VIRGINIA GAS AND OIL BOARD

MONTHLY BOARD TRANSCRIPT

APRIL 1997

VIRGINIA OIL AND GAS BOARD

HEARING OF APRIL 15, 1997

9:00 A.M.

AT THE SOUTHWEST VIRGINIA 4-H CENTER

HILLMAN HIGHWAY

ABINGDON, VIRGINIA

- -

Appalachian Court Reporting Services, Inc.

P. O. Box 833

Abingdon, Virginia

(703) 676-2244

ID# 54-1495140

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1 [illegible] 15, 1997

2 This matter came on to be heard on this the 15th day of
3 April, 1997 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. WAMPLER: Good morning. We'll go ahead and start today's
8 meeting. My name is Benny Wampler. I'm Deputy Director
9 for the Virginia Department of Mines, Minerals and
10 Energy and Chairman of the Gas and Oil Board. I'd ask
11 the members to introduce themselves.
12 MR. BRENT: My name is Mason Brent. I'm from Richmond and I
13 represent the gas and oil industries.
14 MR. KING: My name is Clyde King. I'm from Abingdon and I am
15 a public member.
16 MR. LEWIS: Max Lewis from Buchanan County, a public member.
17 MS. RIGGS: Sandra Riggs with the office of the Attorney
18 General.
19 MR. GILLUM: Richard Gillum, Abingdon, coal industry
20 representative.
21 MR. HARRIS: Bill Harris, Big Stone Gap, public
22 representative.
23 MS. CASHMAN: Cheryl Cashman, the Richmond office of Mines,
24 Minerals and Energy.
25 MR. FULMER: Tom Fulmer, Department of Mines, Minerals and

1 Energy.

2 MR. CHAIRMAN: Tom has a sign-up sheet that he's passing

3 around for those of you that wish to address the Board on

4 these regulations. Our first agenda item today is to

5 hold a public hearing to receive comments on the proposed

6 Virginia Gas and Oil Board Regulations. These regula-

7 tions govern conservation of the Commonwealth's gas and

8 oil resources and the protection of correlative rights of

9 gas and oil owners. The law provides for regulation by

10 the Department -- the Department of Mines, Minerals and

11 Energy and regulation by the Gas and Oil Board. Today's

12 hearing deals only with regulations of the Gas and Oil

13 Board. Now, for your information we will -- after we

14 receive something back from the Department of Planning

15 and Budget there's another set of regulations, the

16 Department Regulations, dealing with gas and oil,

17 permitting actions that go on, the actual drilling, the

18 regulations that govern that. There will be a public

19 hearing on that. We will announce in the paper and

20 you'll have an opportunity for public comment. I don't

21 have a way of telling you here today when that public

22 hearing will be because we have to wait until we get them

23 back and have them approved from the Department of

24 Planning and Budget. But it will be sometime probably

25 within the next 60 to 90 days and we'll have a public

1 hearing on that. The Virginia Gas and Oil Board has the
2 authority to promulgate this regulation under Section
3 45.1-361.15 of the Code of Virginia. That section states
4 that the Board -- this Board will posture, encourage and
5 promote the safe and efficient exploration for in
6 development, production and conservation of gas and oil
7 resources located in the Commonwealth, to administer the
8 procedures for the recognition and protection of the
9 rights of gas and oil owners with interests in gas or oil
10 resources contained within a pool, to administer proced-
11 ures for the recognition and protection of the rights of
12 gas or oil owners within the pool, to promote the maximum
13 production and recover of coal without substantially
14 affecting the right of the gas owner, to explore for and
15 produce gas and to hear and decide appeals of administra-
16 tive decisions by DMME related gas and oil development.
17 That's straight out of the law. As proposed, the
18 regulations will incorporate recommendations resulting
19 from Executive Order 15 which is signed by Governor Allen
20 and reflect legislative changes to the Virginia Gas and
21 Oil Act. These amendments specify what information is to
22 be included with notices of hearings before the Board
23 instead of requiring that full application be included
24 with the notices. It changed the notification for
25 amendments to pooling orders to require that only the

persons affected will be notified, clarifies the requirements for the use of state plane coordinate system in description of pool and unit boundaries instead of using meets and bounds descriptions, adds a requirement to account for pending permit applications as well as existing permits and requests for exceptions for statewide spacing. It extends the sunset date for Board orders from one to two years if there is no commencement of activity in the unit and it simplifies the requirements to transfer operations of a unit under a forced pooling order to any company. The proposed regulation was approved for publication during the October 15th, 1996 meeting of the Board and the Department submitted an amendment to the Department of Planning and Budget for their economic impact analysis on October 21st, 1996. The Department of Planning and Budget completed the economic impact analysis on January 16th, 1997 and Governor Allen signed off on the amendments on January 28th, 1997. The proposed regulation was published in the March 3rd issue of the Virginia Register at which time the public comment period began -- the public comment period that we're in right now. In addition to accepting comments at today's public hearing the Board will accept written comments submitted to the Division of Gas and Oil until 5:00 P.M. on Friday, May 2nd, at which time the

1 public comment period will end. So you can submit
2 written comments until Friday at 5:00 P.M. May 2nd to the
3 Division of Gas and Oil Office in Abingdon, Virginia.
4 Responses to public comments and a final draft of the
5 proposed amendments to this regulation will be drafted
6 after the close of the public comment period. Upon
7 approval of the Board of this final draft the final
8 amendments will be published in the Virginia Register and
9 they will become effective 30 days after that public-
10 ation. I'm going to call on the speakers today in the
11 order in which you appear on the sign-up sheet. Tom, if
12 you will get that to me when it's completed. After each
13 of the speakers have the opportunity to present comments
14 I'll ask if there's anyone else that wishes to comment.
15 And when I acknowledge you, if you would, please come
16 forward to the table and speak clearly, state your name,
17 and if you're with an organization or if you're just
18 representing yourself and begin your comments. The first
19 person requesting to speak today is Delegate Jackie Stump
20 who called me and I'd ask him to come forward at this
21 time. Welcome. We're happy to have you with us today,
22 Delegate Stump.
23 MR. STUMP: Thank you, Mr. Chairman, members of the Board.
24 Thank you for the courtesy to allow me to speak first.
25 Senator Jack Reasor and I are in some different meetings

1 today. He couldn't be here with me. So I'm speaking on
2 his behalf while he's covering for me in another meeting
3 in Tazewell County which I will try to attend shortly
4 after I leave here. But I do, Mr. Chairman, appreciate
5 the courtesy. I hope that you -- I know you're well
6 aware of some problems that have come up in Buchanan
7 County. So I hope that you and the members of the Board
8 will allow me some latitude in discussing them because I
9 thought it was serious enough that it needs to be brought
10 to the Board's attention as quick as possible. We are in
11 the process, Senator Reasor and I, of researching as we
12 went to a meeting -- it's been a few weeks ago -- that
13 Tom was able to attend and also Max Lewis. And let me
14 say up front, sometimes you're in a no win situation. We
15 heard from the property owners that day of a lot of
16 concerns that they have and we're out to try to help
17 address those. In the meantime I have gotten calls from
18 coal miners concerned about us jeopardizing their safety
19 and also people from the gas industry concerned about
20 losing their jobs. So let me make it clear up front that
21 sometimes you're in a no win situation. We are here to
22 try help the property owners. We're in no way going to
23 diminish safety for the coal miners because I've been a
24 coal miner for a number of years. That is not our
25 intent. And in no way do we want to do anything that

1 employees working for gas companies will lose their jobs.
2 So in saying that you know we have a terendous task
3 before us as to find that balance to make everything work
4 together. And that's what I'm here for. I'm not here --
5 and I want you all to realize and understand up front,
6 I'm not here to point fingers at anyone. I'm not here to
7 question anybody's -- what they've been doing because I
8 guess you know when you look and you read a lot that
9 people spend more time pointing fingers than they do
10 finding out what the actual problems are and how to
11 resolve them. So that's what I'm here for today. If
12 there's regulations that this Board has or the Director
13 that we can try to help address or if there's things in
14 the books that we need to change or the regulations won't
15 cover the problems then it's all of our jobs and all of
16 our duties to try to protect the environment and that's
17 what my main goal is. If I could I'd just like to draw
18 your attention, Mr. Chairman, to some issues and I will
19 submit to you in writing about the regulations to be
20 discussed. We do have a potential volatile situation in
21 Buchanan County right now to say the least. And I think
22 Tom along with Max can verify that. And what I've done
23 is I've went back and tried to look at the Act and I just
24 bring to your attention some concerns and I ask your
25 guidance. I know I don't expect the answers today but I

1 know, Benny, you and I have a good work relationship and
2 you don't always tell me what I want to hear but we do
3 work good together. So I would ask that you on behalf of
4 the Board if there's things that I can bring up that you
5 think will help with the situation I hope that you will
6 get back to me and if there's things that need to be
7 changed or the Board feels like needs to be changed then
8 I just ask you. One of the things -- and I draw your
9 attention to Page 7 of the Act talking about construct-
10 ion, 45.1-361.3. The thing about it is as I read a lot
11 of that and bring your attention to 1, 3, 6 and 7 is to
12 protect the environments, to recognize the use of the
13 surface and the rights of the people owning the gas. I
14 know you all try to attempt that. But if there's things
15 in this as I just mentioned and you all see when you
16 deliberate later that needs to be strengthened on your
17 part then I would hope that you would tell me if the laws
18 need to be changed. The Director naturally has quite a
19 bit of authority. I just want to go through some of
20 these things and ask for your all's guidance. In trying
21 to deal with the situation over there a lot of people are
22 coming to me about a lot of different things. The
23 violations and the penalties, a lot of people have said
24 maybe they're not enough to make companies do what they
25 should be. I don't know that answer. I've been looking

1 at it trying to reach that. But if there is problems --
2 and I'm not saying there's problems with everybody. I'm
3 sure that some of the companies get along but some of the
4 companies don't. And I think that's pretty evident. But
5 under that, the violations penalty does need to be
6 stronger in your all's option. I just ask you to look at
7 that. Under Article 2, talking about the Virginia Oil
8 and Gas Board, there has been recommendations from some
9 of the citizens does the Board need to be changed. In
10 other words, in the areas that there is a lot of gas
11 production, gas wells going in, does the make-up of the
12 Board need to be different to give more citizens in that
13 area a voice. As I'm going through these, Mr. Chairman,
14 I'm trying to do it hurriedly so that I don't take up a
15 lot of your time. I would draw your attention to under
16 the Act, Page 2, Article 3, where it talks about the
17 duties and responsibilities of the Director. It says --
18 I'm just going to read it real hurriedly. "The Director
19 shall promulgate and enforce rules, regulations and
20 orders necessary to insure the safe and efficient
21 development and production of gas and oil reserves
22 located in the Commonwealth. Such rules, regulations and
23 orders shall be designed to -- like in number one --
24 prevent pollution of waters controlled by the Water
25 Quality Standards, protect against all site disturbances,

1 ensure the restoration of all sites disturbed by gas. In
2 other words, what I'm saying and you go down to number
3 eight, protect the public's safety and general welfare.
4 Is this enough under this, as you all view, to help with
5 the situation that we've got in Buchanan County which is
6 a tremendous problem? I know some of the Board members
7 may not know the problems and I'm sure as time goes on
8 that you will discuss it with them. Powers and duties of
9 our inspectors, do they have enough power and duty to go
10 out and to enforce the rules and regulations that are out
11 there? Bonding, bonding is something I've been looking
12 at as far as what does it take for clean up or getting
13 land back like we would hope to be as close to the
14 natural terrain that is disturbed. That's one main thing
15 that's out there. I know there's a fine line, that the
16 gas companies are going to say, "If it's the surface
17 owners timber and things we can't do anything with it."
18 So there's a fine line there where a balance is going to
19 have to be come up with to see what we do. Because it is
20 an eye sore that's been left in the counties. It's got
21 to be addressed some way or another. So I hope you would
22 look at that. And you did mention objections to permits
23 and hearings. I guess this is a judgement call that you
24 have to look at. Do the surface owners have enough
25 things -- they're pretty limited on what they can object

1 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
2 Exhibit #3.
3 MR. CHAIRMAN: It's accepted.
4 Q. (Ms. McClannahan continues.) You have filed for a joint
5 force pooling under I and II, is that correct?
6 A. Yes, we have.
7 Q. What is the time frame that you anticipate between
8 completion as a fracked unit until mining actually
9 begins?
10 A. One to four years.
11 Q. In this application are you requesting a pooling order
12 under both Oakwood I for frack well production and under
13 Oakwood II for short hole, unsealed, gob and gas from
14 any additional wells?
15 A. Yes, we are.
16 Q. Could you explain what triggers the change from Oakwood I
17 production to Oakwood II production?
18 A. The isolation of the longwall panel by the driving of
19 entries.
20 Q. Can you explain how the production is going to be
21 allocated between Oakwood I and II?
22 A. The Oakwood I will be the actual percentage of interest
23 within the unit and the Oakwood II the percentage of the
24 longwall panel within the production unit times their
25 percentage of interest within the unit.

1 to. Maybe that needs to be broadened to a certain point
2 to allow things when it's being permitted -- and a lot of
3 times I know people may not come forward until after
4 something's permitted. Maybe we need to do things in
5 such a way as to try to get people there to deal with
6 those situations. Mr. Chairman, if I get too far along
7 you can cut me off. I'm trying to just hurriedly go
8 through this. I don't want to take up a lot of the time.
9 Going over into the Gas and Oil Regulations on Page 22, I
10 guess it would be covered under -- it's under Article 3,
11 closure order. It talks about the Director shall
12 immediately order cessation of the operations when he
13 finds a condition or presence which create or can be
14 reasonably expected to create an imminent danger to the
15 health and safety of the public. Now, I've went and
16 viewed some of the areas and have traveled them a number
17 of times. I do really have concerns and things there
18 about things that -- in other words, trees, brush, things
19 in streams and things. That definitely concerns me. I
20 think definitely we're going to have to do something to
21 try to address that situation. Does regulations -- does
22 something need to be changed to where we can enforce it a
23 little bit more? Also I would go to Page 33, 1.26,
24 erosion, sediment control and reclamation. Probably this
25 is one of the most important articles I could even

mention to you today at all. But if you look at that there has to be a plan for reclamation. My concern is this; do what we have in the regulations or in the laws is it strong enough or do we need to change those to where we can assure a place that's been a beauty and we want the gas people to have all their rights come in, get their gas and -- but we also -- when they are gone we want to be able to look back and see the beautiful mountains that we've always looked at before. So I ask you to look at that. Do we need to change that? The last thing I will just touch on is naturally release of bond. When you release the bonds the work -- there's different phases of it and the work should be done, the reclamation should be looked at. Do we need to look closer before we release the bonds to insure that place that we consider beauty is restored to as much as its contour. I know if we're able to go back and redo and straighten out surface mining and things that this is another incident that we need to go back and try to look at. I know I've hurried so I wouldn't take up much time. Mr. Chairman, I've ran through a lot of things and shared some things with you that, believe me, are important. I say to this Board, to the people in the audience that are people of concern, the surface owners and to the gas people, we've got to find that balance that makes it work

because I know there's a lot of people out there that work with the gas companies. There's a lot of people inside these mines that depend on getting the gas out of the mines but there's also property owners out there that have to be looked at and worked with in a manner to what they feel like they have some rights. And I just ask you to look at it. I'm going to try to do my job to the best of my ability and if there's things that you all feel like -- or as a Board that you think need to be dealt with and it needs to be done in Richmond under laws and things then I ask you to give me the guidance and things that it takes. But if you feel like there are things in the regulations and the laws now sufficient to deal with this then I think we've got to deal with it as all the parties that I said before. It's not no easy balancing act, as I say, because you've got a lot of entities to deal with. But I think if we would all work together to try and do a better job -- and I put myself in that same category -- then I think we can try to all be happy because -- and Benny and I talked about it little bit earlier. The sad part about it is for a lot of our citizens and things that their gas rights and a lot of rights have already been sold years ago before they ever know it and the gas companies have the right to come in. But as they come in I just ask them all to have the

respect necessary that when they do leave that those surface owners would be able to say that they were good corporate citizens, came in and worked with us and left and left our environment as close to the original contour as they could. Mr. Chairman, I apologize for being long winded. Sometimes we get accused of being that way, but I felt like this is the first step after finding out that you all were going to be having public hearings -- a lot of this I know may have rambled away from that, but I'm saying to you and to this Board we do have a volatile problem out there that I have asked people to use extreme patience because -- I mean, it's a situation out there that when I -- I get nervous about. I'm nervous about right now because a lot of people are out there that are surface owners that feel like they've been run over top of and they're not going to let it happen anymore. And we've got a situation here that we've got to try to deal with. So any guidance that you can give me, I will try to do my part. As I say, I want you all to understand I'm not here pointing fingers at anybody. I'm here asking for the guidance as just a coal miner trying to figure out how that I can help the people and reach that balance that the gas companies, the surface owners, the coal people, everybody has that balance that they can get along and we can leave this is a good environment. Mr.

1 Chairman and members of the Board, I do appreciate you're
2 allowing me to speak to you this morning. I wish I could
3 stay for the whole meeting but, as I said, I'm speaking
4 for Senator Reasor, too. He's holding down another
5 meeting that I'm going to be attending and going to. But
6 he shares the same concerns and we are going to be
7 getting back and sitting down with the Department. And
8 the same as any gas companies that want to be involved,
9 Senator Reasor is trying to set that up to where we can
10 go back and have our meeting with the people to try to
11 say, "Here are some things we're going to try and deal
12 with." So I'm just asking for your help there. Mr.
13 Chairman, thank you very much and members of the Board,
14 thank you.
15 MR. CHAIRMAN: Thank you. I know we had a sign-up sheet going
16 around. I want each of you -- we're not going to put you
17 on the spot. I'm going to call your name and you're
18 welcome to come up and speak to the Board for the record
19 or if I call your name and you don't wish to do that just
20 let me know. The first name I have on the list is Troy
21 Gillespie.
22 MR. GILLESPIE: I'm just here for information.
23 MR. CHAIRMAN: That's fine. Thurman Wade.
24 MR. WADE: I'm going to let my son speak for me.
25 MR. CHAIRMAN: All right.

1 MR. WADE: Thank you. My name is Ronald Wade. I'm here on
2 behalf of my parents who are surface owners in Buchanan
3 County to address what I feel is a complicated issue
4 that's been complicated by our legislators when they
5 passed this coalbed methane gas act. It gets down,
6 ladies and gentlemen, to money. Natural gas and the
7 coalbed methane -- I don't know if anyone has taken a
8 sample of the coalbed methane that's being produced in
9 Buchanan County but natural gas itself is about 97
10 percent methane. The other three percent are the propane
11 units found. No one has taken it to court yet but what
12 I'm addressing is the fact that I have two parents. My
13 dad is 71 and my mother is 67. They leased their
14 property to Consol and instead of getting royalty checks
15 it's been held in escrow due to the cloudiness of the
16 ownership addressed by a coal company that's severed the
17 minerals from -- the coal mineral from the property close
18 to 100 years ago. There's no wording in the lease
19 whatsoever -- in the coal severance deed about natural
20 gas or coalbed methane. It wasn't in existence then.
21 It's a concept that's been relatively new in development.
22 The problem is this, ladies and gentlemen, I have a
23 degree in petroleum engineering. I understand a whole
24 lot more. I use to work for a gas and oil company. And
25 I understand what this whole situation is about. The

1 whole situation is there is some large corporate entities
2 who want to cloud the issue of whether this gas is owned
3 by the people who own the surface or whether it's
4 controlled by the coal owners. If the gas was only
5 produced by the coal seam it would not be found in the
6 strata above and below the coal seam. The carbonation of
7 natural gas and oil comes from decaying vegetable
8 materials. If you have a black carbonation shell it's
9 called carbonation shell because it has a high vegetable
10 mineral content -- high plant content. Gas is produced
11 from that. Most of these people here, the private
12 individuals, they're are here because they in good faith
13 leased their gas rights to Consol, Pocahontas Gas
14 Corporation, but they were never told that the funds
15 would be held in an escrow account. My parents weren't.
16 I mean, I know the people that leased it very well. I
17 was there party to the negotiation. So they've been
18 mislead. I'm only speaking on behalf of my parents but I
19 think it's happened to all these people. The problem is
20 if you go outside the coal fields and you look at a
21 section of property it's divided up, you drill it, they
22 find the gas ownership to the surface owner and once the
23 gas well is drilled and goes into production they get
24 paid their royalty. But not in the coal fields because
25 we're dealing with some people who say that all this gas

1 came off the coal seams. But it didn't. That's what I'm
2 here to tell you. It came from anything that has carbon
3 content in it. And if it comes only from the coal seam
4 then they should produce the gas only from the coal seam
5 only, but they don't. Most of the gas is being produced
6 in the sandstone, in Buchanan County especially. In this
7 area, I know, from a sandstone that's several hundred
8 feet above the coal seams being mined over there. I
9 mean, we're here to find out the information but we are
10 also here to make the Board aware that 100 years ago some
11 people were taken advantage of because of their lack of
12 knowledge. But there are some of us now who understand
13 and we don't want to see the general public taken
14 advantage of again. There are people here that will put
15 their resources together and stand up for it. And
16 they're tired of it. They're tired of being told that
17 this is coalbed methane and it's a different set of rules
18 from natural gas. I'll tell you what, if it goes to
19 court you're going to found out it's the same material.
20 It's going in the same pipeline, the same quality being
21 used for the same places. It's not any different.
22 You'll find that out. I'll put myself at the disposal of
23 the Board to assist in helping in any way possible. I'd
24 just like to see the people get their problems straight-
25 ened out and go on about life because life's too short to

go through all this aggravation. I'll be of assistance any way I can. Thank you.

MR. CHAIRMAN: Thank you. Kathleen Wade.

MS. WADE: No comments.

MR. CHAIRMAN: Okay. David Rose. Brenda Rose. If you want to come up together that's fine.

MR. ROSE: We're property owners from Swartz Gap where Consol is wanting to drill. They've approached us twice wanting to drill on us. They've got -- like you say, they've got the rights to come in and get their gas which on part of my land they might have the gas rights, part of it they don't. I've got about three or four different tracts. But when they come in it's total destruction. There's something needs to be done there. You can go out from my property where they've stopped drilling so far and it's just like Jackie Stump was talking about. He went out and looked at it. The property that I've got has been in my wife's family for seven generations. Whoever sold the gas rights they sold them, but still yet when they come through and the gas is gone we've got nothing. We've got nothing. We've paid taxes on it for seven generations. Who paid the taxes on the gas? I've got over $100,000 in my house on that property. It won't be worth $20,000 when they get through. Who wants it? Who would want it? You drill a well right there at it you've got the chance

of natural gas or coalbed methane or any kind of gas -- I'm a coal miner. I'm losing money down here today. I took off work. But I'd rather lose this work than to lose everything I've got. They're talking about drilling for the safety of the miners, right. What did they do before Consol got it and they got the pipeline in here? How many degas wells did they have before then? You didn't have this problem then. Like I said, this is for money, to get the gas out of here. I don't want to see nobody get hurt. They need to degas. If they can sell it, fine. But if you come out there and look there's gas wells everywhere. They're just totally -- I've got 35 acres that they're wanting to put, I believe, three wells on. Does it take three wells to degas 35 acres of that coal? The best I can figure from talking with a man I work for now he use to be a boss for Island Creek when they were Beatrice. He said one of the panels then -- I don't reckon that anybody got hurt on account of it then. He said you'd be lucky to have two or maybe three degas wells on a panel. That pipeline goes a long ways. Then, of course, this doesn't have anything to do with it. If they're going to drill on me they're going to. If they're going to make all the money off of it then what are we going to have when they're gone? The companies or whoever -- when the coal is gone and the gas

is gone and everything else we've got nothing. We've got nothing. And what they're proposing to pay per well and then you take your timber out -- if I wanted to sell my timber I'd sell my timber. If I wanted to build a road through my property I'd build a road through it but I don't want it. It's not doing me any good. $2,500 a well -- $2,500 won't pay a good down payment on a good leased car -- on a good vehicle. So something needs to be done somewhere or somehow. If they can just roll over you, like Jackie said, it's a volatile situation. When you're looking at somebody -- I'm 45 years old. I've not got a whole lot of time left. And I started out with nothing and I worked up to what I've got. I ain't got time to do that again. If somebody takes it away from you it makes you think. I don't want to do anything. I just want to go on living the way I am. But I don't want to be run over. Whatever regulations you all are proposing or whatever, the screws need to be tightened. They don't need to be loosened on what's going on. That's about all I've got to say right now.

MRS. ROSE: We don't like being ran over because they just come in and they say, "We have the right to do this and you have no say so over it." They can just come in and take over our land or whatever. They say we have no rights.

