VIRGINIA GAS AND OIL BOARD

MONTHLY BOARD TRANSCRIPT

JUNE 1997

VIRGINIA OIL AND GAS BOARD

HEARING OF JUNE 17, 1997

9:00 A.M.

AT THE SOUTHWEST VIRGINIA 4-H CENTER

HILLMAN HIGHWAY

ABINGDON, VIRGINIA

- -

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June 17, 1997

This matter came on to be heard on this the 17th day of June, 1997 before the Virginia Gas and Oil Board at the Southwest Virginia 4-H Center, Hillman Highway, Abingdon, Virginia pursuant to Section 45.1-361.19.B and 45.1-361.22.B of the Code of Virginia.

MR. CHAIRMAN: Good morning. My name is Benny Wampler. I'm Deputy Director for the Virginia Department of Mines, Minerals and Energy and Chairman of the Gas and Oil Board. As usual, I'll ask the Board members to introduce themselves.

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

MR. GARBIS: My name is Dennis Garbis. I'm a public member from Fairfax, Virginia.

MR. LEWIS: Max Lewis, public member from Buchanan County.

MS. RIGGS: I'm Sandra Riggs with the Office of the Attorney General.

MR. HARRIS: I'm Bill Harris, a public member from Wise County.

MR. KING: I'm Clyde King, a public member from Washington County.

MR. FULMER: Tom Fulmer, Department of Mines, Minerals and Energy, Division of Gas and Oil.

MS. CASHMAN: Cheryl Cashman, Department of Mines, Minerals

and Energy in the Richmond office.

MR. CHAIRMAN: Thank you. We have eight items on today's agenda. The first two could be time consuming. We have people here from the public. I want to just have you talk with me for a minute -- communicate with me. We'll proceed down the line on the agenda or we can go the first items if you are here for specific cases. The first item on our agenda is the rules and regulations that the Board has -- come back after having received public comment and the second item is Tom Fulmer will present to the Board the status of Board orders and issues of compliance. That doesn't mean certainly that you're not welcome to stay, but if a change of order will accommodate any of you if you will let me know that we'll try to move on it to the other items or we'll just start down the list. Do you have any preference, any of you that are here from the public? The Board just wants to try to accommodate you from the standpoint if you are here for specific cases. We'll be happy to call those and start right in with the cases if you would like for us to do that. (Pause.) No preference from any of you? Okay. Without any preference we'll start right down the agenda then.

ITEM I

MR. CHAIRMAN: The first item on the agenda is the Gas and Oil Board will review the staff report on comments received on the Board's rules and regulations and consider the regulations for adoption here today. Some extra copies of those rules and regulations are laying here on the table if anyone here today would like to pick up a copy. You are welcome to do that now. (Pause.) At this time I'd like to ask Cheryl Cashman to review for the Board the draft comments and draft response for the Department. What the Board will do -- as we go along feel free to ask questions on anything that you have any questions about or make comments and then we will ask for adoption of whatever modified version these rules and regulations that we deem appropriate at the end of the presentation. Cheryl.

MS. CASHMAN: The first thing is sort of a housekeeping type of thing. At the Board's last meeting we received comments on the Gas and Oil Board Regulation, the Gas and Oil Reg, the Act. So we split the comments out by section. The first section is the Gas and Oil Board Regulations. We received a comment asking that Section 25-160-3.B.1 -- saying that if the 30th day falls on a weekend or a legal holiday the deadline shall be the

prior business day. The commenter felt that this would allow the public 30 days to comment. We believe that it may be a misunderstanding on the commenter's part. If you get a calender and count backwards it has to be the way it is or you wouldn't have the full 30 days. So no change was made to the regulation on that. The second commenter commented on Section 4-VAC-25-160-30.D asking that at the time of filing and shall notify the applicant of the docket number be added back into the regulation. They believe that the Department should be able to tell the applicant what the docket number is at the time that it's filed. This change was made to the regulation. The third commenter objected to the term "reasonable" in 4-VAC-25-160-100.A as it's used to describe the costs applicable to the operation of the unit and the reasonable supervision fee. We did recommend a change to the regulation because we believe that the Board orders and all parties involved with specific units have the opportunity to see what the operating costs are and to resolve any disputes. The next comment the commenter objected to Section 4-VAC-25-160-100.A 1 and 2, stating that the direct and indirect costs chargeable to participating and non-participating operators were too broad and that they provided a complete charge ability of any conceivable

expense. We did not recommend a change to this section because we believe that in the application the operator must provide the itemized costs associated with specific wells. These costs then become part of the Board order which is open to the public if they have questions or comments or concerns. The items will vary on a well to well basis. So those were left the same. There was no change made. The next commenter on Section 4-VAC-25-160-110.A suggested adding in inhouse payments and interest paid on suspended payments and the inhouse escrow accounts. Inhouse escrow accounts are not subject to the Board's jurisdiction. They are limited to cases where the escrow agreement is part of a voluntary contractual agreement among the operators and other parties. Inhouse escrow accounts are only allowed when there are no conflicting claims to ownership of the gas. If there were any conflicting claims to the gas then the funds would be escrowed under the Board's order. Therefore, we didn't recommend a change to this section. One commenter suggested adding the word "detailed" or "itemized" before the words records of all costs in Section 4-VAC-25-160-110.B so that the sentence would read "each unit operator shall maintain itemized records of all costs charged to participating or non-participating operators

until the latter of." This change was made into the regulation for your all's consideration. One commenter objected to the time extension for the process of appeal in Section 4-VAC-25-160-150.C. The commenter stated that the permit regulations allow the operator to refile for a permit and that the applicant should not benefit by an objection or appeal by the petitioner. We did not recommend a change to this section because we believe that the tolling of time on an appeal with respect to the expiration date of a pooling order should be maintained. All orders that are issued by the Board pursuant to the proposed regulations will end two years after the date of issuance unless the unit operator's operations have begun. During an appeal actions to develop the unit must be placed on hold. We didn't feel that the operator should be penalized by loosing the right to proceed while awaiting a Circuit Court's decision. One commenter noted that we had made a typo in each of the sections referring to the statewide spacing. We had put in there 1.24 thousand instead of 12.24 thousand. We did go through and make that change in several of the sections that it was found in. We had another commenter that suggested that when the proposed regulation was published in the Virginia Register certain sections

were not published and wondered if those sections would then become -- were still part of the Regulation. They are. The Virginia Register doesn't publish sections that there are no changes to. Those are pretty much the changes. We had one change in the definition of directional survey in the very first -- 4-VAC-25-160-10 where the word "departure" should have been "deviation". That was changed. That was a staff recommendation. And then in 4-VAC-25-160-40.E again it was a type of thing when the regs were promulgated that some of the regulation sections got switched. So those were changed to reflect that. Do you want me to go through the whole thing?

MR. CHAIRMAN: Yeah. I thing we probably ought to go through all of them just to see if the Board has any comments or any question about what we are changing and any response that's recommended.

MS. CASHMAN: That was all of the changes.

MR. CHAIRMAN: So you're talking about where the rest are clarifications and what basically is a repeat of clarifications the Board offered at last meeting. Is that --

MS. CASHMAN: Right. We had several pages, starting with Comment #10, where they were comments but the commenter was asking for clarification on certain sections, not

asking that the Board take action. And that ran through Comment =19 on Page 5.

MR. CHAIRMAN: Right.

MR. HARRIS: May I ask a question about those particular questions? When they ask for clarifications what we have here are responses to that person, is that right?

MS. CASHMAN: Right.

MR. HARRIS: But none of this is written into the regs as such.

MS. CASHMAN: Right.

MR. CHAIRMAN: That's clarification for the record. In other words, what we're doing is we are responding to every comment that was made.

MR. HARRIS: If there is a general comment like -- well, I don't know how general that was and I don't remember specifically the person, for instance, in =13 who asked for a clarification of that particular section to the 100.E. So we've a clarification. But what I'm wondering is if you go back and read that section is that the only person that asked a question but there may be 50 people with that question.

MR. CHAIRMAN: That's right.

MR. HARRIS: But we haven't addressed the actual writing of it to see if there's a problem of clarification there. Do you understand the distinction?

MR. CHAIRMAN: Yes. What you're saying is we have clarified it but should we have looked to change the regs so it was plainer on its face to begin with.

MR. HARRIS: Right. It wouldn't generate that kind of question to begin with. What I'm saying is is that we're dealing with the question but is it the regulation -- the way it's written, do we need to visit that? I don't know if anybody has.

MR. CHAIRMAN: Well, part of the requirement in going through the register of regulation -- part of the Governor's order was that we look to see if we can make these regulations plainer and if we've tried to followed the guidance that we received on doing that.

MR. HARRIS: The thing I've gotten into before is we all know what the different words and the letters mean and we put them down and we expect --

MR. CHAIRMAN: I understand. Why don't we run through these then.

MR. HARRIS: I just wonder what else is being done, if anything else is being done.

MR. CHAIRMAN: As I said, as part of the overall review of the rules and regulations there was an attempt to try to write the rules and regulations so they are clearer and simpler to understand -- easier to understand. I think any time that we can do that we want to do that

so that clarifications are not needed and the regulation is clear on its face.

MS. RIGGS: I think many of these were questions directed at me probably at the last hearing which were more in the nature of legal interpretations than they were clarifications.

MR. HARRIS: Okay.

MS. RIGGS: And they were answered during those proceedings and I think the answer that is reflected here is the answer that was given to the person at the time they asked.

MR. CHAIRMAN: Right. That's the way a lot of that was.

MR. HARRIS: Thank you.

MR. CHAIRMAN: The other part of this document that we'll discuss -- I think if it suits the Board we should discuss that after we make a decision on the rules and regs because it deals with responding to Delegate Jackie Stump. If you recall, he addressed the Board and on behalf of he and Senator Reasor asked us to make recommendation back to him on what, if anything, he should do as a legislator if we had any thoughts or ideas or suggestions. The staff was directed to provide these responses to the questions and comments that came up before the Board as well as address all the other complaints that went beyond the Board's rules

and regulations and fell more in the Department's rules and regulations. We've also attempted to address a number of those and subject to the Board's approval of that we would respond back to Delegate Stump and Senator Reasor with this document, if you believe that appropriate. That's something we'd like your comment on. So I guess first -- do you have any other discussion that you'd like to have on the rules and regulations? If so, we'll take those now. If not we're open for a motion for adoption.

MR. KING: Mr. Chairman, I'd like to commend them for doing such a good job on this. It looks like a good housekeeping thing.

MS. CASHMAN: Thank you.

MR. BRENT: Mr. Chairman, I move that we adopt the revised rules and regulations.

MR. GARBIS: I'll second it.

MR. CHAIRMAN: A motion and second. Any further discussion? All in favor signify by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.) We have a unanimous approval. Those regulations will be adopted. They will continue to go through the process for final adoption but the Board has approved those, Cheryl. We'll move on to the other part of the comments. Cheryl, if you don't mind going through those and we'll take a few minutes.

These do get into other areas outside the Board's rules and regulations into the Department's rules and regulations, but I think it's important for the Board to understand the comments and under the response and make sure we don't have any disagreement there. So if you don't mind doing that.

MS. CASHMAN: Starting on Page 7?

MR. CHAIRMAN: Yes.

