalbed methane would be in-
22 consistent with a contention by MacConstruction that
23 it already owned the methane?
24 MR. BRAGG: We object to the question that it's assuming
25 that it's a requirement of negotiation and we would

1 obviate that the agreement requires them to negotiate.
2 It's also argumentative.

3 MR. CHAIRMAN: Sustained.

4 Q. (Mr. Swartz continues.) What does the word "shall"
5 mean?

6 A. That you shall.

7 Q. Is that like a mandatory kind of word as opposed to may
8 which is a discretionary kind of word?

9 MR. BRAGG: I object. That's call for a legal conclusion.

10 MR. CHAIRMAN: Sustained.

11 MR. SWARTZ: I don't think the use of the English language
12 -- we all speak english. And the basis of the object-
13 ion was it was calling for a legal conclusion. If this
14 man understands the word may to mean something that the
15 rest of us don't. I think I'm entitled to ask him. We
16 all speak -- regular people and lawyers. And the
17 objection was it called for a legal conclusion which is
18 ridiculous. I mean, it calls for his understanding of
19 what the word may mean means compared to the word
20 shall.

21 MR. CHAIRMAN: Sustained.

22 Q. (Mr. Swartz continues.) Do you know if MacConstruction
23 ever talked to anybody with regard to obtaining a
24 lease?

25 A. No.

1 Q. Do you know if MacConstruction attempted to get Island
2 Creek at some point to assign coalbed methane rights to
3 them?
4 A. I do not know that.
5 Q. In the first paragraph and thereafter in Exhibit #2
6 MacConstruction is called the surface owner, isn't it?
7 A. Excuse me. Where?
8 Q. In Exhibit #2 in the first paragraph MacConstruction is
9 referred to as the surface owner, correct?
10 A. Yes.
11 Q. Do you have your bond with you today?
12 A. No, I do not.
13 Q. When did you obtain that bond?
14 A. Prior to submitting our well permit application.
15 Q. What's the amount of the bond?
16 A. I'm thinking \$10,000. I do not know that for sure but
17 I think so.
18 Q. Your application requests that a provision be made to
19 escrow, correct?
20 A. Our pooling or --
21 Q. Pooling application?
22 A. Yes.
23 Q. Do you plan to deposit with the escrow agent royalty or
24 other funds associated with production in the past?
25 MR. BRAGG: I'd object to that. The application is prospec-

1 tive and for the record we'll point out that the
2 question of claims to past royalties are in litigation
3 in the Circuit Court of Buchanan County.

4 Q. (Mr. Swartz continues.) Well, what about the 25
5 percent owned -- have you sued the people who own Tract
6 #1 in court? You're not claiming that you own that
7 percentage of this unit, are you?

8 A. We have claimed to own all the gas.

9 Q. Well, have you sued the people who have -- all the
10 people who hold any title interest at all with regard
11 to Tract #1 in your action that you've commenced in
12 Buchanan County?

13 A. No, we haven't.

14 Q. So my question is with regard to those people that you
15 haven't sued who have an interest in the production
16 from this unit do you plan to escrow money with regard
17 to production in the past?

18 MR. BRAGG: Again we'd objection as it being immaterial and
19 irrelevant. The application is prospective.

20 MR. CHAIRMAN: I'll overrule the objection.

21 A. (The witness continues.) We can try to come with a
22 volume used and work it out with them.

23 Q. So you might is your answer?

24 A. Well, we would pursue that.

25 Q. With regard to your cost estimate, Exhibit #C which is

1 part of your application, where did these numbers come
2 from? I mean, who did the estimate?

3 A. I have gotten Mountain Pipeline to come take a look at
4 our vertical vents and take a look at our gas well,
5 showed them where the pipeline needed to go. They gave
6 me an estimate on what they would construct the
7 pipeline for. I spoke with McJunken in Norton on
8 buying the pipeline and I spoke with JW Operating in
9 Oklahoma City and got costs on equipment and that's
10 where they came from.

11 Q. Looking at acquisition and additional drilling, what
12 does the acquisition refer to?

13 A. Basically we spent -- \$17,000 was our bill from Noel
14 Horn when we drilled the well.

15 Q. Do you have that bill with you today?

16 A. No, I don't.

17 Q. Does it still exist?

18 A. Yes, it does.

19 Q. With reference to that bill could we tell when the well
20 was drilled?

21 A. No, you could not. There is a date of the billing but
22 the drilling process and working the different pipe in
23 the well was over a period of time. It was not as if
24 they came in and drilled the well in a two day period
25 and left and billed us. It was worked out over quite

1 some time.

2 Q. What's the date of the bill?

3 A. Exactly I do not know.

4 Q. Roughly what it is?

5 A. August of 1983. Now that's being brought out of

6 memory. I wouldn't stake my life on it but it's close.

7 Q. When was the bill paid?

8 A. I don't know. I would imagine we could come up with

9 that, though.

10 Q. Was the bill submitted after all the work was completed

11 or did you have to pay up front?

12 A. I believe that it was after the work was -- after all

13 of the work was completed.

14 Q. Would it be fair to say that the well did not produce

15 before August of 1983?

16 A. I do not think so, no.

17 Q. That would not be fair?

18 A. It would not be fair.

19 Q. When did the well first produce?

20 A. I personally do not know.

21 Q. When was the well hooked into anything that could use

22 gas from it?

23 A. I could not state that either.

24 Q. Was it after August of 1983 or before?

25 A. I do not know that.

1 Q. \$17,000 of the \$30,000 was the cost to drill the well.
2 What's the other \$13,000?
3 A. To run the pipeline and flow meters, pressure gauges,
4 that sort of thing.
5 Q. What's the meter cost?
6 A. The flow meter was, I think, in excess of a couple
7 thousand bucks.
8 Q. What line are we talking about running?
9 A. We're still working with (Inaudible.) Manufacturing
10 concerning that. They are the people who manufactured
11 the burner.
12 Q. So what we're looking at here is running line from the
13 existing well to the burner and then re-configuring the
14 burner to use the gas?
15 A. No. It had nothing to do with re-configuring the
16 burner. It just had to do with running the pipeline
17 and also deepening well. Noel Horn said that he would
18 do that for \$8,000.
19 Q. But the line that we're talking about running here
20 would be from the well to the plant?
21 A. Yes.
22 Q. And you would be expecting that that would be a cost
23 that could be assigned to this unit?
24 A. Possibly.
25 Q. Was it in the \$30,000?

1 A. Excuse me?

2 Q. Is it in the \$30,000, the cost of the line?

3 A. Yes.

4 Q. What is the \$69,000 for equipment?

5 A. The compressor was in excess of \$100,000 and what we
6 had hoped to do was to be able to put that cost over to
7 two wells and I guess I was wrong in saying that the
8 pressure gauges, flow meter and that sort of thing was
9 in the \$30,000. That is in the equipment. That
10 \$30,000 was the original drilling of the well and then
11 deepening.

12 Q. Do you have a written estimate from anybody with regard
13 to the deepening?

14 A. No, I do not.

15 Q. And the equipment, is that the flow meters, the lines
16 and a compressor?

17 A. Correct.

18 Q. What else?

19 A. I had money for miscellaneous things that did not have
20 time to work out. So we added -- I added additional
21 moneys for miscellaneous unforeseen things.

22 Q. How much would that be of the \$99,000?

23 A. I think I added \$10,000.

24 Q. Then if I understand this correctly the numbers for the
25 first part of Exhibit #C only work if you do the second

1 part because you've put roughly half of the cost of the
2 compressor on the second part as well, right?

3 A. Correct.

4 Q. So if you didn't do the second well your well costs on
5 the first one would go up by another \$50,000, correct?

6 A. Yes.

7 Q. So it would be at \$159,000?

8 A. That is correct. But like I stated, that MacConstr-
9 uction would absorb anything over.

10 Q. I'm just trying to get at your costs. Now, which VVH
11 do you have in mind here with regard to the second half
12 of the this Exhibit #C?