1 MR. ROSE: Well, what gets you is if you come in -- I work ten
2 hours a day, 50 to 60 hours a week. That is if things go
3 good. And you come in and you're wore out and you come
4 out and somebody has got a path down through your
5 property, a survey, you know, we're going to put a well
6 here now.
7 MRS. ROSE: They never contacted us or anything.
8 MR. ROSE: They never contacted us or nothing. That don't go
9 over real good at all. Now, that is a volatile situ-
10 ation. They might be sitting up there when I get back.
11 I don't know. But I have come in twice -- well, once my
12 wife, she found them before I did. But once I found them
13 and it's just not any fun. You come in from work and all
14 you're worried about is trying to get cleaned up and have
15 supper and here is somebody else saying, "We're going to
16 drill a well down here. We've done cut us a right of way
17 down through here. We've surveyed it." I don't want
18 people on my property that I've paid taxes on all these
19 years and that I've worked for. Even if they have got
20 the right I want to know about it. I'll do my best
21 -- my utmost best to stop them, believe me, because I've
22 already seen what they've done. They can say we're going
23 to do this and we're going to put it back and we're going
24 to do this. But all you've got to do is drive out there
25 and look, all of you. Come out there and look. It's

1 right there. Anybody can see it. That's all I have to
2 say.
3 MRS. ROSE: And we would like for you to help us if you could.
4 MR. CHAIRMAN: We appreciate your comments. Thank you for
5 taking the time. Rondal Lattimere.
6 MR. LATTIMERE: I'm with them.
7 MR. CHAIRMAN: Thank you. Riley Hamm. If I mispronounce a
8 name please --
9 MR. HORN: It wouldn't be Horn, would it?
10 MR. CHAIRMAN: It could be. Yeah. It's Horn. I'm sorry.
11 That's me. My focus is not too good either. Riley Horn
12 from Short Gap?
13 MR. HORN: Yes.
14 MR. CHAIRMAN: Okay.
15 MR. HORN: Gentlemen, I'm just here as a resident of Buchanan
16 County and I know you're trying to de-regulate some of
17 the regulations and the laws and the stuff that you have
18 in here and there's a lot of things I'd like to bring up
19 to a point of view. That is that land owners that have
20 been mentioned this morning are being walked over in
21 Buchanan County and their land is being destroyed, like
22 Mr. Stump mentioned. And you as the Board, as he
23 mentioned, we do need help in Buchanan County. And like
24 the gentleman before me mentioned about the laws and
25 stuff being loosened, we do need to stricken up the laws

1 but we do need to work together with everybody if we can.
2 There is a bad volatile situation in Buchanan County. A
3 lot of tempers are rising. A lot of people are getting
4 uneasy about this. As Board members -- I think everyone
5 here should, if you can, go in Buchanan County and look
6 at the damage that is being done to the county. Some way
7 all the Board members need to get together and it would
8 be good if you all went to Buchanan County and looked at
9 the issues that are being brought up before you make any
10 decision on loosening any regulations and things and see
11 what the citizens of Buchanan County are going through.
12 Because they are truly being walked over by this company.
13 It's very evident. Like the beauty of the mountains and
14 things in Buchanan County -- the way they're coming
15 through they're destroying everything they come through.
16 We need to get together. We need to pass some laws where
17 everybody can work together and bring back -- if nothing
18 else, they're cutting right of ways 100 feet wide to run
19 power lines, destroying that much timber. Everybody's
20 concerned about that. A lot of people in the Grundy area
21 should be concerned also. In 1977 we had one of the
22 worse floods in Buchanan County. The next flood with the
23 way the roads and stuff are being built around these
24 mountains, no water control, the trees are being taken
25 out, erosion problems and things of that nature, I think

1 a lot of that needs to be addressed. A lot of people are
2 very concerned about that. I would just like to ask all
3 of you Board members if you could to try and get together
4 and take a tour of Buchanan County and you can see what
5 the people of Buchanan County are concerned about.
6 Because it affects us all. Like Mr. Rose said, we all
7 work hard for our property, work hard for our houses and
8 our homes. They come in and do what they're doing
9 offering very little for the damages they do. Who's
10 going to be left sitting when it's all over? All our
11 homes and stuff -- with the value of our property
12 depreciated what can we do? We are left with that. I
13 think that some of the regulations and stuff need to be
14 tightened up but yet work together with the gas companies
15 and the coal companies. Everybody has to work together.
16 But like they brought up before hand about the degas
17 wells -- that was a good issue. Back in the early 80s I
18 use to work for a drilling company myself and there
19 wasn't anything of this magnitude going on back in the
20 early 80s with the degas wells when Island Creek Coal was
21 mining in Buchanan County for mine safety. A lot of that
22 is being brought in because they're putting it all in
23 production and making money off of it. There should be a
24 regulation put into effect and some laws changed where
25 there's not so much wells put so close together and come

1 back and look at some of the things done back then. You
2 didn't have that many problems with the property owners
3 then like there is now. So that's just some of the
4 thoughts and comments I would like to bring to the
5 Board's attention and see if you can maybe talk it over
6 and, like I say, get a tour together. Get all of you all
7 together. A lot of you all live away from here and maybe
8 never have been down there and seen what's going on in
9 Buchanan County. I think it would be good for all of the
10 Board members to Buchanan County and take a good tour,
11 not just down 460 but go up some of the hollows and stuff
12 and places where they've been drilling. Mr. Lewis can
13 probably take you to every one of them. He lives in
14 Buchanan County. He knows what it's all about. Mr.
15 Wampler, I'm sure you've been there also. But I think
16 there's some of the Board members that live away from
17 here and everything and may not know what's going on.
18 There should be a tour and let them go look and see.
19 Help us with this issue for the residents of Buchanan
20 County because we all live there. We all pay taxes and
21 we're all real concerned about what's going on. Basic-
22 ally that's about all I have. Thank you for the change
23 to speak my opinion.
24 MR. CHAIRMAN: Thank you. Hubert Carter. Did I get that
25 right?

1 MR. CARTER: Yeah. That's right. I'm a resident in Buchanan
2 County also. My concern is pretty much the same as
3 what's been expressed. Another thing, I don't think we
4 need a de-regulations of what is wanting to be stricken
5 from what's already set forth by the Act. I feel like
6 that if you look over the country I don't even think
7 they're obeying what's already set up. I think de-
8 regulations is just going to open it up a little more, to
9 let them do more than what's already being done. In
10 reference to what Mr. Wade was talking about on the
11 coalbed methane gas, in light of what I have seen -- I
12 work for Centennial Construction Company in construction
13 in (Inaudible.) #5 shaft. And it's a fact -- and if the
14 Board would have someone to go to the fields they can
15 check it out. In A-Shaft, the very shaft that I work
16 in, we have to have a pump in that below the coal 168
17 feet in order to bring refuge and coal out of the mines.
18 At this 168 feet level where I work I installed stainless
19 steel pipes in the pump are to get water out of the mines
20 that drain in that section under the skits that bring the
21 coal out. I have seen the gas come right out below the
22 coal seam. If they're just collection methane off of the
23 coal that's not true. I've see gas come out of the
24 ground of blue sandstone 168 feet below the coal level.
25 So that claim as far as it just coming off the coal is

1 not true and I just want to state that fact because I
2 have knowledge of that. And I think if we would put
3 somebody out there from the gas people -- the department
4 that they would find out this also. Another concern I've
5 got is why if it's not a proven fact that they do own the
6 gas -- why are they allowed to have just pretty much the
7 run of the situation and do what they want to? In these
8 here laws here if they are allowed to incur all the
9 operations, all the costs -- they have a list here that's
10 ridiculous that they want to apply to the gas owner
11 instead of their own self. They're the ones that's
12 getting the gas. They're the ones that are getting the
13 money off of it. They are the ones that should be
14 responsible for the production of this gas they're
15 wanting. It ain't just for a fact of safety of men to
16 get gas off of the coal because Beatrice Mines in the
17 First Shaft Mine in Buchanan County, they run coal and
18 everybody in Buchanan County has knowledge that they have
19 done this for 25 to 30 years and they've never had a
20 degas program at all. And if it's not just for the fact
21 of getting gas and selling it they wouldn't be just
22 degassing it for safety because in reference to most
23 companies in the country they care very little about
24 employees by the treatment they give them. I know they
25 pay their employees well but as a whole and the bottom

line most companies give their employees a bad way to go when it comes time to treat them the way they should be treated. I'll put it that way. But anyway that's about all I have to say about my concerns. I think it needs to be looked into a little bit more. A lot of the things they're saying and a lot of the claims that they're making I think they should come up and be made to prove that they do have the right to do what they're doing as far as taking the gas. It looks like a one sided situation for the company. People are not getting a fair shake and I think it needs to be looked into. I don't think we need de-regulations and if necessary I think we need Federal Government regulations, not just State. I think it needs to be looked into and something done about it. They ain't got to me yet but they're coming. They're wanting to drill a gas well. I'm facing the same situation and I think -- another thing, there ought to be enough regulations set up that these people when it's common knowledge that you don't have a problem but then when they start coming in and getting their coal and their gas and then the problems start they affect your water. I'm having a problem now. My house is busting down. They'll shift you around from one thing to the other to get out of anything and make any excuse not to stand responsible for the damage being done. It is a

known fact through the reclamation department that the problem of drilling gas wells is affecting people's water and it is creating a problem and it needs to be looked into. I think they ought to be made to stand up and stand responsible for what they're doing in that county. If they want the gas -- if it's a proven fact that it's their's and they're creating a problem let them pay for the problem. That's all I have to say. I appreciate your listening.

MR. CHAIRMAN: Thank you for your time. Thank you very much. James Davis and Joy Davis.

MR. DAVIS: I have met Tom before. I met Tom about two weeks ago and I have wrote you with -- I have objected to some well sites near our property. I talked to you, too, Max. Our problem is water. On that ridge where we live that's the last place that has any water out there and they have done drilled all on the north side of our property. We're just sitting up on a high wall out there. They've not -- all the banks are -- they've got big steep banks. They sowed some grass seed but that's all they've done. Now they're fixing to go on the south side of our property and they're proposing to drill two well sites near our property out there. This is straight in front of our spring. That's all the water we have. We've had a nice little farm out there for years. As a matter of

fact, my dad's been there all of this life. If we lose that water that's the last water on that ridge going from the Short Gap area. That's the only water that we have. That is a major concern to us. I mean that's a major problem to us. The next thing is where they have went all around our property and they have got these big high walls, if we was to have any substantial ran -- and we're sitting up on top -- what's going to happen to our land. I mean it is some steep land that we have got. The next thing is after they came in there and they drilled these well sites -- I think they call it liquid Nitrogen -- they pump it in the holes, the cracks, the rocks or whatever it is. Up here is my mom's house and stuff is sitting up there. All the fumes -- I mean it is like a cloud that comes up. We're never warned. We never know nothing or nothing. You're just out there and there you are and that comes upon you. But my dad -- he would be here today if he was able. My dad is not bedfast but he is almost practically bedfast and he has black lung. He has breathing problems and everything. We don't have no kind of air conditioning in our house and on a hot day that's the only way that they can get any kind of air, is just to raise the windows. I mean if it gets hot that's the way he cools his house off. But whenever they pump this stuff into the ground you cannot hardly breath. And

1 we don't know nothing about it. We're just there and it
2 comes up on us. We never get warned or nothing. We
3 don't know anything. Getting back to these two well
4 sites, if these well sites -- they are so close. I mean
5 I know you may can measure across the hill and it's a
6 long ways from our spring to this well site. But if you
7 go straight through the hill it's nowhere. These well
8 sites -- they need to consider people's water. That's
9 the only water that we have on that mountain out there.
10 It is a major concern to us and we have really -- we have
11 really done everything we can to save our water because
12 we don't want to lose it. There's no way else we can get
13 any water out there. When they pump this stuff into
14 their wells at mom's -- Mom, you couldn't even drink your
15 water, could you?
16 MS. DAVIS: We had to let it go a few days before we could use
17 it.
18 MR. DAVIS: I mean there was an oily film that came up in her
19 well. And her water -- they couldn't even use it. She
20 still bathes with it but as far as cooking or anything
21 you couldn't even use that water, could you?
22 MS. DAVIS: No.
23 MR. DAVIS: So that is some of our concerns that we have right
24 now considering what's going on. These two well sites,
25 if they could just be -- I'm not saying -- there ought to

1 be somewhere they could put these that it would not
2 affect our water. That's all we've got. If we lose it
3 we don't have nothing. It really it. I appreciate you
4 concern and you listening to me, too.
5 MR. CHAIRMAN: Thank you for your time. Also you did the
6 right thing in writing your objection during the time of
7 permitting. That gives us an opportunity to sit down and
8 talk with you about that at that time as well.
9 MR. DAVIS: On our objection, will we be talking to you
10 personally on this thing or --
11 MR. CHAIRMAN: Mr. Fulmer.
12 MR. DAVIS: Okay. Tom, if I could just show you our situ-
13 ation. I know I can't explain everything but if I can
14 show you. That's why I asked Jackie to come out and look
15 at it. Thanks for your time.
16 MR. CHAIRMAN: Thank you.
17 MS. DAVIS: I'd just like to say a few things, too.
18 MR. CHAIRMAN: Yes, ma'am.
19 MS. DAVIS: Now, I live there and I've lived there 50 years.
20 This year will make 50 years and we've never had this
21 water problem. We've always had water. We've had
22 cattle. And I don't see if why these people come around
23 -- this Tray Owens come and he does not tell you the
24 truth. He came out to my place and we had a little bit
25 of heirship land and he said, "Would you sign that your

1 husband is an heir in the land?" And I did. So here
2 come this certified letter saying that I had signed all
3 the rights for him to come on me and he never even named
4 nothing. And another thing I don't like, I don't like
5 them to put their wells right in my door and all that's
6 coming up right on me. Another thing he done I don't
7 like is go to a nursing home and get some old man to sign
8 a paper that don't know what he's signing and pushing
9 over old people that don't know. Now, I'm not no young
10 person myself and I signed what the man told me but then
11 here come this certified letter and I got really upset
12 about it because that's what the man asked me -- he asked
13 me did I know my husband's brothers and sisters and his
14 aunts and uncles. I said yeah and I signed I knowed
15 them. But I did not sign no paper for him to come over
16 top of me. Furthermore, I want him to stay 750 feet away
17 from me and I don't want him back out there noway. I'm
18 tired of it and I'm tired of them trying to run over top
19 of us. We pay our tax and nobody didn't buy that land
20 but us and we paid for it and I think it's our's. I
21 don't know about the gas and oil under it. There's so
22 much out there they can't give account for and it could
23 be somewhere close to me. I don't appreciate them coming
24 and telling me one tale and writing me something else
25 because I've been an honest person and I can prove that

1 by anybody that lives on the mountain. I've been an
2 honest person. So I would like to do something about it.
3 I don't like them running over old people. My husband is
4 78 years old and he's not able to be ran over and not
5 able to be talked to. I did sign the paper that I knew
6 the people. But then here come this certified letter
7 like I had signed all these rights and he didn't even ask
8 me nary thing about rights. He didn't ask me about a
9 pipeline across this or nothing. So I'm much concerned
10 about it and I wish you could help us and do something
11 about it. I am tired of them coming and just trying to
12 push over top of old people. That's all the water we do
13 have. We're the last house down the mountain. And I
14 appreciate if you could help us out. Thank you for your
15 time.
16 MR. CHAIRMAN: Thank you. Thank you for your comments. Jill
17 Harrison.
18 MS. HARRISON: No comment.
19 MR. CHAIRMAN: Les Arrington.
20 MR. ARRINGTON: No comment.
21 MR. CHAIRMAN: Mark Swartz.
22 MR. SWARTZ: I'll just keep this real brief. My name is Mark
23 Swartz. I was one of the 25 or 30 people that served on
24 the committee that met over the period of -- on and off
25 over the period of probably more than a year with regard

1 to the regulations that are under consideration today.
2 I'm not sure what the date is but there was also another
3 set of regulations which deal more with the drilling of
4 wells and erosion control and water protection and some
5 of the issues that we've heard about this morning that
6 will be on your agenda I think at some point in the
7 future for public comment. But what we're really talking
8 about today are the Board regs. I would recommend them
9 to you and to your serious consideration because I think
10 they simplify the process a little bit and in some
11 respects give more meaningful information to the people
12 that are affected by forced pooling, which is really what
13 the focus of these regulations are. The regulations
14 contemplate that the people that receive notice of
15 pooling applications will get information that is more
16 specific to their particular interests and concerns. And
17 they will be told what tract or tracts they're interested
18 in as a matter of title and how the application affects
19 them whereas currently they need to figure it out from a
20 mass of information, a lot of which really doesn't
21 pertain to them. So there are some, I think, advantages
22 in terms of communicating with people who participate in
23 this process, either willingly or unwillingly. And then
24 just a couple of general comments; Mr. Stump I think made
25 a good point at several different times during his

presentation and that is that there are always -- whenever any governmental agency or citizen or company wants to do something there are always people pushing and pulling on an issue. There are competing interests. The committee that came up with these proposed regulations and the committee that addressed the Division of Gas and Oil Regulations which are also being revised was made up of a group of people that didn't just come from one prospective. There were oil and gas inspectors from the DGO that were on that committee. Mr. Wampler was there. There were representatives of the coal regulators, the Division of Environmental Quality from the Commonwealth. There were citizens who participated. And I mean just plain ole citizens who had environmental and surface concerns. There were oil and gas companies that participated and coal companies. So it was -- there was a mixed bag of people available to bring those competing interests to bear on the regulations. And I think that hopefully that process and the day to day operations of Mr. Fulmer's office and some of the people in this room -- hopefully people will continue to communicate and share their concerns and views with an eye toward compromise and accommodation so that everyone gets treated fairly ultimately. To the extent that Mr. Stump is representing his constituents and wants to make sure

1 that they receive effective communications and that
2 they're treated fairly, he's absolutely right. That
3 needs to happen. And I think that all of the parties in
4 this kind of push and pull that we always have from a
5 regulatory standpoint need to have an opportunity to
6 communicate, need to get notice, need to get their
7 questions answered and to the extent the process can
8 accommodate them in an amicable compromise way that needs
9 to happen. And these regulations in conclusion, I think,
10 simplify the process and make it more understandable for
11 everybody. And I think that was the intent of the
12 amendments. I appreciate a chance to talk to you all
13 this morning. Thanks.
14 MR. CHAIRMAN: Claude Morgan.
15 MR. MORGAN: In another forum I'd probably have a whole lot
16 more to say but I'll try to address what's before the
17 Board today. I also served on the committee that's
18 worked on these regulations. I think the de-regulation
19 that's talked about here is more a paperwork -- wasted
20 paperwork elimination. I don't think it has anything in
21 it that addresses the concerns that the folks have
22 brought before you today. I think, as Mr. Swartz said,
23 it was something that was reasoned out by many competing
24 interests representing pretty much everyone concerned. I
25 would recommend that the Board adopt the changes that

1 have been proposed.

2 MR. CHAIRMAN: Betty King.

3 MS. HARRISON: Ms. King doesn't have any comment.

4 MR. CHAIRMAN: Ann Worley.

5 MS. WORLEY: No comment.

6 MR. CHAIRMAN: Nick Deskins.

7 MR. DESKINS: My name is Nick Deskins and I appreciate you all
8 giving me the opportunity to speak. The problem I'm
9 going to be addressing started in roughly 1992 and from
10 what I've seen dealings with prior to what's happened to
11 date. The lady that -- she was talking about that they
12 went to the nursing, that was my papaw. And different
13 things have happened that I've seen. I've seen the way
14 they come in and the damages that's being done. Not only
15 is it affecting my home but it's affecting my job. I
16 work for (Inaudible.) Incorporated. They came in there
17 and they offered them $50 -- $5 a year for ten years. I
18 don't know who the biggest gas owner is. So what. But I
19 would say that the Wade heirs is one of the biggest gas
20 owners in Buchanan County. They said when they came and
21 talked to him it would be three to four months and then
22 he would be getting a royalty check. Well, it's been
23 five years and we haven't seen nothing except for the $60
24 that he signed and didn't know what he was signing for.
25 And then now they came on around the mountain and came to

our house and the things that I've seen and the way that I know that they've operated -- I don't want it close to me, around me, losing our water. And if we decide to leave -- your land ain't worth nothing. There ain't nobody going to buy it. I mean the resale value and everything is gone. I feel like the people of Buchanan County -- the young generation -- people in Buchanan County is gone. We're going to have to do something to try to keep the people in Buchanan County. I'm a young person and I if I had the opportunity to get away I would for the simple fact that there's no jobs. There's nothing for the people in Buchanan County. And I feel like we need to do something or another. My papaw, he's 80 some years old and I feel like in my heart that he deserves something. I'd like to see him get something or another before he dies, whatever it would be. I mean, prior to 1992 they said if you owned the gas rights you do and now I just want to know what people's rights are and if they own the gas. I feel like there's been enough time that what should be done should already been done. I appreciate your all's time.

MR. CHAIRMAN: Thank you. Beecher Deskins.

MR. DESKINS: No comment.

MR. CHAIRMAN: Billy Bond.

MR. BOYD: Billy Boyd?

1 MR. CHAIRMAN: Yes, sir.

2 MR. BOYD: Good morning. My concern is I own the coal and
3 mineral rights on my property, 225 acres, and they're
4 trying to get me to sign a contract to lease it to them
5 but they're wanting to drill the wells on other people's
6 property where Pittston Coal Company owns the mineral
7 rights on it. I think they're trying to give me a rough
8 deal there. They should drill a well -- at least one on
9 my property, I believe. That's the reason I believe
10 they're trying to --

11 MR. CHAIRMAN: Drill around your property.

12 MR. BOYD: Drill on other people's property where Pittston
13 gets half of the royalty out of it. So if they want to
14 drill some wells on my property I might sign a contract
15 with them but I don't believe I'll go along with them
16 the way they're wanting to do it. There ain't many
17 landowners that has their coal and mineral rights on
18 their property. Most of it's done been sold off. So I
19 think when they found me owning the coal and the mineral
20 rights they fell on a plan to drill around the edge of it
21 to where I'd lose half of my royalty out of it. That's
22 about all I've got to say. Thank you.

23 MR. CHAIRMAN: Thank you for you time. Mark McClannahan and
24 Sheila.

25 MS. McCLANNAHAN: Good morning. I'm not really quite sure if

these changes are suppose to be in lieu of the paper reduction act. Is that correct? Is that what this is?

MR. CHAIRMAN: It was the Governor's Executive Order to first not exceed statutory authority and to eliminate waste and simplify the regulations.

MS. McCLANNAHAN: Okay. I have a few questions. We called the Gas and Oil Office and got a copy of this. I just have a few questions marked on some of the pages. On Page 3, Part B, number one where it says if the 30th day falls on a weekend or a legal holiday it has to be prior to that -- the business day prior to it. I was just wondering why it has to be prior to since nothing can be done over the holiday or the weekend. Why not after?

MS. RIGGS: The statute requires at least 30 days and you're working your way back and what's happened in the past is sometimes when it falls on a weekend they notice the next work day and that makes it short. In other words, you've got to have 30 days. So if it falls on a weekend you've got to do it on the prior business day, not the following business day to get the full 30 day period in.

MS. McCLANNAHAN: Okay. On Page 4, the last paragraph, it was B and now it's A. I was just wondering if you could give me some information on the statewide spacing and that code and the second sentence in the last part of the paragraph.