MS. CASHMAN: Starting on Page 7 these were the comments that Delegate Stump submitted on behalf of himself and Senator Reasor who was unable to attend. These comments deal with the Gas and Oil Act as opposed to any of the regulations. One of the Code Sections that Delegate Stump asked was if we felt like it needed to be stronger or whatever with Section 45.1-361.3 relating to the protection of surface owners rights. Virginia does not have a surface damages act that addresses what actions a mineral owner must take when using the surface estate to gain access to the mineral estate. However, both common law and Virginia's Gas and Oil Act recognizes that the operators have an (Inaudible.) reasonable right to use the surface to produce gas. This typically includes the right to build roads, clear the line for pipelines or locate well sites necessary to produce and market the gas that

they own. Minimum standards for completion of these activities are set by the Act and by the Regulation. Any changes to the relationship between the surface and the mineral owner rights would have to be provided by legislation. Section 45.1-361.13 of the Code is dealing with the composition of the Virginia Gas and Oil Board -- the membership. Delegate Stump asked if legislation should be introduced to add a citizen member to the Board. The current statute states that the Governor appoints -- and this is subject to the confirmation by the General Assembly -- the Chairman and six additional members of the Board. It further states that the Director of the Department of Mines, Minerals and Energy or his designee would be one member. And then one but not more than one individual who is a representative of the gas and oil industry, one but not more than one individual who is a representative of the coal industry, and four other individuals or citizens who are not representatives of the gas, oil or coal industry. The membership as it currently is written was designed to provide a balanced forum of both the public, the citizen interests and the industry interests associated with gas and oil production. Section 45.1-361.27 and 45.1-361.28 deal with the duties, responsibilities and authority of the Director

and the Inspector. Delegate Stump asked should legislation be introduced to provide stronger closure order provisions, particularly in Buchanan County type situations. Currently the statutes state that the Director has the authority to promulgate and enforce rules, regulations and orders necessary to insure the safe and efficient development and production of gas and oil resources that are designed to -- among other things -- protect public safety and general welfare. The Director has the authority to issue, condition and revoke permits, issue notices of violation and orders upon violations of any provision of the Chapter or Regulation and issue closure orders in cases of eminent danger to persons or damages to the environment or upon a history of violations, maintain suit in the city or county where a violation has occurred or is threatened or whenever a person who is violated or threatens to violate any provision of this Chapter may be found in order to restrain the actual or threatened violation. The Director also has the authority to issue an emergency order without advance notice or hearing when he determines an emergency exists. This provides sufficient authority for the Department to act when violations of the law or regulations are found. Section 45.1-361.31 deals with the bonding and financ-

ial security that's required. The question was raised "are the provisions strong enough to insure compliance with all laws and regulations pertaining to permitted activities are far as restoring the land as close to the natural state as possible once the operations have ceased?" By statute all permit applicants must provide blanket or individual bonds. The levels of the bonds are established by law. While blanket bonds won't cover 100 percent of the costs wells that still are producing are not likely to require plugging and restoration. Additionally the Gas and Oil Plugging and Restoration Fund would provide any additional needed revenue. The provision is provided by law to restore the balance of the fund which insures that the resources will always be available for plugging and restoration. This approach was developed to allow the State to maintain proper protection of the citizenry and the environment and to insure that operators were not required to tie up substantial capital. The Gas and Oil Act and Regulation require wells to be plugged and the sites to be restored. This does not require the return of the land to it's approximate original contour.

MR. HARRIS: Mr. Chairman, let me ask about that one. At present no one determines -- who determines if returned

to the original state? I know we talked about doing that. There's nothing that we do or say that covers that -- controls that or that regulates that?

MR. CHAIRMAN: There's nothing in the law that requires it to be returned to its original state. It says that it shall be stabilized and re-vegetated. In some other laws they do have that requirement but not in this law. In this law it's basically that the well -- the well head be removed, that the facilities be removed, be re-plugged and reclaimed meaning making sure that it's stabilized and re-vegetated.

MR. HARRIS: I just wondered if the landowner has a hill or a mountain there that gets leveled then it's left level?

MR. CHAIRMAN: Typically that's the case, yes.

MR. LEWIS: Whenever they drill a well like that usually after they drill the well it's more usable than before the well.

MR. HARRIS: The land is more usable after the well?

MR. LEWIS: Yeah, unless it's in a field or something like that.

MR. HARRIS: I just wonder how much control the landowner had on what's left. I mean, is there any agreement with the producer of the oil or the people who come in?

MR. CHAIRMAN: There's nothing that requires that. I think

in some cases there's probably some discussion along those lines but nothing in the law that mandates that. That kind of ties back into the discussion up front in the application of reasonable use of the surface.

MR. HARRIS: Well, since you bring up the word reasonable I was going to ask about that. Who defines reasonable?

MR. CHAIRMAN: Often the courts in these kinds of cases based on what a deed said or --

MR. HARRIS: In =1, if I might return to that one, it says the operators have an (Inaudible.) reasonable right to use the surface. I just wonder -- the word reasonable -- how far reasonable goes.

MR. FULMER: I think on reasonableness in the process for the application there is a process of objection to that process. The surface owner has a right to come in and to object to the operations and plan itself. And through that mechanism they can argue what is reasonable on their property and what's not reasonable.

MR. CHAIRMAN: That's the idea. Interaction is up front in the permit application process itself so that there's an understanding by the affected landowner and the operator of how the land is going to be -- what it's going to look like at the completion of the operation.

MR. HARRIS: Judging from the kind of concerns we get from landowners is there some way to encourage that more

between the operators and the landowners? Because a lot of what I see is you sign the lease and you have no other control until it's over with.

MR. FULMER: Well, signing the lease is acceptance.

MR. CHAIRMAN: Mr. Harris, to address that we're working to put out more flyers and brochures to hand out to folks that tell them about this. We've done that in the past but we felt like maybe some -- now that hasn't been done in a while we'll do it again and see if that helps our inspectors when people to complain are able one on one to explain what their rights are.

MR. KING: Mr. Chairman, I have a question of Sandy. Is there anything -- this is a touchy, touchy question I'm sure. If one landowner allows someone to desecrate the property and then another landowner has a complaint do we have any way of handling that at all?

MS. RIGGS: Well, I think you first have to distinguish the responsibility of this Board under Article 2 of the Act from the responsibilities of the Department under Article 3. Now, the Board only hears five kinds of things. You hear creation of field rules, pooling orders, exceptions to statewide spacing, appeals of permit decisions. On the other hand this whole permitting process and enforcement through violations and closure orders are administered through Tom through

his separate powers that have nothing to do with the Board. The only time those two areas of jurisdiction overlap each other where you would be put in a position of hearing those types of permitting issues is when someone objects in the permitting process, they get an unfavorable ruling with respect to the permit and then they bring that appeal back to the Board. In the normal course of things through your pooling applications and creation of field rules you're not hearing permitting decisions and violation type decisions. So that's why you have to distinguish between the two separate activities going on. And the regulations that you're reviewing that is Board regulations deal with your powers and authorities under Article 2 of the Act. When they talk about Department regulations they're talking about Tom's jurisdiction under Article 3 for enforcement which is a whole separate thing. And the only time you hear any of that is if somebody appeals that to you after they've already gone through the permitting process. Does that sort of put it in prospective?

MR. KING: What is our priority then?

MS. RIGGS: When you're talking about the permitting process -- is that what your question is directed at?

MR. KING: Well, I guess --

MS. RIGGS: Reclamation and that kind of -- operations plan?

MR. KING: Yes. Right.

MS. RIGGS: That's all under permitting.

MR. CHAIRMAN: The reason that I was having this discussion about how the Department intends to respond to these other questions that came up that extended beyond the Board's authority at the hearing when Delegate Stump brought those was to make sure if there are any questions or anything that the Board had that they felt like we need to look into more that we certainly are doing that in an open quorum. It came to the Board. He asked for the Board to make recommendations back. The Department can't extend to the Board authorities beyond the law does but what we are doing is sharing with you in an open forum the Department's intended response to those questions that came up.

MR. KING: So Delegate Stump needs to make some rules in law.

MR. CHAIRMAN: That's why he asked for the response, so that he could judge what, if any, legislative changes might need to be introduced to address some of these issues. And that's why we're trying to go through and address with the regulations what we believe the current statute allows and doesn't allow without suggesting legislation here or legislation there. Just simply

being factual on what comments were made and what the responses are based on what we believe to be current law and current regulation.

MR. HARRIS: Mr. Chairman, on that though we stop short of recommending, don't we, in the comments?

MR. CHAIRMAN: Yes.

MR. HARRIS: We don't say there needs to be -- I don't like -- like an environmental protection act or something like that and something similar in the State.

MR. CHAIRMAN: Right. We're clarifying what the current -- what we believe the current law and current regulation is; leaving the decisions on whether or not legislation needs to be made beyond that to others.

MS. CASHMAN: Section 45.1-361.35 is the section that deals with objections to permits and the hearings. One of the questions that Delegate Stump raised was do citizens need more rights or does the Section need to be broadened to allow citizens more grounds on which to object. He also stated that perhaps the process should be changed to encourage citizens to become involved before any operations are permitted. Currently persons who have standing to object to permits are identified in the Virginia Gas and Oil Act together with the grounds upon which they may object. That's also Section 45.1-361.35. For example, the Act states that

objections to permits may be raised by surface owners if the operations plan for soil and erosion and sediment control is not adequate or not effective. Measures in addition to the requirement for wells water protection string are necessary to protect fresh water bearing strata and the permit work will constitute a hazard to the safety of any person. Surface owner objection rights are also affected by the common law tenant that operators have a reasonable right to use the surface to produce gas. This also touches back to Comment =1 that was on Page 7 talking about that Virginia doesn't currently have a Virginia surface damages act that lays out between the surface owner and the mineral owner. Delegate Stump, again speaking for Senator Reasor, just stated that he felt like in Virginia we needed to find a balance that works between industry and citizens and he asked the Board to look at the areas mentioned to see what, if anything else, needed to be done that he would be happy to introduce in legislation.

MR. HARRIS: You'll probably tape my mouth before too long. Let me ask, in the middle of that is says for example, it states that objections to permits may be raised by surface owners if the operator's plan for soil erosion and sediment control are not adequate or effective.

Who determines if it's adequate or effective? Is that Tom's? Is that the Department.

MR. CHAIRMAN: Tom has to make that decision.

MS. RIGGS: That's under permitting.

MR. FULMER: When the surface owner makes an objection then he states he reason for objection and I have to examine the reasons for objection and compare it to the operational plan.

MR. HARRIS: I don't know. Maybe I'm an idealist. It always seems like it's a reaction to something that's already happened and it just seems easier if you just sit down and say okay, it's going to look like this when its done and then there are no surprises. I don't know.

MS. RIGGS: When they file for their permit they have an operations plan there and a copy of that goes out to all the parties that the statute says to receive that. The parties review that. Then the statute says if they don't agree that that's the way it ought to be done then they're required to file objections with Tom. When he received those objections he then has to have a hearing. He takes the testimony much like we do here and then he enters a decision with respect to the objections, whether to issue the permit, not to issue it, condition it, require a change, whatever. Now, if

they don't like Tom's decision then they file an appeal to this Board and we have another hearing and take that evidence again and there's another look at it at that point. If they don't like that decision then Circuit Court is the next step. So there is a process there where it's laid out up front, there's an opportunity to object, an opportunity for hearing and then a resolution and an appeal process on through.

MR. HARRIS: I guess it just seems to me that a lot of the objections I hear from the citizens are way up front and that it's in the agreements and not understanding the agreements. And that's why I mentioned earlier is there some way for us to recommend that people just be more aware of what's going to happen when you sign that piece of paper. I think that's the thing that bothers me.

MR. CHAIRMAN: How we communicate that out to the public is what you're saying and I think that's the challenge that we have, to try to be able to communicate that to the public because that is where you need to lay the foundation for all of this. That's what the permit application's all about, is to -- and that's why there's public notice and all the public provisions are there, so that there is this understanding of what disturbance is going to take place, where it's going to

take place, how it's going to take place and that there's an ability to interact up front rather than after the fact.