13 A. We would need cooperation with Island Creek or Consol,
14 whoever had the records and drill logs of the two
15 wells. One is cased. The other is an open hole.

16 Q. So at this point you don't have one of them in mind?

17 A. As far as -- no.

18 Q. The \$91,500 in equipment, I assume \$50,000 of that is
19 the half of the compressor?

20 A. Yes.

21 Q. And then we've got \$41,500. What's the rest of that?

22 A. There is approximately 25 for pipeline.

23 Q. And where is that pipeline going to go to and from?

24 A. The well to the asphalt plant.

25 Q. And that's a cost you feel is fair to put in the

1 equation here?

2 A. Yes.

3 Q. What's the balance of it?

4 A. What we had, 50 and I said approximately 25?

5 Q. Right.

6 A. \$16,500 which 10,000 of that was for miscellaneous.
7 We would have a flow meter there which would take two
8 to three thousand of it.

9 Q. What would the rated capacity on the output side of
10 this compressor be?

11 A. What we originally had spoke with was 80,000 cubic feet
12 per hour with a discharge pressure at the burner to be
13 13 PSI.

14 Q. What's going to fuel this compressor?

15 A. We'd spoke of having an electric motor.

16 Q. So the \$100,000 bid on the compressor was for an
17 electric power?

18 A. 200 horsepower which I believe after speaking and
19 consulting with Halk Manufacturing that could possibly
20 be just a little oversized.

21 Q. Has MacConstruction been paying severance taxes to the
22 County with regard to the gas it has extracted from its
23 well over the years?

24 A. No, we haven't.

25 Q. Does the well currently produce water or liquids?

1 A. Yes.

2 Q. And what do you do with that?

3 A. We have them stored on site.

4 Q. When you run out of storage space what do you do with
5 it?

6 A. We have watered our roads and used it for snow removal.

7 Q. Do you know if that's legal?

8 A. I have found out within the last year or even sooner
9 than that that we need a permit to do so.

10 Q. Have you applied for a permit?

11 A. We haven't applied for a permit but we have -- the
12 water is being tested presently. We should have gotten
13 that sample back prior and as far as for the applic-
14 ation for the permit I think the test for the heavy
15 metals and salt and all that need to be on it.

16 Q. What kind of a permit have you been told you need?

17 A. It's in the Oil and Gas Act. I can't pull it out of my
18 memory of basically what it is.

19 Q. Are you planning on injecting that water into a well?
20 I mean, what are you planning on doing with it?

21 A. Well, I guess if it did not pass the current limit-
22 ations that we would have to inject it into a well or
23 haul it to a treatment place. But if it was within
24 the proper certain boundaries we could have it condi-
25 tioned and use it for dust removal or snow removal,

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what?

Q. If you have to inject it -- if it turns out it doesn't pass the test and it has to be disposed of either by injection in a well that you all own or somebody else's well do you plan to obtain a permit for an injection well? What are your plans?

A. No, we do not plan on doing that. I think we could possibly get rid of what we produce another way that would be a lot less expensive.

Q. And what's that other way?

A. Possibly we could work out something with Buchanan Production, Consol or whoever as far as one of their injection wells or find someone who could treat the water.

Q. Do you know that there are commercial companies that you can pay to inject your water?

A. No.

Q. So you don't know that they're available and you don't know what that would cost?

A. Correct.

Q. With regard to charts, assuming you eventually get meters on one or more of these wells, do you understand that meters have charts?

A. Possibly. Like honey well charts?

Q. Have you ever seen a gas meter?

1 A. No.

2 Q. So you don't know whether or not they have paper
3 charts?

4 A. I would assume possibly they could.

5 Q. Who would read those charts for you if reading charts
6 was necessary?

7 A. I think I could possibly learn to read a chart.

8 Q. Who would do the royalty accounting?

9 A. I'm sure if we could not handle it inhouse we could
10 hire the proper people to be able to handle that task.

11 Q. Is that something you really haven't thought through
12 yet?

13 A. No, we haven't.

14 Q. How about cost accounting, in terms of deducting costs
15 that might be deductible in terms of royalty? Who
16 would do the cost accounting?

17 A. Well, we could do that inhouse but I'm sure our
18 accountant would oversee us.

19 Q. Do you have any moneys in your Exhibit #C estimates
20 with regard to separators or other equipment or tanks
21 to deal with produced water?

22 A. No.

23 Q. Is that --

24 A. Unless that could fall under the miscellaneous.

25 Q. Right. But nothing specific?

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A. No.

Q. In the event that the mine were to reopen could you tell me whether or not you would expect that that might impose additional responsibilities on the operator with regard to either one of these wells and if so, what some of those additional responsibilities and duties might be?

A. I would think that it would impose additional responsibilities and I'm sure those responsibilities would be to conduct operations or stop operations to make sure that the mining could be done in a safe manner.

Q. Do you have any money in your estimates with regard to Oxygen content monitoring equipment with regard to telemetry that could shift a vent -- shift from production to venting?

A. No.

Q. So if any of that were required you haven't provided for it other than in terms of the miscellaneous category?

A. Correct.

MR. SWARTZ: That's all I have, Mr. Chairman.

MR. CHAIRMAN: Any questions at this time, members of the Board, before redirect? You may go ahead, Mr. Bragg.

MR. BRAGG: Just a few questions.

REDIRECT EXAMINATION

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BY MR. BRAGG:

Q. Mr. McClannahan, you referred to discussions with JW Operating regarding the possibility of recirculating gas that was excess gas, is that correct?

A. Yes.

Q. Who is JW Operating?

A. They are a company who design and build compressors in Oklahoma City for gas and oil.

Q. And was that a suggestion that they had made to you with the capability of their equipment?

A. Yes.

Q. Is it something that you were planning on doing?

A. It's not something that we were planning on doing but it was just something -- it was an alternative to instead of -- their compressor would produce 80,000 cubic feet per hour and if we were not running maximum production and if we were just heating up or whatever that compressor would still be producing that if we did not have certain valves and other piping. That was just a possibility.

Q. So what he was doing was describing the capability to that compressor?

A. Correct.

1 Q. Is it your plans and is it your commitment to the Board
2 that if Mac is designated as unit operator that any
3 excess gas would be marketed using due diligence to get
4 the best price that could be obtained?
5 A. Yes.
6 Q. Now, you were asked several questions about not having
7 a meter on your well right now and there was some
8 discussion about someone else having a 25 percent
9 claim. Why have you not metered the well up to this
10 point?
11 A. We are not using very much gas whatsoever but we feel
12 that we own 100 percent of it.
13 Q. When you were referring to the other surface owner in
14 parcel one were you referring to potential claimants?
15 A. Yes.
16 Q. Is it your position that whoever captures the gas
17 outside of a pooling application is the owner of the
18 gas?
19 A. Yes.
20 Q. Regarding your testimony that you will be using ten to
21 twelve million cubic feet of gas from spring through
22 early fall, is it your intention if this fuel source is
23 available to expand the operations of your business?
24 A. Yes, in which that ten to twelve million cubic feet
25 would take care of what we've done for the past five

1 years. That's each year. Which we would hope to
2 expand. We would expand, yes.

3 Q. And would you be using a substantial amount of the gas
4 year round?

5 A. Yes, we would.

6 Q. You would be adding new businesses?

7 A. Yes.

8 Q. New ventures?

9 A. Yes.

10 Q. Creating new jobs?

11 A. Yes.

12 Q. If you have been using ten to twelve million cubic feet
13 from spring to early fall -- give the benefit of the
14 doubt and say that's six months -- and you increase
15 business can you estimate how many million cubic feet
16 you would be using --

17 A. As far as the increased businesses I couldn't estimate
18 it, but if we could run our asphalt plant at maximum
19 production we could burn two million cubic feet per
20 day with the plant we presently have.