1 MS. RIGGS: Statewide spacing in controlled under Statute
2 45.1-361.17 which I have a copy of here and it basically
3 sets the distances between wells in the absence of field
4 rules in the area. It also grants to the Board the
5 ability to grant exceptions to those minimum spacing
6 requirements.
7 MS. McCLANNAHAN: So it's in the absence of field orders, is
8 that what you said?
9 MS. RIGGS: Right. Field rules circumvent or take precedence
10 over statewide spacing. It's basically the rule that
11 applies in the absence of the Board creating rules. If
12 there are no rules those are the rules that would apply.
13 MS. McCLANNAHAN: Okay. On Page 5, Part 6, Section C,
14 location exception. It gives what the notice should
15 include.
16 MS. RIGGS: That's what we just talked about. On statewide
17 spacing the statute gives the Board the authority to
18 grant exceptions to statewide spacing and that provision
19 deals with the notice that would come on for hearing
20 before the Board.
21 MS. McCLANNAHAN: So it would come before the Board?
22 MS. RIGGS: Yes.
23 MS. McCLANNAHAN: On Page 11, Part A, at the very bottom of
24 the page. I was just wondering if maybe there could be
25 some type of wording more specific as to what -- it says

1 including a reasonable supervision fee. What that
2 supervision fee might be.
3 MS. RIGGS: I think the Board orders on forced pooling track
4 that language as well. It also comes out of the statute
5 with respect to what the operator is entitled to include
6 in it's estimated cost of completion. The only --
7 MS. McCLANNAHAN: Supervision fee specifically?
8 MS. RIGGS: That number is -- when you come before the Board
9 or an operator comes the Board seeking forced pooling
10 they provide a breakdown, what's called an AFE, or an
11 estimate of what all the costs that comprise that number
12 are. And as part of the hearing that's reviewed by the
13 Board and anybody that objects to that can bring that to
14 the Board's attention at that time. So that's one of the
15 issues that's litigated as part of the forced pooling
16 application. Now, they will have all those costs broken
17 down on their estimate and then that gets plugged into
18 the Board order on the cost of participation.
19 MS. McCLANNAHAN: Uh-huh.
20 MS. RIGGS: For someone that wants to participate in the well
21 cost? Is that what your question's addressed to?
22 MS. McCLANNAHAN: Yeah. And then on the next page, Page 12,
23 those two lists there, is that specifically what
24 you're --
25 MS. RIGGS: I'm not looking at what you're looking at. So I'm

1 having a hard time following

2 MS. McCLANNAHAN: These are the changes that --

3 MS. RIGGS: You must have a different printed version than I

4 do because mine is double spaced and I can see your's is

5 single spaced. So the page numbers are different.

6 MS. McCLANNAHAN: I'm sorry.

7 MR. CHAIRMAN: That's okay. It's not your problem. It's our

8 problem. We'll get on the right page.

9 MS. McCLANNAHAN: On mine all of this is from -- I guess it's

10 Virginia Code 160 -- 25-160.

11 MS. RIGGS: That's the Board regulations.

12 MS. McCLANNAHAN: Right. That's what is being discussed

13 today, is that correct?

14 MS. RIGGS: Correct.

15 MS. McCLANNAHAN: Is there anything else being discussed today

16 as far as changes?

17 MS. RIGGS: Yes. I just have a different printed version that

18 was double spaced. So it was putting me on a different

19 page than you're on. But now I have the same one you

20 have.

21 MS. McCLANNAHAN: Okay. There's a list on Page 12, direct

22 cost, indirect cost. A is environmental, ecological.

23 That's all it has. I'm just wondering what type of costs

24 there are. Is that studies that they do prior to

25 drilling? What does that include?

1 MS. RIGGS: It would probably vary on a well by well basis,
2 depending on what costs they plug into that estimate
3 that's a part of the application and the pooling. And it
4 would be itemized in that application. That's a category
5 as opposed to specific. I don't know if anybody can
6 answer that. Maybe Tom has better insight to it than I
7 have.
8 MR. FULMER: Well, this list is a list in regards to costs
9 that may be incurred by the unit operator when he files
10 for the --
11 MS. McCLANNAHAN: That's under direct costs, though. Is that
12 explained in greater detail in the Gas and Oil --
13 MR. FULMER: No. To answer your question, I guess, no. These
14 are categories of what they may apply to under the
15 petition to the Board. Each one of these items are
16 negotiable.
17 MS. RIGGS: The costs have to be approved by the Board. So in
18 their application they attach that AFE -- that estimate.
19 And they itemize all these and put dollar figures to them
20 and then as part of the process everybody gets notice and
21 has an opportunity to come in and discuss during the
22 hearing what the costs related to that particular well
23 are. Now, it may differ from well to well. These just
24 -- in every instance you may not have item. It may only
25 be applicable to certain wells. So it would vary on an

1 application to application basis and it would be itemized
2 in the application itself as part of the costs estimate
3 that's provided for that particular application.
4 MR. CHAIRMAN: Specifically you're talking about the cost of
5 permit -- collecting permit data.
6 MR. HARRIS: Mr. Chairman, if I may, I keep hearing Ms.
7 McClannahan asking one question and I keep hearing other
8 answers. I'm not sure if I'm missing something or
9 something. It sounds like you're asking how do we define
10 what's grouped into these different areas.
11 MS. McCLANNAHAN: Well, I was just trying to research. It
12 says this is listed under direct costs and I'm just
13 wondering what -- for each of these topics they have a
14 comment on them as to what relevance or specifically how
15 they're directly related to the costs in the well. Like
16 environmental, is that due to research studies that are
17 done on the area or something like that? I want more
18 information or more detail.
19 MR. HARRIS: On what those items actually are?
20 MS. McCLANNAHAN: Right, or what they could be because he just
21 said it could be one or more if not all of these.
22 MR. HARRIS: I'm not aware of any guidelines that we have that
23 say you can include these items in environmental. That's
24 what you're asking for?
25 MS. RIGGS: This is the guideline and then it would vary on a

1 well to well basis depending on what they were proposing
2 to do for that well.
3 MS. McCLANNAHAN: Okay.
4 MR. CHAIRMAN: You have an opportunity to suggest that it be
5 more explicit or give specific examples.
6 MS. McCLANNAHAN: Yeah. I'm just trying to get general notes
7 today.
8 MR. CHAIRMAN: This is all the definition there is.
9 MS. McCLANNAHAN: Thank you. On the same page, Page 12, Part
10 D. I'm not sure if I'm just not reading that properly.
11 I don't really understand the context of that paragraph.
12 It seems to me like the first sentence and the second
13 sentence are --
14 MS. RIGGS: I think that addresses a burden of proof issue at
15 the hearing. Like I said, if you have a presumption then
16 the burden shifts to the other party to overcome that
17 presumption and it's a legal terminology that has to do
18 with determining who has the burden of proof in the
19 hearing itself in the event of a challenge of a particu-
20 lar cost.
21 MS. McCLANNAHAN: Okay. On Part E, unless one or more
22 respondents elect to participate and then it goes on, the
23 unit operator shall have no obligation to report costs
24 after the expiration of an election period. Why is that?
25 MS. RIGGS: There was a time when the Board was trying to get

1 a feel for whether costs were reasonable or not and how
2 they varied from well to well and area to area. So they
3 undertook a research project which imposed upon the
4 operators an obligation that was not in law or in
5 regulation but was imposed by the Board order itself to
6 report back -- at the time of the application they have
7 estimates because they haven't drilled the well yet.
8 They don't know what the final costs are going to be.
9 And the Board wanted a feel for whether those estimates
10 for purposes of election and participation in the
11 drilling unit were realistically what the ultimate final
12 numbers looked like for comparison purposes. So in the
13 Board orders the Board directed that the operator once
14 the well was complete would report back what the final
15 costs were so that the Board could do a comparison
16 between the estimated costs and the final costs. And
17 that data's now been collected over some period of time.
18 What this says is there's -- the only real reason for
19 that provision in the first place was for the Board to be
20 able to get a feel for those numbers. And now that
21 that's occurred the only other reason why you would need
22 to know that is if somebody were participating in the
23 unit. The Board order gives for those persons entitled
24 to an election 30 days for them to make an election to
25 sell, lease, be carried or participate. If they choose

to be carried or participate then in one way or another they have to bear a portion of the costs of that drilling operation. Therefore, it's very important to those people that they know what that final cost is. So in a situation where you have a participation you still want those numbers. If no one elects to participate they become irrelevant really because the operator is going to bear the full burden of that cost anyway.

MS. McCLANNAHAN: Unless what he or she recoups in the -- what they're allowed to recoup before they pay into the escrow account?

MS. RIGGS: No. If nobody participates in a drilling unit and everybody is leased or sold then the only person that's going to end up bearing these costs is the operator. Nobody has to pick up any portion of it. They have to bear the total costs in consideration for their getting the working interest in the well. Does that make sense?

MS. McCLANNAHAN: Yes, it does.

MS. RIGGS: So the only time that another person other than the unit operator would need those numbers is if they chose to participate or be carried and they somehow were having to pay a portion of those costs through their -- either up front or through their carried position.

MS. McCLANNAHAN: Was the study done in both situations where the operator had to absorb all of the --

1 MS. RIGGS: Currently in all Board orders it requires that the
2 unit operator report back those final costs whether
3 anybody participates or not.
4 MS. McCLANNAHAN: Page 16, 160-150, effective date for Board
5 orders. It's changed from one year to two years. Was
6 there a specific reason why?
7 MS. RIGGS: I attended some of the work session that developed
8 these -- the work group that developed these. And my
9 recollection is that a permit by law is good for two
10 years and they were attempting to make the Board orders
11 consistent with permitting -- to the life of the permit.
12 Is that --
13 MR. FULMER: That was a legislative change that occurred when
14 they extended -- it was up to two years. Then they can
15 apply and extend that permit for another two years.
16 MS. RIGGS: That's on the permit. It has a two year life with
17 a two year extension.
18 MR. FULMER: Right.
19 MS. RIGGS: And the Board orders only had a one year life or
20 365 days from the date of issuance pursuant to the Board
21 order. So I think that was an attempt to get those in
22 sink with each other.
23 MS. McCLANNAHAN: Okay. And then 25-160-170, notice of
24 violation. All that's completely crossed out. What are
25 the changes?

1 MS. RIGGS: The Virginia Gas and Oil Board oversees what's
2 called Article 2 of the Virginia Gas and Oil Act and it
3 basically has four functions. To hear statewide spacing
4 exceptions, to hear pooling applications, to create field
5 rules and to hear appeals of permitting decisions.
6 That's the only authority that this Board has. And those
7 are defined in Article 2 of the Act. When you go to
8 Article 3 of the Act the director is given certain
9 responsibilities that apply to the permitting process.
10 Enforcement is a permitting function. It's not a Board
11 function. And under Executive Order 15 we were suppose
12 to eliminate duplication. So all of the enforcement
13 proceedings are addressed in the Division of Gas and Oil
14 Regulations that are administered through the inspector
15 as part of the permitting process under Article 3 of the
16 Act. Enforcement is not something this Board does.
17 Therefore -- it was put here, I think, originally just
18 sort of to keep everything in one place.
19 MR. CHAIRMAN: To keep the regulation in one place.
20 MS. RIGGS: But it's duplicated. It's in both places and it
21 appropriately belongs in the other set of regs, not in
22 this set of regs.
23 MS. McCLANNAHAN: Is that the same reason for all the other
24 sections that have been repealed, duplication?
25 MS. RIGGS: Many of them -- yes. It was to separate it out

1 into two separate set of regs. One that would apply to
2 this Board, the other that would apply to the permitting
3 process. That would be true for closure orders. That's
4 an enforcement tool. That's the only other one crossed
5 out, right? 170 and 180 are enforcement tools.
6 MS. McCLANNAHAN: Allowable production is crossed out also.
7 MS. RIGGS: Where are you now?
8 MS. McCLANNAHAN: Page 22.
9 MS. RIGGS: I think the reason for that is when you look in
10 the statute under 20, which is the establishment of field
11 rules, the statute says what the Board must establish in
12 its Board orders and under 45.1-361.20.B.6 the Board is
13 directed to establish allowable production for each well.
14 That's the statutory provision. Now, I don't recall from
15 the work group precisely what the discussion was on that
16 item. Does anybody?
17 MR. CHAIRMAN: It's a case by case situation. It would be
18 included in the Board order.
19 MS. RIGGS: The Board is directed to establish allowable
20 production as a part of the field rule process and
21 that's pursuant to statute.
22 MS. McCLANNAHAN: So before that -- the statute before this, I
23 mean that's what should have been complied with or
24 whatever?
25 MS. RIGGS: And that's what the Board does through its field

1 rule process.

2 MS. McCLANNAHAN: Is there some type of consistency rule or

3 something that the Board goes by as far as -- I know he

4 said it was case by case but --

5 MS. RIGGS: Well, it's based on the testimony presented and

6 usually you have expert witnesses come in and put on the

7 testimony to the Board and the Board listens to the

8 testimony. It's much like in an evidentiary proceeding

9 that you would have in a courtroom where the parties come

10 before the judge and put on their evidence and the Board

11 then sits to hear the evidence and makes its rulings.

12 That's why it's important when people receive notice of

13 these hearings that they come if they have evidence and

14 present it to the Board so that the Board can take that

15 into consideration when it comes to its decision. But it

16 is a litigated issue. These hearings are done as public

17 hearings under the Administrative Process Act which is

18 called a :12 or a formal hearing. And it is a litigated

19 issues process. An advisory litigated litigation type

20 hearing.

21 MS. McCLANNAHAN: The last page, Page 23, underground storage

22 of natural gas.

23 MS. RIGGS: There's been a recent statutory change by the

24 General Assembly. Virginia gas in the only entity in

25 Virginia that has an underground gas storage facility.

1 and the General Assembly has now given jurisdiction over
2 underground gas storage to the SCC and it's now regulated
3 as a utility with a certification process through the
4 State Corporation Commission. Therefore, the Gas and Oil
5 Board's jurisdiction over underground storage is not --
6 up until this recent law change it was regulated through
7 the Division of Gas and Oil or the Department of Mines,
8 Minerals and Energy. Now it's regulated by the State
9 Corporation Commission. I don't know -- I think the
10 outcome of this session of the General Assembly was that
11 they've established a study committee as to go over the
12 next year's period where they're going to investigate and
13 come to recommendations on exactly which agency will have
14 what jurisdiction over underground gas storage and then
15 come out with legislation next year that will define that
16 more clearly.
17 MS. McCLANNAHAN: Do you have an address or a way that we can
18 contact that committee?
19 MR. CHAIRMAN: Delegate Stump is the chairman of the
20 committee. If you don't have his address we can get it.
21 MS. McCLANNAHAN: I have it. Thank you. That's all I have.
22 Thank you very much.
23 MR. CHAIRMAN: Thank you for your time. George Mason.
24 MR. MASON: Good morning. My name is George Mason. I'm the
25 vice-president and general counsel of Equitable Resources

1 Energy Company and also past president of the Virginia
2 Oil and Gas Association. What I'd like to do is make
3 some general comments, if I can, and also some specific
4 comments to the regulations. As most of you know, this
5 Board is a creature created by the 1990 Virginia Gas and
6 Oil Act. That act -- I think we have lived with it for
7 seven years and many times we've made changes to the
8 statute to tweak it to make it better. We're making
9 changes to the regulation that I think will be better for
10 everybody regardless if you're a surface owner, oil and
11 gas owner, royalty owner, coal owner or what have you.
12 And all those groups were represented as a process of
13 developing those regulations. I think that we've got a
14 better regulation for this Board for development of
15 correlative rights. Some of the changes in here, if you
16 have your's handy, I'd like to go through.
17 MS. RIGGS: Is your's the double spaced or single spaced?
18 MR. MASON: I've got the double spaced.
19 MS. RIGGS: Okay.
20 MR. MASON: Some of these items that I'm going to bring up may
21 be minor in total but I think it should just be brought
22 to the attention of the Board and to legal counsel for
23 the Board. Generally I think this, as I said, the
24 changes made to the Gas and Oil Regulation are better
25 because they eliminate duplication. It does not (in-

1 audible.) well for us as an operator -- gas and oil
2 operator or surface owners or, coal owners or royalty
3 owners or what have you. If you have duplication and
4 inefficiency that breeds inefficiency in developing the
5 oil and gas resources. Looking on Page 6 -- and like I
6 said, some items that have brought -- we have reviewed
7 this also, Mr. Wampler, with what was published in the
8 Virginia Register on this. So you'll see at Item 10 --
9 and I don't know if this will go to the effectiveness of
10 this regulation if it's not published. But you'll see
11 the last part of sentence ten of this chapter is not in
12 the published version of this regulation. Let me go to
13 the next item. Page 10 of Page 23, this is also a small
14 item. As you'll see, the underscored provision, about
15 the fifth line that's underscored it says a 7.5 minute
16 and then it has a parenthetical. There should be a one
17 colon twenty-four -- one to twenty-four thousand topo-
18 graphic map. And that's just small for clarification of
19 this regulation to ensure it's intent. Now, as you go
20 to Page 11 you'll see two provisions here. 4VAC25-160-80
21 which says applications to pool interests in a drilling
22 unit, conflicting claims to coalbed methane gas owner-
23 ship. That is not in the published version, what was
24 published in the Virginia Register, nor was the one
25 following that section, 4VAC25-160-90, standards for

escrow accounts. I've got a copy of what was published in the Virginia Register. I assume but I don't know, Mr. Wampler, that it if it's not published in the register it's not effective then as far as public notice is concerned.

MS. CASHMAN: The Virginia Register -- there were no changes to those two sections.

MR. MASON: So that's the reason why it wasn't published.

MS. CASHMAN: The Virginia Register doesn't publish non-changes. They're there.

MR. MASON: Then that's fine.

MS. CASHMAN: It's a little startling to see it when you first look at it.

MR. CHAIRMAN: Just for clarification, when we published a final rule -- when the Board actually adopts and the final rules are published in the Virginia register is it all inclusive at that time or only the change again?

MS. CASHMAN: It should be all inclusive.

MR. CHAIRMAN: It should be all inclusive at that time.

MS. CASHMAN: For the sections that there were no changes to I'm not sure that they would publish those again.

MR. MASON: That's fine. Hopefully -- when we read through looking at those side by side we thought that those two provisions had been left out inadvertently and therefore might affect this regulation -- the totality of the

1 regulation. Turning to Page 17, D that's underscored,
2 all orders of the Board shall be enforced by the director
3 pursuant to the process set out in this chapter and
4 Section 45.1-361.24 of the Code of Virginia. At least
5 our notes from the meeting did not have that as part of
6 the change to the regulation. We do not object to it.
7 We just want to set forth that it wasn't a part of what
8 we had notes from that meeting when we went over these
9 regulations. I think that that's probably anyway whether
10 it's set forth in this regulation or not part of the
11 powers of the director, to enforce the Board orders.
12 MR. CHAIRMAN: Yes. And that was also part of the process of
13 striking out those enforcement provisions over in --
14 MR. MASON: So you took that out and then you had to put that
15 sentence in?
16 MR. CHAIRMAN: Put the references in, right.
17 MR. MASON: We were unaware of that balancing act.
18 MR. CHAIRMAN: Okay.
19 MR. MASON: The other item, the last one that I have is on
20 Page 20 on civil charges. The same thing was that we did
21 not find that published in the register. So we assumed
22 that it was inadvertently omitted.
23 MS. CASHMAN: There are no changes to that also.
24 MR. MASON: We did not see any changes. It's just that we had
25 that it was not published. I think that is all the

1 corrections that I have. Just one comment -- general
2 comment. When we're talking about -- I think that with
3 this act -- and people need to realize this. The 1990
4 Gas and Oil Act was the first state statute that I know
5 of that met head on coalbed methane development. This
6 act has been the model for the coalbed methane ownership
7 provisions, the 1992 Energy Policy Act that was signed by
8 President Bush. It also form for the model for the West
9 Virginia coalbed methane legislation which was an act of
10 1994. It's also used as a basis for review by a group
11 just like we had in Virginia that was looking at legisla-
12 tion for coalbed methane development in Kentucky. So I
13 think that the Act, whenever you are mixing property
14 rights with human beings you're always going to have some
15 type of conflict. You'll never be able to satisfy
16 everybody. But I think that this has been a model act.
17 It has allowed for the conservative development of oil
18 and gas and coalbed methane by use of an escrow provision
19 which basically has led the country in that development
20 where you have allowed for escrow the proceeds and
21 development of coalbed methane rather than long, expens-
22 ive litigation to determine -- and you'd have to deter-
23 mine on a case by case basis who owns the coalbed
24 methane. And you can't have -- I don't think you'll ever
25 have one decision even when it gets up to the Supreme

1 [illegible] of Virginia that will say that coalbed methane
2 belongs to statewide a certain resource. They'll just
3 have to look at the deeds, what's involved in that, and
4 that would be a court rather than this Board. But I
5 commend the act because I think that after seven years it
6 has done what it's suppose to do, to allow for the
7 orderly development of the natural resources. And I
8 commend this Board and you all as citizens taking your
9 time to meet on a monthly basis to hear our applications
10 of our company, other companies, objections by others as
11 to the development of this resource, not only coalbed
12 methane but oil and gas. Thank you.
13 MR. CHAIRMAN: Thank you. Cheryl, do you want to review the
14 errata sheet that we have?
15 MS. CASHMAN: The one in response to your comment about of
16 chapter --
17 MR. MASON: Yes.
18 MS. CASHMAN: -- we had gone through and put in this regul-
19 ation or of this regulation. At the Virginia Register
20 that's part of their style and formula. They changed to
21 of this chapter. So it's just --
22 MR. MASON: So it's just a matter of form rather than sub-
23 stance.
24 MS. CASHMAN: Exactly right. One of the other things that we
25 noticed when we were going through and looking and

1 [illegible]ring the regulations was under the definitions
2 section. The definition for directional survey, the
3 wording should be departure -- the wording is departure
4 in the printed reg and it should be deviation. It means
5 a well survey that measures the degree --
6 MR. MASON: Oh, I see.
7 MS. CASHMAN: That will be changed between now and the final.
8 Also on Section 4VAC25-160-40E --
9 MR. MASON: What page is that?
10 MS. CASHMAN: I believe it's 5.
11 MR. CHAIRMAN: E is on 6.
12 MS. CASHMAN: Section 45.1-361.20 should be Section 45.1-
13 361.21 or 45.1-361.22.
14 MR. CHAIRMAN: These are correct here. It's an errata sheet
15 for the Virginia Register. When it was published in the
16 Virginia Register there were some incorrect references.
17 MS. CASHMAN: Right.
18 MR. CHAIRMAN: That will be corrected at the final.
19 MR. MASON: And it was a little bit differently with the new
20 numbering scheme. Thank you.
21 MR. CHAIRMAN: Thank you. Jim Kaiser.
22 MR. KAISER: No additional comment.
23 MR. CHAIRMAN: Dennis Baker?
24 MR. BAKER: Decline comment at this time.
25 MR. CHAIRMAN: Don Hall.

1 MR. HALL: No comment.

2 MR. CHAIRMAN: That's all the names that I have that have
3 signed up. Are there any others that wish to address the
4 Board at this time? Hearing none, on behalf of the Board
5 we would like to thank you for taking the time out and
6 for your comments that you've made here today as we
7 review these regulations and consider them over the next
8 time period. I would again remind you that the comment
9 period is open for written comment to the gas and oil
10 office until 5:00 P.M. on Friday, May 2nd. We welcome to
11 write any comments that you have and submit those. The
12 comments that you have made here today will be part of
13 the record. We have a transcriptionist here that will
14 type those up and they will be a part of the Board's
15 record for consideration. I guess the question for the
16 Board is do you want to authorize the staff to develop a
17 draft response to these proposed comments today and bring
18 back to you at the June meeting? That will be after the
19 close of all written comments and --

20 MR. KING: I so move, Mr. Chairman.

21 MR. LEWIS: I second it.

22 MR. CHAIRMAN: A motion and second. Any further --

23 MR. HARRIS: I do have a question. Do we discuss these among
24 ourselves or are we now making a motion to take it to
25 staff and let them respond?

1 MR. CHAIRMAN: The motion was for the staff to prepare a draft
2 of the response for the next hearing.
3 MR. HARRIS: All right.
4 MR. CHAIRMAN: Then it will be discussed at that time.
5 MR. HARRIS: Fine. I just wanted to make sure that we had the
6 opportunity to talk about it.
7 MR. CHAIRMAN: Yes.
8 MR. HARRIS: Thank you.
9 MR. CHAIRMAN: Any further discussion? All in favor signify
10 by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
11 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)
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ITEM I

MR. CHAIRMAN: The next item on the agenda is the Gas and Oil Board will receive a quarterly status report from Premiere Bank Shares Corporation as escrow agent on the escrow account. You may proceed when you're ready.