MR. BRENT: Mr. Chairman, who up front -- with regard to the potential soil erosion or (Inaudible.) wells who up front stamps approval for the producer's plan for mitigating soil erosion or (Inaudible.)wells? Does somebody up front --

MR. CHAIRMAN: The Gas and Oil Inspector's Office.

MR. BRENT: So they are, in effect, the Division --

MR. FULMER: Up front, now we're getting -- because I don't approve it. We review it for it's standing.

MR. CHAIRMAN: You issue a permit. When you issue a permit --

MR. FULMER: I'm getting confused because he's talking about one up front and you're talking about another up front.

MR. BRENT: No. I think we're talking about the same up front. When you issue a permit are you not -- have you not satisfied yourself at the time that their efforts to mitigate soil erosion and their efforts to avoid tainting wells is going to be sufficient?

MR. FULMER: Yeah. We review it for compliance with the standards of the Act and Regulation, yes.

MR. BRENT: So you are at that stage -- in effect, you are

representing the surface owner in trying -- attempting to insure yourself that there will be no significant soil erosion or pollution of wells. Is that correct?

MR. FULMER: I'm not --

MR. LEWIS: They have inspectors that inspect those locations on about a weekly or sometimes two weeks basis.

MR. FULMER: I'm not approving the actual disturbance on the surface property to allow or approve that disturbance to occur. I'm not doing that. What I am doing is that if they construct in this manner, it's been reviewed and is in compliance with the appropriate erosion and sediment control practices and procedures -- that's what I'm approving. But I am not approving them to get on the property to make this disturbance.

MR. LEWIS: He's approving the plan that they have is what he's really doing.

MR. BRENT: Let me tell you where my concern comes from -- tell the Board where my concern comes from and you may or may not be answering that. If I were one of these surface owners I'm not sure I'd know whether what you're going to do is going to cause any erosion problems or pollute the well. So why am I going to come to the Board and object? I don't know anything about that.

MR. HARRIS: That's my point. I don't know up front that

that's going to happen.

MR. BRENT: And I think we as a Board need to make sure in our own minds that those people who don't know what ramifications may occur because of this activity on their property somebody's looking out for their interest and they can insure that whatever the producer is going to do is reasonable and is going to minimize any adverse impact on their property. That's why I'm asking is that you. Is that your --

MR. FULMER: That's me according to the laws and regulations that are written. I make sure that they are in compliance with that which is suppose to protect the environment.

MR. CHAIRMAN: The distinction Tom's making here is he's not interpreting lease rights and all those other kinds of things about to the extent --

MR. BRENT: I understand.

MR. CHAIRMAN: That's why he's being guarded in what he's saying.

MR. BRENT: Mr. Chairman, I think the point that I would like to see made to Delegate Stump is that to the extent that we can mitigate adverse impact to surface owners property we do that. Now, the question is do the laws have enough teeth to really protect the surface owners.

MR. KING: But those are not laws that are in this Board's jurisdiction, is that correct?

MR. FULMER: Well, those are to the departmental regulations as far as the actual drilling of the well, the well site construction and so forth which is then through the statutes and to the regulations promulgation process.

MR. CHAIRMAN: Mr. Garbis, you had a question?

MR. GARBIS: Yes. Mr. Chairman, I think there's some things that there's a lot of potential for different views on this because obviously if the operators come forth with a plan and in their mind -- those in the construction industry -- I mean, if we can look at something I can pretty well -- I understand how it's going to look. But somebody who's not a landowner -- they may not be that aburst to it and it's going to look entirely different when the actual thing is done. From the operator's standpoint he's going to look at this and say I need to do this and I need to be here and his mind it's crystal clear. If you're not that familiar with operations of construction the way it's going to come out it's going to come out to be entirely different. They might have agreed to what has to happen but because of the different prospective, the extent of which they may need to clear an area or to level an

area or some many square feet -- I can see there's a lot of potential for that and I'm not sure that -- and I'm sure that both sides having dealt in good faith -- there might just be a natural conflict there because obviously again one is coming from one prospective and another from another prospective. How you effectively deal with that, particularly if you're talking about the restoration of -- in the end I'm not sure how you're going to really get there without more extensive regulations or law. I just don't know how you can do that.

MR. CHAIRMAN: Any other comment on that? Thank you. Cheryl, you want to wrap up?

MS. CASHMAN: Another commenter stated -- this was one of the Buchanan County residents -- that the companies are not doing what they're suppose to be doing. They believed that gas was coming out everywhere, not just off the coal, that it was coming from much deeper. They asked, "If it has not been proven who owns the gas how can the companies be allowed to move forward? It's not just for mine safety. Companies should have to prove ownership." Section 45.1-361.22 of the Code provides that when there are conflicting claims to the ownership of coalbed methane gas the Board upon application from any claimant must enter an order

pooling all interests or estates in the coalbed methane gas drilling unit for the development and operation of the unit. Additionally this section of the Code states that the Board will establish an escrow account into which the payment for costs or proceeds attributable to leased and unleased conflicting interests shall be deposited and held for the interest of the claimants. Without this escrow provision development of the State's coalbed methane resource was not possible. If one person produced the gas and was later found not to own the gas it could have been held liable to the owner. This lead to the condition where the gas was never produced, instead being vented during mining. This was a waste of this usable resource. The escrow provisions allow the gas to be produced and not wasted and protect the interests of the persons ultimately found to own the gas. The next set of comments that we tried to break out were related to the Gas and Oil Regulation. One of the comments we received was talking about Article --

MR. CHAIRMAN: For clarification, it's the Department of Gas and Oil Regulation as opposed to the Board Regulations.

MS. CASHMAN: Right. It's two separate regs. This is the Department's Gas and Oil Regulation which is different. Talking about the closure orders -- these are also the

Department's responses back as opposed to the Board's. Talking about closure orders, does the director's authority need to be strengthened relating to his powers to immediately order cessation of the operations when conditions create or can be reasonably expected to create an imminent danger to the health and safety of the public in regard to trees and brush. Currently the Director has the authority to immediately order a cessation of operations if he finds any condition or practice which creates or can be reasonably expected to create an imminent danger to the health or safety of the public or if he finds any condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air or water resources.

MR. CHAIRMAN: One addition there, we're talking within the permitted area. Those areas are required to be permitted by the law.

MS. CASHMAN: Another commenter again on the Gas and Oil Regulation questioned the erosion and sediment control and reclamation provisions -- this was Delegate Stump -- and asked if the reclamation provisions were strong enough to keep the gas and oil sites beautiful once the operations had ceased. The regulation states that the operator must stabilize the well site, pipelines and

roads. These stabilization measures must be maintained throughout the life of the well and the pipeline. Final restoration of the site begins after the well is plugged and the operations have ceased. The purpose of final reclamation provisions are to insure the land is stabilized and water quality is not degraded from the site after the operations have ceased. The Department believes that the regulations are strong enough to meet these purposes. Release of bond which is Section 1.47 in the Gas and Oil Reg, a question was raised, "Should we look closer at the reclamation more before bonds are released, such as requiring restoration to the land's original contour?" The Virginia Gas and Oil Act does not require specific land uses after operations are completed. Operators are required to plug the well, reclaim the land surface and remove all remaining erosion and sediment control measures. Vegetative cover must be successfully maintained for two years after plugging and restoration. The Department requires full compliance with these provisions before the bond is released. The law and the regulation do not require the land to be put back to it's approximate original contour. Another commenter, a resident from Buchanan County, stated that Consol has gas rights on some parts of his land. The commenter stated that they

came in and totally destroyed the land -- the surface of the land and that he believed that he was left with nothing. He believes the regulation needs to tightened because the companies say, "We have the right to do this and you have no say so over it." The commenter and his wife invited the Board to their home to see the damage the company has caused. Another commenter, a resident of Buchanan County, stated that landowners that have been mentioned this morning are being walked over in the county and their land is being destroyed. He asked the Board to go to the county and look at the erosion problems. He stated that the companies are putting in 100 foot buffers for power lines, that during the 1980s degas wells were not as popular for mine safety. He believes that a lot of the wells are being brought in to put the gas in production and to make money. He stated that there should be a regulation put into effect and some laws changed where there is not so much wells put so close together and come back and look at some of the things that were done back then. He believes we need to look at the way things were done in the 1980s. Another commenter, a Buchanan County resident, stated, "The problem I'm going to be addressing started in roughly 1992 and from what I've been dealing with prior to what's happened to date."

He stated that he has seen the way they come in and the damage that's been done. The Department will look at these comments as we go through and promulgate the Gas and Oil Regs. The Department only has the authority to regulate land use issues that are listed specifically in the Act. These include; to prevent the pollution of state waters and require compliance with the water quality standards adopted by the State Water Control Board, to protect against off site disturbances from gas, oil or geophysical operations, to ensure the restoration of all sites disturbed by gas, oil or geophysical operations, to prevent the escape of the Commonwealth's gas and oil resources, to provide for coal and mineral mining safety, to control waste from gas, oil or geophysical operation, to provide for the accurate measurement of gas and oil production and delivery to the first point of sale and to protect the public's safety and general welfare. The Department does not have the legal authority to regulate other issues affecting the use of the surface and land. Additionally the Department does not have jurisdiction over power lines developed to serve coal mines and gas wells and cannot address issues related to their construction and operation. Another commenter, a Buchanan County resident, stated that the regulations

should be tightened because the companies are affecting people's water. The companies are getting the gas and getting the money for the gas. The commenter believed that they should be the one to pay for any damages they cause. Another commenter, a Buchanan County resident, stated the company has drilled on the north side of his and his parents property and now they want to drill on the south side of the property but it's impacting their water. He stated that there are big high walls that are very steep. He further stated that clouds of fumes from the operation which were liquid Nitrogen are seeping into the houses without warning. They are never warned by the company. They want to save their water which now sometimes has an oily film on it. Again the Department will look at these when we promulgate the Gas and Oil Regs. If the commenter knows of instances where a gas operation has affected water quality we would encourage them to contact the Division of Gas and Oil in Abingdon so that they may investigate the complaint and take appropriate action. However, Section 45.1-361.29.E.2 provides that the applicant has the right to conduct the operations as set forth in the application and operation's plan and that some of the other practices raised by the commenters may be approved under these plans. Another

commenter, a Buchanan County resident, stated that the company came to her asking her if her husband was an heir to the land. She said yes and he asked her to sign a paper stating such. She did. She then received a letter stating that she had signed all of the rights to come on me and he never even named nothing. If the commenter believes that she did not sign over her gas rights or that her signature for lease or sale of the gas rights was fraudulently obtained then she must bring a civil court action to challenge the instrument. Such a private contractual relationship is not subject to administrative review by the Department.

MR. CHAIRMAN: Thank you, Cheryl. Any questions or comments? This would constitute, subject to the Board's concurrence, a response to Delegate Stump based on his statements made to the Board. Do you have anything you wish to clarify, add or question regarding these responses?

MR. BRENT: I've got a couple of questions. Did we hear -- we were invited to come out there and look at some of these problems. Did the Division go out there?

MR. CHAIRMAN: Yes. We're continuing to do that. I accompanied a tour that Delegate Stump and Senator Reasor organized with the citizens. We spent one twelve hour day going around site by site. We have

another tour set up for next Tuesday, the 24th. We'll be doing that until we review every site that the citizens have requested that we look at.

MR. BRENT: It seems to me that the Division does have some control over these environmental issues but, as you just pointed out a minute ago, only in the permitted area.