21 Q. And if your application is granted do you have plans
22 for increasing the equipment that you have in your
23 plant, replacing the burner and utilizing more gas than
24 what you would have been using in the past?

25 A. Yes.

1 Q. Mr. McClannahan, you were asked about whether you knew,
2 in fact, whether Island Creek had signed the coal
3 leases to Consol or whether Consol had simply bought
4 out Island Creek. Does that make any difference to
5 you?

6 A. No, it doesn't.

7 Q. After Island Creek stopped mining the coal and had sold
8 the coal was Consol the one operating the VP-1 Mine
9 under your property?

10 A. I think so, yes.

11 Q. Is MacConstruction committing to handle the operation
12 of this unit and of any well in a first rate profess-
13 ional fashion and committing to this Board that if you
14 are designated as unit operator you will either employ
15 as staff of the company or as consultants all the
16 professionals that are necessary?

17 A. Yes.

18 Q. In terms of the accounting, who is your accountant?

19 A. Mike Shortledge.

20 Q. What firm is he with?

21 A. Cook and Associates.

22 Q. Are they CPAs?

23 A. Yes.

24 Q. In fact, Mr. Cook is considered one of the top CPAs in
25 the Commonwealth, is that correct?

1 A. I think so, yes.

2 Q. He's been chairman of the board that governs CPAs, do
3 you know?

4 A. I do not know that.

5 Q. Are they capable of any accounting that's necessary?

6 A. I'm sure.

7 MR. BRAGG: That's all.

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

9 (Witness stands aside.)

10 MR. BRENT: I have a question for Mr. Swartz. Have you
11 offered MacConstruction -- if you are to be the unit
12 operator have you offered them a gas sales contract --
13 your client?

14 MR. SWARTZ: We have a lot of problems with them. We have
15 offered to resolve all of our problems. There's two
16 other law suits. There's a well permit application
17 which we haven't gotten into here. There's this
18 pooling application. There are some other contractual
19 agreements that you see from time to time. We have
20 made a global proposal including a proposal to allow
21 them to purchase gas at the well head at a well head
22 price so that our royalty owners would get an equiv-
23 alent compared to if we transported it to Grant, West
24 Virginia. But it's a pretty complicated collection of
25 problems that we have between ourselves. We have made

1 global offer that includes that kind of a provision
2 but you know how things take. They always happen at
3 the last minutes. We're still going to be negotiating.
4 I mean, they haven't blown us out. I don't know if
5 we're going to be able to reach an agreement or not but
6 we're going to continue to talk about it until one side
7 or the other decides that we have nothing to talk
8 about. Another wrinkle here is --one of the conditions
9 on that is that an agreement be reached with our
10 lessors and we really don't control that. So there are
11 a lot of hurdles here. But, yes, we are trying and --
12 I mean, their reaction was not to say it was completely
13 totally unreasonable but they may ultimately come back
14 and tell us that. We're going to talk to them about
15 it. But whether or not that's going to work out I
16 don't know.

17 MR. YEARY: If we were the unit operator, I might add, that
18 we would negotiate with them as well.

19 MR. SWARTZ: Well, we're not interested in buying gas and I
20 don't mean that in a testy sort of way. I mean we
21 produce a lot of gas and we're not a buyer. We're not
22 a reseller.

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

24 MR. BRENT: You asked him about the value of his bond which
25 he indicated was \$10,000. I'll ask this of anyone. Is

1 that a typical value?

2 MR. SWARTZ: That will work for a well. Typically what we
3 have is a blanket bond because we have a lot of wells
4 and it's a larger number. It's still pretty small,
5 though. I think OXY's bond was \$100,000. I'm not sure
6 what our bond is but it's a bigger number but it's not
7 hugh. It's kind of a plugging protection.

8 MR. CHAIRMAN: Set by law.

9 MR. SWARTZ: Right.

10 MR. LEWIS: \$10,000 is set by law.

11 MR. CHAIRMAN: The amount of the bond.

12 MR. SWARTZ: If it's that amount it's appropriate. Just so
13 you guys don't miss this, I mean I'm planning on
14 putting Mr. Morgan on the stand for a little while with
15 some questions with regard to our operations because we
16 consolidated these things. I'm perfecting willing to
17 address any questions you might have if I can answer
18 them.

19 MR. KING: I've got a question. How do you justify the
20 difference between \$230,000 and \$91,000? I am asking a
21 proper -- I think Mr. McClannahan says that he can do
22 it for \$91,500 and is not your application saying --

23 MR. SWARTZ: Actually his \$91,500 assigns \$50,000 to the
24 other well. So he's really at \$159,000 if it's a stand
25 alone. I will tell you without going back to my

1 application the \$230,000 definitely contains \$60,000 or
2 more for fracturing and simulation. So that \$230,000
3 immediately goes to \$170,000 if you're not fracturing
4 the well. So they're not going to be fracturing
5 their's presumably or at least they don't have fracture
6 costs in there. Also they're building in a \$17,000
7 drilling cost from thirteen years ago. We can't
8 currently drill a well for \$17,000. I suspect that
9 that's an explanation for a lot of it. But the
10 difference isn't as gross as it might appear at first
11 blush. I mean, we're talking current drilling costs if
12 we were to drill a new well. The other thing that -- I
13 think the better well to look at for comparison
14 purposes -- I don't know this for a fact but my guess
15 is we would be more interested in a gob well because
16 the production potential is greater, we know that
17 historically, than the frack or non-fracked wells. In
18 their cost estimate that you're looking at today that's
19 \$91,500 there is no cost assigned to that well bore.
20 We assign a value to these well bores and if you assign
21 a value of roughly \$50,000 to the well bore -- I mean,
22 it costs somebody something to drill it and case it and
23 so on and so forth. Typically when you look at one of
24 our gob wells -- I don't know if you remember this, but
25 typically we're in the 130,000/140,000 range for a gob

1 well. So I think our numbers kind of compare to
2 their's. I'm a little troubled by the compressor. If
3 you add the compressor to the gob well and assign some
4 value to the well -- I mean, they're probably higher
5 than we are but they're not all that different when you
6 look at the gob well. The difference in the gob well
7 is they're just not assigning a value to it. It's in
8 at zero. I asked him what the components where and
9 he's putting it in at zero.

10 MR. CHAIRMAN: Of course, we consolidated two cases to hear.

11 Do you have anything further as to your application?

12 MR. SWARTZ: I would like to put Mr. Morgan on the stand for
13 a while. I suspect he will be the only witness.

14 MR. YEARY: As just a rule of order or procedure, Mr.
15 Chairman, it's my understanding that that application
16 was rested on October 15th, 1996.

17 MR. SWARTZ: Well, when I rested there wasn't another
18 application. So to the extent that a subsequent
19 application has been filed I would move to reopen if I
20 need to or I would offer Mr. Morgan in this application
21 in this hearing as a witness that I'm calling. I don't
22 think it makes a big difference.

23 MR. YEARY: As a point of procedure I think that there is a
24 difference because I recall we even asked for a
25 continuance and there was no continuance and it was

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closed. I believe that was the case.

MS. RIGGS: There was a continuance. The stay was denied.

MR. YEARY: Okay.

MS. RIGGS: The continuance was granted.

MR. YEARY: But the hearing was closed.

MR. SWARTZ: It was continued to today's date.

MS. RIGGS: And re-advertised.

MR. CHAIRMAN: It's properly before the Board today.

COURT REPORTER: (Swears witness.)

CLAUDE MORGAN

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

DIRECT EXAMINATION

BY MR. SWARTZ:

Q. State your name for the record, please.

A. Claude D. Morgan.

Q. Who do you work for?

A. Consol, Inc.

Q. As part of your duties for Consol, Inc. do you participate in the activities necessary to act as professional manager for Buchanan Production Company?