MR. KING: My name is Bill King and I'm with Premiere Trust Company. As everyone knows, we're the escrow agent for the Virginia Gas and Oil Board. I have passed out three sheets of paper for the Board to review. I want to just go over those briefly. The first one we should look at actually has -- the difference in it, the date column after 12/31/95 there's 6/30/96 and 12/31/93. We produced this report and then the next one is a combined report for the whole year. The reason the last balance -- I believe the last one of these little summary sheets that we did was through June 30, 1996. So the first one shows that balance and it also shows the receipts -- the large number of receipts that came in in the last half of 1996. Other things that may be -- well, really not clear -- if you look under the income column, June 30, 1996. Again this was the bottom line of the last report, income $32,000. Below that you see a figure in parenthesis which would be a negative number, $12,253, and below that, $55,107. There is footnote, I guess, to explain

1 that. But basically those -- we are showing, I think,
2 during the first time we reported during that year or in
3 a recent time period to show when we bought bonds that
4 figure is the accrued interest paid. So if it weren't
5 here the income might look a little strange. In effect,
6 the 55 is the full amount of gross income. So the net
7 for the period would be more like 43 or close to 43. But
8 the point is just as a better illustration the fact that
9 we paid that when we buy a bond was get it back in the
10 next interest payment period. In the long run it all
11 smoothes out, but in the meantime it's going to create
12 some numbers that don't look right. At any rate, the
13 sheet that both bring us up to date, the one that -- the
14 second one is a little more simple in that it shows 1996,
15 just one figure for the full year. Again, the reason we
16 had done the first sheet was just to break out and show
17 the last half of last year. Certainly the royalty
18 receipts really accelerated during that time period. I
19 think they have been but I think beginning somewhere --
20 July really I guess they really started accelerating.
21 Now, taking the second one and looking at the report that
22 shows each full year and then it shows the first quarter
23 of 1997. Obviously the grand totals show the total
24 receipts received -- and his is again through March 31st
25 -- the total income, interest income from the earnings of

1 the funds we hold, the fees, the distribution and then
2 the final balance. Now, we should take note at March
3 31st on a cost basis. In other words, on amounts
4 received the total is approaching three million dollars.
5 The market value was two million, nine hundred and ninety
6 thousand, nine thirty-seven or about nine thousand under
7 the cost or the actual principal amount. We go to the
8 next report. This report -- I apologize -- it's quite
9 fizzy here but I think the important thing is after the
10 last meeting we discussed the investments of the escrow
11 account and that leaving sufficient liquidity it would be
12 a good idea to try to get a little more interest and
13 we've done that. We've added -- I think since last time
14 we updated this, September, we have brought the three
15 Treasury Notes you see that are $200,000 face amount.
16 Just very, very recently we added an additional Govern-
17 ment Agency, the Federal Nation Mortgage Association.
18 Rates have gone up. The reason for, again, the market
19 value fluctuation that is going to happen through the
20 life of these investments. Fluctuation with interest
21 rates as we've discussed. And interest rates are higher
22 now than they've been certainly any time in the last
23 couple of years. So one reason that the additional bond
24 was bought was an opportunity to participate in that. On
25 the other hand the investments that we hold have dropped

1 [illegible] value. We're not really concerned about it because we
2 have every intention of holding these to maturity. And
3 again we are not going any further out on maturities than
4 four years. The last one we bought was a little over
5 four years but it's in the four year range. And that
6 will be the longest, I think, we would be comfortable in
7 going. Right now the rates are very attractive. So we
8 continue to try to monitor the activity and what the
9 future holds for the fund. The last time we indicated
10 that we would leave a million dollars liquid and with the
11 additional deposits we went well over that. I think
12 probably -- and what I have done is at least for a guide
13 for us and you'll see at the very top right-hand portion
14 of the page where it shows target under the fixed which
15 would mean bonds, fixed income, investment of bonds, 50
16 percent in cash equivalent or money market 50 percent.
17 We probably would never get to 50 percent or as low as 50
18 percent in the cash equivalents. Right now it's 56
19 percent. Add to that a Treasury Note that's due in June
20 of 1997, that's considered cash, too. So probably
21 somewhere in the range of 60 percent. Without going any
22 further out than four years I think the fund is in real
23 good shape and we're earning an average yield which shows
24 at the very bottom
25 -- there's a column that says yield market value at the

1 very bottom. 5.6 is the average for the fund. So that's
2 being obtained at very, very low risk levels. Now, the
3 report that -- the last report that I'm talking about now
4 that says trust review of assets is showing a total
5 market of two million, six eighty-four, eight sixty-two
6 versus at the end in March, two million, nine hundred,
7 ninety -- almost two million, nine ninety-one. In
8 accordance with a Board order we did pay out about
9 $321, 000 plus on March 10th. So that -- this report, in
10 other words, is almost -- it's as of yesterday. The
11 difference is, like I said, what we've paid out. Are
12 there any questions first on any of the reports that I've
13 distributed?
14 MR. CHAIRMAN: Questions, members of the Board?
15 MR. LEWIS: You said you paid out $321,000?
16 MR. KING: Yes.
17 MR. LEWIS: What's that consist of?
18 MR. KING: That was actually on one unit. That was return of
19 escrowed funds per order or per Board instruction. If I
20 recall I think this was actually funds where there was a
21 supplemental order but it was not to be -- it was to be
22 escrowed maybe in-house. It came to us. We had a
23 supplemental order. We established an account and held
24 it. And I don't know but that money probably came in
25 over time. But it was determined that it was not to be

1 held by us as agent for the Board. So that was returned.
2 MR. FULMER: Just to kind of help you along here, there was a
3 supplemental order written on a Board order. However, in
4 the supplemental order it said that no funds would be
5 escrowed -- no royalty would be escrowed. And normally
6 you wouldn't issue a supplemental order. It went to the
7 bank. They established an account and the money was
8 being deposited in there until we discovered the contents
9 of the supplemental order which said no funds would be
10 escrowed. It would be done internally. So we retracted
11 that and sent the money back to the operator and that
12 account was closed.
13 MR. CHAIRMAN: Other questions?
14 MR. LEWIS: In other words, that was sent back to the
15 operator?
16 MR. FULMER: That was sent back to the operator.
17 MR. KING: As of the last report if you look under the
18 distribution column there's been very, very little --
19 it's really negligible other than this. But I think
20 these were probably unlocatables that we've had in the
21 past that people were located. But I feel like our
22 investment objective of trying to get as much income as
23 we can in a very conservative way is on track and what we
24 should be doing. Any comments to that I'd be -- would
25 certainly be welcome now or anytime really from the

1 Board

2 MS. RIGGS: We have on the agenda today some applications that

3 have been filed for withdrawal of funds for the first

4 time in the situation where there are conflicting

5 claimants. And while we don't have a court order the

6 conflicting claimants have reached an agreement amongst

7 themselves with regard to how they're going to share in

8 the royalty. I don't know if you plan to stay for that,

9 but I think that's Items VII and VIII on the docket for

10 today and it will be the first time that this Board's

11 been asked to address distribution in a coalbed methane

12 unit that's subject to escrow. In the past it has been

13 unknown and unlocatables in conventional units.

14 MR. KING: Very good.

15 MR. CHAIRMAN: Any other questions for Mr. King? I know we've

16 talked before about audit procedures. We're talking

17 three million dollars here or at least very shortly.

18 We've been there and --

19 MR. KING: And we'll be back again.

20 MR. CHAIRMAN: -- we'll be right back there. I know that the

21 bank has a number of restrictions. Would you advise that

22 the Board have an audit of these funds? Do you deem it

23 to be necessary?

24 MR. KING: When we're audited we have an internal audit and

25 then we also are examined by the Bureau of Financial

1 Institutions under the State Corporation Commission.
2 They do sampling of accounts. They do not, though, just
3 because of the size or maybe because it's public moneys
4 or Government Agency pick out this and audit it extensiv-
5 ely at least to my knowledge. So it would -- it probably
6 wouldn't be a bad idea. I would say whatever would be
7 the standard procedure there we would be happy to
8 cooperate and provide reports. We are regularly examined
9 by the Government and our own internal audit. We have --
10 I think from time to time the -- I'm not sure what
11 agency it is, probably in Richmond that would oversee
12 this, has requested statements from our auditors. It's
13 been a while, I think, since that happened. But it
14 wasn't an actual audit --
15 MR. CHAIRMAN: It's the auditor of public accounts for the
16 State. I'm thinking, Board, just for discussion purposes
17 here that we might want to have an independent audit of
18 the account, not only to look at the funds in the account
19 but look to make sure -- just to check everything and
20 make sure that everybody's paying in what they should be
21 paying in and the kinds of trails that really need to be
22 there to have a sound financial arrangement, you know,
23 and just make sure that the procedures and processes are
24 in place.
25 MR. KING: I would add that we're taking care of what comes in

but as far as making sure what's suppose to come in does, that would be beyond our knowledge. So if they would look at orders and test -- I guess the one thing that could happen with money coming in it's possible that we could look at an order and spot something. But there's no assurance. So that would be good probably from that point of view.

MR. CHAIRMAN: Does that sound feasible?

MR. HARRIS: Let me just ask a question. The legal documents or the legislation that authorizes this, does that address that at all? I would have thought that they'd made some references to --

MR. CHAIRMAN: No. It just says that we are to establish an escrow account. That's it. The management of that's up to this Board.

CLYDE KING: Would that audit include, Mr. Chairman, what is suppose to be paid in and out?

MR. CHAIRMAN: That's what I would recommend. In other words, that we make sure that we have the proper processes in place everywhere, through Tom's office, the bank and everything else so that we can properly credit everything. As Mr. King correctly stated, he's acting on supplemental orders and orders coming from the Board but he doesn't have a means nor is it part of his contract to be checking to make sure people are paying everything

they're suppose to be paying and if everything is appropriate in that regard. It would probably be --

CLYDE KING: Because this is public money.

MR. CHAIRMAN: That's right.

MR. KING: We fully realize like in most of our business we're handling money for others in a fiduciary capacity. We consider that more a higher duty than what we would have when you go to your teller at the bank. I mean, we realize that and take that into consideration. But you're still dealing with human beings who occasionally can make errors. The other thing I might say is that as you know Senator Jack Reasor is the CEO of Premiere Trust Company. We work together. He has mentioned that he had a hearing in Buchanan County about some of the issues there and even as far as the escrow account people wondering where it is and what's happening. And perhaps while we're not -- I guess it's not part of the contract -- we're not equipped to really deal with direct inquiries we do try to have those go through the staff. Maybe the audit would help in that regard, too. So we would certainly welcome that and be glad to help and cooperate.

MR. CHAIRMAN: <u>If it's okay with the Board I guess I would entertain a motion that we direct Tom Fulmer to work with our contracting staff to set up an audit over the next</u>

1 few months that will incorporate the things that we've
2 talked about, financial as well as a process type audit.
3 MR. LEWIS: I'd make that motion.
4 MR. HARRIS: Second.
5 MR. CHAIRMAN: A motion and second. Further discussion?
6 All in favor signify by saying yes. (ALL AFFIRM.)
7 Opposed say no. (NONE.) Thank you. Do you have
8 anything further?
9 MR. KING: No, not unless there are any other questions?
10 MR. CHAIRMAN: Any other questions, members of the Board?
11 CLYDE KING: Mr. Chairman, I have one question. Of course,
12 this is being held in escrow. Me being a fairly new
13 member, could court actions down -- is that true
14 MR. CHAIRMAN: Due to court action or agreement among all
15 parties.
16 CLYDE KING: Which is this one we're looking at later.
17 MR. CHAIRMAN: We have one this afternoon that's certainly has
18 been represented as an agreement among all parties.
19 We'll hear whether that's the case or not.
20 CLYDE KING: It certainly would be to the advantage of the
21 people if they could come up with those type of agree-
22 ments to save the court actions.
23 MR. KING: It also would be very important information if this
24 were a trend that would happen then it would affect how
25 we would invest the fund. That's -- it's a real balanc-

ing act to try to get as much as we can but be safe and not have money out too far. So we'll pay close attention to that. Appreciate it.

MR. CHAIRMAN: Thank you very much.

1 ITEM II

2

3 MR. CHAIRMAN: The next item on today's agenda is a petition
4 from Equitable Resources Energy Company for the pooling
5 of a conventional gas drilling unit for V-2823. This is
6 docket number VGOB-9/7/03/18-0567 that was continued from
7 March. We'd ask the parties that wish to address the
8 Board in this matter to come forward at this time,
9 please.
10 MR. KAISER: Mr. Chairman and members of the Board, Jim Kaiser
11 representing Equitable Resources Energy Company. Our
12 witnesses in this matter will be Mr. Dennis Baker and Mr.
13 Bob Dahlin. At this time I'd ask that you swear the
14 witnesses.
15 COURT REPORTER: (Swears witness.)
16 MR. CHAIRMAN: The record will show there are no others. You
17 may proceed.
18
19 DENNIS R. BAKER
20 a witness who, after having been duly sworn, was examined and
21 testified as follows:
22
23 DIRECT EXAMINATION
24
25 BY MR. KAISER:

1 Q. Mr. Baker, would you state your name for the record, who
2 you're employed by and in what capacity?
3 A. My name is Dennis R. Baker. I'm employed by Equitable
4 Resources Energy Company as senior landman.
5 Q. Do your responsibilities include the land involved here
6 and in the surrounding area?
7 A. Yes, they do.
8 Q. Are you familiar with Equitable's application for the
9 establishment of a drilling unit and request for a
10 pooling order for EREC well V-2823 that was dated
11 February 14th, 1997?
12 A. Yes, I am.
13 Q. Does Equitable own drilling rights in the unit involved
14 here?
15 A. Yes, we do.
16 MR. KAISER: Mr. Chairman and members of the Board, we have a
17 revised plat and revised Exhibit #B that I'd like to hand
18 out so you'll have it available as we go through the
19 testimony. (Pause.)
20 Q. (Mr. Kaiser continues.) Mr. Baker, does the proposed
21 unit depicted at the revised Exhibit #B that's just been
22 submitted to the Board members include all the acreage
23 within 2,500 feet, that is a 1,250 foot radius, of
24 proposed well V-2823?
25 A. That is correct.

1 Q. What is the interest of Equitable within this unit?
2 A. The leased interest at the time of application was 52.73
3 percent. Currently at the time of the hearing we have
4 75.55 percent interest leased.
5 Q. Could you identify for the Board what additional leases
6 you obtained between the date that the application was
7 filed and today's date?
8 A. The revised Exhibit #B that you have, the difference is
9 being identified as Tract 2, First Union Bank. That is
10 now a leased interest.
11 Q. Are you familiar with the ownership of drilling rights of
12 the parties other than Equitable underlying this unit?
13 A. Yes, I am.
14 Q. Could you state that for the Board?
15 A. At the time of application the unleased interest was
16 47.27 percent. At time of the hearing we currently have
17 24.45 percent unleased.
18 Q. Are any unleased parties that are set out at the amended
19 Exhibit #B, that is the revised version that the Board
20 now has dated 4/14/97?
21 A. That's correct.
22 Q. Prior to filing this application did you make efforts to
23 contact each of the respondents and make an attempt to
24 work out an agreement regarding the development of the
25 unit involved?

1 A. Yes. we [illegible]

2 Q. As you have earlier stated, subsequent to the filing of

3 the application you continued to attempt to reach an

4 agreement with the unleased parties?

5 A. Yes.

6 Q. Were any efforts made to determine if the individual

7 respondents were living or deceased or their whereabouts

8 and if deceased were efforts made to determine the names

9 and addresses and whereabouts of the successors to any

10 deceased individual respondents?

11 A. Yes.

12 Q. Were reasonable and diligent efforts made and sources

13 checked to identify and locate unknown heirs including

14 primary sources such as deed records, probate records,

15 assessors records, treasurers records, and secondary

16 sources including telephone directories, city direct-

17 ories, family and friends?

18 A. That's correct.

19 Q. Mr. Baker, in your professional opinion was due diligence

20 exercised to locate each of the respondents named

21 herein?

22 A. Yes.

23 Q. Are the addresses set out in our revised Exhibit #B, that

24 being the one dated 4/14/97, to the application the last

25 known addresses for the respondents?

A. Yes.

Q. Are you requesting the Board force pool all unleased interests listed in this revised Exhibit #B?

A. Yes, we are.

Q. Does Equitable seek to force pool the drilling rights of each individual respondent if living and if deceased the unknown successor or successors to any deceased individual respondent?

A. Yes.

Q. Is Equitable seeking to force pool the drilling rights of the person designated as trustee if acting in that capacity and if not acting in such capacity is Equitable seeking to force pool the drilling rights of the successor of such trustee?

A. Yes.

Q. Are you familiar with the fair market value of drilling in the unit here and in the surrounding area?

A. Yes, I am.

Q. Would you advise the Board as to what those are?

A. A five dollar per acre consideration, a five year term, one-eighth royalty.

Q. Did you gain this familiarity by acquiring oil and gas leases and other agreements involving the transfer of drilling rights in the unit involved here and in the surrounding area?

1 A. Yes.

2 Q. In your professional opinion do the terms you have

3 testified to represent the fair market value of and the

4 fair and reasonable compensation to be paid for drilling

5 rights within the unit?

6 A. Yes, we do.

7 Q. Based on this testimony and as to respondents who have

8 not voluntarily agreed to lease do you recommend that the

9 respondents listed in the revised Exhibit #B who remain

10 unleased be allowed the following options with respect to

11 their ownership interest within the unit; 1) Partici-

12 pation. 2) A cash bonus of five dollars per net mineral

13 acre plus a one-eighth of eight-eighths royalty. 3) In

14 lieu of a cash bonus and one-eighth of eight-eighths

15 royalty share in the operation of the well on a carried

16 basis as a carried operator under the following condi-

17 tions; Such carried operator shall be entitled to the

18 share of production from the tracts pooled accruing to

19 his interest exclusive of any royalty or overriding

20 royalty reserved in any leases, assignments thereof or

21 agreements relating thereto of such tracts but only after

22 the proceeds allocable to his share equal A) 300 percent

23 of the share of such costs allocable to the interest of

24 the carried operator of a leased tract or portion

25 thereof. Or B) 200 percent of the share of such cost

allocable to the interest of the carried operator of a unleased tract or portion thereof?

A. Yes.

Q. Do you recommend that the order provide that elections by a respondent be in writing and sent to the applicant at Equitable Resources Energy Company, Eastern Region, PO Box 1983, Kingsport, Tennessee, 37662, attention Dennis R. Baker, Regulatory?

A. Correct.

Q. Should this address be the address for all communications with the applicant concerning the forced pooling order?

A. Yes.

Q. Do you recommend that the forced pooling order provide that if no written election is properly made by a respondent then such respondent should be deemed to have elected to cash royalty option in lieu of participation?

A. Yes.

Q. Should the unleased respondent be given 30 days from the date of the order to file written elections?

A. Yes.

Q. If an unleased respondent elects to participate should they be given 45 days to pay the applicant for respondent's proportionate share of well costs?

A. Yes.

Q. Does the applicant expect the party electing to partici-

pate to pay in advance that party's share of completed well costs?

A. That's correct.

Q. Should the applicant be allowed 60 days following the recordation date of the order and thereafter annually on that date until production is achieved to pay or tender any cash bonus becoming due under the forced pooling order?

A. That's correct.

Q. Do you recommend the forced pooling order provide that if a respondent elects to participate but fails to pay the respondent's proportionate share of well costs satisfactory to the applicant for payment of well costs then the respondent's election to participate should be treated as having been withdrawn and void and such respondent could have paid or made satisfactory arrangements for well costs?

A. That's correct.

Q. Do you recommend the forced pooling order provide that where a respondent elects to participate but defaults in regard to the payment of well costs any cash sum becoming payable to such respondent should be paid within 60 days after the last date on which such respondent could have paid or made satisfactory arrangements for the payment of those well costs?

A. Yes.

Q. Do you recommend that the forced pooling order provide that if a respondent refuses to accept any payment due including any payment due under the order or any payment of royalty or cash bonus or said payment cannot be paid to a party for any reason or there is a title defect in the respondent's interest that the operator create an escrow account for the respondent's benefit until the money can be paid to the party or until the title defect is cured to the operator's satisfaction?

A. That's correct.

Q. Who should be named the operator under the forced pooling order?

A. Equitable Resources Energy Company.

MR. KAISER: That's all I have for this witness at this time, Mr. Chairman.

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

(Witness stands aside.)

MR. CHAIRMAN: Call your next witness.

ROBERT A. DAHLIN, II

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

DIRECT EXAMINATION

BY MR. KAISER:

Q. Mr. Dahlin, could you please state your name, who you're employed by and in what capacity?

A. My name is Robert A. Dahlin, II. I'm employed by EREC as a production specialist.

Q. Have you previously testified before the Virginia Gas and Oil Board and have your qualifications as an expert in production been previously accepted by the Board?

A. Yes, sir.

Q. Do your responsibilities include the land involved here and in the surrounding area?

A. They do.

Q. Are you familiar with the proposed exploration and development of the unit here under the applicant's plan of development?

A. Yes, I am.

Q. What is the total depth of the proposed well under the applicant's plan of development?

A. 4,485 feet.

Q. Will this be sufficient to penetrate and test the common sources of supply in the subject formations?

A. Yes, it will.

Q. Is the applicant requesting the forced pooling of the

conventional gas reserves not only to include the designated formations but any other formations excluding coal formations which may be between those formations designated from the surface to the total depth drilled?

A. That's correct.

Q. Will this initial well be at a legal location?

A. Yes.

Q. What are the estimated reserves of the unit?

A. 450 million cubic feet.

Q. Are you familiar with the well costs of proposed well under applicant's plan of development?

A. Yes, I am.

Q. Has an AFE been reviewed, signed and submitted to the Board?

A. Yes.

Q. Was this AFE prepared by an engineering department knowledgeable in the preparation of AFEs and knowledgeable in regard to well costs in this area?

A. Yes.

Q. In your opinion does this AFE represent a reasonable estimate of the well costs for the proposed well under applicant's plan of development?

A. Yes, it does.

Q. Could you please state at this time for the Board both the dry hole cost and completed well cost?

1 A. The dry costs are $142,100 and the completed well costs
2 are $244,200.
3 Q. Do these costs anticipate a multiple completion?
4 A. Yes.
5 Q. Does the AFE submitted include a reasonable charge for
6 supervision?
7 A. Yes.
8 Q. Mr. Dahlin, in your professional opinion will the
9 granting of this application be in the best interest of
10 conservation, prevention of waste and the protection of
11 correlative rights?
12 A. Yes, sir.
13 MR. KAISER: I have nothing further of this witness at this
14 time, Mr. Chairman.
15 MR. CHAIRMAN: Questions, members of the Board?
16 MR. KING: Mr. Kaiser, I have one question, please. The First
17 Union Bank, is this -- is it managed leases or are they
18 leases from First Union? I'm a little confused, I
19 believe.
20 MR. BAKER: They are leases that the First Union Bank signed
21 on properties that they own.
22 MR. KING: That they own?
23 MR. BAKER: Yes.
24 MR. KAISER: As you see from Tract 1 and 2, they're the
25 majority interest owner within the unit.

1 MR. CHAIRMAN: Other questions?

2 (Witness stands aside.)

3 MR. KAISER: Mr. Chairman, we'd ask at this time that the

4 application be approved as submitted.

5 MR. KING: I move it be approved, Mr. Chairman.

6 MR. CHAIRMAN: A motion to approve.

7 MR. BRENT: Second.

8 MR. CHAIRMAN: A motion and second. Any further discuss-

9 ion? All in favor signify by saying yes. (ALL AFFIRM.)

10 Opposed say no. (NONE.) It's a unanimous approval.

11 Thank you.

12 MS. HARRISON: Mr. Chairman, we have the next matter on the

13 docket but we would permit Equitable to go ahead and

14 complete their three since they're already there.

15 MR. CHAIRMAN: All right. Thank you.

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1 ITEM IV

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3 MR. CHAIRMAN: The next item then on the agenda we'll go to
4 what's listed as Item IV. We will consider a petition
5 from Equitable Resources Energy Company for pooling of a
6 coalbed methane gas unit under the Nora Coalbed Gas Field
7 Order identified as Unit VC-3324. This is docket number
8 VGOB-97/04/15-0574. We'd ask the parties that wish to
9 address the Board in this matter to come forward at this
10 time.
11 MR. KAISER: Mr. Chairman and members of the Board, Jim Kaiser
12 on behalf of Equitable Resources Energy Company. Once
13 again our witnesses in this matter will be Mr. Baker as
14 to land matters and Mr. Dahlin as to operations and
15 production.
16 MR. CHAIRMAN: You've been previously sworn. The record will
17 show there are no others. You may proceed.
18

19 DENNIS R. BAKER

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

23 DIRECT EXAMINATION

24

25 BY MR. KAISER:

1 Q. Mr. Baker, would you again state your name for the Board,
2 who you're employed by and in what capacity?
3 A. My name is Dennis R. Baker. I'm employed by Equitable
4 Resources Energy Company as senior landman.
5 Q. Do your responsibilities include the land involved in the
6 unit for VC-3324 and the surrounding area?
7 A. Yes, it does.
8 Q. Are you familiar with Equitable's application for the
9 establishment of a drilling unit and request for a
10 pooling order for EREC well VC-3324 which was dated
11 March 12th, 1997?
12 A. I am.
13 Q. Is Equitable seeking to force pool the drilling rights
14 underlying the drilling unit and spacing unit as depicted
15 at Exhibit #A of the application?
16 A. Yes.
17 Q. Does the location proposed for well VC-3324 fall within
18 the Board's order for the Nora Coalbed Field Rules
19 established by order dated March 20th, 1989?
20 A. Yes, it does.
21 Q. Does Equitable own drilling rights in the unit involved
22 here?
23 A. Yes, we do.
24 Q. Would you please state the interest of Equitable in the
25 gas estate within the unit?