MR. CHAIRMAN: Within the permitted area, yes. So there's things that people have complained about such as the felling of trees along power lines that the Division is not -- it's not a permitted area.

MR. BRENT: Was it access roads to the permitted area?

MR. CHAIRMAN: The access roads are permitted. Yes, they are. The bigger issues that were pointed out regarding the way the site looks were the felling of the trees along the power lines and the other was wind rowing techniques. That's another issue that we are address-ing. There are a number of sites out there where trees were cut and just pushed without saving the timber. It wasn't a brush barrier. It was a tree barrier. And we're taking steps to correct that and get it to where it's intended to be an erosion control method. It was serving to control erosion but there was some waste of timber that we're hoping that we can -- and the company's working with the local folks

better to try to address that.

MR. BRENT: So there is some relief we can help with on some of these concerns and to the extent we can we are?

MR. CHAIRMAN: I believe that to be true and I think the company's taking steps to do that as well.

MS. McCLANNAHAN: Can I ask a question?

MR. CHAIRMAN: Yes.

MS. McCLANNAHAN: I was just wondering who does Mr. Fulmer, I guess, answer to or who's above him that makes sure that he does his job or what he's suppose to do?

MR. CHAIRMAN: Mr. Fulmer is a division head -- one of the regulatory division heads that report to me. And I report to Gene Dishner, Director of the Department.

MS. McCLANNAHAN: Some of the issues that Mr. Stump brought up as far as the trees over the hillside and all that -- if it's in the regulations that they're not suppose to be there then he's suppose to see to it that basically the companies that are involved in the production of the gas -- that they follow these rules and regulations?

MR. CHAIRMAN: It's his and the Inspector's responsibility to insure that the law and regulations are followed, yes.

MS. McCLANNAHAN: So if it's specifically written in here that that's not suppose to happen and it has shouldn't

there be some type of written violation or something like that?

MR. CHAIRMAN: If it's a violation of the regulations, yes.

MS. McCLANNAHAN: And also talking about restoring the land, it just has in the regulation that it has to be compatible -- species that are compatible with the area.

MR. CHAIRMAN: Right.

MS. McCLANNAHAN: Shouldn't there be something in that that kind of puts back the natural vegetation like the wild flowers and those things instead of just grasses?

MR. CHAIRMAN: That's up to the public -- she's talking about the Department rules and regulations now and that is open for public review right now.

MS. CASHMAN: Not quite right now. We've got two regs -- well, we're finishing up one reg and we're just getting ready to start the other one. As an agency we have to go through and take the regulation and submit it to get an economic impact analysis done and all that kind of stuff. We have met with planning and budget just last week to go over that and to answer some of their question about the regs and things like that. So when we get that back that one will opened up for public comment. That's one of the reasons why on the response document, for those of you that got a copy of the

package that was sitting up here, we said that we would look at some of the issues that were raised at the public hearing that was held a couple of months ago on the Board reg at that time because that's where those issues are.

MR. CHAIRMAN: So there will be a full opportunity for public review of those comments and a public hearing.

MS. McCLANNAHAN: Thank you.

MR. McCLANNAHAN: Would it not be good for Mr. Fulmer to accompany the tour that they're going to have next Tuesday?

MR. CHAIRMAN: He will be there. He was out of town at the last tour. But one of the inspectors was on the tour.

MR. HARRIS: Mr. Chairman, let me ask something again related to trees. When we talk about disturbance of property, is there nothing to be done with trees? Are they usually -- I don't know and that's why I'm asking. Are they generally just pushed to the side to make the right of way for the road or the power and they're left there? Is it not financially feasible to have somebody who harvests trees or cuts them or whatever to just follow behind the guys or women or whoever?

MR. CHAIRMAN: When I'm responding I'll respond to what's been told. As I've been told, a lot of citizens prefer to have them left for firewood and other

purposes. Typically what I've seen is a variety of things, but in the ones that I think are a more suitable situation is the tree trunks, if you will -- I'll call them tree trunks -- the limbs have been cut off. The trunks are left in a place, placed in a pile where they could easily be either retrieved for sale or used by the landowner or whatever and that the trunks and the limbs have been pushed into a wind row for erosion control.

MR. HARRIS: Ms. McClannahan had a question about the species of trees. Are trees not being planted that were there? If there were pines there originally are you suggesting there weren't the same type planted?

MS. McCLANNAHAN: I'm not sure about every site, but generally what happens is I think they sew it in grasses of different kinds. That what I've seen in the area.

MR. HARRIS: That's what stabilizes the soil.

MS. McCLANNAHAN: I know. But before they go in there there's (Inaudible.) Those are -- some of those are not, per say, endangered but they are valuable to the area and they are native. So it doesn't specifically say that you have to restore it to it's original contour but it says it has to be compatible. The grasses might be compatible but there's nothing that

was there before. There are some trees that are limited not just to our area but to Virginia. And those are not being put back.

MR. McCLANNAHAN: In our woods the Oaks, the Hickories, I don't know if those have been replanted.

MR. HARRIS: One of my concerns, and this is probably unrelated to the regulations at the moment, but I talk to people who do clear cutting and I wonder why it is that they never plant trees. And what they said -- and I even talk to foresters about this. Why don't we just sew grass. Their comment has been -- and these are even the State foresters saying, "Well, we let nature decide what's going to grow there rather than go back and replant trees." They say, "Nature knows best what grows. So it just regrows."

MS. McCLANNAHAN: That's exactly why it was there before, because nature decided that it was there.

MR. HARRIS: Well, I'm not real happy about that either because I like the wild flowers and all that. I don't know how you -- because most of those don't transplant. I don't know how you would --

MS. McCLANNAHAN: They transplant very well if you do the proper things.

MR. HARRIS: Well, I hate to bring this up but who's going to pay for Trillium and transplanting it? The reality

is is who's actually going to actually dig it up and put it there. It would be nice.

MS. McCLANNAHAN: Well, that could be involved with the community. That's one economical benefit to the community.

MR. CHAIRMAN: Any other comments or questions? Does this serve as something that you deem appropriate to respond to the legislature?

MR. KING: Mr. Chairman, I think that this is something that Mr. Stump and Senator Reasor need to look at. Maybe there are some -- the law needs to be strengthened. I recommend that we refer it to them. I so move.

MR. HARRIS: Second.

MR. CHAIRMAN: A motion and second. Further discussion? All in favor signify by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.) We'll take a five minute break and let Tom set up for the presentation on Board orders and issues of compliance.

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

ITEM II AND VIII

MR. CHAIRMAN: The next item that we're going to here is a staff report. Tom Fulmer is going to present a status of Board orders and issues of compliance to Board orders particularly regarding the order issued by the Board, VGOB-91/05/21-0126. This was CBM unit Z-12 in the South Grundy District, Buchanan County. We continued this from May. Tom, the floor is your's.

MR. FULMER: Mr. Chairman and members of the Board, I apologize. I was absent last meeting of the Board and these two items -- there's two items that came up on the agenda before the Board and that involved Item II and along with Item II was the NELW-10 issued in regards to return of the funds. That was part of it. I'd like to address those two issues first and then we'll go on to staff the Board because it has some variance in the rest of my presentation. As far as the Z-12 -- in my document that was handed out -- we had received a letter from Mr. Don Johnson who was representing several members of the Z-12 unit and through him we found out that money had not been deposited in regards to conflicting claimants in that unit. We followed up on it and we worked with the unit operator at that time, Consol, and so forth and got that money

deposited. Like I said, the original designated operator in that unit was OXY, USA who -- it's successor is Consol, Inc. Through transfer of unit operatorship this particular unit was transferred. The petition was done in 1991 and the order was approved in 1991 and recorded in 1991. The supplemental order was approved in June of 1993 and recorded on June 10th. The first production was reported in 1993. Again we followed up with Mr. Johnson on this question and inquiries on this particular unit and had that particular money deposited in accordance with the conflicting claimants going all the way back to production in 1993. In relationship to that inquiry by Mr. Johnson there were several questions raised by Mr. Johnson in several letters and one of them was the specifics on the unit and the application which we answered. The other was relevant to some questions in regards to costs, post production costs or post well drilling costs. These were the deductibles or things that the Board had approved in past orders in regard to transportation costs, taxes and so forth of that nature. I sent Mr. Johnson a copy of the transcript from the Board hearing in October, 1995 when the Board held it's hearing at the Breaks Interstate Park. That was a document dealing with royalty calculations. Maybe some of you

remember it. I gave a lengthy discussion in regards to the different types of leases and royalty calculations based on deducts and post well drilling costs. I also invited Mr. Johnson to petition the Board if he was unsatisfied with the way the Board was handling his post production costs and at this time we never received a petition from Mr. Johnson. He did in his last correspondence with me wanted me to inform him if the Board should want to take this issue up again at some point in time and I said I would follow up on it if the Board should do that. He'd like to be involved in those discussions. That was involving the Z-12. It's significant on the Z-12 because at that point in time we normally tracked what the Board had done and what the Board had signed but not particularly the escrow accounts. It will come relevant to me as we go along in this discussion of why we wasn't up to that point looking at this. At that point in time we did start our audit on the escrow accounts and the Board orders in regard to the escrow accounts. Typically on a follow-up on the NELW-10 there was a question at the time when Hugh MacRae and Garden Realty came before the Board with a voluntary agreement among those parties to have the funds released in accordance with their percent of interest in the units. They had come to a

mutual agreement. Prior to that during it's audit -- the staff's audit -- we ran across several orders. One of them was the NELW-10. When we looked and examined the record on the NELW-10 we looked at the supplemental order which I have a copy and copies for the Board members to look at as we talk through this. (Pause.) On the NELW-10 we looked at the supplemental order and the requirement after the elections of what the supplemental order said. If you look on the back sheet when we examine this file you'll notice they have a listing of tracts in that unit that are conflicting in nature. They each have stars beside of them. And if you look at the subtitles down below giving the definitions of what those stars are and what they meant you will notice that the signed supplemental order -- and this is the one that was recorded -- says under three stars total to be escrowed by Virginia escrow agent - zero. Also there is another comment there, total to be escrowed inhouse due to conflicting claims. So at this point in time if there's not suppose to be any money in there there shouldn't be any money in there. So we asked the escrow agent to return it. Now, at the same time this was going through we informed the unit operator of this. He submitted -- the unit operator at the time submitted a revised

supplemental order and we tried to get clarification on that supplemental order and did not receive it. This was brought up in the Hugh MacRae and Garden Realty section when the Board met. They followed up with a supplemental order. We now have a supplemental order signed -- a new supplemental order signed in regards to this. This is the old one. This is the first one that was done in 1993. So those funds hopefully are in there and need to be disbursed.

MR. HARRIS: Tom, let me understand you correctly. When you say "in there" the funds are now with the escrow agent?

MR. FULMER: With the escrow agent according to the new supplemental order.

MR. HARRIS: So then that total should be zero then, inhouse?

MR. FULMER: Yes and no, because as I go through the rest of the explanation of some of the Board orders it will become quite evident that there's some kind of use used that the Board may or may not want to address that I want to bring to the Board's attention in regards to some of these supplemental orders and some of the Board orders for their consideration. I wanted to clarify the NELW-10. Our actions were taken duly upon the process of the supplemental order that there was not suppose to be money in there and there were money in

there. The next thing I'd like to go to if that's all right -- are there any questions on that?

MR. HARRIS: One last thing about the one, two and three stars, these -- let me wait and ask that later. Let me let you finish. Go ahead. I'm sorry.

MR. FULMER: Any questions?

MR. CHAIRMAN: Go ahead and get further into it and then we'll take questions.