A. I do.

1 Q. I have some general questions for you today about
2 marketing, transportation, operating, those kinds of
3 issues with regard to coalbed methane. How many days a
4 year does Buchanan Production sell gas?
5 A. 365.
6 Q. Recently what are the volumes that Buchanan Production
7 has been selling on a daily basis?
8 A. In excess of 40 million cubic feet a day.
9 Q. That's within the last couple weeks?
10 A. Yes.
11 Q. Where does Buchanan Production sell its gas? At what
12 point?
13 A. It sells it into the Columbia Interstate line at Grant
14 in West Virginia.
15 Q. How does Buchanan Production get its gas from Buchanan
16 County to Grant, West Virginia?
17 A. It flows through two different systems. One system
18 operated by Oakwood Gathering which gathers the gas
19 from the various wells own and operated for Buchanan
20 Production. The Oakwood Gathering moves the gas into a
21 larger higher pressure sixteen inch line running from
22 Buchanan County to the Columbia line in West Virginia
23 that is operated by Cardinal States Gathering.
24 Q. Is Buchanan Production Company a partner in Cardinal
25 States?

- 1 A. No.
- 2 Q. Is Cardinal States a company that operates basically
3 one line and associated facilities to get gas from the
4 Oakwood Gathering system into West Virginia to Grant?
- 5 A. It gathers gas from Oakwood Gathering as well as
6 Pocahontas Gas Partnership.
- 7 Q. Typically in terms of royalty where is the price --
8 what point in the lines or in the transfer is relevant
9 to price typically in computing royalty?
- 10 A. The price is the sales going into the Grant line less
11 allowable deductions.
- 12 Q. Does the price into the Grant line vary during the
13 year?
- 14 A. Very much so.
- 15 Q. As a general rule when does it tend to be the highest?
- 16 A. During the winter months.
- 17 Q. And when does it tend to be the lowest?
- 18 A. Summer months.
- 19 Q. Can it fluctuate by as much as a dollar or two during
20 the course of a year?
- 21 A. Two dollars is not uncommon.
- 22 Q. Have you seen that kind of a fluctuation this year,
23 1996?
- 24 A. Yes, we have.
- 25 Q. Does Buchanan Production meter the gas from the various

1 wells that it has?

2 A. Yes, it does.

3 Q. Can you tell me whether or not there are charts
4 associated with those meters?

5 A. There are two types of charts. One is an electronic
6 chart which gives you an electronic readout. The other
7 would be a Barton chart or something of that sort which
8 does have a chart that requires integration.

9 Q. In an overview sense could you describe to the Board
10 how it is that the gas from the wells is metered, data
11 from the charts is collected and processed so that you
12 have volumes and you're able to calculate royalty? In
13 a general sense how does this work?

14 A. There are several sets of meters to be monitored, as I
15 think Max alluded to, a couple of different meters.
16 Each well head will have a meter which is maintained.
17 We do have measurement specialists on staff whose job
18 is nothing but to maintain those meters, calibrate
19 those meters periodically as required for custody
20 transfer and to collect the charts, assimilate the data
21 and send to a contractor that allows for integration of
22 the charts. In addition to the well head meter there
23 may also be a meter from a centralized compressor area
24 and then there will be a meter where Oakwood moves into
25 the Cardinal system and there will be a meter where the

1 Cardinal system goes into the Columbia system. The
2 volumes are allocated back from those meters back down
3 the line to the individual well head. As I said, the
4 charts are collected monthly, sent to a contractor who
5 integrates the charts, factors in temperatures, factors
6 in measured BTUs to determine a BTU rate to be allocat-
7 ed back to the well head. The results of that inte-
8 gration is then transferred to a separate company who
9 is doing the royalty accounting and reporting for the
10 volumes produced.

11 Q. In terms of cost accounting and the calculation of
12 royalty can you tell me whether or not the Board orders
13 and many of your lease agreements allow for certain
14 deductions to be made in the process of calculating
15 royalty?

16 A. Yes, they do.

17 Q. What are the kinds of things typically that -- if there
18 is a provision for deducts what are the kinds of things
19 typically that you would be deducting for?

20 A. There would be transportation deducts. There are
21 deducts in many if not all for the royalty owner's
22 share of severance. Transportation deducts being the
23 primary.

24 Q. In transportation -- are you including compression and
25 gathering in transportation?

1 A. Yes.

2 Q. Does Consol on behalf of Buchanan Production or
3 Oakwood, as you understand it, account for those kinds
4 of costs so that they can be calculated and utilized in
5 royalty?

6 A. Yes.

7 Q. And are those costs then passed along to the company, a
8 third party, that does the royalty calculations?

9 A. Yes.

10 Q. In terms of available places to sell gas can you tell
11 me why this Oakwood Gathering system was constructed
12 and created and the Cardinal States was constructed and
13 created in the first instance here?

14 A. Markets for the gas didn't exist in the Buchanan County
15 area for the capacities that were being made available.
16 Neither did pipeline capacity exist in the Buchanan
17 County area to transport the gas out.

18 Q. So in a nut shell if you didn't build pipeline capacity
19 you'd have tons of gas and you couldn't get it to
20 market?

21 A. That's right.

22 Q. Have you had any interaction with Virginia Gas recently
23 -- and I'm talking about Virginia Gas, the utility --
24 recently or has anyone on behalf of Buchanan Production
25 that you're aware of had interaction with them this

1 calendar year with regard to whether or not they need
2 gas?
3 A. There have been discussions with Virginia Gas on the
4 potential supply of gas and they have expressed no need
5 for any of our gas.
6 Q. Virginia Gas has a sister company that's a producer,
7 does it not?
8 A. Yes, it does.
9 Q. Are there other pipelines with available capacity in
10 the immediate vicinity of Mac's well or the N-13 unit?
11 A. No, not that I'm aware of.
12 Q. What's the closest one you're aware of?
13 A. C&G has a line on Dismal in Buchanan County that would
14 be, I would say, in excess of ten miles away.
15 Q. And that's the closest line that you can think of at
16 this point that --
17 A. Other than our own Oakwood Gathering system.
18 Q. Who does Oakwood gather for?
19 A. Oakwood Gathering at this point is gathering for
20 Buchanan Production and gathers a small amount for
21 Pocahontas Gas Partnership.
22 Q. Other than that anybody else?
23 A. No.
24 Q. You were here while Mr. McClannahan was testifying
25 earlier?

1 A. Yes.

2 Q. Did you hear his description of potential plans to
3 deepen the existing well by the asphalt plant?

4 A. Yes, I did.

5 Q. Has Consol attempted to map that well location in
6 relation to the mine under unit N-13?

7 A. Yes, we have.

8 Q. And where do you map that well location in relation to
9 the mine?

10 A. It is either in or on the very edge of an entry in the
11 mine -- directly over the entry or directly over the
12 very edge. If it was deepened it would either be in
13 the entry or on the very edge of a pillar beside that
14 entry.

15 Q. There are some existing VVHS also in the N-13 unit?

16 A. Yes, there are.

17 Q. Are they over a longwall panel?

18 A. Yes, they are.

19 Q. And what panel is that, if you know?

20 A. I don't know the name of the panel. It's the most
21 northern panel in that portion of the VP-1 Mine.

22 Q. And has that panel been mined out?

23 A. Yes, it has.

24 Q. So it would have gobbled at this point?

25 A. Yes.

1 Q. And those VVHs, if they were to produce would those be
2 active gob wells as that term is used in front of the
3 Board?
4 A. Yes.
5 Q. The mine has not been sealed. So we'd be talking an
6 active gob situation?
7 A. That is true.
8 Q. Could you describe for the Board the kinds of things
9 that an operator does -- Buchanan Production does
10 because there is mining in relation to most, if not
11 all, of its wells in relation to mine safety issues?
12 A. When you're dealing with a gob the primary concern is
13 the safety of anyone within a mine. Even if an area
14 were sealed there is still much concern with keeping
15 the pressure from building up behind the seals. If
16 this pressure builds behind the seals the methane will
17 migrate into the mine and become a safety hazard. In
18 an unsealed area it's definitely a big consideration.
19 That's why I sort of shutter a little bit when I hear
20 somebody talking about pumping methane back underground
21 into one of these holes. If it's going into a gob area
22 -- our biggest concern is keeping the gas out of the
23 mine, not pumping gas back into the mine. And we would
24 be extremely concerned with someone else trying to
25 operate a gob well in one of the mining operations

1 because of the controls that have to be in place the
2 monitoring of the mine atmosphere, the monitoring of
3 the wells to maintain the safety underground. It's an
4 extensive monitoring system. I'm talking computerized
5 systems to monitor the conditions underground. And
6 controls on the surface to regulate the wells such that
7 conditions underground do not deteriorate and impair
8 the safety of those working underground.