1 A. At the time of application the interest leased to
2 Equitable was 97.57 percent. At the time of application
3 the coal estate that was leased was 100 percent.
4 Q. Are you familiar with the ownership of drilling rights of
5 parties other than Equitable underlying this unit?
6 A. Yes, I am.
7 Q. Could you state those for the Board, please?
8 A. Yes. At the time of application the unleased interest
9 was 2.43 percent.
10 Q. And that represents Tract 2?
11 A. Yes, it does.
12 Q. The parties included in the ownership for Tract 2 are the
13 only unleased parties set out in Exhibit #B?
14 A. That's correct.
15 Q. Prior to filing this application were efforts made to
16 contact each of these respondents and an attempt made to
17 work out an agreement regarding the development of the
18 unit?
19 A. Yes, it was.
20 Q. Subsequent to the filing of the application have you
21 continued to attempt to reach an agreement with the
22 respondents listed in Exhibit #B?
23 A. Yes, we have.
24 Q. As you've stated previously you have been unable to
25 obtain leases from the Johnson family in California which

has kept us from establishing a voluntary unit?

A. That's correct.

Q. Were any efforts made to determine if the individual respondents were living or deceased or their whereabouts and if deceased were efforts made to determine the name and addresses and whereabouts of the successors to any deceased individual respondent?

A. That's true.

Q. Were reasonable and diligent efforts made and sources checked to identify and locate any unknown heirs if they exist, to include primary sources such as deed records, probate records, assessors records, treasurers records, and including secondary sources such as telephone directories, city directories, family and friends?

A. Yes.

Q. Mr. Baker, in your professional opinion was due diligence exercised to locate each of the respondents named herein?

A. Yes, it was.

Q. Are the addresses set out in Exhibit #B to the application the last known addresses for the respondents?

A. That's correct.

Q. Are you requesting this Board to force pool all unleased interests listed in Exhibit #B?

A. Yes, we are.

1 Q. Does Equitable seek to force pool the drilling rights of
2 each individual respondent if living and if deceased the
3 unknown successor or successors to any deceased in-
4 dividual respondent?
5 A. Yes, we are.
6 Q. Is Equitable seeking to force pool the drilling rights of
7 the person designated as trustee if acting in that
8 capacity and if not acting in such capacity is Equitable
9 seeking to force pool the drilling rights of the success-
10 or of such trustee?
11 A. Yes.
12 Q. Are you familiar with the fair market value of drilling
13 in the unit involved here and in the surrounding area?
14 A. Yes, I am.
15 Q. Would you please again advise the Board as to what those
16 are?
17 A. A five dollar per acre consideration, a five year term,
18 one-eighth royalty.
19 Q. Did you gain your familiarity by acquiring oil and gas
20 leases, coalbed methane leases and other agreements
21 involving the transfer of drilling rights in the unit
22 involved here and in the surrounding area?
23 A. Yes, I did.
24 Q. Mr. Baker, in your professional opinion do the terms you
25 have testified to represent the fair market value of and

1 the fair and reasonable compensation to be paid for
2 drilling rights within the unit?
3 A. Yes, they do.
4 MR. KAISER: Mr. Chairman, at this time as to the elections
5 afforded the unleased parties that we're attempting to
6 force pool and the various time elements in which they
7 have to either elect or participate or respond I would
8 like to incorporate the testimony of Mr. Baker that we
9 just heard in VGOB docket number 97/03/18-0567.
10 MR. CHAIRMAN: That will be incorporated.
11 Q. (Mr. Kaiser continues.) Mr. Baker, do you recommend
12 that the force pooling order provide that if a respondent
13 refuses to accept any payment due including any payment
14 due under said order or any payment of royalty or cash
15 bonus or said payment cannot be paid to party for any
16 reason where there is a title defect in a respondent's
17 interest or in the event of conflicting claims to the
18 coalbed methane that the operator pay into an escrow
19 account created by this Board into which all costs or
20 proceeds attributable to such conflicting interest shall
21 be held for the respondent's benefit until such funds can
22 be paid to the party by order of this Board or until the
23 title defect or conflicting claim is resolved to the
24 operator's satisfaction?
25 A. That's correct.

1 Q. Who should be named the operator under the forced pooling
2 order?
3 A. Equitable Resources Energy Company.
4 MR. KAISER: That's all I have for this witness at this time,
5 Mr. Chairman.
6 MR. CHAIRMAN: Questions, members of the Board?
7 MR. BRENT: Mr. Baker, can you tell me, if you know, why Tract
8 2 is unleased?
9 THE WITNESS: The individuals didn't wish to sign an oil and
10 gas lease.
11 MR. CHAIRMAN: Other questions?
12 (Witness stands aside.)
13 MR. CHAIRMAN: You may call your next witness.
14
15 ROBERT A. DAHLIN, II
16 a witness who, after having been duly sworn, was examined and
17 testified as follows:
18
19 DIRECT EXAMINATION
20
21 BY MR. KAISER:
22 Q. Mr. Dahlin, I will remind you you're under oath. If you
23 would once again state your name, who you're employed by
24 and in what capacity?
25 A. My name is Robert A. Dahlin, II. I'm employed by EREC as

1 a production specialist.

2 Q. And you've previously testified before the Virginia Gas

3 and Oil Board and your qualifications as an expert in the

4 area production have been previously accepted by the

5 Board?

6 A. Yes.

7 Q. Do your responsibilities include the land involved in the

8 unit for VC-3324 and in the surrounding area?

9 A. Yes.

10 Q. Are you familiar with the proposed exploration and

11 development of the unit here under the applicant's plan

12 of development?

13 A. Yes, I am.

14 Q. What is the total depth of the proposed well under the

15 plan of development?

16 A. 2,645 feet.

17 Q. Will this be sufficient to penetrate and test the common

18 sources of supply in the subject formations?

19 A. Yes.

20 Q. What are the estimated reserves of this unit?

21 A. 300 million cubic feet.

22 Q. Are you familiar with the well costs for the proposed

23 well under the applicant's plan of development?

24 A. Yes.

25 Q. Has an AFE been reviewed, signed and submitted to the

Board?

A. Yes, it has.

Q. Was this AFE prepared by an engineering department knowledgeable in the preparation of AFEs and knowledgeable in regard to the cost for coalbed methane wells in this area?

A. Yes.

Q. Does this AFE represent a reasonable estimate of the well costs for the proposed well under applicant's plan of development?

A. It does.

Q. Could you state at this time for the Board both the dry hole costs and completed well costs for well VC-3324?

A. The dry costs are $76,572 and the completed well costs are $179,700.

Q. Do these costs anticipate a multiple completion?

A. Yes.

Q. Does the AFE as submitted include a reasonable charge for supervision?

A. Yes.

Q. Mr. Dahlin, in your professional opinion will the granting of this application be in the best interest of conservation, the prevention of waste and the protection of correlative rights?

A. Yes, sir.

1 MR. KAISER: I have nothing further of this witness at this
2 time, Mr. Chairman.
3 MR. CHAIRMAN: Mr. Dahlin, on the AFE under your allocated
4 supervision are salary and wages.
5 THE WITNESS: Yes, sir.
6 MR. CHAIRMAN: The one that we previously looked at I believe
7 you allocated monies in employee benefits and this one is
8 rolled up in salaries and wages.
9 THE WITNESS: Yes, sir. We have a group of employees respons-
10 ible for different development, conventional versus CBM.
11 It's just merely an in-house difference in how they
12 prepare their AFEs. Through the years the AFEs have been
13 prepared in this manner and additionally I believe you've
14 seen in our review of the actual costs they are very,
15 very close in both cases.
16 MR. CHAIRMAN: Other questions, members of the Board?
17 (Witness stands aside.)
18 MR. KAISER: Mr. Chairman, we'd request that the application
19 be approved as submitted.
20 MR. BRENT: Mr. Chairman, I move that we approve the
21 application as submitted.
22 MR. LEWIS: I second that.
23 MR. CHAIRMAN: A motion and second. Further discussion?
24 All in favor of approving the application say yes. (ALL
25 AFFIRM.) Opposed say no. (NONE.) Unanimous approval.

Thank you.

ITEM V

MR. CHAIRMAN: The next item on the agenda is a petition from Equitable Resources Energy Company for pooling of a coalbed methane gas unit in the Roaring Fork Coalbed Gas Field Order identified as unit VC-3290. This is docket number VGOB-97/04/15-0575. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MR. KAISER: Mr. Chairman, Jim Kaiser once again on behalf of Equitable Resources Energy Company. I would like to go ahead and submit our revised Exhibit #B before we get under way.

MR. CHAIRMAN: While he's doing that I would ask are there any others that wish to address the Board in this matter to please come forward at this time. The record will show there are no others. You may proceed.

DENNIS R. BAKER

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

DIRECT EXAMINATION

BY MR. KAISER:

Q. Mr. Baker, please again state your name for the record, who you're employed by and in what capacity?

A. Dennis R. Baker. I'm employed by Equitable Resources Energy Company as senior landman.

Q. Do your responsibilities include the land involved in the unit for VC-3290 and in the surrounding area?

A. Yes, it does.

Q. Are you familiar with Equitable's application for the establishment of a drilling unit and request for a pooling order for EREC well VC-3290 dated March 13th, 1997?

A. Yes, I am.

Q. Is Equitable seeking to force pool the drilling rights underlying the drilling unit and spacing unit as depicted at Exhibit #A of the application?

A. Yes.

Q. Does Equitable own drilling rights in the unit involved here?

A. Yes, we do.

Q. Would you please state for the Board the interest of Equitable in the gas estate in the unit both at the time of the application and if there has been additional

1 leases acquired at the present time?

2 A. Yes. At the time of application in the gas estate the

3 leased interest was 97.865 percent. At the time of the

4 application the coal estate was 100 percent leased. At

5 the time of application the drilling rights of parties

6 other than Equitable unleased was 2.135 percent. At the

7 time of the hearing we currently have 2.0232 percent.

8 Q. I'm sorry.

9 A. 2.0232 percent.

10 Q. Could you point out for the Board via the revised Exhibit

11 #B what additional leases you've picked up since the time

12 the application was filed?

13 A. Yes. On Page 10 of the revised exhibit under the Maxie

14 Gardner heirs, Mary Ann Jones and her husband C. Sterling

15 Jones.

16 MR. CHAIRMAN: Is that now leased?

17 THE WITNESS: Yes, it is. And the 2.0232 that you talked

18 about earlier are the percentage of unleased in the unit?

19 THE WITNESS: Yes, at this time.

20 Q. (Mr. Kaiser continues.) That was the only additional

21 lease picked up since the time the application was filed?

22 A. Yes.

23 Q. Are all unleased parties set out in revised Exhibit #B?

24 A. Yes, they are.

25 Q. Prior to filing the application you've testified that

1 efforts were made to contact each of these respondents
2 and an attempt made to work out an agreement regarding
3 the development of the unit?
4 A. Yes.
5 Q. And you've testified that subsequent to the filing of the
6 application you have continued to attempt to reach an
7 agreement with all unleased respondents listed in Exhibit
8 #B?
9 A. Yes, we have.
10 Q. Were any efforts made to determine if the individual
11 respondents were living or deceased or their whereabouts
12 and if deceased were efforts made to determine the name
13 and addresses and whereabouts of the successors to any
14 deceased individual respondent?
15 A. Yes.
16 Q. Were reasonable and diligent efforts made and sources
17 checked to identify and locate unknown heirs to include
18 primary sources such as deed records, probate records,
19 assessors records, treasurers records, and in addition
20 secondary sources such as telephone directories, city
21 directories, family and friends?
22 A. That's correct.
23 Q. Mr. Baker, in your professional opinion was due diligence
24 exercised to locate each of the respondents named
25 herein?

1 A. Yes.

2 Q. Are the addresses set out in the revised Exhibit the last

3 known addresses for the respondents?

4 A. Yes, it is.

5 Q. Are you requesting this Board to force pool all unleased

6 interests listed in revised Exhibit #B?

7 A. Yes, we are.

8 Q. Does Equitable seek to force pool the drilling rights of

9 each individual respondent if living and if deceased the

10 unknown successor or successors to any deceased in-

11 dividual respondent?

12 A. Yes.

13 Q. Is Equitable seeking to force pool the drilling rights of

14 the person designated as trustee if acting in such

15 capacity and if not acting in such capacity is Equitable

16 seeking to force pool the drilling rights of the success-

17 or of such trustee?

18 A. Yes.

19 Q. Are you familiar with the fair market value of drilling

20 in the unit for VC-3290 and in the surrounding area?

21 A. Yes, I am.

22 Q. Please advise the Board as to what those are?

23 A. A five dollar per acre consideration, a five year term,

24 one-eighth royalty.

25 Q. Did you gain your familiarity by acquiring oil and gas

leases, coalbed methane leases and other agreements involving the transfer of drilling rights in the unit involved here and in the surrounding area?

A. Yes.

Q. Mr. Baker, in your professional opinion do the terms you have testified to represent the fair market value of and the fair and reasonable compensation to be paid for drilling rights within this particular unit?

A. Yes.

MR. KAISER: Mr. Chairman, once again I would ask that the testimony entered into the record pursuant to VGOB-97/03/18-0567 earlier this morning regarding election options to the unleased interest and their rights and time deadlines under the order be incorporated into this hearing.

MR. CHAIRMAN: They will be incorporated into the record.

Q. (Mr. Kaiser continues.) Mr. Baker, do you recommend that the force pooling order provide that if a respondent refuses to accept any payment due including any payment due under said order or any payment of royalty or cash bonus or said payment cannot be paid to a party for any reason where there is a title defect in a respondent's interest or in the event of conflicting claims to the coalbed methane that the operator pay into an escrow account created by this Board into which all costs or

1 proceeds attributable to the conflicting interest shall
2 be held for the respondent's benefit until such funds can
3 be paid to the party by order of this Board or until the
4 title defect or conflicting claim is resolved to the
5 operator's satisfaction?
6 A. Yes. That's true.
7 Q. Who should be named the operator under the forced pooling
8 order?
9 A. Equitable Resources Energy Company.
10 MR. KAISER: I have nothing further of this witness at this
11 time, Mr. Chairman.
12 MR. CHAIRMAN: Questions, members of the Board?
13 MR. KING: I have a small question. Penn-Virginia Resources
14 Corporation, is that a subsidiary corporation?
15 MR. KAISER: Penn-Virginia Resources Corporation to my
16 knowledge has both a coal and an oil and gas entity but
17 as far as it being a subsidiary of who, not to my
18 knowledge. I don't represent that I know too much about
19 them.
20 MR. FULMER: It is. It's a subsidiary of Penn-Virginia
21 Corporation.
22 MR. KAISER: Penn-Virginia Resources is a subsidiary of Penn-
23 Virginia Corporation.
24 MR. KING: They own a large part of that, don't they?
25 MR. KAISER: Yes, sir. A little over 61 percent of the unit.

1 MR. CHAIRMAN: Other questions, members of the Board, for this
2 witness?
3 (Witness stands aside.)
4 MR. CHAIRMAN: Call your next witness.
5
6 ROBERT A. DAHLIN, II
7 a witness who, after having been duly sworn, was examined and
8 testified as follows:
9
10 DIRECT EXAMINATION
11
12 BY MR. KAISER:
13 Q. Mr. Dahlin, could you again state your name for the
14 record, who you're employed by and in what capacity?
15 A. Robert A. Dahlin, II. I'm employed by EREC as a product-
16 ion specialist.
17 Q. And you've previously testified before the Virginia Gas
18 and Oil Board and your qualifications as an expert
19 witness in your field have been accepted by the Board?
20 A. Yes.
21 Q. Do your responsibilities include the land involved here
22 and in the surrounding area?
23 A. Yes.
24 Q. Are you familiar with the proposed exploration and
25 development of this unit for VC-3290 here under the

applicant's plan of development?

A. Yes, I am.

Q. What is the total depth of the proposed well under the plan of development?

A. 2,390 feet.

Q. Will this be sufficient to penetrate and test the common sources of supply in the subject formations?

A. Yes.

Q. What are the estimated reserves of this particular unit?

A. 500 million cubic feet.

Q. Are you familiar with the well costs for the proposed well under the applicant's plan of development?

A. Yes, I am.

Q. Has an AFE been reviewed, signed and submitted to the Board?

A. Yes.

Q. Was this AFE prepared by an engineering department knowledgeable in the preparation of AFEs and knowledgeable in regard to the cost for coalbed methane wells in this area?

A. Yes.

Q. Does this AFE represent a reasonable estimate of the well costs for the proposed well under applicant's plan of development?

A. Yes, it does.

1 Q. Could you state for the Board both the dry hole costs and
2 completed well costs for well VC-3290 as represented in
3 the AFE?
4 A. The dry costs are $77,578 and the completed well costs
5 are $175,100.
6 Q. Do these costs anticipate a multiple completion?
7 A. Yes.
8 Q. Does this AFE include a reasonable charge for super-
9 vision?
10 A. Yes.
11 Q. Mr. Dahlin, in your professional opinion will the
12 granting of this application be in the best interest of
13 conservation, the prevention of waste and the protection
14 of correlative rights?
15 A. Yes.
16 MR. KAISER: I have nothing further of this witness at this
17 time, Mr. Chairman.
18 MR. CHAIRMAN: Questions, members of the Board?
19 (Witness stands aside.)
20 MR. KAISER: Mr. Chairman, we'd ask that the application be
21 approved as submitted.
22 MR. LEWIS: I make a motion to approve the application
23 MR. BRENT: Second.
24 MR. CHAIRMAN: Motion and second. Any further discussion?
25 All in favor signify by saying yes. (ALL AFFIRM.)

Opposed say no. (NONE.) Unanimous approval. Thank you.

ITEM VI

MR. CHAIRMAN: The next item on the agenda is a petition from Equitable Resources Energy Company for a modification of a previously issued Board order for the Nora Coalbed Gas Field. The purpose of this application is for redefining the boundary lying between the coalbed methane field created by the Nora Order and the coalbed methane gas fields created by the Oakwood I and II Orders to exclude the area in Buchanan County, Virginia -- and I'll not read the call letters there -- and to include subject lands within the Nora Field and further to establish drilling units consistent with those established by the Nora Order for the Nora Field. This is docket number VGOB-93/03/16-0348-02. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MR. KAISER: Mr. Chairman, Jim Kaiser on behalf of Equitable Resources Energy Company. Our witnesses in this matter will once again be Mr. Baker who will be testifying primarily as to notice issues and Mr. Dahlin who will be testifying as to the technical issues involved in this application and the relief that we're requesting. If we could have just a couple of minutes -- if the Board would allow us a couple minutes to set up some exhibits we've

1 prepared.

2 MR. CHAIRMAN: I've just received a tele-fax. It says, "Dear

3 Mr. Fulmer, I received into today's mail a copy of the

4 proposed modification of prior order by Equitable

5 Resources Energy Company, Eastern Region concerning the

6 Oakwood Gas Field. Lavisa Coal Company, the coal owner,

7 is an interested party in this matter and as managing

8 partner I request that any action on this matter be

9 deferred until such time as Levisa has had a reasonable

10 time to understand the impacts of the proposed modifi-

11 cation. The applicant Equitable Energy improperly

12 notified Levisa, the coal owner, by sending the notifi-

13 cation to the previous managing partner, Mr. Fred Combs.

14 Also no notification was given by Equitable to the

15 Pobts/Combs heirs who hold the oil, gas and other

16 mineral interests in Tract 1." This is faxed in by John

17 C. Irvin, managing partner of Levisa Coal Company, a

18 Virginia limited partnership. So we have a request here

19 to -- it's a notice issue, a challenge of the notice

20 issue and requests the Board not to here it until a

21 subsequent date.

22 MR. KAISER: Mr. Chairman, if I can address what we did. Does

23 he list an address for Levisa Coal on that?

24 MR. CHAIRMAN: 4710 Hunterwood Circle, Richmond, Texas, 77469.

25 MR. KAISER: We did send notice to Levisa Coal on March 13th,

1997. I have their certified card. It did go to care of Fred Combs, PO Box 841, Tazewell, Virginia, 24651. It was received on 3/17/97 -- let me see who signed for it. And we noticed over 103 entities. Fred Combs signed for it. We noticed over 103 entities in this matter, everything from mineral interest owners to oil and gas, CBM lessees, coal lessees, oil, gas and coal operators and feel like we've complied with --

MR. CHAIRMAN: Who did you send that to? Did you send it to Fred Combs?

MR. KAISER: We sent it to Levisa Coal Corporation at PO Box 841, Tazewell, Virginia, care of Fred Combs.

MR. CHAIRMAN: What they're saying is is that it's improper notification by sending notification to the previous managing partner, Mr. Fred Combs. It's a challenge. Then also no notification was given by Equitable to the Pobts/Combs heirs who hold the oil, gas and other mineral interests in Tract 1.

MR. KAISER: That's one issue. Whether or not the other owners in Tract 7 -- I have once again green cards -- signed green cards from everyone other than some Propts in Las Vegas that came back unclaimed. Pobts or however it's pronounced. Mr. Baker, do you know how we got this address for Levisa Coal?

MR. BAKER: It's an address that we've had for some time. As

1 far as correspondence goes we normally don't correspond
2 with lessees of other companies. As far as the managing
3 partner goes we were unaware that there had been a
4 change.
5 MR. KAISER: If the Board would like to see the name cards for
6 the other owners in Tract 7.
7 MR. KING: Wonder when the ownership changed hands?
8 MR. LEWIS: The management.
9 MR. KING: Are you talking about ownership or management?
10 MR. LEWIS: Management.
11 MR. KAISER: Apparently a new managing partner.
12 MS. RIGGS: What is Levisa Coal? It is a corporation. It
13 says a corporation. Is it a partnership?
14 MR. CHAIRMAN: Virginia limited partnership, he says. Levisa
15 Coal Company.
16 MS. RIGGS: They're listed as a corporation under the --
17 MR. CHAIRMAN: That's what they provided.
18 MS. RIGGS: Right. Are they registered to do business in
19 Virginia. Was there a check done with the SCC with
20 respect to their designated registered agent?
21 MR. BAKER: The information that we gathered came from the
22 Clerk's Office and the county records.
23 MR. KING: So there's been no change in the county records?
24 MR. BAKER: I was not aware of any.
25 MR. KAISER: I might add, if I may, Mr. Chairman, for the

record that we continued this a couple of times in order for a landman or several landsmen under Mr. Baker's direction to make sure that we did effectuate notice properly.

MS. RIGGS: How is the interest held, as a corporation or as a limited partnership? Is it Levisa Coal Corporation or is it Levisa Coal Company, a Virginia limited partnership?

MR. BAKER: The information that we gathered out of the records in the courthouse is Levisa Coal Corporation. Whether or not that's accurate and there's been a change --

MR. KING: What does our attorney say? Where do we stand?

MR. CHAIRMAN: We're just trying to figure this out. We've got a challenge to notification. The question is there's no point in hearing it until we decide whether or not we accept the challenge to notification. So we don't need to hear any of the record. The safe thing to do is to continue it until notification is properly made in accordance with this tele-fax and set it for the next available hearing that allows for the proper notification which -- is there time for next time or does it have to be --

MR. KAISER: The deadline is Friday.

MR. CHAIRMAN: So we set it for the May docket and ask you to notify the Board on its own motion continue based on this

1 telefax.

2 MR. BRENT: Mr. Chairman, does that fax provide an address for

3 the Pobts that they say were not notified?

4 MR. CHAIRMAN: No. It only provides this one address. It

5 does provide an address for the -- let me look at this

6 other page. It does not provide an address for the

7 Pobts/Combs heirs. But he does provide telephone

8 numbers. So perhaps follow-up with these numbers.

9 MS. RIGGS: And he says that those interests are in Tract 1.

10 You're saying they're in Tract 7?

11 MR. KAISER: Well, there's interest in different tracts.

12 MR. BAKER: They may be holders in Levisa Coal.

13 MR. KAISER: And they're also owners in Tract 6. Apparently

14 the heirs that he references, I believe, own Tract 7. If

15 I could just state for the record, I feel like Equitable

16 in this case went to tremendous lengths to effectuate

17 proper notice and that we did exercise due diligence and

18 do our job under certainly the record notice of the

19 records in the Circuit Court Clerk's Office in Buchanan

20 County and were unaware of any change in either entity or

21 managing partner of Levisa Coal or whatever entity they

22 be known as. We're prepared to go forward.