MR. FULMER: The first thing I want to do is hand out to you a copy to follow along on my presentation. In the packet are some revised sheets that were given to you at the last hearing and we'll be going over those. (Pause.) One thing I want to bring the Board's attention to is the fact of what time does the Board spend on what part of its responsibilities and duties. This is a breakdown of the number of the hearings that the Board has held and the type of hearings the Board has held. And out of that there has been a total of 576 hearings all together. If you want some hard figures under transfer we've had one transfer and it was a very large transfer. That was from OXY to Consol. We've had basically two civil charges. We've had twelve hearings on appeals. We've had 18 field rule hearings. We've had 92 location exception hearings. We've had 128 conventional gas pooling

hearings under Section 21. We've had 323 under the Section 22 pooling hearings involving coalbed methane. As you can see, over 78 percent of the Board's hearings have been conducted on pooling applications which is a large percentage of what your duties, I guess, responsibilities -- what it has done. I thought you'd like to see that and see how important these poolings are and the percentage of time the Board spends on pooling.

The next thing I want to do is to bring up some issues in regards to our audits just merely want to present to the Board as points of discussion. It may not be relevant. You may not want to discuss it, but these are things that when we did conduct the audit that we had questions about, that we may need some guidance from in our future dealings with the Board orders and the field orders. The first one is the orders which have expired. There are a number of these and these are all captioned in the last five sheets of that handout which is a spread sheet which lists all the Board hearings that are active. I want to say active in the nature that these are Board orders that have been filed, that have been recorded, and onto grantor and grantee sheets in the different counties that these Board orders have been filed. So they are against the deed books and they're there. These orders have not

been dismissed. They haven't been vacated. They're there. So the listing in the spread sheet -- and we'll get to the spread sheet -- will denote these ones that have expired for various reasons over the years, why they have expired. The next thing that I want to bring up is the supplemental orders. The supplemental orders -- we have various supplemental orders that are filed by various companies and the various supplemental orders are done different by various companies. They're not consistent in how they're laid out or how they interpret the supplemental order prior to submitting it to us for examination. In other words, there's terms that are listed in the supplemental order as conflicting owners. There are terms used as conflicting claimants. There are terms that are used as lease ownership and they've got terms as fee ownership and use terms are deemed to have leased ownership. So various companies do record the supplemental in various different ways as far as when it comes to us. I think more or less what I'm talking about here is consistency in the supplemental order and how these companies are to submit their elections process in the supplement order and how they are to be listed. The third topic is the audit of accounts and we're in the process with our purchasing arm of DMME which is our office's

(Inaudible.) general services to secure an auditor to audit these accounts as the Board wished. I haven't confirmed that yet but as soon as I do I will get back to the Board. This is a very important from my prospective on the audit accounts. There's a certain amount of questions in regards to what money should be there, how much money should be there in accordance with the production. The way the system works now the unit operator submits the amount of money required under the order -- submits the amount of money to the escrow agent. Now, where that's the correct amount of money I have no idea. There's no way of telling that. And it will become pretty evident later on when you're talking about Oakwood II orders and that is the most difficult one to determine. Violation of Board orders is an issue. We've looked at several of the orders and whether or not the unit operator is in compliance. We have issued letters to them to bring them in compliance and issued NOVs in regards to whether or not they're in compliance with the Board orders. Five -- and I put this down basically as a clarification issue. What is a conflicting claimant? How is the term conflicting claimant to be defined and who belongs to -- who is in that group of conflicting claimants? There's not a working definition in the law or the regulation in

regard to what a conflicting claimant is. And when the Board orders require that all conflicting ownership or claimants are to be escrowed then when you get a supplemental order there's different terminology for conflicting claimants. So that's where it varies. The sixth item I put down is a deemed to have leased. We have generally under the statute -- under Section 22 a deemed to have leased situation and that is basically derived from the fact that you have unknowns and then you have conflicting claimants that may or may not lease or you've got heirship that may or may not lease. So under the -- because of the ownership issue under 22 this creates a problem. Now, under 21 there's not really a deemed to have leased because there people are unknown or they're known. So this is an issue especially when it comes to determining in the supplemental order whether these funds are to be -- even though they are deemed to have leased are they to be deposited. I've got a six and six. It's suppose to be a seven. Sorry about that. The next issue I put forth is about voluntary agreements under Board orders. This is an issue that I don't know how the Board may want to approach it. There may be no answer to this. In voluntary agreements what we end up having is at the time the supplemental order is filed then the operator

has reached either agreements with both conflicting claimants and have signed leases and therefore it becomes a voluntary agreement. This comes back to these conflicting claimants. Does it take them out of the issue of being conflicting claimants at the time the Board order is filed? I don't know. That's a question maybe the Board may want to discuss in regards to -- because with supplemental orders we do see where these parties have been leased. Both parties have been leased and then there are not any (Inaudible.) into the escrow account -- those people to be escrowed. The seventh -- and this is an issue that basically I want to put forth. In a lot of the Oakwood II orders and when we have had recent orders where the petitioner would come in and past orders and they've come in and got an Oakwood I or Oakwood II. Since the law was basically based upon the fact you have one well per unit and during the evolution of the Board and the types of situations that exist the accounting portion of determining what is to be escrowed or what royalties are out there followed along in the Oakwood I. But when you got to the Oakwood II there may or may not be a well drilled in that unit. That gas is then allocated cross and most of it, as you know, is across the panel. We don't know or we can't determine how much

gas is allocated in that particular unit. In other words, what I'm saying is was it 100 MCF for that unit that month? We don't know. There's just plainly no way of tracking that. Now, most of the horizonal -- we have horizontal drilling underground. We have production being taken out through a bore hole. We've got accounting of a bore hole production but that would cover that whole panel. It don't break down the whole unit situation. So that becomes a difficult determination when you're trying to audit some account of how much production or how much royalty should be in this escrow account. Then I've repeated myself again on the audit of accounts. I think this is a necessary thing to determine exactly how much money should be in that account and that's one we're working on. The next thing I want to go to is the spread sheets I passed out to you. It will take me a minute here to get to the file. (Pause.) The spread sheet you're looking at is revised from the last meeting when I think you more or less cleaned up. I would be the first to admit that I'm not -- this is an ongoing process to make sure that everything is correct and where it's suppose to be. So I can't say 100 percent sure or 100 percent that this is in its final form. But it's about 98 percent. On the different categories listed on the

spread sheet you have the order number which is basically the order it's been assigned to -- the order number it's been signed to. You have the applicant, you have the type which here I'm only dealing with forced poolings. You have the file number. Now, this file number is in relationship to the unit. If there's a well drilled in that unit then that's one of the file numbers. Now, we use this file number to track down production in our files to see when and where this well began production so that we can determine some part of when escrowing should have been conducted or been deposited with the escrow agent according to the date of production. Then you have the operation's name which is the well name, order and then signed and that is the supplemental order. That's when the supplemental order was signed and when the escrow account should have been established. Also I have a column listing production which is the first month of production for each of these wells that we do know of and can relate back to that Board order. The next column is for funds, whether or not there's funds in the escrow agent's account for that particular order. And then you have a general comment section where we've attempted to look at the supplemental orders and give you the determination of what we do see there. The last is a

CORRECTION

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spread sheet you have the order number which is basically the order it's been assigned to -- the order number it's been signed to. You have the applicant, you have the type which here I'm only dealing with forced poolings. You have the file number. Now, this file number is in relationship to the unit. If there's a well drilled in that unit then that's one of the file numbers. Now, we use this file number to track down production in our files to see when and where this well began production so that we can determine some part of when escrowing should have been conducted or been deposited with the escrow agent according to the date of production. Then you have the operation's name which is the well name, order and then signed and that is the supplemental order. That's when the supplemental order was signed and when the escrow account should have been established. Also I have a column listing production which is the first month of production for each of these wells that we do know of and can relate back to that Board order. The next column is for funds, whether or not there's funds in the escrow agent's account for that particular order. And then you have a general comment section where we've attempted to look at the supplemental orders and give you the determination of what we do see there. The last is a

recommendation column. In regards to today's -- what I'd like to present to the Board today is those orders which either for some reason the well's not been drilled, that there will be no production or it's just plain expired -- the Board order expires by itself. Again I want to emphasize the fact that these are recorded in the courthouse and I feel there's a need to be some kind of mechanism to dismiss these out of the courthouse basically.

MR. HARRIS: Tom, an example is the first -- were you going to give examples or can we just ask questions now?

MR. FULMER: You can go ahead and ask questions any time now.

MR. HARRIS: Take the first item there, the first one listed, it's an EREC well. If you go across you'll notice that it has a drilled date, operation's name, order, signed and then nothing else. What's the status -- how do we know when we read this what that well is doing? Is it just idle? There's no production date.

MR. FULMER: On this particular one it related back to the Board order. This is a pre-90. All Board orders at that time did not allow for the escrowing. It involved internal escrowing. These are all carried operators. That was their choice. So there was never another -- a choice to be made. Either you participated or you

became a carried operator.

MR. HARRIS: Now, in terms of that order that order's still outstanding?

MR. FULMER: That order is still outstanding.

MR. HARRIS: But it is or is not in production? I mean, we don't --

MS. RIGGS: Well, if it's a conventional unit and there are no unknowns or unlocatables there would be no escrow because you don't have a conflicting claimant situation.

MR. HARRIS: I wasn't asking about the escrow. I agree we don't -- if they agree among themselves that they're going to do the drilling, handle this as a carried operator and whatever, I guess my question is where does that order stand now? Is that one of them that's in the courthouse that' still "open" that they are still producing from or is that just a dead well and it's just on the books and we haven't done anything? Is this one of the kinds of wells you're talking about?

MR. FULMER: It doesn't have production but I'm sure it does have production. It's just not there. Here I was looking more at what is in the escrow account and what needed to be escrowed. The reason I threw these up is these are still active Board orders. The problem with these type of orders is that it's all internal escrow.

If the Board order requires that it's an internal -- the unit operator set up an internal escrow.

MR. HARRIS: So we're basically hands off on that except for some regulations about the escrow --

MR. FULMER: That was a pre-90 type but it's still an active order.

MR. KING: If it's inhouse it means there's no pooling?

MR. FULMER: Well, there's pooling -- there's a pooling order but what the order said was that people had to make elections and then those elections could be four things. Either you sell or lease, depending on your situation either you're subject to a 300 percent penalty. In other words, if you were an operator who had a lease that was being pooled you become that type of operator and you make that election to either participate or not to participate. Or you become 200 percent where you can participate with a 200 percent penalty and then the fourth option was that you -- you simply become a carried operator. In other words, your royalty is to be taken out until you've paid your percentage of the cost to drill the well.

MR. KING: So if it's pooled inhouse who audits that and makes sure that's there?

MR. FULMER: I assume the company does.

MR. KING: Nobody does for this Board?

MR. FULMER: No, because the Board order required an internal escrow and they're responsible for that internal escrow.

MR. HARRIS: But we don't go so far as to dictate what percentages go where? Do we look at that? Do we have any jurisdiction over there? I guess I'd have to look at one of these orders to see what kind of provisions there were back in 1989.

MR. FULMER: It's quite different than the ones after 1990.

MR. CHAIRMAN: The only way it would come before the Board is if a person who was aggrieved by any payout or any provision and would come before the Board at this point in time unless we changed -- made some provision of change which we would have to set for hearing.

MR. HARRIS: Let me go back to my original question and make sure I understand that. The original was what happens with this particular order if it's -- 1989, that's eight years. Is the well still operational?

MR. FULMER: The well's still operational.

MR. HARRIS: So we just leave it as active then?