9 Q. Do Buchanan Production wells produce water?

10 A. Yes, they do.

11 Q. And how does Buchanan Production dispose of that
12 produced water?

13 A. Injection wells permitted through the EPA.

14 Q. Out of Philadelphia?

15 A. Yes.

16 Q. Does Buchanan Production spread it on the road in the
17 summer to keep the dust down and in the winter to melt
18 the ice?

19 A. No.

20 Q. Can you do that?

21 A. No.

22 Q. Does Buchanan Production pump gas back into any well or
23 wells?

24 A. No.

25 Q. Can you do that -- forget mining safety for a minute,

- 1 but can you do that in your judgement without a special
2 different kind of permit?
- 3 A. I really don't see how you can pump gas back into a
4 well unless you've got a storage permit and I'm not
5 aware of any storage permits in conjunction with an
6 active producing well.
- 7 Q. Any gob well which might produce out of the longwall
8 panel that is under part of N-13, how would the
9 royalties associated with that gob production be
10 allocated?
- 11 A. The royalty would have to be allocated to all of the
12 units affected by that panel. In other words, if there
13 are six units --
- 14 Q. Does it look like there are six units that would be
15 affected?
- 16 A. There appears to be six units over that panel. The
17 royalty that was under the Oakwood II Rules would have
18 to be allocated to the owners in all six units in
19 proportion to the area of the longwall panel that's
20 within those units.
- 21 Q. Have you participated in pooling applications where
22 Buchanan Production has sought to pool one or more
23 units for active gob production?
- 24 A. Yes, I have.
- 25 Q. Are you familiar with the fact that under those

1 circumstances Buchanan Production Company has had to
2 estimate its projected costs?
3 A. Yes.
4 Q. And typically does Buchanan Production Company estimate
5 its costs for just one of the six units or all of them?
6 A. For all of the six units.
7 Q. And then typically does Buchanan Production Company
8 allocate the total cost of developing all six units to
9 the six units?
10 A. Yes.
11 Q. Has that been done here by the applicant, MacCons-
12 truction?
13 A. I can see no provisions in that application for that.
14 Q. In looking at the title and the plats -- let me ask
15 you, are you familiar with Buchanan Production's
16 application here even though you didn't do it yourself?
17 A. I have reviewed it.
18 Q. Looking at the plat map -- just looking at the one that
19 accompanies the MacConstruction application, there is a
20 tract identified as Tract #1. Do you see that?
21 A. Yes.
22 Q. It's above Webb Branch?
23 A. Yes.
24 Q. Is it your understanding that Mac is not claiming any
25 interest in that tract?

1 From reviewing their application I can see no claim to
2 that interest.

3 Q. Is it your impression from reviewing their application
4 that the royalty with regard to Tract #1 would not be
5 subject to escrow and would be currently payable?

6 MR. BRAGG: I object to what his impression is.

7 MR. CHAIRMAN: Sustained.

8 Q. (Mr. Swartz continues.) What is the reason why royalty
9 is escrowed?

10 A. Where there is conflicting ownership claims.

11 Q. In looking at Tract #1 in the MacConstruction applic-
12 ation and the exhibits that they have submitted with
13 regard to Tract #1 does the MacConstruction -- speci-
14 fically Exhibit #E which is part of their application -
15 - do they show any conflicting claims with regard to
16 Tract #1?

17 A. No.

18 Q. If there are no conflicting claimants would royalty
19 then be payable on a current basis?

20 A. Yes.

21 Q. Does Island Creek Coal Company still exist?

22 A. Yes.

23 Q. Have the Island Creek coal leases been just (In-
24 audible.) assigned?

25 A. No.

1 Q. What would happen if that were done?

2 A. We would probably be declared in default of the leases

3 because some of the leases, I'm sure, do not contain

4 the ability to assign.

5 Q. Wouldn't you agree that most of the leases probably

6 don't?

7 A. That's possible.

8 Q. Do the leases with Yukon Pocahontas and the other

9 companies, do those leases still -- are they still in

10 force and still in the name of Island Creek Coal

11 Company?

12 A. Are you referring to the coal leases?

13 Q. Yes.

14 A. Yes.

15 Q. Have the agreements -- I'll say when I'm using the word

16 "agreements" I'm talking about Plaintiff's Exhibits #2

17 and #3 which were between MacConstruction and Island

18 Creek. Have those been assigned by Island Creek to

19 somebody?

20 A. No.

21 Q. So they are still in Island Creek?

22 A. Yes.

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

24 MR. CHAIRMAN: Any questions, members of the Board before

25 Mr. Bragg or Mr. Yeary cross-examine? Go ahead.

1
2 CROSS-EXAMINATION
3

4 BY MR. YEARY:

5 Q. Mr. Morgan, you're with Consol?

6 A. Yes.

7 Q. What is the relationship of Island Creek and Consol?
8 What is your relationship to them -- or what is the
9 relationship of Consol to Island Creek?

10 A. I'm not completely familiar with the total corporate
11 structure. I'm an employee of Consol, Inc. which is an
12 operating entity within the Consol Energy group.

13 Q. So if Island Creek is still an existing company then I
14 take it any agreements that anyone would have with them
15 would be -- Island Creek and anyone else would be bound
16 by them, correct?

17 A. Island Creek is still an existing company and -- I
18 won't speak from a legal standpoint, but Island Creek
19 is an existing company and agreements were signed by
20 Island Creek.

21 Q. Is Consol a stockholder of Island Creek?

22 A. I'm not aware of the corporate transactions.

23 Q. Do you know if they are a stockholder of any kind?
24 Have you heard that?

25 A. I do not know the corporate structure for the purchase

1 of Island Creek.

2 Q. Is Island Creek producing any coal?

3 A. Yes.

4 Q. In the Buchanan County area?

5 A. Yes.

6 Q. The VP-1 Mine, does Consol operate that for Island

7 Creek?

8 A. The VP-1 Mine is idled. It is being maintained on an

9 inactive status. There are considerable reserves

10 remaining in the VP-1 Mine. So it's not being operated

11 at this point.

12 Q. Who is managing it?

13 A. There is a staff at the Virginia operations office who

14 is responsible for that.

15 Q. Who idled it, Island Creek or Consol or who?

16 A. Island Creek was still operating the mine as an

17 operating company when it was idled.

18 Q. Who's in charge of it today?

19 A. Island Creek.

20 Q. Now, does Buchanan Production -- what's your relation-

21 ship to Buchanan Production?

22 A. Consol, Inc. is the operator of Buchanan Production

23 Company.

24 Q. So it's the operating --

25 A. We are the operator.

1 Q. Do you own part of it?

2 A. No.

3 Q. Buchanan Production, does it obtain gas from any other
4 sources other than its own -- its own wells?

5 A. No.

6 Q. Do you ever buy gas from anyone else --

7 A. No.

8 Q. -- other than your own companies?

9 A. Right.

10 Q. You say that this Oakwood Gathering system is owned by
11 who?

12 A. Oakwood Gathering was a separate company. And I can't
13 remember the corporate tree, how it goes. But Oakwood
14 Gathering was purchased along with Buchanan Production
15 by a subsidiary of the MCN Corporation.