23 MR. CHAIRMAN: I understand. I'll just make the statement,

24 not to sway or anything, but this Board has always gone

25 to great lengths to try to make certain that we don't

1 have a challenge to notice issue, that the parties that
2 need to be noticed. I'm open for a motion on however we
3 go. Personally I don't like having a challenge to notice
4 laying here without curing it by continuing for another
5 hearing till next month.
6 MR. KAISER: I understand, Mr. Chairman.
7 MR. LEWIS: I'd like to make a motion that we continue
8 this until the May meeting on the grounds of this fax,
9 that the right party wasn't notified.
10 MR. HARRIS: Second.
11 MR. KING: I have a question, Mr. Chairman. If we reset it do
12 all these other people have to be renotified?
13 MR. FULMER: No.
14 MR. CHAIRMAN: What we're setting on our motion to continue,
15 that way -- but we will direct -- what we're going to do
16 is continue it. We will notice via the newspaper and
17 they will be required to notice based on this party
18 specifically and to follow up with the SCC to make sure
19 that those notices occur.
20 MR. KAISER: Mr. Chairman, I request that you provide us with
21 a copy of that fax.
22 MR. CHAIRMAN: We're going to do that.
23 MR. KAISER: Would you like us to republish also?
24 MR. CHAIRMAN: I think that would be good. That way we're
25 exhausting notification measures. Any further discuss-

1 ion? All in favor signify by saying yes. (ALL AFFIRM.)
2 Opposed say no. (NONE.) The matter will be continued to
3 May. Tom, if you will get a copy of this tele-fax.
4 (AFTER A LUNCHEON RECESS, THE HEARING CONTINUED AS
5 FOLLOWS:)
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ITEM III

MR. CHAIRMAN: We'll reconvene the Gas and Oil Board hearing. The next item on the agenda is petition for Pocahontas Gas Partnership for the pooling of a coalbed methane gas unit under the Oakwood I and II Field Orders identified as unit X-34. This is docket number VGOB-97/03/18-0572. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MS. HARRISON: Good afternoon, Mr. Chairman, ladies and gentlemen. My name is Jill Harrison. I practice here in Abingdon with Penn-Stuart and today I represent Pocahontas Gas Partnership. Pocahontas Gas Partnership filed four applications, three of which were heard last month. This one was continued to this month to take care of a publication question. We have republished. Elizabeth McClannahan was before you last month with the three prior units, all of which were approved. This is the last sister unit to be heard in that area. The application today is to pool the interest in the coalbed methane gas, unsealed gob gas, short hole gas and gas from any well that's authorized pursuant to 45.1-361.1, et al. We are coming under the Oakwood I Field and Oakwood II Field Rules for the gas that's underlying what is referred to as the X-34 unit. By this application we

wish to force pool the coalbed methane gas in advance of mining frack gas and to then convert the unit to Oakwood II production as mining advances and as longwall panels are isolated within the unit. Initially when the application was filed Pocahontas Gas Partnership controlled 96.2425 percent of the Pokie #3 seam. That is now 100 percent and Mr. Arrington will testify as to the changes that brought that about. Initially we controlled 93.8800 percent of the oil and gas. That number is now 97.6275 percent, formerly at the time of application 96.2425 percent of the coalbed methane gas and that is now 100 percent. Again Mr. Arrington will testify as to that information. Under this application and in addition to the force pooling Pocahontas Gas Partnership will be seeking cost under this application for the Oakwood II production wells allocated to the longwall panels that will affect the X-34 unit. Pocahontas Gas Partnership also asks that the Board authorize the inspector to grant any future necessary additional wells that are dictated by the mine plan but that were previously authorized by the Oakwood II Field Rules. There will not be, however, any additional costs sought without Board approval should that occur. We would ask the Board then to listen to the testimony of Mr. Arrington and grant our application after that. If you would please swear Mr. Arrington.

1 COURT REPORTER: (Swears witness.)

2

3 LESLIE K. ARRINGTON

4 a witness who, after having been duly sworn, was examined and

5 testified as follows:

6

7 DIRECT EXAMINATION

8

9 BY MS. HARRISON:

10 Q. Would you please state your name?

11 A. Leslie K. Arrington.

12 Q. And your address, please?

13 A. PO Box 947, Bluefield, Virginia.

14 Q. If you would, please identify for the Board the exhibit

15 that is marked as Exhibit #1 in the book that was

16 provided to them?

17 A. That's my work background and educational history.

18 MS. HARRISON: Mr. Chairman, I would ask that the resume as

19 Exhibit #1 be introduced.

20 MR. CHAIRMAN: It's accepted. Let me just interrupt. Are

21 there any others that wish to address the Board in this

22 particular matter? The record will show there are none.

23 You may proceed.

24 Q. (Ms. Harrison continues.) Mr. Arrington, you have

25 previously qualified as an expert witness before the Gas

1 and Oil Board, is that correct?
2 A. Yes, I have.
3 MS. HARRISON: Mr. Chairman, I submit Mr. Arrington as an
4 expert witness to the Board.
5 Q. (Ms. Harrison continues.) Pursuant to Virginia Code,
6 annotated, 45.1-361.19 did you give notice of the
7 application to the individuals with an interest in the un
8 units?
9 A. Yes, we did. That was done by certified mail, return
10 receipt requested.
11 Q. Does Exhibit #2 in the book that was provided to the
12 Board contain a copy of the hearing notice?
13 A. Yes, it does.
14 MS. HARRISON: Mr. Chairman, I would move the introduction of
15 Exhibit #2 into evidence.
16 MR. CHAIRMAN: It's accepted.
17 Q. (Ms. Harrison continues.) Do you have the returned
18 receipts?
19 A. Yes, we do. A copy of which are at Exhibit #3.
20 Q. Were those also previously submitted to the Board with
21 the due diligence affidavit and certification of mailing?
22 A. Yes, they were.
23 MS. HARRISON: Mr. Chairman, I would ask for the introduction
24 of Exhibit #3.
25 MR. CHAIRMAN: It's accepted.

1 Q. (Ms. Harrison continues.) Did Pocahontas Gas Partnership
2 also publish the notice of the hearing as required by the
3 statute?
4 A. Yes, we did. That was published on March 19th, 1997 in
5 the Bluefield Daily Telegraph.
6 Q. Was the certificate of publication previously submitted
7 to the Board?
8 A. Yes, it was.
9 Q. Is a copy of that proof of publication at Exhibit #4 in
10 the book provided to the Board today?
11 A. Yes, it is.
12 MS. HARRISON: Mr. Chairman, I move for the introduction of
13 Exhibit #5.
14 MR. CHAIRMAN: It's accepted.
15 Q. (Ms. Harrison continues.) You have filed under this
16 application for a joint force pooling as under the
17 Oakwood I and Oakwood II Field Rules, is that correct?
18 A. Yes, it is.
19 Q. Is that related to the initial drilling of the well as a
20 frack unit?
21 A. Yes, in advance of mining.
22 Q. What is the time frame that you anticipate between
23 completion as a frack unit until the mining actually
24 begins?
25 A. At this point two to four years.

1 Q. That is with mining operations moving toward this unit?
2 A. Yes, it is.
3 Q. In this application are you requesting the pooling order
4 under both the Oakwood I for frack well production and
5 the Oakwood II for short hole gas, unsealed gob and gas
6 from any additional wells authorized by 45.1-361.1?
7 A. Yes, we are.
8 Q. What triggers the change from Oakwood I to Oakwood II
9 production?
10 A. The isolation of the longwall panel by the driving of the
11 entries.
12 Q. How will production itself be allocated between the
13 Oakwood I and the Oakwood II?
14 A. That change will happen when -- it's the percentage of
15 the longwall panel within that 80 acre unit multiplied by
16 the individual interest owners interest.
17 Q. So the allocation that will actually change once coal
18 operations with the driving of entries and the longwall
19 panel is isolated?
20 A. Yes, it is.
21 Q. At this point in time what percentage of the coal, oil
22 and gas and coalbed methane rights in the tracts that
23 comprise the X-34 unit come under the control of Pocahon-
24 tas Gas Partnership?
25 A. 100 percent of the Pocahontas #3 seam and 97.6725 percent

1 of the oil and gas and 100 percent of the rights to
2 develop the coalbed methane estate.
3 Q. Are these the same ownership percentages that were listed
4 on the original application?
5 A. No, it is not.
6 Q. What has changed since that time?
7 A. We have purchased the Commonwealth of Virginia's interest
8 in the Pocahontas #3 seam of coal and gas. That change
9 will be shown on our Exhibits #5, #6 and #7 which will be
10 our Exhibits #B, #B-3 and #E.
11 MS. HARRISON: Mr. Chairman, I would move for the introduction
12 of Exhibits #5, #6 and #7 which represent the revised
13 exhibits, #B, #B-3 and #E.
14 MR. CHAIRMAN: Would you describe what those are again,
15 please?
16 THE WITNESS: Yes. It indicates on each one of those exhibits
17 that we did acquire the Pocahontas #3 seam from the
18 Commonwealth of Virginia and it does show on each one of
19 the exhibits the Commonwealth's respective interests
20 left.
21 MR. CHAIRMAN: That's the only change on all three?
22 THE WITNESS: That's correct.
23 MR. CHAIRMAN: Okay. They're accepted.
24 Q. (Ms. Harrison continues.) Do the plat and acreage totals
25 that are on the revised Exhibit #B that have been

1 submitted herein as Exhibit #5 reflect the relative
2 contribution that each tract is expected to make to the
3 entire X-34 unit?
4 A. Yes, it does.
5 Q. Does the revised Exhibit #B that's been submitted herein
6 as Exhibit #5 also reflect the percentages that each
7 tract is expected to make to the individual panels?
8 A. Yes, it does.
9 Q. Are the unleased owners and their interests and the
10 conflicting claimants and their interests to be escrowed
11 listed on the revised Exhibit #E that has been submitted
12 and introduced here as Exhibit #7?
13 A. Yes, it does.
14 Q. With regard to the unleased owners did Pocahontas Gas
15 Partnership make an attempt to lease these individuals or
16 obtain an assignment of their interests?
17 A. Yes, we did. It was either done by phone, mail --
18 certified mail or in person.
19 Q. In general what were the primary terms and the delay
20 rental terms for the oil and gas and coalbed methane
21 leases that Pocahontas Gas Partnership has acquired?
22 A. For coalbed methane leases we offer a dollar a year
23 rental for a five year term and a one-eighth royalty.
24 Q. And then it's a dollar per acre for --
25 A. For CBM, yes.

Q. Are you here today requesting that the Board pool the interest of the individuals who are listed on the revised Exhibit #B submitted herein as Exhibit #5 for the X-34 unit?

A. Yes, we are.

Q. Have any well work permits been issued for the X-34 unit at this time?

A. Yes, it has for well CBM PGP X-34A. It was issued October 28th, 1996, permit number 3206, well CBM PGP X-34B issued on December 16th, 1996, permit number 3250 and permit for well CBM PGP X-34-C issued on March 5th, 1997, permit number 3304.

Q. Were the location of the wells X-34A, X-34B and X-34C approved by the Gas and Oil Inspector?

A. Yes, they were.

Q. For what type of wells were the permits issued?

A. Coalbed methane wells.

Q. What's the present status of these wells?

A. X-34A and B have been drilled. X-34C has not been drilled to date.

Q. Are any of the wells presently in production?

A. No, they are not.

Q. Have you received any written responses from the owners of the tracts within this unit to the force pooling application that you filed?

A. No, I have not.

Q. Does the plat attached to the force pooling application filed by Pocahontas Gas Partnership indicate the acreage and the shape of the acreage to be embraced within the X-34 unit?

A. Yes, it does.

Q. Does the unit follow the boundary lines of the Oakwood I and Oakwood II 80 acre unit designated as X-34 as it appears on Exhibit #A to the application?

A. Yes, it does.

Q. Does the plat that's attached to the force pooling application, a copy of which the Board has, indicate the area within the wells which the wells will be drilled?

A. Yes, it does.

Q. Does the drilling unit embrace two or more separately owned tracts?

A. Yes, it does.

Q. Does Exhibit #G of the application show the longwall panels that will affect the X-34 unit?

A. Yes, it does.

Q. Have you included a color copy of Exhibit #G as Exhibit #8 in the book that was provided to the Board today?

A. Yes, we have. That was just as clarification to make things stand out better.

Q. The location of the units, the wells and mining at this

time?

A. That's correct.

MS. HARRISON: Mr. Chairman, I would move for the introduction of Exhibit #8 into evidence.

MR. CHAIRMAN: It's accepted.

Q. (Ms. Harrison continues.) What are the numbers of these longwall panels?

A. 11-East, 12-East and 13-East.

Q. Does Page 1 of Exhibit #G show the percentage of panel allocation to the X-34 unit?

A. Yes, it does.

Q. Are the costs and expenses for the wells allocable to the X-34 unit set forth on detailed well estimates and the cost allocation charts that are attached to the force pooling application as Exhibits #G and #H?

A. Do these exhibits reflect the estimated cost of drilling the wells as allocable to the X-34 unit to total depth and completed for production costs?

A. Yes, it does.

Q. Generally how did you calculate the costs that are listed in the DWEs?

A. Those costs were calculated from our field averages within that area.

Q. With regard to the costs that you have listed on the DWEs that are submitted for the wells in this X-34 unit how do

1 you propose to allocate the cost among the owners within
2 the unit?
3 A. Again it's done as a cost of their allocated portion of
4 the longwall panel within that unit.
5 Q. Based upon their prorata ownership within the unit?
6 A. That's correct. It is.
7 Q. Have there been any changes to the DWEs and the cost
8 allocation charts that were originally submitted as
9 Exhibits #G and #H of the application?
10 A. No, there has no.
11 Q. Are you requesting that Pocahontas Gas Partnership be
12 designated as the well operator authorized to operate the
13 X-34 unit?
14 A. Yes, we are.
15 Q. Are you requesting the relief sought in Paragraph 4 of
16 Pocahontas Gas Partnership's application in accordance
17 with Virginia Code, annotated, 45.1-361.1?
18 A. Yes, we are.
19 MS. HARRISON: Mr. Chairman, I have no further questions for
20 this witness at this time.
21 MR. CHAIRMAN: Questions, members of the Board?
22 (Witness stands aside.)
23 MS. HARRISON: Mr. Chairman, I would move on behalf of
24 Pocahontas Gas Partnership to ask the Board for approval
25 of this application as submitted.

MR. CHAIRMAN: Les, let me ask you one question on the detailed well estimate. How many wells do you have in this entire unit per panel?

MR. ARRINGTON: Per panel or for the unit?

MR. CHAIRMAN: For the unit.

MR. ARRINGTON: They will be sharing in the costs of approximately 18 wells total -- their proportionate share of each one of those.

MR. CHAIRMAN: In the DWE that you have here as Exhibit #H is based on the actual costs that you've experienced in putting these wells in --

MR. ARRINGTON: That's correct. It is estimated cost of wells within that area.

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

MR. KING: Mr. Chairman, I move we accept.

MR. LEWIS: I second it.

MR. CHAIRMAN: A motion and second to approve. Any further discussion? All in favor signify by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.) Unanimous approval. Thank you.

MS. HARRISON: Thank you very much.

MR. CHAIRMAN: The next item on the agenda is a petition from Hugh MacRae Land Trust and Garden Realty Corporation to amend a supplemental order for unit SLW-7. This is docket number VGOB-97/04/15-0576. We'd ask the parties that wish to address the Board in this matter to come forward at this time, please. (Pause.) While they're getting ready I want to go ahead and tell you that the last item on the agenda, Item XI, where it says the staff to the Board will present a status of Board orders and issues of compliance to Board orders, that's on there by mistake. Last month we continued that until May and it was a mistake when it was listed today. I apologize for any inconvenience for that but that is continued till May.

MS. HARRISON: Mr. Chairman, ladies and gentlemen, my name is Jill Harrison. I'm with Penn-Stuart here in Abingdon. Today I'm here on the successive matter representing Hugh MacRae Land Trust and Garden Realty Corporation. As Ms. Riggs has indicated previously we are here on an application that's a new animal for the Board. This is an application in which two conflicting claimants on a coalbed methane gas unit have agreed on how they wish to disburse the money that is allocable to their interest

1 within seven units. Four of these units will be heard
2 today. Three will be filed on Friday to be heard at the
3 May hearing. In trying to determine the best way to walk
4 through this, to follow the steps, I have put together a
5 flow chart -- a smaller version of which I have given to
6 you -- to go through very quickly how we've come to this
7 point in time to where the parties have asked that the
8 money is to be divided. On the south longwall seven unit
9 --
10 MR. CHAIRMAN: Can I ask you to just do one thing?
11 MS. HARRISON: Yes, sir.
12 MR. CHAIRMAN: Can we move that over so that others can see
13 that when we're talking. Do you mind doing that?
14 MS. HARRISON: Sure. I'll be glad to.
15 MR. CHAIRMAN: Thank you.
16 MS. HARRISON: (Pause.) Is that better?
17 MR. CHAIRMAN: Yes.
18 MS. HARRISON: This is a very short history of the South
19 Longwall 7 unit. The initial pooling application was
20 filed on this unit on January 21st, 1992 and in the book
21 that I've provided to you as Exhibit #1 is a copy of the
22 pooling application that was filed. If you will look at
23 the exhibit that is attached to the application the
24 application itself is very lengthy. So what I've
25 provided to you is the section of the application which

shows the conflicting claimants as Hugh MacRae and Garden Realty on some tracts. Hugh MacRae is also listed as the coal owner on several tracts on which Garden Realty has no interest. The only tract that we are discussing today that's involved in these four units is one 600 acre tract, portions of which fall within the different units as they're laid out. The next step in the process was a hearing that was held on January 18th, 1992. At that hearing the pooling request was granted. Exhibit #2 in your book is a copy of the pooling order that was entered on April 29th, 1992. There are also supplemental orders but for ease of reference I've only listed the date of the entry of the initial order. The other orders are also in your book. The next step in the process Pocahontas Gas Partnership pursuant to the pooling order that was entered began to escrow funds in-house and deposit them with the escrow agent. The next step in the process that we've only come to recently is an agreement between Hugh MacRae and Garden Realty that was entered into on November 18th, 1996. In your book as Exhibits #3 and #4 are affidavits, one that was signed by Allen Seagel who is a trustee of Hugh MacRae Land Trust and attached to it is a copy of the agreement and Exhibit #4 is an affidavit from Ms. Betty Boyd King who is here today to testify as to the information that we have

1 provided in the application. From that point in time we
2 then filed on March 14th, 1997 our application for
3 withdrawal of the funds. What permitted us to take this
4 step is a provision in Virginia Code, a copy of which
5 I've put as Exhibit #5 in your book, 45.1-361.22.A.5.
6 It's on the second page of the statute about the middle
7 of the page. It's Paragraph 5. This statute indicates
8 that the Board shall order payment of principle and
9 accrued interest from the escrow account to all persons
10 legally entitled thereto pursuant to the provisions of
11 45.1-361.21 and order of the Board. Such order shall be
12 issued within 30 days of receipt of notification of the
13 final legal determination of the entitlement thereto or
14 upon agreement of all claimants. And that's what brings
15 us here today, is the second part of that sentence.
16 That's the final step, the hearing that we're at today to
17 request for application of funds. I would ask at this
18 time that Ms. King be sworn in as a witness.
19 COURT REPORTER: (Swears witness.)
20
21 BETTY BOYD KING
22 a witness who, after having been duly sworn, was examined and
23 testified as follows:
24
25

1 DIRECT EXAMINATION

2

3 BY MS. HARRISON:

4 Q. Would you state your name, please?

5 A. My name is Betty Boyd King.

6 Q. Ms. King, are you president of Garden Realty Corporation?

7 A. I am.

8 Q. Is Garden Realty Corporation a family owned corporation?

9 A. It is.

10 Q. When I say "family owned" does that mean it's family

11 members that own the stock in the corporation?

12 A. Absolutely.

13 Q. This is the same Garden Realty that has been identified

14 as a conflicting claimant with Hugh MacRae Land Trust in

15 the South Longwall 7 unit, is that correct?

16 A. That's right.

17 Q. Does Garden Realty claim the ownership of the oil and gas

18 underlying the 600 acre tract that falls within this

19 unit?

20 A. We do.

21 Q. To your knowledge does Hugh MacRae Land Trust claim the

22 ownership of the coal --

23 A. Yes.

24 Q. -- underlying the 600 tract that falls within this unit?

25 A. Yes.

1 Q. Have Garden Realty and Hugh MacRae Land Trust entered
2 into an agreement that resolves this conflicting claim as
3 to the coalbed methane gas ownership?
4 A. Yes.
5 Q. Does that agreement set forth the manner in which the
6 royalties attributable to this interest in the unit
7 should be paid?
8 A. Yes.
9 Q. I would ask you to look at the agreement that is attached
10 to your affidavit as Exhibit #4 and if you would, advise
11 the Board as to whether or not that is the agreement that
12 Garden Realty Corporation entered into with Hugh MacRae
13 Land Trust?
14 A. (Pause.) It is.
15 Q. This agreement is still in effect at this time?
16 A. Right.
17 Q. Based upon this voluntary agreement between Garden Realty
18 Corporation and Hugh MacRae Land Trust are you asking the
19 Board today to reflect in their orders that Hugh MacRae
20 and Garden Realty Corporation are no longer conflicting
21 claimants within this unit?
22 A. Yes.
23 Q. And also based upon this agreement are you asking the
24 Board to direct the escrow agent and the operator to
25 account for the fund deposited or held that have been

1 credited to this unit and to pay to Garden Realty and
2 Hugh MacRae the funds that they are entitled to pursuant
3 to this interest?
4 A. Yes.
5 MS. HARRISON: Mr. Chairman, simultaneously with the filing of
6 this application notice of the application and this
7 hearing were sent by certified mail, return receipt
8 requested and we have previously filed our affidavits
9 with the Board but we have provided as Exhibit #C copies
10 of the return receipts. Notice was also published in the
11 Bluefield Daily Telegraph on March 26th and a copy of
12 that certificate of publication is found as Exhibit #7.
13 Mr. Chairman, at this time I would move for the entry of
14 Exhibits #1 through #7 that are found within the book
15 provided to the Board.
16 MR. CHAIRMAN: Not hearing any objection they are accepted.
17 MS. HARRISON: That's all the questions that I have for Ms.
18 King at this time.
19 MR. CHAIRMAN: Questions from members of the Board?
20 (Witness stands aside.)
21 MS. HARRISON: This is basically, as best we can tell, what
22 appears to be a simple process within the statutory
23 guidelines that have been provided. The statute provides
24 that once the parties enter into an agreement and we
25 notify the Board -- we have to do that -- that the funds

1 should be disbursed. The statute is very simple, very
2 clear and at this time that's what Hugh MacRae and Garden
3 Realty Corporation would ask the Board to do based upon
4 their voluntary agreement for their interest in this
5 tract within the unit.
6 MR. CHAIRMAN: Any other parties here wishing to address the
7 Board in this matter? The record will show there are
8 none.
9 MS. RIGGS: The tract number that's being settled is which
10 tract number?
11 MS. HARRISON: I'll have to look at my percentages and match
12 them to the tracts to tell you that. (Pause.) If you
13 will turn to Exhibit #E that's attached to the applic-
14 ation under Exhibit #1 it starts on Page 2 and goes to
15 Page 3, a 22.913 acre tract. The coal owner is shown as
16 Hugh MacRae Land Trust. A portion of Garden Realty
17 Corporation's 600 acre tract overlies that tract and if
18 you'll look at the next page, number four, Garden Realty
19 Corporation, 7.057 acres, 3.81 percent. So this applic-
20 ation seeks to affect only 3.81 percent aggregate
21 interest in the unit.
22 MR. CHAIRMAN: Which is only the interest that the Garden
23 Realty Corporation has, is that right?
24 MS. HARRISON: With Hugh MacRae. Yes, sir.
25 MR. CHAIRMAN: With Hugh MacRae.

1 MS. HARRISON: That's correct.

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

3 MR. HARRIS: I was wondering what to do but this is an

4 agreement between two parties for one tract and I don't

5 know if our regulations even address how this -- of

6 course, we don't have anything to say in precedence but

7 are we restricted to doing the whole case or -- I don't

8 know if there's anything in the regulations that allow us

9 to do a tract or whatever. I guess I'm just asking

10 because I wonder about it.

11 MR. CHAIRMAN: Are you asking for some legal advice there?

12 MR. HARRIS: Well, I guess so.

13 MS. RIGGS: The statute is silent. I think a request to a

14 pooling order is that you've got to have two or more

15 tracts. So it's always contemplated that within a

16 pooling order you're going to have various interests. I

17 think you just have to apply a rule of practicality in

18 agreement. There would be no need to have an agreement

19 between all the parties within a drilling unit when their

20 interest don't affect the particular interest. I think

21 what's needed here is to make sure that as to the 3.81

22 percent interest in the drilling unit that's being

23 settled that you have all the parties necessary to settle

24 that interest.