MR. FULMER: Yeah. That's the only thing I can do because -- that I can think of because it's still an active Board order. It sets up the unit. It sets up the people who are in that unit. It sets up everything like a normal Board order would do except for the fact

that at that time it required an internal escrow of the funds that contributed to those people who have not leased or who ever made the election, whatever election they made.

MR. HARRIS: I guess the question that I raised was in recommendation if there's nothing there -- maybe this is a general question for all of these. If there's nothing in the recommendation column we are to assume that they're still active?

MR. FULMER: Yes. You'll see that you do have several of those. Now I want to go down to the next one down which we made a recommendation to dismiss. The reason we made the recommendation to dismiss there is the well was never ever drilled. The Board was out there, the well undrilled. There's no production from that -- under that particular order. Now, later on -- and you'll see as time goes on, I'm sure, that Consol -- mostly Consol, PGP maybe, how ever they work that -- will come back and ask for a pooling order on that particular unit. But under this particular Board order it expired according to the Board order.

MR. SWARTZ: Getting into some BPC units, C-36 and then there's a group as you come down, if I'm not mistaken those are all units that there's circuit court actions pending in Buchanan County arising out of a dispute

with Ashland that the circuit court -- ten of those orders, and I don't have that file with me but these numbers look familiar. In ten of those wells the circuit court entered an order stating the expiration of the order and I think we have been here on some trip with regard to those. There are ten orders -- Buchanan Production orders that are old orders from 1990/1991 that are still the subject of litigation. I am happy to report that recently we settled that litigation with Ashland but there are other parties involved that's going to require a dismissal. There are pending court cases. And the problem that Tom has and frankly the clients have here in reconstructing this is in some instances people have just dropped the ball. And this audit is a good idea to get Tom's records current and to get the companies records current. Les has been working with them and I'm sure EREX is working with Tom as well. In other instances the paperwork is correct and it's right but we've got litigation pending. This is an example I'm just giving you. And we all need to get on the same page. So this is a good exercise. But at least with regard to these, Mr. Harris, these initial ones here we're talking about, the reason those have not been drilled and were not dismissed is actually there's pending litigation. There are ten

wells involved. Litigation is still pending.

MR. HARRIS: Should we have pending litigation there rather than dismiss?

MR. CHAIRMAN: If those are the ones.

MR. HARRIS: Well, I'm not saying these in particular but I guess I'm trying to help you at some point -- when I look at this and I want to see what the status is right now and I go over and there's a blank space then I'm assuming that it's still active. If I see dismiss I assume that it was never drilled or --

MR. CHAIRMAN: That's right.

MR. FULMER: I feel and this is an overall statement that when you go through this work sheet there's going to be other instances of different situations. This is a discussion document as far as I'm concerned. People are going to have to come back to the Board and explain these things because there's no record showing in our file that yeah, these are under litigation.

MS. RIGGS: I can provide you with a list to post on here of exactly which cases are on appeal because I've got that in my office.

MR. HARRIS: It would be nice to have to so all of us will know what the status is at any given time.

MR. FULMER: That's why I say this is a working document -- a continuous working document.

MR. HARRIS: I didn't know how many options you had for that column. I guess whatever you want to put in at different levels.

MR. FULMER: Right. Again, I wanted to present this to the Board and we hope to continue it as a working document and update it as we can on future Board hearings in this regard. In respect to what Mark was saying, yes, it's probably true. What we have of record right now is under that particular Board order the well wasn't drilled.

MR. HARRIS: And that's all you can say.

MR. SWARTZ: Which is also true. I mean, that's correct. It's just that it wasn't drilled because of the litigation.

MR. FULMER: That's why I say that many of these are going to bring up different issues, different situations that may need to be explained to the Board and the Board asks those questions and we can resolve it.

MR. HARRIS: Thank you.

MR. CHAIRMAN: What we're trying to accomplish is a audit-able trail that will show for every Board order the status of that order and to keep it clean so that when ever a Board order lapses due to time from a well not being drilled, for example, that this is an action that's taken to remove that from the record.

MR. HARRIS: But these have not been removed because they're in litigation. That's what I understand you're saying.

MR. CHAIRMAN: A Board order even though we may not have taken action on those where they've not drilled -- not the ones in litigation but the ones where no action is taken, the law makes them lapse anyway. But we still have them on the record in the courthouses and we believe that there needs to be some action follow-up by the Department through the Board to get those off the record for other parties because when you go in there it's going look like you've got a Board order out there when, in fact, you don't have a Board order.

MS. RIGGS: Let me ask a question. Bonuses are being escrowed under these orders. Could you have a situation where there will be money in escrow but the well was never drilled?

MR. FULMER: I can't answer that. For instance, we have the T-32 which tells what the docket number is. This is docket number 154 if you follow the list down. And this is the T-32.

MR. HARRIS: Which page?

MR. FULMER: We're on the first page.

MR. CHAIRMAN: 154, if you can down and follow it.

MR. HARRIS: On the order numbers. Okay. Buchanan Production Company?

MR. CHAIRMAN: Right above EREX.

MR. HARRIS: Okay. Thank you.

MR. FULMER: We have the T-32. There was money deposited in that account but the well was not drilled.

MR. KINGS: That was those dollars, though, wasn't it?

MR. FULMER: Huh?

MR. KING: The dollar they say --

MR. FULMER: Probably the bonus and whatever else was done at the time. That was one of them. So you do have that occurrence where you do have funds in there. And there's not that many but there are a few in regards to where money had been deposited and the well was never drilled.

MR. KING: So when you say dismissed and disbursed you've disbursed that money?

MR. FULMER: Once you dismiss the order then you've got to do something with the funds.

MR. HARRIS: Do we have any regulation that says what has to happen to those? In the case of a bonus is there anything?

MR. CHAIRMAN: No. No, we don't.

MS. RIGGS: It's regulated by the Board order itself.

MR. BRENT: Tom, on these ones where you're recommending dismissal how do you come to that conclusion -- to that recommendation?

MR. FULMER: Well, the Board order itself requires them to do activity within one year of the Board order which would be drill well or production activity. This becomes much harder when you're talking about an Oakwood II where you have no record to go back on on the well. So most of these are based upon the fact that the well was never drilled. Now, when you look at these spread sheets you'll also see later on where Consol has come back and agreed -- pooled under an Oakwood II the same area. But these orders were originally Oakwood I orders.

MR. BRENT: In arriving at your recommendation are you looking for any extenuated circumstances such as litigation?

MR. FULMER: No, no. This is just strictly what's in record that we have.

MR. BRENT: Shouldn't we do that before you make a recommendation?

MR. FULMER: Well, a lot of times those circumstances are outside. In other words, some of this litigation is between the two parties outside the Board order. So the Board order was never -- in some cases -- and Mark might tell me I'm wrong, but in some cases the Board order was not an issue. It was just an argument between the parties.

MR. SWARTZ: That's possible but there are 20 cases pending in Buchanan County Circuit Court for sure that either the Department or the Board is also a defendant along with my clients. There are probably more. The point, though, I think in response to your question of Tom -- and I think this is happening and I would hope it is happening -- this audit certainly myself and my clients think this is a good idea. That everybody needs to get this kind of a track in a centralized place up to speed. I would hope -- and I think this is happening -- that Tom's office is interacting with the various operators in terms of this is where we think this unit is. We think it's a candidate for dismissal in cleaning up the courthouse records. And I think this has been happening from talking to Les and this is an ongoing thing over the last month or more.

Z-12 started it and I had some interaction with Sandy and Tom with regard to litigation that pertained to the Z-12. So I think that there needs to be a dialogue before it gets dismissed because there are sometimes reasons or the ball's been dropped and the operator needs to do something. As long as that dialogue is occurring I think this needs to happen.

MR. BRENT: That's exactly where I was heading, is that dialogue does need to be there before a recommendation

is made to dismiss it or do anything really.

MR. FULMER: To answer your question, as far as this particular spread sheet goes this is a discussion document as far as I'm concerned. We'll update it as it comes about. If Sandy gives me -- we put that in the comment column. I can't emphasize what a job it is just to even get to this point. You've got several documents. You've got several things that's gone on. You've got different ways -- you've got the Oakwood I and the Oakwood II. When you get over in the spread sheet you'll also see where a previous order was amended and we had to run that trail all the way to what order is really in effect at the time. So to answer your question -- I'm not sidestepping your question, but I think we will make the modifications and relate this back to the Board on a continuous basis to update them about what's going on.

MR. CHAIRMAN: I guess the bottom line here today is you're doing this as a presentation and not a request to dismiss these orders at the present time.

MR. FULMER: No.

MR. BRENT: And I understand that.

MR. CHAIRMAN: That's what he's getting to here. We're getting to the point of trying to set up a process of interacting with people so that various topics that he

listed -- that we have direction from the Board and that Tom is able to move in interacting with the companies to come back to the Board to get the record clean.

MR. BRENT: And that's my point. I think the point has been made if you're going to come to me and ask me to dismiss something I want to have some assurance that everybody that's involved has had some input and knows what is going on before we're asked to do that.

MR. FULMER: That's what I hope to do, is to come to the Board at the hearings and say these need to be dismissed so that we can get orders done. Again, like I said, I just want to present this to the Board to see -- to let the Board know the various situations that have come up and the various issues that may be involved. And not to degrade the dismissal part of it, there are some that are clearly that have no litigation to them at all that need to be dismissed. I'll come back to the Board next month and present those as we go.

MR. KING: One quick question, Tom. If a company like OXY is no longer in existence and it's now Consol, did they assume those responsibilities inhouse?

MR. FULMER: The responsibilities, I assume -- and I'm not going to speak for that agreement but the unit operato-

rship was transferred to Consol from OXY.

MR. SWARTZ: Right.

MR. FULMER: So, yes, they would.

MR. SWARTZ: Right. Part of the arrangement -- most of you weren't on the Board then, I don't think. I think Bill was. Part of the Board's concern at the time that transfer occurred was that Consol understood that it was going to be the operator and have the ongoing responsibility to assure that these kinds of issues get straightened out. I don't think there's any issue there. There's never been an issue that they stepped into the shoes of OXY. OXY provided some pretty (Inaudible.) records with regard to the wells at the time of the transfer. And there were a lot of wells involved and some of the problems on this spread sheet which Tom and Les are trying to resolve were things that OXY had started and Consol assumed they had finished that summer when this happened and it didn't get finished. So we're going back and revisiting -- some of that stuff -- Consol certainly is of the view, as demonstrated by their conduct, that to the extent there were problems during OXY's watch we're resolving. So we're not in here saying that we don't have some obligation to make some of this stuff right.

MR. FULMER: One point of clarification on this spread

sheet. You don't see Consol or OXY listed here. That's because Buchanan Production Company is the unit operator.

MS. RIGGS: The applicant is Buchanan but the operator would be Consol under a designation.

MR. FULMER: I understand that. I understand. That's why I've got it listed as Buchanan Production Company.

MR. GARBIS: Is it the intent that you get some direction from the Board as far as proceeding in researching out each of these several areas that you've indicated?

MR. CHAIRMAN: Right. That's what I was going to take him back to. On this first one basically I think first when we get things like applicant names we really ought to clarify who the applicant -- who's the operator that's been approved by the Board. It ought to accurately reflect the operator. And this doesn't.

MR. SWARTZ: I think in every application filed by Buchanan Production Company Consol is currently the operator. You just need to remember that. I mean, I wouldn't add a column.

MR. CHAIRMAN: I wasn't trying to add a column. I was just saying we need to decide not to mix apples and oranges. If you have who the operator is then that's all you list on here.

MR. SWARTZ: So not even list the apples.