16 Q. These are people in Detroit?

17 A. Yes.

18 Q. And Oakwood Gathering lines, they extend to West
19 Virginia?

20 A. No.

21 Q. How far do they go to?

22 A. The Oakwood Gathering lines extend to a compressor
23 station -- two compressor stations connecting to the
24 Cardinal States system.

25 Q. Where is the point of beginning and the point of end of

1 Oakwood Gathering?

2 A. There's more than one. There are many.

3 Q. Well, in relation to the property in this unit in
4 question what's the closest end of the pipe for the
5 Oakwood Gathering system?

6 A. Are you talking about the inlet end?

7 Q. Yes, sir.

8 A. At this point that line is probably about -- I'd say
9 two to three miles away. We are actively obtaining
10 right of way and permitting for a line into that area.

11 Q. You do not have all the right of ways available at this
12 time?

13 A. We have some right of ways acquired and others are
14 being worked and --

15 Q. So you do not?

16 A. -- some are permitted.

17 Q. And others you do not, is that correct?

18 A. There are others that are still being worked.

19 Q. Well, the question has a simple yes or no answer. Are
20 there others that you do not have right of ways on at
21 the present time?

22 A. Other what?

23 Q. Other properties that you cannot cross to get to this
24 unit?

25 A. I won't say that. I'll say there's properties we don't

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have a right of way on.

Q. Do you intend to just go across them without a right of way?

A. I would say that there are property rights associated with them that may be utilized.

Q. So you're saying right now you could go up there without question?

A. I won't say without question but I'd say there are opportunities to remove this gas.

Q. Well, we all have opportunities but can you legally go up there today and lay a pipeline all the way?

A. I don't have the permits in place at this time for all of it. Portions of it I do.

Q. You do not have the rights of way from the landowners, do you?

A. There is not a right of way, per say, from every landowner. I think I should clarify a little bit. We intend to do right of ways with every landowner regardless of property rights. At some point we evaluate our property rights versus right of way acquisition and we make a determination then whether additional acquisition is necessary or whether we have sufficient rights to go ahead.

Q. Do you ever have an occasion where landowners won't let you go across their land?

1 A. Yes

2 Q. Do you have the right of eminent domain?

3 A. No.

4 Q. Do you know whether Oakwood Gathering or Cardinal

5 States is in public utility or a carrier -- a public

6 carrier?

7 A. They are not.

8 Q. Can Cardinal if it has capacity refuse gas distribution

9 to others?

10 A. I don't know that.

11 Q. And Oakwood?

12 A. I don't know that.

13 Q. You indicated something about this gob unit and you

14 looked at MacConstruction's application and it did not

15 appear that they had calculated if you're going into

16 six other units -- what was it you called that, a gob

17 unit?

18 A. It's active gob under the Oakwood II Field Rules.

19 Q. In your application did you calculate that in your

20 \$250,000 or would that be a separate calculation?

21 A. There is a method for allocation of that to the

22 different units?

23 Q. You did not do that in your application, however, did

24 you? You had not considered these other units in your

25 application?

1 A. The \$250,000 was an Oakwood I estimate, I believe.

2 Q. So that was just for this 80 acre unit, correct?

3 A. That was for a frack well, not a gob well, the \$250,-

4 000. A frack well is not allocated on that basis.

5 Q. So what you submitted to this Board in your application

6 also did not consider these other outside areas, is

7 that correct?

8 A. I would have to review the application to see what

9 you're talking about there. (Pause.) This contains an

10 estimate for a frack well that would be drilled in the

11 N-13 unit.

12 Q. So the answer to my question would be that you all

13 likewise did not consider the allocation of royalties

14 or cost or whatever in these six other units that you

15 were talking about in response to Mr. Swartz' quest-

16 ions? You didn't do that either in your application,

17 did you? Is your answer no? Would you answer the

18 question, sir, without --

19 A. This is a frack well application. This is not a gob

20 well.

21 Q. So the answer to my question would be no?

22 A. For a frack well you do not allocate the other units.

23 Q. On your application did it not request under the

24 heading "relief sought" number two for unsealed gob

25 gas? Was that part of your application?

1 A. I've having to back up and read.

2 Q. I call your attention to Page 2, Paragraph 4 continuing
3 on Page 3.

4 MR. YEARY: Excuse me. Could the witness respond to the
5 questions without assistance of counsel?

6 THE WITNESS: He was not advising me on the answer to your
7 question. I think I asked for time to review this.

8 MR. CHAIRMAN: Mr. Yeary, you and your client had discussion
9 back and forth and I don't consider that inappropriate.

10 Q. (Mr. Yeary continues.) Page 2, Paragraph 4, about two
11 thirds the way down the page.

12 A. Okay. Are you in the application?

13 Q. Yes, sir. Where it says "Relief sought".

14 A. Yes, sir.

15 Q. And where it says, "Applicant requests the Board issue
16 an order providing as follows:" Do you see that?

17 A. Yes, sir.

18 Q. In Paragraph A, B and then Sub-paragraph 1 to B and
19 then on continuing on the next page it mentions
20 unsealed gob gas, is that correct?

21 A. It does.

22 Q. And also for gas from any well located in longwall
23 panel?

24 A. I think if you look in there where it talks about the
25 sealed gob gas it does talk about allocating that

1 production to the other units.

2 Q. Did you put that in costs?

3 A. It says to establish in the formula for division of
4 interests for production, revenue and costs as follows.
5 Item two says for unsealed gob gas, amount of produc-
6 tion produced from and attributed to each 80 acre unit
7 shall be the ratio expressed as percentage of mineral
8 acreage (Inaudible) on the surface which is both in the
9 effected unit and the longwall panel that bears to the
10 total mineral acreage (Inaudible.) on the surface
11 contained within the entire longwall panel effecting
12 such 80 acre drilling unit.

13 Q. So you're again talking about the 80 acre drilling
14 unit?

15 A. But allocated to the different in accordance with the
16 percentage contained within the longwall panel.

17 Q. Did you consider in your costs using an existing vent
18 hole?

19 A. That was not a part of this estimate.

20 Q. Would that ordinarily be cheaper?

21 A. If we were using an existing vent hole we would
22 consider that hole to have a value that would be
23 allocated as part of the cost.

24 Q. But if you were willing to just give that value would
25 that not bring the cost down?

1 A. Certainly.

2 Q. So assuming that you are not going to allocate that and

3 charge the royalty owners with it -- so we start off at

4 zero basis in it then the cost of production from that

5 vent hole would be substantially lower, would it not?

6 A. It might be.

7 Q. Than drilling a new well?

8 A. The actual up front cost may not be but when you're

9 looking at a unit and production from the unit you

10 don't just look at the cost. You look at the produc-

11 tion potential from the well. And on a unit of

12 production basis it may or may not be cheaper.

13 Q. Well, assuming everything else is equal is it not

14 ordinarily substantially cheaper to go in a vent hole

15 or existing vent hole than drilling a new well?

16 A. Assuming everything else is equal.

17 Q. The actual drilling and so forth and substantially?

18 A. Assuming everything else is equal.

19 Q. Well, that's the assumption in the question.

20 MR. SWARTZ: I think that's his way of saying yes. Are you

21 telling him yes?

22 THE WITNESS: Yes, assuming everything else is equal.

23 That's a big assumption.

24 Q. (Mr. Yeary continues.) And you have how many of these

25 vent holes on this unit already existing?

1 A. On this unit?

2 Q. Yes.

3 A. I think there's three on the unit. A vent hole does
4 not necessarily have to be on that unit to produce that
5 unit under Oakwood II.

6 Q. Do you have any definite plans as to where you're going
7 to put -- on this unit as we sit here today where
8 you're going to put a well?