25 RON WADE: Does this not also set a legal precedent for this

1 if you allow this to occur?

2 MS. RIGGS: I don't think it sets a legal precedent. It's

3 pursuant to the statute that directs that the money be

4 held in escrow until one of two things happen, a court

5 determination or an agreement between all of the potent-

6 ial claimants as to that interest.

7 RON WADE: The reason I address this is because my parents are

8 part of this pool also. Roughly -- close to the same

9 percentage as this one is.

10 MS. RIGGS: But a different tract.

11 RON WADE: A different tract. That's correct.

12 MR. HARRIS: My question was about -- legally can we go in and

13 make this -- approve this for one tract as opposed to --

14 would we have to do the whole thing or can we go in tract

15 by tract. That was really my question.

16 RON WADE: That's what I was asking.

17 MR. HARRIS: I'm not sure -- and apparently the statute

18 doesn't speak to that. You're suggesting it's a danger-

19 ous precedence to set?

20 RON WADE: You force everyone into a pool to agree -- I mean,

21 pooling is done because you've got 25 people who are in

22 this pool and you've got 23 people who are willing to

23 lease it or whatever and you've got two people who are

24 not willing to lease it. So for the benefit of the good

25 it's pooled and put into an escrow account. But since

1 you pooled it and put it into an escrow account and -- it
2 goes back to what I was talking about originally. The
3 whole issue is clouded because it's called coalbed
4 methane, not natural gas, but the gas is being produced
5 below the geologic strata where the coal ends at where
6 Hugh MacRae Land Trust had no vested ownership. And it's
7 not all coming off the coal. There are some real
8 substantial legal questions here.
9 MS. RIGGS: If Hugh MacRae doesn't have the ownership as to
10 this 3.18 who would? Garden Realty.
11 RON WADE: The land owner, yes.
12 MS. RIGGS: And since the two of them are in agreement --
13 RON WADE: But it forces everyone else who's in this pool
14 would have to be considered in the same aspect. I mean,
15 I can only -- I'm not even speaking for my parents
16 benefit. This is the first time that we were told today
17 that there was an agreement to split this 50/50 rather
18 than to go to court and fight it out or whatever.
19 MS. RIGGS: Well, that's as to a 3.18 percent of the total.
20 As to the other 96. whatever percent, it will remain in
21 escrow until the claimants to that interest --
22 RON WADE: If the Board decides this is --
23 MS. RIGGS: Based on what they're asking. The relief being
24 requested. That would be the effect of it. They're not
25 asking that all the money in escrow as to this drilling

1 unit be disbursed, only that a 3.81 percent of it be
2 disbursed to them 50/50.
3 RON WADE: But what I'm getting at is the pool that is put
4 there, it was pooled all together in one drilling unit.
5 And true, these parties could have agreed but what if
6 Hugh MacRae and my parents don't agree to do a 50/50
7 split or Mr. Deskins or any of the other various parties
8 that are in it. It puts the burden of the pool off on
9 these other people. I mean, there's a lot of ways to
10 look at it. For the good of all it was put together but
11 now one individual is out of the pool because they're
12 willing to agree and step outside the good of the all.
13 MS. RIGGS: No. Their interests are still pooled for product-
14 ion purposes.
15 MR. HARRIS: Once one tract is established the division of the
16 escrow and the division of the interest is made according
17 to that number of acres out of the whole. So therefore
18 the others -- the only people who would be involved in
19 that 3.81 percent would be people who have -- even be it
20 a conflicting claim at that time, those are the people
21 responsible -- not responsible but who would receive
22 royalties for that particular tract. So if they decide
23 at this point to split it, however, it doesn't matter.
24 If they sit down and decide 10/90 that's up to them and
25 once they do that --

1 RON WADE: But the Board's setting precedent. This is new.
2 MR. HARRIS: I realize that.
3 RON WADE: Force pooling was new and now if you allow this to
4 be split -- I mean, again it's setting precedent.
5 MR. HARRIS: I think the reason we're so quiet about this is
6 because we realize that and we're not sure the best way
7 to move. And that's why I asked about what the law says.
8 But legally --
9 MR. WADE: You can have a two-thirds majority that's agreeing
10 on what you're working on right now.
11 MR. HARRIS: I'm not sure that this requires two-thirds
12 majority. I think these are people who have a conflict-
13 ing claim about a particular piece of land that have
14 decided among themselves how they're going to divide
15 this. This money is being held for them until the
16 courts decide or something else happens. Well, they've
17 just decided to split it --
18 MR. WADE: In other words, you're going to throw these other
19 people to the dogs.
20 MR. KING: No. They can come to the same agreement.
21 MR. HARRIS: Yeah. They can do the same thing.
22 MR. WADE: It's an agreement but the thing of it is what if
23 the majority of the rest of them don't want to do it?
24 MR. HARRIS: No. We're not -- this has nothing to do with the
25 other people who have had their interest pooled.

1 MR. WADE: I understand that. But the thing of it is why not
2 settle it all at once? I'm sure that I can agree with
3 it.
4 MS. RIGGS: The Board doesn't have jurisdiction to make those
5 kinds of determinations.
6 MR. WADE: Well, they shouldn't have predictions -- to make
7 determinations on the other parties either.
8 MS. RIGGS: They're not. The parties reached their own
9 agreement with respect to their interest. They're not
10 trying to impose that agreement on the rest of the owners
11 within the drilling unit, only as to their 3.81 percent
12 interest.
13 RON WADE: In retrospect, though, you did propose their own
14 interest on someone if they didn't want to lease.
15 Pocahontas Gas Corporation went to everyone to try to
16 lease the property. There was portions of the property
17 that they could not lease. That's the reason there was a
18 forced pooling. Correct?
19 MS. RIGGS: That's correct.
20 RON WADE: Now, we're saying because two parties within the
21 group are willing to arbitrarily decide how to distribute
22 the escrowed royalty it's okay to do that but it's not --
23 versus in force pooling you just have to go along with
24 it.
25 MS. HARRISON: May I say something? I don't mean to talk with

1 my back to you. I'll come over here. I think one way to
2 look at this is timing. Garden Realty Corporation and
3 Hugh MacRae Land Trust both signed leases with our
4 lessor but because of the conflicting interest that's why
5 our money is being escrowed, not because we didn't
6 voluntarily want to enter into that agreement. If Garden
7 Realty and Hugh MacRae had reached an agreement before
8 they were force pooled we would be -- have gotten our
9 money since 1992. That money would not even be in
10 escrow. The only difference is the time in which this
11 has occurred. And in one sense this is not the first
12 time this has happened because it's my understanding that
13 -- who was it -- Levisa Land and Timber and Pobts entered
14 into an agreement before they were force pooled. They've
15 been receiving their money even though they would
16 technically be conflicting claimants under the statute.
17 So in my mind I have to look at it in a timing frame. In
18 this situation it's just that our agreement is coming a
19 little bit after the fact.
20 RON WADE: Let me diverse back a little bit. When --
21 MR. CHAIRMAN: Mr. Wade, excuse me just a second. I really
22 need you to come up because we're trying to get a
23 verbatim record. Just state your name for me, please.
24 RON WADE: My name is Ron Wade. When Pocahontas Gas Corpor-
25 ation came to my parents and leased the property they

1 told us that they would pay us a one-eighth royalty on
2 the gas and we honored that. At that time there was no
3 discussion of cloud of ownership in any manner. After-
4 wards it became clear that they did not want to -- they
5 were trying to cover their bases. They wanted to have as
6 many people under lease as possible because of the
7 wording in the law calling this coalbed methane. I mean,
8 that's where all of this problem comes from. If you go
9 back and you look at in particular, the mineral deed
10 where the property was severed -- I can only speak about
11 my parent's because I'm intimately familiar with it. It
12 was severed in 1887. At that time they had no real
13 knowledge that there was gas associated with this and
14 definitely not coalbed methane. It was not -- it entered
15 into the law. When was the law passed?
16 MR. CHAIRMAN: 1990.
17 RON WADE: 1990 coming up with the coalbed methane. And the
18 gas, as I stated earlier this morning, is produced from
19 carbonatous material. Any of the guys in the gas and oil
20 business will tell you that it comes from decaying
21 vegetable material. Not just from the coal seam but from
22 the shells or anything else and it flows through the
23 rock. You've heard guys talk about seeing the gas come
24 up below the coal seams and it's being produced in the
25 strata above it. So this is a cloudy ownership issue. I

1 mean, if it's good to have force pooling in my opinion
2 it's good to have forced realization of the whole
3 problem, not just arbitrarily sit down between a land
4 company who is claiming something that they don't really
5 have a title to in some instances -- and they may have a
6 title to it in other instances. I don't know. I'm not
7 an expert about it. But to go and mislead people that --
8 like I come up to you and I want to lease your property -
9 -- you have a farm outside Richmond -- and drill gas
10 wells on. I lease it and I say I'll pay you this
11 royalty and they come and drill the wells. And when you
12 expect your royalty check all of a sudden you find out
13 you can't do it because Reynolds Metals says that they
14 have a lease for aluminum mining rights underneath your
15 property and that there's a gas produced from aluminum
16 gas. It's a cloudy issue and you can force people into
17 pooling but when you start arbitrarily deciding on how to
18 do this you set a precedent for these other people to
19 have to deal with. If this -- this is the agreement that
20 starts out you set that precedent. And every attorney
21 will say, "Well, this is what they agreed on." Hey, I'm
22 only dealing with reality.
23 MS. RIGGS: You're concerned about the fact they negotiated a
24 50/50 split and that may become the bench mark by which
25 subsequent negotiations are tied like a comparable sale,

1 Is that the essence of what you're saying?
2 RON WADE: That's exactly right. The Board sets the precedent
3 for what the people --
4 MR. CHAIRMAN: But the Board did not set that. The Board
5 would --
6 RON WADE: If the Board approves it you do.
7 MS. RIGGS: We don't approve their agreement.
8 MR. CHAIRMAN: Oh, no.
9 MS. RIGGS: It's not --
10 RON WADE: If you approve the disbursement you do.
11 MR. CHAIRMAN: The only thing that we're being asked to do is
12 approve the payment out of escrow. We're certainly -- I
13 don't think that any Board member here wants to insert
14 himself between the parties as --
15 MR. WADE: I was told by the lady that takes care of this that
16 there was two ways that I could get the money out of
17 escrow. One was that all of it was settled or that I had
18 a court order and I give her the court order ordering
19 them to release the escrow that was there. It was a lady
20 at a bank at Tazewell.
21 MS. RIGGS: The escrow agent which is the bank is under
22 contract with this Board and the only way they can
23 disburse from that account is if they have a Board order
24 directing them to disburse, which is what they're asking
25 for today. They advising the Board that they've reached

1 a settlement as to their 3.81 percent interest and they
2 pursuant to the statute are applying for release of their
3 3.81 percent of the escrow funds. They're not asking the
4 Board to approve or to get involved in any way in the
5 settlement that they made. There are many -- and I just
6 thumbed through the agreement, but there's consideration
7 beyond the 50/50 split. There's tax credits. There's
8 all kinds of things involved. This Board isn't being
9 asked to approve the terms of their agreement, merely to
10 accept the fact that they have agreed and based upon the
11 fact that they have agreed to release their interest in
12 the unit from the escrow requirements.
13 MR. WADE: Well, I contacted the Commonwealth's Attorney and I
14 think she contacted you and I asked for a rule that way.
15 I went to the bottom and started climbing the ladder.
16 She discussed it with you and I took all the information
17 that I had -- she was right there at the courthouse and
18 she could get more if she wanted to. She called and
19 ended up talking to you according to what she told me.
20 MS. RIGGS: They called Richmond and Richmond conference
21 called in. That's correct.
22 MR. WADE: She didn't say what happened but --
23 MS. RIGGS: But this wasn't the issue being discussed. The
24 question that was posed over the phone had to do with
25 interpretation of severance deeds.

1 MR. CHAIRMAN: Any other questions, members of the Board? Do
2 you have anything further?
3 MS. HARRISON: No, sir, I don't. Not on this unit anyway.
4 MR. CHAIRMAN: Will you clarify your application -- what
5 you're asking the Board to do?
6 MS. HARRISON: Yes, Mr. Chairman. There are two things that
7 we require today. Well, on this particular unit there is
8 only one item that is required today. There are no prior
9 orders that need to be amended to reflect the change in
10 the conflicting interests. The one item of relief we ask
11 today is that the Board issue an order asking the
12 operator and the escrow agent to provide an accounting
13 of the funds that have been deposited to the credit of
14 this unit and to at the appropriate time disburse the
15 funds to Hugh MacRae and Garden Realty Corporation in
16 accordance with the terms of the agreements that has been
17 presented to the Board.
18 MR. CHAIRMAN: Thank you. Further discussion?
19 MR. LEWIS: I would think myself by my own judgement that if
20 they did grant this that it would be a help to the ones
21 that have conflicting claims, that they may be able to
22 settle their's. It looks like it would help you more
23 than it would hurt you.
24 MR. WADE: I can't understand why it all can't be settled at
25 one time. If you had all the people involved in it and

1 handled it at one time under a legal term.

2 MR. CHAIRMAN: Mr. Wade, if you had all parties that would

3 come to an agreement to that we could. In other words,

4 this Board acts to -- as the guardian of the escrow

5 account so to speak on case by case. If you had every

6 tract in that pooling order come to an agreement this

7 Board is empowered to make those kinds of decisions.

8 It's not --

9 MR. WADE: They asked me to get a court order or either to get

10 it all resolved before they could turn the money loose

11 and they wouldn't even tell me how much money I had in

12 the escrow. The bank wouldn't.

13 MS. HARRISON: Well, we weren't told either how much money was

14 in there.

15 MR. BRENT: Mr. Chairman, it's clear to me that the statute

16 clearly requires that we grant this application if

17 there's an agreement amongst the parties. And there

18 clearly is an agreement amongst the parties. I think

19 it's incumbent upon us to grant the application. I move

20 that we do so.

21 MR. LEWIS: I second it.

22 MR. CHAIRMAN: A motion and second.

23 MR. LEWIS: Mr. Wade, do you think there's any way that you

24 and the conflicting interest in your's could come to an

25 agreement?

1 MR. WADE: There wouldn't be none in mine if it was done
2 right.
3 MR. CHAIRMAN: Any further discussion? All in favor signify
4 by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
5 You have an approval. Thank you.
6 MS. HARRISON: Mr. Chairman, the questions that I will be
7 asking Ms. King are essentially the same for the remain-
8 ing three units and if the Board wishes -- I will do it
9 however you like but would you consider consolidating all
10 three to hear the evidence?
11 MR. CHAIRMAN: I will provided that you work with us very
12 carefully and make sure that any evidence that changes as
13 we go through that. And if there are any parties when I
14 call these separately that wish to address the Board then
15 we'll take them separately. If not we'll take them as a
16 group.
17 MS. HARRISON: Maybe we should just do Item VIII and IX.
18
19
20
21
22
23
24
25

ITEMS VIII, IX

MR. CHAIRMAN: Based on that I'll go ahead and call the next two. A petition from Hugh MacRae Land Trust and Garden Realty Corporation to amend a supplemental order for unit number SLW-8 and a supplemental order for unit R-25. These are docket numbers -- for SLW-8 the docket number is VGOB-97/04015-0577 and for the supplemental order for unit R-25 the docket number is VGOB-97/04/15-0578. We'd ask the parties that wish to address the Board in these matters to come forward at this time.

MS. HARRISON: Mr. Chairman, would it be helpful -- I have time lines also for the South Longwall 8. Would it be helpful for me to go through those the same way?

MR. CHAIRMAN: I think so.

MS. HARRISON: Mr. Chairman, for the record I am Jill Harrison. I practice with Penn-Stuart here in Abingdon. This afternoon I represent Hugh MacRae Land Trust Company and Garden Realty Corporation in their application for withdrawal of funds. With regard to the South Longwall 8 unit the time line is -- I've shown it on the larger exhibit here and on the charts that I've presented to the Board. The pooling application was originally filed on March 17th, 1992. A copy of that exhibit is included in your booklet for the South Longwall 8 unit. Attached to

it is a copy of the exhibit that shows the conflicting owners within this unit and you will find on that the conflicting claims between Garden Realty Corporation and Hugh MacRae Land Trust. A hearing was held on the force pooling application on April 21st, 1992. The pooling request was granted at the hearing that day. The pooling order was subsequently entered on July 27th, 1992. A copy of that is included in your book at Exhibit #2 as well as any additional orders that have been entered since that time related to this unit. After that time Pocahontas Gas Partnership began escrowing the funds in-house as well as depositing funds with the escrow agent in accordance with that order. Several years later Hugh MacRae and Garden Realty entered into their November 18th, 1996 agreement. Once again in your books you will find an affidavit from Allen Seagel accompanied by a copy of the exhibit as well as an affidavit from Betty Boyd King which has a copy of the agreement attached as an exhibit. Hugh MacRae then filed this application for withdrawal of funds on March 14th, 1997 pursuant to the statutory provision, Paragraph, a copy of which is in your book that I have pointed out to you previously. That brings us to the point where we are today with a hearing on our application. With regard to the R-25 unit the original pooling application was filed on September

22nd, 1995. A hearing was held on that application on October 24th, 1995. At that time the pooling request was granted and the order was subsequently entered on October 25th, 1995. A copy of the pooling application with the attached exhibits showing conflicting claimants is Exhibit #1 in your book and a copy of the pooling order and any subsequent orders are Exhibit #2 in your book. Buchanan Production Company in accordance with the October 25th, 1995 order began escrowing funds in-house and depositing them with the escrow agent. A little over a year later Hugh MacRae -- we come to the point where Hugh MacRae and Garden Realty have entered into their November 18th, 1996 agreement. Our application for withdrawal of funds was filed on March 14th and we come to today's date, April 15th, for hearing on our application. Ms. King, you're still under oath. Mr. Chairman, if I may I will question the witness at this time.

MR. CHAIRMAN: Go ahead.

BETTY BOYD KING

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

1 DIRECT EXAMINATION

2

3 BY MS. HARRISON:

4 Q. If you would, state your name again, please?

5 A. My name is Betty Boyd King.

6 Q. Ms. King, you are president of Garden Realty Corporation?

7 A. Yes.

8 Q. I forgot to ask you where you're from?

9 A. I'm from Winston-Salem, North Carolina but I'm a true

10 Virginian. I never have let it get out of my blood.

11 Q. One of those Buchanan County girls?

12 A. Yes.

13 Q. Garden Realty Corporation is a family owned corporation?

14 A. It is.

15 Q. Is the Garden Realty Corporation that you're the presi-

16 dent of the same entity that's identified as a conflict-

17 ing claimant with Hugh MacRae Trust in the South Longwall

18 8 unit as well as the R-25 unit?

19 A. Yes.

20 Q. Does Garden Realty claim the ownership of the oil and gas

21 underlying this 600 tract --

22 A. Yes.

23 Q. -- portions of which is found in the South Longwall 8 and

24 the R-25 unit?

25 A. Yes. I'm sorry.

1 Q. To your knowledge does Hugh MacRae Land Trust claim the
2 ownership of the coal underlying the tract, portions of
3 which are found in the South Longwall 8 and the R-25
4 unit?
5 A. Yes.
6 Q. Has Garden Realty entered into an agreement with Hugh
7 MacRae Land Trust in which you have agreed to a resol-
8 ution of that conflicting claim?
9 A. Yes.
10 Q. And the agreement that you've reached is set forth -- let
11 me show you. Exhibit #4 which is your affidavit and a
12 copy of the agreement is attached to it. I'll ask you if
13 that is the agreement that was entered into between
14 Garden Realty Corporation and Hugh MacRae Land Trust?
15 A. (Pause.) Yes.
16 Q. Does this agreement set forth the manner in which all
17 escrowed funds as well as future royalties are to be paid
18 between Garden Realty and Hugh MacRae Land Trust?
19 A. Yes.
20 Q. And that agreement is still in effect today?
21 A. Yes.
22 Q. Based upon this agreement are you asking the Board today
23 to amend its orders to reflect that Garden Realty and
24 Hugh MacRae are no longer conflicting claimants with
25 regard to this 600 acre tract?

1 A. Yes.

2 Q. Are you also asking the Board to enter an order directing

3 the escrow agent and the operator to account for the

4 funds that it has paid or held as credit to this unit and

5 to your interests and to pay to Garden Realty and Hugh

6 MacRae in the manner set forth in the agreement?

7 A. Yes.

8 MS. HARRISON: Mr. Chairman, simultaneously with the filing of

9 the application notice of the application and the hearing

10 that was held today was sent to all individuals identifi-

11 ed as having an interest in the unit. We have previously

12 filed with the Board our affidavit that we have complied

13 with the mailing requirements, also a copy of the

14 publication order. In Exhibit #6 and #7 in the booklet

15 for South Longwall 8 and for the R-25 unit there are

16 copies of the receipts as well as a copy of the public-

17 ation that was actually done on March 26th. I would at

18 this time move for the entry of Exhibits #1 through #7

19 for the South Longwall 8 and the R-25 unit.

20 MR. CHAIRMAN: They're accepted.

21 MS. HARRISON: I have no further questions for this witness,

22 Mr. Chairman.

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

24 (Witness stands aside.)

25 MR. HARRIS: In the R-25 unit, the handout that we have, under

1 Exhibit #2 at the top there is says Book 442, Page 64.
2 If you will turn to Page 75. I don't know if they're in
3 numerical number. I would assume they are.
4 MS. HARRISON: I'm sorry.
5 MR. HARRIS: Under Exhibit #2.
6 MS. HARRISON: Mine is numerical. Do you have pages missing?
7 MR. HARRIS: No.
8 MR. CHAIRMAN: No. It says Book 442, Page 75.
9 MR. HARRIS: At the very top it says Book 442.
10 MS. HARRISON: Oh, I'm sorry. Yes, sir.
11 MR. HARRIS: The one that says Book 442, Page 75, down at the
12 bottom it says Tract 6. Is this the tract we're talking
13 about?
14 MR. HARRISON: I have to look at my ownership interest to
15 confirm that. Yes, sir.
16 MR. HARRIS: Now, if you will turn to Page 450 which is the
17 last -- I'm just concerned. There are other people
18 listed here. Is this a list of claimants or are these
19 lists -- I know some say coal above drainage, oil and gas
20 lease. Consolidation Coal Company, for instance, they
21 have that.
22 MS. HARRISON: Consolidation Coal Company and Island Creek
23 Coal Company are related entities which at this point in
24 time Island Creek has been -- have they actually been
25 merged into?

1 MR. SWARTZ: We're not under oath.

2 MS. HARRISON: You can nod, Mark.

3 MR. SWARTZ: They're separate companies.

4 MS. HARRISON: They are separate companies but they are

5 related.

6 MR. SWARTZ: They have a parent that's a relative but they're

7 separate companies.

8 MS. HARRISON: And Permac, Inc. has coal above drainage.

9 Under this unit -- it was drilled into the Pocahontas #3

10 seam. That's what's being produced from. Garden Realty

11 owns the oil and gas. We are the lessor to Consolidation

12 Coal Company and the lessor to Buchanan Production

13 Company. Does that answer your question?

14 MR. HARRIS: I'm not sure. I guess I'm just trying to decide

15 who the claimants are and that may not be the list to

16 use.

17 MS. HARRISON: The owners are the claimants.

18 MR. HARRIS: Yes. The last page in Exhibit #E, at the very

19 last page it says 450 at the top, Tract 6, 12.37 acres.

20 That's what we're referring to now?

21 MS. HARRISON: Yes, sir. That's the 15.4625 percent that's

22 reflected in our application.

23 MR. HARRIS: Thank you.

24 MS. HARRISON: I'm sorry I didn't --

25 MR. HARRIS: When I saw this other -- of course, here is

1 unleased owners and claimants. When I saw the lease here
2 for gas and oil and again with Consolidation and Buchanan
3 it was a little confusing there. Were these two the only
4 claimants to the gas?
5 MS. HARRISON: Yes, sir. This 12.37 acres is the portion of
6 the larger 600 acre tract that falls within this parti-
7 cular unit.
8 MS. RIGGS: With regard to South Longwall Panel 8 which tract
9 are you referring to?
10 MS. HARRISON: Not very much as you can tell from the percent-
11 age there.
12 MS. RIGGS: One, I believe.
13 MS. HARRISON: Yes. Under the 55.975 acre tract on Page 3 of
14 Exhibit #E to the application under Exhibit #1. Garden
15 Realty Corporation owns 1.266 acres of this 55.975 tract
16 which is again a portion of the 600 acre tract.
17 MR. HARRIS: You said Page 3 of that?
18 MS. HARRISON: Yes, sir, of Exhibit #E to the application.
19 It's toward the bottom of the page.
20 MR. HARRIS: I'm sorry. I found it. I'm sorry.
21 MS. RIGGS: Are these all pooled under Oakwood I?
22 MS. HARRISON: You asked me a question I don't know the answer
23 to.
24 MR. MORGAN: R-25 is Oakwood I and the other one was one of
25 the longwall units that we created earlier.