MR. CHAIRMAN: Right, because the Board is approving the operator of the unit. I'm just getting the Board's approval. Is there any other comments, I guess, on these spread sheets other than the ones we've had? Then I plan to take you back and talk about some of the other things here. What we want is a spread sheet -- and as you reflect on it if you come up with ideas for next hearing. We want a spread sheet that anyone can look at and see the status of what's going on.

MR. SWARTZ: One other comment. I might suggest we sort our spread sheet by wells because if you're looking for a particular well it's alphabetical -- by well designation it's pretty quick to find. You might consider maybe having this in two forms. One by operator and one by well.

MR. FULMER: Can't do it. It's just not physically able to do it. We don't have wells in some of the orders.

MR. SWARTZ: All right.

MR. HARRIS: The wells aren't consistently numbered, though, are they?

MR. CHAIRMAN: Companies have their own number system.

MR. HARRIS: So even you went down and decided to sort that in that column that wouldn't work.

MR. FULMER: Under Oakwood II you may or may not have a well. So you can't -- the way this is sorted is it's

sorted by year and by month or the Board hearing.

MR. HARRIS: So if someone comes in and says I signed a lease for a well that was something, A-38 -- hopefully that's not one in existence -- for that particular well and somebody walked up to me and said, "I want to know the status of that." I'm going to have to look down for the well A-38. So if they had a copy of the order --

MR. SWARTZ: But, see, once we get this cleaned up there are going to be hardly any on here where there are not wells.

MR. CHAIRMAN: Right.

MR. SWARTZ: So, I mean, you might at least think about doing that.

MR. CHAIRMAN: I think it's a good point.

MR. HARRIS: I think it's a good point but I don't know -- the consistency of the designation of the well, that's not the same from company to company.

MR. SWARTZ: Correct, but it would have a letter and a number.

MR. CHAIRMAN: No, it will be tracking though.

MR. HARRIS: So we would assign a tracking number to it.

MR. GARBIS: I think we ought to go by the order number, the way you've got it.

MR. CHAIRMAN: Yeah. I think it would be good to have both of them.

MR. GARBIS: You've got to have an order number. That's what I'm interested in. I don't care what these guys do.

MR. HARRIS: How many entries are we talking about, Tom, all together? I know we have five pages, but how many total? We have five pages. See, our's don't have the numbers on them.

MR. FULMER: 295.

MR. HARRIS: 295?

MR. FULMER: Yeah. That's what I counted.

MR. CHAIRMAN: For the Board's information, when Tom comes before the Board to present orders for dismissal it would be a docketed item, public notice that he's coming forward for dismissal so that parties would have an opportunity -- after having attempted to work it out up front if there were still any chance that there was someone out there that didn't know that they would still be noticed and have an opportunity to appear here for that. On supplemental orders, Tom, what's the point there, any clarification you're looking for?

MR. FULMER: On the supplemental orders we have this issue of the different terminology in regards to conflicting claimants. What is a conflicting claimant? Is it a conflicting owner? There are several terminologies used in different supplemental orders that the -- some

operators do a supplemental orders one way and other operators do it a different way.

MR. CHAIRMAN: So you're looking for consistency?

MR. FULMER: Right. Now, it's not a matter of consistency in regards to the forms that we've been using in the supplemental orders. It's the attached months to that supplemental order in regards to the elections. I think that's the problem.

MS. RIGGS: I think the history of this was the Board order gives 30 days for parties to make their elections and spells out what the elections are. And it directs the unit operator to deposit the money into escrow and what is deposited depends upon the elections made. So there had to be a process by which the escrow agent at the end of the 30 day period was notified that certain parties had made certain elections and that was the key, that there would be an escrow account and that's what he uses to open the escrow account. When he gets the supplemental order he then opens the account for that VGOB and he had a list of the parties categorized by the election made. And that supplemental order is recorded in the public records the same as the original pooling order. And that sort of closes the door then on the open endedness of the Board order.

MR. CHAIRMAN: Just to insert something, the Board had

previously approved me to sign those without all of those having to come before the Board once the staff had received all the information they needed. What it's done is simply conveying what the elections were and authorizing the escrow agent to open the account, so to speak, and keeping that trail coming from the Board to that escrow agent rather than have everybody out there sending things over and asking him to do this or that.

MS. RIGGS: Now, my sense of what is happening is that there's an ongoing negotiation going on with the unit operator and with the respondents. And there are in many instances voluntary leases that occur subsequent to entry of the Board order but prior to entry of the supplemental order. So in addition to tieing down elections parties are being dismissed in and out of the proceedings by use of the supplemental order. So another thing is occurring other than that which was originally contemplated. That's one instance that I've seen that I know of. And I think what Tom is seeing now is some real inconsistencies in the schedules that get attached because the order itself says, "See schedule attached hereto" and then the operator spits out their inhouse of how ever they track those elections and it gets smacked on the back of that order.

they're not consistent in the way they categorize these elections. So he's having a hard time tracking some of that information down.

MR. FULMER: The other issue in regards to supplement orders -- again, we are working with the operators. We have a lot of orders that a supplemental order has not been submitted. So we are working with the operators on that to try to get those supplemental orders. And some of them are pretty late.

MS. RIGGS: I think they're suppose to be filed within 30 days of the entry -- or 30 days after the election period and 60 days from entry of the order.

MR. FULMER: We are working with the operators on that.

MR. HARRIS: Tom, I'm not sure what to ask. Some of these then have supplemental orders that apply to them?

MR. FULMER: Right.

MR. HARRIS: Are you asking about --

MS. RIGGS: I think the column that says "order number, signed" you said was if there's a supplemental order that it's there.

MR. HARRIS: Okay. I was thinking at one time you were maybe asking or suggesting that there's some way to put that in so that you'll know. I missed that. So it's under order and number signed?

MR. FULMER: Right. If there's a supplemental it gives you

a date and that's the date that the supplemental order was signed.

MR. HARRIS: So there is a way to track that?

MR. FULMER: There is a way to track that. Now, the ones that I'm talking about -- let me find one. It will say in that same column no supplemental order filed. Right here's one. It lists, for instance, the U-11, the O-3 and the M-48. Some of these the order was signed in 1993 and the first production you get was about -- well, one was signed in 1994. That's when the order was signed. One of the wells in the unit was drilled in 1991. We have no production reported or no funds put into an escrow account because we don't have a supplemental.

MR. KING: How do you get production before an order's signed?

MR. FULMER: Do what?

MR. KING: Production before the order was signed.

MR. FULMER: Are you talking about, for instance, the Board order was signed at a certain date and then production is showing up at an earlier date?

MR. KING: Yes.

MR. FULMER: That's because the well was pre-existing. That's the well -- the reference point of that well when it's production started. If the order required

that the escrowing be done on the date the order was signed then that production would start then and it goes all the way back.

MR. CHAIRMAN: Let me take you back now to the conflicting claimant and the various ways people are treating that. Do you have a recommendation at this time or do you need to work back with the companies to get some reconciliation on that?

MR. FULMER: I think right now I need to work with the companies and with Sandra in regards to going back to the definition of what a conflicting claimant is -- what is the Board going to say a conflicting claimant is because we have -- in the cases of deemed to have leased there are conflicting claimants but there are also leased parties.

MS. RIGGS: I think what Tom's getting at here is you have situations where you have respondents to a pooling order who are offered elections and either make an election or are deemed to have leased if they do nothing and they are conflicting claimants. And you also have the situation where the operator may have leased the coal side and the gas and oil side under voluntary leases. They weren't elections made under the pooling order. They're strictly voluntary but they're still conflicting in that the operator doesn't

know who to pay the royalty to. So one category of conflicting claimants would be those claimants whose interests are in conflict but are both subject to a voluntary lease and then you have the situation where their interests are in conflict but subject to some election under the Board order. With respect to voluntary leases you have some operators who name those parties to the pooling proceedings and you have some who do not. So you may have a pooling application where a person may think they're a conflicting claimant. They've signed a lease but they're not getting royalty but they're not a party to the pooling either. Does that make sense?

MR. CHAIRMAN: See, you don't have that come up as a major issue until pay out time or until people think they're going to get royalties or -- their checks will be coming but it be suspended or withheld into escrow until such time as the ownership is resolved. We've heard some of those kinds of things from the folks that have a misunderstanding of what the Board's managing and what the companies are managing.

MR. BRENT: If we spend 78 percent of our time dealing with issues surrounding conflicting claimants I think we all ought to know what conflicting claimants are.

MR. CHAIRMAN: That's right.

MR. BRENT: Agree. So what do we need to do to come up with a definition?

MR. FULMER: I would suggest that -- we've always tried to work in work groups to try to come up with an answer to this issue unless the Board wants to make that determination on it's own and not take a recommendation. I would assume that I need to recommend to the Board what a conflicting claimant should do or should be and then from that point in time the Board can decide. But I think all of the situations there's a multitude in combination of situations that exist as to what may be a conflicting claimant. So there's different situations and I think that part has got to be resolved and come down to some concrete -- this is what a conflicting claimant is going to be.

MS. RIGGS: Underlying all of this, though, is a basic question of whether or not when you file a pooling application you need to name all owners of the coal and the gas and minerals within the unit even though they may not be entitled to a right of election. They may be subject to a voluntary lease but does the law require that they be named as parties and to the extent that their interests are conflicting escrowed in the Board established escrow account? Or the other tact is that the pooling application is a mechanism by which

the operator can avail itself of protection for unleased interests and that the only thing going into the escrow account are those moneys flowing from interests that are force pooled and that voluntary agreements are between the operator and the party to that voluntary agreement and not subject to the Board's escrow account. I think it comes down to how you treat conflicting voluntary leased parties. Because clearly if they're in the pooling order and they're conflicting and they are force pooled it's in the Board's escrow account and nobody argues that it shouldn't be. But if they are voluntary agreements, especially if they're not named as parties to the pooling application, is that within the Board's jurisdiction of a conflicting claimant to require that be escrowed anyway in the Board's escrow account in which event they would have to be named as a party or should that be escrowed with the operator pursuant to the voluntary agreement? And that's the basic overall problem, is giving rise to all these different scenarios that are coming up.

MR. BRENT: I feel like I should be asking you that question rather than you asking me that question.

MS. RIGGS: I can tell you what the statute says, I guess. This may require some further -- I don't think you're going to find any case law on it. I mean, basically

there's no precedent for it and what the Virginia law would say is in the event that the statute is unclear the Board's interpretation of it's own law will be given great deference. So to the extent there is no precedent, whatever decision the Board makes with respect to that would be given great deference in a court of law if later challenged.

MR. BRENT: Seriously, though, shouldn't we be asking you for an interpretation of that by which we would then proceed?

MS. RIGGS: I can give you a recommendation but the ultimate interpretation, I think, is for the Board to make.

MR. BRENT: Well, I do mean a recommendation.

MS. RIGGS: Yeah.

MR. CHAIRMAN: That's something we'll ask Sandy to do some research on and come back and present to the Board. I think the one thing that's been brought to our attention -- to the Board's attention from the effected parties, the folks that appear at these hearings, are there's obviously some confusion from those who enter into private leases who expect the Board then to be managing the payout of that money when, in fact, as it is right now the Board's managing what's been brought straight forward to it under force pooled situations only. And this is a how broad does that outreach need

to be type question in response to those questions that come before the Board.

MR. BRENT: But if you go much beyond that aren't you then interfering in contracts between private parties?

MR. CHAIRMAN: I'm sure there are people who will argue that. I think that certainly will be a part of what the research will need to be. But it's important for all of us to have a clear understanding of where -- it's just like a lot of these other things we discussed this morning. What this all goes to is carving out jurisdictional responsibilities and then making the public aware of what those are and within what arena they need to appropriately conduct their business.