9 A. We are building toward this area. We are working those
10 plans as we go.

11 Q. So you have no definite plans as of this moment?

12 A. The definite plans have not been developed.

13 Q. Do you have any guarantee as to when you would comm-
14 ence?

15 A. I have no guarantees. We do it by the same one year
16 ruling as you have mentioned.

17 Q. Do you know Elizabeth McClannahan?

18 A. Yes, I do.

19 Q. Were you, in fact, not notified by Ms. McClannahan of
20 the outstanding vertical vent holes, wells, and consent
21 to stimulate agreements in regards to closing the
22 Island Creek seal?

23 A. No, I was not.

24 Q. You deny that, do you?

25 A. Yes, I do.

1 Q. Did you go up on the property to look at it before the
2 closing?
3 A. I did not personally. I was --
4 Q. Did others?
5 A. I don't know that anybody was on the McClannahan
6 property at that time. It was a big property.
7 Q. So they may or may not have been nowhere on it?
8 A. I'm not aware.
9 Q. Did you ask anyone from Island Creek are there any
10 outstanding vent hole agreements?
11 A. No, sir, I didn't.
12 Q. Or such similar agreements, you didn't ask them that?
13 A. No, sir.
14 Q. Did you ever ask "Give me a copy of all your agree-
15 ments" before you closed this deal?
16 A. I don't know that we asked for a copy of all the
17 agreements before we closed the deal. There was a due
18 diligence done. Whether anybody reviewed these
19 agreements or not I'm not aware of anybody doing so.
20 Q. So you don't know whether you asked for the agreements
21 and if you did whatever you got you don't know if they
22 looked at them or not?
23 A. From personal knowledge I do not know. I will not
24 speculate.
25 MR. YEARY: Thank you very much. That's all.

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

2 MR. SWARTZ: I just have one area.

3
4 REDIRECT EXAMINATION

5
6 BY MR. SWARTZ:

7 Q. I think you indicated that Oakwood Gathering was two to
8 three miles away at this point?

9 A. Yes.

10 Q. And then we got into a discussion of rights of way?

11 A. Yes.

12 Q. When you use the term right of way are speaking about
13 an agreement that is something different than a lease
14 agreement?

15 A. Yes.

16 Q. Can you tell the Board whether or not you can lay
17 pipelines under many of the leases that you all have

18 A. That is what I was referring to and that an analysis is
19 done after an attempt to deal with all surface owners
20 up front. An analysis is done of our leases to lay
21 pipelines.

22 Q. And when you say analyzing your leases, typically you
23 would have a lease from an owner of a severed mineral
24 interest?

25 A. That's right.

- 1 Q. There's a term "mining rights" in terms of severance
2 deeds. Are you familiar with that?
- 3 A. Yes.
- 4 Q. Is that what you look at, your lessor's mining rights
5 under their severance deeds to determine whether or not
6 you have pipeline rights under your lease?
- 7 A. We look at the mining rights as well as any oil and gas
8 rights or any other sort of mineral transfer that was
9 made.
- 10 Q. Your first attempt, though, is to obtain a right of way
11 from a surface owner?
- 12 A. That is correct.
- 13 Q. And failing that you look at your mining rights?
- 14 A. That is correct.
- 15 Q. Have you analyzed your mining rights at this point to
16 be able to say one way or the other whether they extend
17 the entire two to three miles?
- 18 A. Yes.
- 19 Q. Do they?
- 20 A. Yes.
- 21 MR. SWARTZ: That's all I have.

22
23 RE-CROSS-EXAMINATION

24
25 BY MR. YEARY:

1 anticipate being in there and producing. We have
2 permits coming in on conversion of VVHS in that area.
3 Some permits are in place. So that work is ongoing
4 actively.

5 Q. My question is can you tell us as we sit here now what
6 month the line would be up there if you -- assuming you
7 have the legal rights to get there?

8 A. I would anticipate being there within six months.

9 Q. Would you be going there anyway but for this permit?

10 A. Sir?

11 Q. If you didn't have this permit would you be going there
12 anyway?

13 A. Which permit are you referring to?

14 Q. The application for what we're pooling -- this pooling
15 application that you're asking for today.

16 A. Yes.

17 Q. Would you be going to this area anyway?

18 A. Yes.

19 Q. One more question. Mr. Leslie Arrington, is he still
20 with your company?

21 A. Yes.

22 MR. YEARY: Thank you.

23 MR. CHAIRMAN: We've consolidated these hearings as far all
24 the testimony goes. It's not easy to do a consolidated
25 vote, though. So I think what we're going to have to

1 Q. You're saying, sir, that you have the legal right to go
2 across everybody's land for that three miles?
3 A. That is our legal interpretation.
4 Q. Are you a lawyer?
5 A. I did not say I was. I said that was our legal
6 interpretation.
7 Q. Well, I'm asking, are you?
8 A. I am not. You should not ask me a legal question.
9 Q. Well, did you not say earlier that you did not know
10 whether you had the right of way --
11 A. I said an analysis of that was done.
12 Q. So you deny making any statement here about ten minutes
13 ago that you did not know whether you had any legal
14 rights to go all the way or words to that effect?
15 A. I can say I remember exactly how I said it. I think I
16 remember saying that we do an analysis of it to
17 determine the rights after we've exhausted all of our
18 right of way activities.
19 Q. Are there any present plans as we sit here now as to
20 when that line is going to be -- will be put to this
21 location?
22 A. I'm behind schedule right now. Money has been allocat-
23 ed for that project for a year.
24 Q. So you don't know when that might be --
25 A. We are actively working that area right now. We

1 do as a Board is make a decision on the applications
2 separately and vote that way. I think we've heard all
3 the evidence and I would just take them in the order
4 they're on the agenda today. As to petition from
5 Buchanan Production Company for the pooling of a
6 coalbed methane unit N-13, docket number VGOB-96/09/17-
7 0555, what's your pleasure?

8 MR. YEARY: May we have a chance to present a statement to
9 the Board?

10 MR. CHAIRMAN: You want to do closing argument?

11 MR. YEARY: Yes, sir.

12 MR. CHAIRMAN: That's fine. Do you want to do them both --
13 still stay consolidated before the Board votes?

14 MR. SWARTZ: My closing argument on my application is about
15 30 seconds.

16 MR. CHAIRMAN: Go ahead and do it and then we'll hear from
17 Mr. Yeary.

18 MR. SWARTZ: I think you've got a pretty clear choice here
19 between a company who knows what they're doing and some
20 nice people who don't know what they're doing, who have
21 grand plans but don't sell gas every day, don't buy it
22 every day, don't have meters, don't have people in
23 place, dump water on their roads, don't know that you
24 can't pump gas back into the ground. I mean, they're
25 a nice family. They are nice people. This is a

1 business. It's a dangerous business. It involves
2 other people. It involves accounting for royalty,
3 accounting for production, whether or not it's just a
4 little bit of money. And I think you're dealing with a
5 responsible operator who sells gas every day. Nothing
6 has to happen for them to be able to sell this gas
7 other than to extend their gathering system which they
8 are extending anyway for this gas to get sold in the
9 market place in an arm's length transaction. And I
10 think in terms of protecting the owners of Tract #1
11 where there is no dispute that somebody else owns 25
12 percent of this unit and in terms of making sure that
13 the money is set aside and this unit is prudently
14 operated for the other owners when title is resolved
15 for the other 25 percent of the unit I think it's
16 pretty clear here you need to go with Buchanan Produc-
17 tion Company and Consol to have some assurance that the
18 accounting will be done appropriately, safety issues
19 will be addressed appropriately, permitting will be
20 obtained when it's necessary. That's my closing.