1 MS. HARRISON: South Longwall 8?

2 MR. MORGAN: Yes.

3 MR. SWARTZ: If I might may a request on behalf of the

4 operator. It's the AG's custom to share a draft order

5 with the applicant before it's entered. I think it might

6 be appropriate here to share an order even though we're

7 not the applicant so that we have an opportunity to make

8 sure that looks like we were expecting to see as the

9 operator before it get's entered might be helpful.

10 MS. RIGGS: I guess the question I'm having in my mind -- I'm

11 trying to think this through. If you have an escrow

12 account and the percentages assigned -- the percentages

13 are tied to the unit, not to the escrow deposit. So the

14 percentages are never going to change even though you

15 pull a piece of the pie out of the escrow. So the

16 supplemental orders will not be effected. The percent-

17 ages set forth in the supplemental orders aren't affected

18 by the fact that you're no longer escrowing a piece.

19 RON WADE: Correct.

20 MS. RIGGS: So the supplemental order that's on record with

21 the Circuit Court would still remain correct and not need

22 to be modified by virtue of this escrow disbursement

23 because the percentages are tied to the unit, not to the

24 amount of money on deposit.

25 RON WADE: Once you have a disbursement there will no longer

1 be a portion of the escrow account, though.
2 MR. CHAIRMAN: That's not the point. A piece of the pie --
3 MS. RIGGS: That's why I'm trying to think through in my mind.
4 All the orders that are now of record whether what's
5 happening here would necessitate an amended supplemental
6 order to reflect that that percentage has been pulled
7 out.
8 MR. SWARTZ: You would need to amend the supplemental order
9 because the supplemental orders direct the operator which
10 funds to escrow. So the percentages are not going to
11 change. You're correct. I mean, the divisions of
12 interests in the unit -- the cast of characters remain
13 the same, but there is a term in a new order that directs
14 the operator to escrow the particular funds that they're
15 asking you to no longer escrow. So I think you do need
16 to -- in a minimal sort of way -- amend the supplemental
17 order.
18 MS. RIGGS: So this is a two step process. One order amends
19 the supplemental order to reflect in the public records
20 what is and is not being escrowed and the other is an
21 order directing the escrow agent with regard to disburse-
22 ment. And I see those as two separate orders.
23 MS. HARRISON: If I may just interject. It may depend on what
24 orders have been entered. For instance, in the South
25 Longwall 7 the supplemental order that's of record in the

1 Clerk's Office does not reflect that anything is being
2 escrowed. I'm not sure why. I can just tell you what's
3 in the order. It does not show this conflicting interest
4 between Hugh MacRae and Garden Realty. So I think it's
5 going to depend on the individual case as to whether you
6 --
7 MS. RIGGS: Need to amend or not.
8 MS. HARRISON: Right.
9 MR. FULMER: There use to be a SLW-7 and there use to be a
10 SLW-8. That's what's complicating the matter. Now
11 they're different units.
12 MR. CHAIRMAN: Other questions?
13 MR. SWARTZ: The other thing, too, when you're doing the
14 orders -- I don't have the exhibits in front of me, but
15 when I was looking at them it appeared to me that in one
16 of the tracts there were undivided interests which are
17 not being released from escrow. It looked like there
18 was a coal owner that 100 percent of the coal in the
19 tract in the unit but then the oil and gas interest was
20 a division of undivided interests between a number of
21 people, some of whom who haven't settled. So you need to
22 lift that percentage which I assume Jill has given you
23 because it's only part of that interest in that tract
24 that has been resolved.
25 MS. HARRISON: Right. And that's what we reflect in the

1 application

2 MR. SWARTZ: Right.

3 MS. RIGGS: That's why I asked the question I did about which

4 particular tract and which interest. Right. Okay.

5 MR. KING: Does the motion to approve their request have to

6 say that we amend the order on the pooling?

7 MS. HARRISON: On the R-25 and on the South Longwall 8 there

8 are two supplemental orders that show the conflicting

9 interests. And those also are in your book. So in those

10 two instances if you want to do separate orders that's

11 --

12 MR. CHAIRMAN: Are we mixing from what we did before, though.

13 We were dealing with all the interest in a tract and then

14 now we're --

15 MS. HARRISON: When it says -- no. For instance, in the South

16 Longwall 7 when it references a 22.913 acre tract, that

17 is not a tract that Hugh MacRae Land Trust owns. That is

18 the portion -- the smaller portion of a larger tract that

19 Hugh MacRae Land Trust owns that falls within the unit.

20 It's not just that they own a 22.913 acre tract. This is

21 a much larger tract of which only 22/913 acres falls

22 within the unit.

23 MR. SWARTZ: I think your question, Mr. Chairman, if you look

24 at the next page of that exhibit on that particular tract

25 is that the oil and gas interests that would be the

1 conflicting claim to this coal interest is segmented into
2 undivided interests which are set forth there and the
3 3.81 percent interest that you're dealing with is not --
4 you're not releasing all of the money on deposit associa-
5 ted with that 22 acres because not all of those oil and
6 gas owners have settled their undivided interest claims.
7 That was your question, I think, and that's the reality
8 of the first application.
9 MR. CHAIRMAN: Right.
10 MS. HARRISON: But they aren't "undivided interests". It's
11 not as if Garden Realty only owns 3.81 percent of a big
12 tract of land. This is their 7.057 acre tract. It is as
13 if you have a large square that is a coal tract and then
14 overlying it you may have several tracts. But these are
15 not undivided interests. These tracts are separately
16 owned. And Garden Realty may have this tract. So when
17 we talk about undivided interests that's not accurate.
18 What we should be talking about are tracts that overly
19 the coal. And when we talk about percentages what we're
20 talking about are percentages within the unit, not
21 undivided ownership interests. Those are two completely
22 different animals.
23 MR. SWARTZ: Except it doesn't make a difference. I mean, you
24 could do it. It does not make a difference. And the way
25 the money is escrowed it is an undivided interest

1 regardless. It's a fund of money associated with that 22
2 acre tract. But I would think -- and you may see this in
3 the future and we need to have a focus here -- there may
4 be people coming in in the future who have a traditional
5 undivided interest as a tenant in common who have worked
6 out their differences and might be asking you to accommo-
7 date their selling which is not tract based.
8 RON WADE: This is the first of potentially many of these that
9 you're going to be faced with. Now that this is out
10 you're going --
11 MS. RIGGS: Once you create a fund there's one thing certain,
12 someday it's got to come out of the fund.
13 MR. KING: Which is good for the people involved really.
14 RON WADE: The people that Consol and Island Creek could not
15 establish ownership of the gas -- you see all these
16 percentages of the surface ownership. It's just like
17 they said, you've got the coal underneath but the surface
18 up here is divided into 25 different little pieces. And
19 each one of these surface owners feels that they own the
20 gas and the mineral owner underneath says, Wait, it all
21 came off of my coal. I own the gas."
22 MS. RIGGS: Well, the dispute here is not between surface and
23 coal. It's between gas and oil and coal under the Act.
24 Under the 1990 Act those are the conflicting claimants.
25 RON WADE: But if Hugh MacRae Land and Trust owns the coal and

in most instances they don't own the oil and gas and what I'm saying is you're going to see people either decide that this is a good fair equitable decision and go forth and try to mediate out things and get all of this settled or they'll eventually go to court.

MS. RIGGS: Well, that's what the statute said. You can resolve it one of two ways. You can either reach an agreement or you can get a court order.

RON WADE: Right.

MR. WADE: Let me ask these Consol boys here if they intend to go back and but in garbage wells on these panels.

MR. MORGAN: There are wells existing on these panels now.

MR. WADE: A big old garbage well?

MR. MORGAN: There are gob wells still existing in the panels. Sometimes they are garbage wells. Ha, ha.

RON WADE: Gob gas is what they call it.

MR. KING: I move that we accept this application.

MR. CHAIRMAN: These two?

MR. KING: These two. I'm sorry.

MR. BRENT: I second the motion.

MR. CHAIRMAN: A motion and second. Further discussion? All in favor signify by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.) You have an approval. Thank you.

MR. KING: I think this is a step in the right direction for a

lot of people.

ITEM X

MR. CHAIRMAN: The last item on the agenda is a petition from Hugh MacRae Land Trust and Garden Realty to amend a supplemental order for unit NELW-10. This is docket number VGOB-97/04/15-0579. I would point out in the print of our -- folks, excuse me. I'm not in the habit of talking over people. The docket number is printed here VGOB-95/04/21-0218 and is incorrect but the docket number for today is correct which is VGOB-97/04/15-0579. We'd ask the parties that wish to address the Board in this matter to come forward at this time. You may proceed.

MS. HARRISON: Mr. Chairman, for the record I am Jill Harrison. I practice with Penn-Stuart here in Abingdon. This afternoon I represent Hugh MacRae Land Trust Company and Garden Realty Corporation in their application for withdrawal of funds on the Northeast Longwall 10 unit. The time line that we followed in coming to this point, the originally pooling application on this unit was filed on January 21st, 1992 and a copy of that is Exhibit #1 in your book. Exhibit #E is attached to it which shows the conflicting claimants between Garden Realty Corporation and Hugh MacRae Land Trust. The hearing was held on February 18th, 1992. The pooling request was granted on

1 that day. On April 29th, 1992 a pooling order was
2 entered. A copy of that is included in your book at
3 Exhibit #2 as well as supplemental orders that have been
4 entered on this unit. Pursuant to that order -- and
5 here's where we have a little dog in the path that we've
6 followed so far -- Pocahontas Gas Partnership in accord-
7 ance with this order escrowed the funds in-house and
8 deposited funds with the escrow agent. I have learned in
9 talking with Diane Davis and with Mr. Fulmer that -- and
10 I think this morning it was mentioned by Mr. King with
11 Premiere Bank that a payment had been made back to an
12 operator pursuant to a supplement order. That was the
13 300 and some thousand dollars. This is the unit. This
14 is the unit on which that occurred. So that up until
15 April 10th of this year PGP had been escrowing funds and
16 depositing them with Premiere Bank. On April 10th, I
17 think as you will see from the letter that Mr. Fulmer
18 has given you, those funds were returned to Connico.
19 Hugh MacRae and Garden Realty have now entered into their
20 agreement. That was on November 18th, 1996. Again as
21 Exhibits #3 and #4 are affidavits from Mr. Seagel and Ms.
22 King with a copy of the agreement attached to it. Hugh
23 MacRae and Garden Realty filed their application for
24 withdrawal of funds on March 14th of this year and we
25 come to the point where we're at today to have the matter

1 heard.

2 MR. CHAIRMAN: Go ahead.

3 MS. HARRISON: Ms. King, you're still under oath.

4

5 BETTY BOYD KING

6 a witness who, after having been previously sworn, was

7 examined and testified as follows:

8

9 DIRECT EXAMINATION

10

11 BY MS. HARRISON:

12 Q. If you would please state your name?

13 A. My name is Betty Boyd King.

14 Q. Ms. King, you are the president of Garden Realty Corpora-

15 tion?

16 A. I am.

17 Q. And it that a family owned corporation?

18 A. It is.

19 Q. Is this Garden Realty Corporation the same entity that's

20 identified as a conflicting claimant with Hugh MacRae

21 Trust in the application for the Northeast Longwall 10

22 unit?

23 A. Yes.

24 Q. Does Garden Realty claim the ownership of the 600 acre

25 tract -- ownership of the oil and gas, excuse me,

1 underlying this 600 tract, a portion of which is found in
2 the Northeast Longwall 10 unit?
3 A. Yes.
4 Q. To your knowledge does Hugh MacRae Land Trust claim the
5 ownership of the coal underlying the 600 acre tract, a
6 portion of which is in the Northeast Longwall 10 unit?
7 A. Yes.
8 Q. Has Garden Realty entered into an agreement at this time
9 with Hugh MacRae Land Trust in which you resolved this
10 conflict of ownership interest in the coalbed methane gas
11 on the 600 acre tract?
12 A. Yes.
13 Q. I will ask you to look at Exhibit #4 which is an
14 affidavit that you've signed. If you would look at the
15 agreement that's attached to it and advise the Board if
16 that is the agreement that was entered into between
17 Garden Realty Corporation and Hugh MacRae Land Trust?
18 A. (Pause.) Yes.
19 Q. Does this agreement set forth the manner in which Garden
20 Realty and Hugh MacRae Land Trust wish to be paid for
21 their conflicting ownership interests within this unit?
22 A. Yes.
23 Q. And this agreement is still in effect at this time?
24 A. Yes.
25 Q. Based upon this agreement are you asking the Gas and Oil

1 Board to amend its orders to reflect that Garden Realty
2 and Hugh MacRae are no longer conflicting claimants with
3 regard to this tract in this unit?
4 A. Yes.
5 Q. Also based upon that agreement are you also asking the
6 Gas and Oil Board to enter an order directing the escrow
7 agent and/or the operator to account for the funds that
8 it holds to the credit of your interest in this unit and
9 to pay that amount, whatever it may be, attributable to
10 your interest to you and to and Hugh MacRae Land Trust?
11 A. Yes.
12 MS. HARRISON: Mr. Chairman, as I indicated previously on the
13 other application, at the same time that this application
14 was filed with Gas and Oil Board certified mail, return
15 receipt letters were sent to all individuals identified
16 as having an ownership interest in the unit with a copy
17 of the application and notice of the hearing that is
18 being held today. A copy of the returned receipts are
19 included as Exhibit #6 in your book and a copy of the
20 notice that was published in the Bluefield Daily Tele-
21 graph is included as Exhibit #7. The notice was publish-
22 ed on March 26th, 1997. Mr. Chairman, I would move for
23 the entry of Exhibits #1 through #7 at this time.
24 MR. CHAIRMAN: They're accepted.
25 MS. HARRISON: With regard to the interests in the unit and

1 the tracts involved there are two tracts. There is a 115
2 and three-tenths acre tract and a 55 acre tract which
3 when the percentage is combined amounts to 43.5427
4 percent of the unit. And I know that there is some
5 confusion about the moneys that were paid in and have
6 been paid back. At this point in time, though, the
7 application that we filed has requested that the escrow
8 agent and the operator give us an accounting of the funds
9 and to pay any moneys due to Garden Realty and Hugh
10 MacRae attributable to this percentage so that the relief
11 we request today is applicable whether it's the operator
12 holding the funds or whether it's the escrow agent
13 holding the funds. We have asked that both be asked to
14 provide this information to us.
15 MR. CHAIRMAN: Do you have anything further?
16 MS. HARRISON: No, sir.
17 (Witness stands aside.)
18 MR. CHAIRMAN: Questions, members of the Board? Do we have a
19 motion?
20 MR. BRENT: Mr. Chairman, could I ask that the request be
21 restated?
22 MR. CHAIRMAN: Sure.
23 MS. HARRISON: With regard to the application for the North-
24 east Longwall 10 there are two parts to our request. One
25 is that any orders that have been entered previously that

1 show the conflicting interests between Hugh MacRae Land
2 Trust and Garden Realty be amended to show that there is
3 no longer a conflicting interest. The second prong of
4 our request for relief is that the escrow agent and
5 operator provide an accounting of the funds that have
6 been deposited or are being held in escrow and to pay
7 those funds to Hugh MacRae and Garden Realty in accord-
8 ance with their ownership interests.
9 MR. CHAIRMAN: Have you confirmed in reviewing this that the
10 Board, in fact -- if there's confusion why did we pay the
11 money back out of escrow?
12 MS. HARRISON: Yes, sir. If you will look at in your orders
13 it would be the page that has Deed Book 431, Page 47, at
14 the top of the page.
15 MR. CHAIRMAN: What exhibit are you in?
16 MS. HARRISON: I'm sorry. Exhibit #2.
17 MR. CHAIRMAN: 431?
18 MS. HARRISON: At 47. Yes, sir. If you'll look at this very
19 small print that's below the graph it's the third line,
20 "Total to be escrowed with the Virginia escrow agent;
21 0.00." Ms. Davis and her eagle eye caught this fact and
22 questioned why funds were being paid into escrow when
23 this was shown on the supplemental order that was entered
24 by the Board.
25 MR. SWARTZ: I'm not sure who caught what. Pocahontas Gas

1 Partnership wrote to Ms. Davis January 30th, 1997,
2 enclosed a revised supplemental order which you may not
3 have as an exhibit in that packet.
4 MS. HARRISON: I don't have that.
5 MR. SWARTZ: And it addressed several issues. One, additional
6 leases have been obtained since the unit was pooled. So
7 there was a listing of whoever might be dismissed because
8 the acreage had been leased. And there was also -- Les
9 Arrington had caught the issue with regard to the
10 confusion with regard to the conflicting claimants. And
11 the order sought -- a further supplement order was sent
12 to Ms. Davis on January 30th to straighten all of that
13 out. And I don't know how the ball got dropped here but
14 instead of getting a call back with regard to our
15 supplemental order and pursuant to straighten it out we
16 get a letter from the escrow agent with a check which
17 really -- the reality however is -- you know, we're not
18 real happy about the way that was handled. But the
19 reality is if these people have reached an agreement with
20 regard to their interest in order to -- and I think it
21 needs to involve the escrow agent because we may need
22 some further information from them for portion of
23 earnings and royalty. This letter that we got from them
24 clearly did not share that information with us. So I
25 think the order needs to affect the escrow agent so that

1 we can really give an accounting. They're entitled to
2 their money. I don't have a problem with that. But Les
3 caught this problem in the December/January time frame
4 and I think frantic in an effort to try to straighten
5 this out somehow the ball got dropped or something
6 strange happened because clearly we wanted the bank to
7 continue to hold those funds. So that's an additional
8 aspect of this tale, I guess, you need to be aware of.
9 But it shouldn't affect the ultimate result. If the
10 people settled their claims, great, give them the money.
11 MR. MORGAN: Probably what we need to do -- we submitted a
12 revised supplemental order. I don't think it's been
13 acted on yet. So we probably need to modify that,
14 resubmit it in conformance with what you agreed to.
15 MR. SWARTZ: It addresses other issues beyond what we're
16 talking about today. I mean, it needs to be dealt with.
17 MS. HARRISON: And, of course, we don't care who pays us.
18 MR. CHAIRMAN: I think what we have to do is act on that order
19 first probably.
20 MS. RIGGS: Well, probably what happened is that The Division
21 of Gas and Oil can process supplemental orders in the
22 format approved previously by the Board. Obviously this
23 one went beyond that format and tried to accomplish some
24 things that normally are not accomplished through
25 supplemental orders. And it probably should have come on

before the Board in order to make those changes as a modification as opposed to being done through a supplemental order.

MR. SWARTZ: It looks pretty standard to me. I mean, typically in a supplemental order if we have leased people subsequent to the hearing we put that of record. And this looks pretty standard to me. I mean, it's the standard form that you guys usually see. I'll show it to you after the hearing, Sandy.

MS. RIGGS: It's the escrow that I'm more concerned with than it is whose lease versus not leased. Who's getting escrowed --

MR. SWARTZ: It's got the same schedule, you know, Exhibit #E that we use for conflicting claims. It looked like pretty standard and we were kind of surprised. The response was a $300,000 check which we clearly did not want and we're not asking for..

MR. LEWIS: You want it but you just can't keep it.

MR. SWARTZ: Well, we would like to have received it but we didn't have the guts to ask for it. Ha, ha.

MR. LEWIS: I'll take it. Ha, ha.

MS. RIGGS: I think what needs to happen is the same. When they account the way they'll account is by filing the revised supplemental order.

MR. CHAIRMAN: Right.

1 MS. RIGGS: And then the escrow agent will report to the Board
2 with respect to how that amount was derived, principal
3 versus interest and so forth. But the Board's action's
4 the same in either.
5 MR. BRENT: I guess my question, Sandy, in a nut shell is
6 based on her request do we have the legal authority to
7 tell the operator to turn over to them the principal in
8 interest. From the escrow account, yes, but legally can
9 we require them -- the operator to do it?
10 MS. RIGGS: Well, they can redeposit, I guess is another way
11 to do it and pass it through the escrow account.
12 MR. BRENT: That's my point. I think you've got to undo
13 what's been done before we can legally grant this.
14 MR. MORGAN: I think maybe I should get my name on the record
15 for this. Claude Morgan for PGP and as operator for
16 Buchanan Production -- involved in Buchanan Production.
17 I think as the Board it is -- it does behoove you to
18 instruct what to do with the escrow funds. We have both
19 of these parties under lease and I think we will live up
20 to the terms of our lease and we will comply with taking
21 care of our lessors as we are contractually bound to by
22 them. But I don't think the Board needs to get into
23 anything under our lease terms. You didn't understand
24 that from that wink, Sandy.
25 MS. RIGGS: How is the relief being requested getting the

1 Board involved in your lease terms, I guess, is the next
2 question.
3 MR. MORGAN: Going back to what they said about instructing
4 the operator to do anything with any other funds that are
5 not going to the escrow agent. For instance, our leases
6 allow escrowing of funds in-house should we choose to do
7 so. And --
8 MR. BRENT: Well, my only point is the statute speaks to us
9 having the authority to release funds from the escrow
10 account. It says nothing about releasing funds from an
11 operator's account. The request I'm hearing is that we
12 do both, the escrow and/or the operator, and I don't
13 think we've got the authority to do that.
14 MR. CHAIRMAN: Why don't we just carry this over to next
15 month. We won't require you to come back for testimony.
16 If we have any questions -- we've asked those. We'll in
17 the meantime sort out what went on here and why it went
18 on and how to do this.
19 MR. LEWIS: I think they ought to work it out (Inaudible.) it
20 looks to me like.
21 MR. CHAIRMAN: In the meantime they can talk, too but we've
22 got some sorting out ourselves to do here too about how
23 this money got released without a Board order. We had
24 basically a secretary authorize and release $300,000.
25 MS. HARRISON: Mr. Chairman, as to -- you had mentioned Ms.

1 King not having to come back next month. We will have
2 the remaining three units that are affected this 600 acre
3 tract. Would any additional testimony be required?
4 They're all the same tracts.
5 MR. CHAIRMAN: That's up to you. I was speaking to this
6 today. That's your call.
7 MS. HARRISON: She'll be here next month anyway.
8 MR. CHAIRMAN: All right. We'll continue this then to next
9 month.
10 MS. HARRISON: One other point I want to make, the way the
11 orders -- the pooling orders are set up, some of these
12 are different on these seven units but the operator is
13 permitted not to have to go to the bank every day and
14 make a deposit. What they're required to do under some
15 of the orders are to make monthly deposits and under
16 other orders they are required to make quarterly de-
17 posits. So when we talk about in our relief asking that
18 the operator be required to account for any funds that
19 are held in-house we are referring to the time period
20 between the last deposit that was made with the escrow
21 agent and the time period in which the order is entered.
22 We are not in any way attempting to collect early on any
23 royalties or anything else that may fall due us. We are
24 only covering the time period up to the point the order
25 goes into effect.

1 MR. SWARTZ: I think what Mr. Brent was asking, though, with
2 regard to the three units you had first there are valid
3 orders in effect requiring the operator to pay money into
4 escrow that the Board needs to counter man. And I don't
5 think that was his point. His point, as I understood it,
6 was with regard to this forth situation. There apparent-
7 ly may not be an order in force requiring the operator to
8 pay money into escrow. So there's nothing to take back.
9 And I think the reason for the continuance is to let
10 everyone explore whether or not you can work it out with
11 the operator and come back next month if you guys have
12 dealt with it. Am I close?
13 MR. BRENT: I think that's part of it.
14 MS. HARRISON: That's my understanding also. But I saw a
15 couple of looks from other Board members and I wanted to
16 make sure we were on the same page in the handbook.
17 Okay?
18 MR. SWARTZ: That's fine.
19 MR. BRENT: But I'd also like to know more about how that
20 transpired in the first place.
21 MR. SWARTZ: We don't know the answer to that.
22 MR. CHAIRMAN: Mr. Fulmer will tell us about that next month.
23 MS. HARRISON: Thank you very much.
24 MR. CHAIRMAN: Thank you. That concludes our business today.
25

(End of Proceedings for
April 15, 1997.)

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 April 15, 1997 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 6th day of May, 1997.

Deborah J. Bise

DEBORAH J. BISE
NOTARY PUBLIC

My commission expires September 30, 2000.