21 MR. YEARY: First, we have a very responsible family. We
22 have a very responsible company that's been in exist-
23 ence here for 37 to 38 years. We have a golden
24 opportunity here to do what not is good for this
25 company but what is good for Southwest Virginia and the

1 State of Virginia at Large. The same argument, I
2 suppose, could have been made back in the 50s -- there
3 probably ones of us that are old enough to remember
4 when we had a (Inaudible.) situation of a large
5 absentee coal companies through out Southwest Virginia.
6 I guess the argument could have been made then that no
7 local people had the experience, the expertise in doing
8 something certainly equally dangerous as coal mining
9 should be involved. But in the 70s when the local
10 people in Southwest Virginia, Eastern Kentucky, in the
11 coal mining areas of Tennessee were finally at last,
12 after a decade, able to get the opportunity to develop
13 their coal resources then we began to see a total
14 change in the economic picture of the coal fields
15 because at long last moneys were not being drained and
16 piped out of the area and shipped out of the area to
17 London, to New York and where ever. But the local
18 people were able to put that money back in to employ
19 and keep that money in the local economy. We've seen
20 how it's affected all of us, even many of us as we sit
21 here today in this very room. Abingdon as we know it
22 now would not exist but for that situation and that
23 change in the attitude. Big Stone Gap as we know it
24 today would not exist. Our community college system as
25 we know it today would not exist but for that. I'm

1 sure that same argument could have been made then about
2 those good meaning and nice people that Mr. Swartz is
3 making today. We see the whole change in what has
4 happened to the economic shift in terms of how it's not
5 just helped the local mine owners but also it is now
6 extended out to the people at Large in the communities
7 far away from the coal fields, even as far away as
8 Abingdon, Bristol, Kingsport and so on. Now we have a
9 similar opportunity here today and I would say -- I'm
10 almost due to explore this. Coming from the coal
11 fields this is very dear to my heart and I think
12 probably we can all see this and we can see what's
13 happening. We can almost see a replay of what happened
14 a hundred years ago and now we have an opportunity in
15 the benefit of history to see that it doesn't happen
16 again and to see that others in the area have the
17 opportunity because if they do it's not just Mark
18 McClannahan but it's for the people at Large. We have
19 a situation here that immediately we know what will
20 happen here, that we have a company that can stay
21 competitive. It can stay competitive and stay in
22 Buchanan County. It can continue to employ the people
23 in Buchanan County that it presently employs. It can
24 continue to employ the people in Buchanan County
25 throughout the winter months that are currently going

1 to be on Welfare or some type of government program
2 throughout the winters. That will immediately change.
3 That will not change with the situation with Buchanan
4 Production because it will be again -- the profits will
5 be eaten up along the corporate bureaucracy that we've
6 seen and ultimately go into the pockets of people in
7 Detroit that own this MCN. What you also see is that
8 now not only will this be competitive but they will be
9 allowed and they can expand -- because now they have a
10 very important ingredient to the situation. That is
11 they will have available the fuel source for the first
12 time that's now being piped away and they can get it at
13 a cheaper price and then they can employ and expand
14 their industry and employ more people. This could be
15 a model, not just for -- and what's so exciting about
16 this whole concept is it's so simple and yet it could
17 be a model for others to follow that could be the
18 stimulus that we need here in Southwest Virginia. And
19 we have the opportunity -- I as an advocate and
20 participate, but you as a Board -- that we could help
21 create this situation. It could be a model for others
22 to follow. I was reminded recently of -- a fellow came
23 in from a foreign country and he's moving his factory
24 back over to the United States. I really applauded
25 him. I said, "How can you do that with the competitive

1 labor market overseas?" In this case it was a situa-
2 tion where he happened to be a minority of a fellow
3 that had been in the country three or four years. But
4 because we were getting some extra consideration that
5 he was able to be competitive and move his factory from
6 this foreign country back to the United States to which
7 I applaud. But how said is it, on the other hand, that
8 we do not do the same thing for the citizens of
9 Buchanan County and other areas that are plighted with
10 unemployment. Surely we can and should do the same for
11 our own citizens. Now, here is a situation that we can
12 do this now. They have an immediate need for this gas.
13 It's not something somewhere down the road. Whatever
14 restrictions -- and this Board has great parameters to
15 put in place -- all safety requirements and certainly
16 these people, they're going to make sure that's all
17 complied with, and that could be a qualification to any
18 application that's granted just as you would do with
19 them, accounting and whatever requirements would be
20 needed to see that this would happen. Clearly these
21 people -- they've had experience with a gas well. It
22 may not have been a great big one, but they have had
23 that experience. But more importantly they can do it
24 and they will do it and you can assure that they can do
25 it by any requirements that you put as an absolute

1 condition. And they're ready to go into production
2 today -- not somewhere down the road, but today. And
3 they are ready today to start employing fifteen or
4 twenty more people. This can be a model for others to
5 follow. It's such a golden opportunity. So I think we
6 look at what is the purpose, the conservation, and we
7 can make sure that all the royalty owners are protect-
8 ed, the economy is better served. Our energy source in
9 Virginia better serves Virginians. We have all those
10 opportunities here today in the application from
11 MacConstruction. So I ask you to consider all of this
12 when you make your vote. And we think that of the two
13 plans that are now before you that MacConstruction is
14 clearly the one that's best for all of Virginia,
15 especially Southwest Virginia. Thank you.

16 MR. CHAIRMAN: The other application we are considering here
17 is the MacConstruction Incorporated application for N-
18 13. So we have two. That's docket number VGOB-
19 96/12/17-0559. Obviously on any recommended vote by
20 the Board which ever one you go with the other one --
21 if you pick one the other one is not being approved.
22 Just so everybody knows that. What's your pleasure?
23 Do I have a motion?

24 MR. BRENT: Mr. Chairman, I move that we grant Buchanan
25 Production's application for pooling and designate them

1 as operator of this unit.

2 MR. CHAIRMAN: A motion to grant.

3 MR. GILLUM: I second that motion.

4 MR. CHAIRMAN: A motion has been made and seconded. Any
5 further discussion? All in favor signify by saying
6 yes. Opposed say no. Two say no. Is there a motion
7 to approve the MacConstruction application?

8 MR. LEWIS: I make a motion that we approve Mac's
9 application.

10 MR. CHAIRMAN: Is there a second?

11 MR. KING: Mr. Chairman, can I make a comment?

12 MR. CHAIRMAN: Yes, sir, as to inquire.

13 MR. KING: I've got a lot of mixed emotions about this
14 situation and it's been a long drawn out procedure and
15 I certainly appreciate both sides presenting their case
16 very forcefully. I really wish there was some way that
17 both parties could get together and operate jointly. I
18 feel like Mr. McClannahan deserves the right to be an
19 independent operator with the giant corporation of
20 Consol in conjunction. I wish that could be worked
21 out. But I guess if you look at pure facts Consol has
22 the energy to go with, the money and money seems to
23 control the world today to do those type things. And I
24 certainly hope that somewhere down the road you folks
25 can work it out. I'll abstain on the second and change

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my motion to vote for the original motion.

MR. CHAIRMAN: Is there a second to the motion to approve
the MacConstruction application? The motion fails for
lack of a second. I would too echo Mr. King's con-
cerns. I think we all -- this is a tough situation
and I don't think anyone feels like that -- ever feels
really good in a situation like this. I hope every-
thing can work out where you can continue to prosper in
your business and your business ideas. You should be
able to do that. And hopefully you find that you have
an ability in working with the company to do that.
Thank you very much.

MR. LEWIS: I would like to say that I feel the same way Mr.
King does. I hope you all can work out something.

MR. SWARTZ: Well, certainly it's still on the table. We're
going to try. I told them that we're going to be
talking regardless of what happened today and we meant
that. Maybe we can't. But we will try.

(End of Proceedings for
December 17, 1996.)

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CERTIFICATE

COMMONWEALTH OF VIRGINIA
COUNTY OF WASHINGTON

I, Deborah J. Bise, 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 December 17, 1996 at the Southwest Virginia 4-H Center, Hillman Highway, 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 13th day of January, 1997.

Deborah J. Bise
DEBORAH J. BISE
NOTARY PUBLIC

My commission expires September 30, 2000.