MR. HARRIS: Mr. Chairman, are we going to return to this again? I'm just wondering. I'd like to see samples of some of the orders you're talking about. I know some are probably standard and others -- what you're saying is they're in this grey area and we're not sure what to do with that?

MR. FULMER: Yeah. I can bring you some examples for the Board.

MR. CHAIRMAN: You're talking about supplemental orders?

MR. HARRIS: Yes, that are part of this interpretation problem.

MR. CHAIRMAN: He can bring samples to the next Board

meeting and provide that. We'll be at various Board hearings continuing to build this record, so to speak, of information. And that's what we want you to do, is ask questions so that he can come back at next hearing and provide some additional information. Sandy can provide information.

MR. GARBIS: Mr. Chairman, in the interest of time -- because we continue to talk about this -- but I think Tom needs to be commended for the work that he's done putting this together because this is an exhaustive sort of thing. I've had to go through the same process and there's a lot of work involved in that. So we certainly appreciate that. And I also think that the seven items that he's presented here all need to be looked at. However, I would probably recommend that we look at some priority. You can't do anything at once. So maybe on some systematic basis we can look at whatever -- well, in some systematic way we can do either one a month or two a month or whatever to at least have an effective way so at some point in time we'd have things under a more manageable way of looking at it.

MR. FULMER: If it pleases the Board, I'd like to come back -- I think I can work this out by July. I think I'd like to come back to the Board next month with a list

of these that I recommended be dismissed because we need to dissolve those and get them out of the way. I'll work with Consol and so forth and try to work all this up and find out which ones from Sandra and find out which ones are in litigation and so forth.

MR. CHAIRMAN: And we'll work on getting the issue of the conflicting claimant definition resolved and bring that before the Board at next meeting or the one after. We'll update it each meeting and stay on this trail that we're on, if that's suitable with the Board members.

MR. HARRIS: May I ask one last question related to this?

MR. CHAIRMAN: Yes.

MR. HARRIS: Tom, if you did have a question and you have the order number how much of this is computerized? When you all get an application and everything has been processed and it goes in a file is there an electronic file also? If you wanted to know more about any one of these do you have to go through a paper file and flip through and see things?

MR. FULMER: For instance, we've got the -- let me go back and correct myself on the operator. We'll have the type of petition -- it's a coalbed methane and so forth -- and we'll have the order date signed. We'll have the supplemental order date and signed. But --

MR. HARRIS: But these are hard physical copies, right?

MR. FULMER: No. You can get it electronically.

MR. CHAIRMAN: It depends on what you want. There's an electronic trail but there's a paper file on everything. You can go in and get yourself very inquisitive of it with an electronic trail. You can help zero on the other information you want to go to or you can go look at the entire file. Everything that's submitted by paper is not in an electronic format.

MR. HARRIS: I guess that was my question.

MR. FULMER: We have the ability to -- for instance, if we were looking at a Board order and so forth we have the ability to switch to another file which has the production and cross reference them that way. So the capabilities are there. They're just not -- I can't punch a button and this will spit out. It's not that way.

MR. HARRIS: I just wondered if you could call it up on the screen if you had a particular well or a particular -- could you look at all that information?

MR. FULMER: Yeah.

MR. HARRIS: I know it's done in your reports. I just wondered how much of this was actually put in the electronics.

MR. FULMER: Everything you see except for the comment

section and the recommendation section -- all of that is in the computer. The yes/no on production I didn't go into how much production they got. It's almost at this point not really an important issue except when it comes down to dispensing the moneys. But I wanted to put that in there to let you know that, yes, we do have production and, yes, we do have some in escrow.

MR. CHAIRMAN: Thanks, Tom. Do you all want a lunch break or do you want to roll?

MR. BRENT: Are we going away from this topic?

MR. CHAIRMAN: Yes.

MR. BRENT: I just have one more thing.

MR. CHAIRMAN: Go ahead. I'm sorry. I didn't mean to cut you off.

MR. BRENT: That's all right. The auditing of these accounts and also production because if we're not auditing production how do you know what's put into escrow is correct? Are we going --

MR. FULMER: That's a question, I think, that the Board can handle in either of two ways.

MR. CHAIRMAN: Auditing of accounts. Let's take one at a time. On auditing of accounts I understood the Division of Administration's General Services section is working with Tom to develop an RVP that will go out and select an auditor who will conduct all the things

that he says they're suppose to do. A part of that will be to make sure that there's a trail. They'll be looking at everything Tom's office has been doing with this, everything the bank is doing with the escrow -- as our escrow agent, how they're handling that to make sure that it's all in conformance with what the Board has requested. That will be a part of that. So it will be tracking trails and identifying for all of us where those trails need to be strengthened. Now, as to --

MR. FULMER: The other thing that could possibly happen in the line of production -- process --

MR. CHAIRMAN: Tracking of production.

MR. FULMER: -- is that the Board may want to require the operator to report production in any of these particular units or all of them, however the Board may want to do it. That's an option.

MR. CHAIRMAN: Describe how you know about production currently.

MR. FULMER: Our production is derived from what the operator of the well submits to us and that's on a monthly basis. But actually it's 45 days after the month of production. That goes into our system. It's uploaded onto our system. Now, the production is based upon an individual well or a file. So we can go out

if we know what well is in that unit then we can plug in that well unit and come out with its production -- the history of production for that particular well going all the way back to whenever it started. The problem is when you get into an Oakwood II and you start allocating production because there's no well to tie it back into our production system. We do have -- and in all honestly we do have production recorded through a bore hole which some of the gas which is horizontally drilled is brought up to that bore hole. So we do have production coming back from the bore hole. I believe all production is being reported but to determine how much is being allocated to the production unit I cannot get it out of my system.

MR. CHAIRMAN: So when you talk about -- that's why I'm just trying to clarify. When you raise the issue of audit of production you're talking about a trail so that you can tie that production back to a particular unit?

MR. FULMER: Right, and see if the escrow money is actually placed into the funds -- in the escrow account.

MR. BRENT: To me that's absolutely essentially that you be able to do that.

MR. HARRIS: Excuse me. Mr. Chairman, part of your question I thought was do we ever spot check the wells? I mean, when the inspectors go out do they ever just check a

meter reading to see if all of this -- and I'm not saying that anybody is being dishonest. But a lot of times these things are estimated. I don't know if that's done. It may be that the industry has certain measures that they use. Does anybody physically go to the well and see what this meter reading is and two months later look at it again and if the production numbers are higher than that or lower -- does anybody ever fit those together?

MR. FULMER: No. If I'm understanding your question right, no. We do know whether the well is producing or shut in. We do know that. We can't read meters. Some of them don't even have meters anymore.

MR. LEWIS: There may be seven or eight wells going through one meter.

MR. FULMER: There could possibly do that. Some of it is electronically done now. You don't have any charts there at the well head. You can look to make your own calculation.

MR. HARRIS: I'm not suggesting anything is wrong, but I just wonder -- we're talking about auditing from that point up or down or over or whatever. At that point if there's discrepancies there what happens? Who checks the checker, I guess, is all I'm asking. And again, I'm not suggesting that there's something happening.

But I just wonder at that point --

MR. FULMER: In my experience usually an independent reader -- I don't know what you call them. You know what I'm talking about.

MR. DAHLIN: We have a third party that does the reading of the charts.

MR. HARRIS: Are these people under contract or something that do that?

MR. FULMER: Yeah. That's my experience. When I worked with ANR Production every chart we pulled was sent to a third party and they read the chart. ANR did. They just accepted what was read as actual production. And that goes back to the fact that you may have royalty interests to pay and so forth and you've got to prove how much is to be allocated --

MR. KING: Every well's got a different reading, hasn't it, as far as the royalty.

MR. HARRIS: Oh, yeah, I expect that. But I'm just saying what happens if that's misread? Do we ever return to that and say this is --

MR. CHAIRMAN: That's not being checked by the Department.

MR. FULMER: No.

MR. CHAIRMAN: So, Tom, that's another thing we'd need a recommendation from you back on on what procedure to tie production back to the unit that you would recomm-

end. All right. What's your pleasure? Lunch or keep going?

MR. KING: How much do we have to go?

MR. CHAIRMAN: We have four cases -- five cases.

MR. SWARTZ: We are going to continue two of our's and only have one. We are going to move to continue V-38 and V-39 because there's only one respondent in each of those and we think we have a lease with them. So we move to continue that for a month on the theory that a lease is going to work out. I think we're presenting the lease tomorrow. The one that we would need to take up which I don't think will take a long time is the VP-8 sealed gob unit two.

MR. CHAIRMAN: Go ahead and trade places with Tom. Let me ask the folks that are here today, are you here for which one? Some of you are just sitting in. I understand that. But are you here for a particular well? If we can accommodate any interest there.

MAN IN AUDIENCE: I'm here for the one that Equitable Resource is wanting a variance on drilling less than 2,500 feet of a well that's on my property.

MR. KAISER: That would be Item VII.

MR. CHAIRMAN: We're going to just work straight through if that's okay with everybody here. We'll just work straight through, finish all the agenda without --

we're not going to break for lunch. Is that okay? Does that put anybody in any physical -- does anybody need to have something to eat or medicine or anything? We'll break and try to accommodate that if you do. You have to tell us. Don't be hesitant.

(AFTER A BRIEF DISCUSSION OFF THE RECORD, THE PROCEEDINGS CONTINUED AS FOLLOWS:)

MR. CHAIRMAN: The next item on the agenda is a petition from -- well, we decided we're going to do your's. Tell us which ones you're going to dismiss.

MR. SWARTZ: We move to continue V-38 and V-39. There is only one respondent in each of those cases. It is a company by the name of Commonwealth Coal. My client's land people advised me that they have been negotiating with Commonwealth Coal. They believe they have an agreement to lease and it's being reduced to writing and they think it will be delivered tomorrow and we think we'll come back in July and dismiss these. But we need them continued to July to make sure that we can enter into a lease with these people.

MR. CHAIRMAN: Docket number VGOB-97/06/17-0588 and VGOB-97/06/17-0589 are proposed to be continued. Any objection? Hearing none they are continued to next month.

MR. SWARTZ: That would be great. Thanks.

MR. CHAIRMAN: And now you want to proceed with 0587?

MR. SWARTZ: Yes.

ITEM IV

MR. CHAIRMAN: The Board is calling docket number VGOB-97/06/17-0587. We'd ask the parties that wish to address the Board in this matter to come forward at this time and identify themselves.

MR. SWARTZ: Mark Swartz appearing on behalf of Buchanan Production Company. Les Arrington is here with me this morning as well.

MR. CHAIRMAN: The record will show there are no others. You may proceed.

MR. SWARTZ: Just to introduce what we're dealing with here today, this is a sealed gob unit. It's a portion of the VP-8 Mine that has been very recently sealed from active mining operations in the rest of the mine. We have previously, I think, been in front of you on the sealed gob Unit 1 in the VP-8 which was another part of the mine that mining was completed and we came in to pool a sealed gob unit. If you go to the very end of the application there is a map that looks like this and we're asking the Board to really do two things today. This map illustrates that. It shows you that this proposed sealed gob unit is over the top of or within certain Oakwood units and those Oakwood units are laid out here for you. I believe the copy you people have

actually shows the mine works so you can kind of get some sense of how we drew the boundaries to configure to those mine works. It also shows not all of the VVHs that could potentially be used to produce because there are many, many more but the VVHs that either have previously been converted to coalbed methane wells and/or the ones that have not as yet been converted but that we would propose to use in producing this unit. And the two things that we're going to ask the Board to do today -- one is to create the unit as depicted in Exhibit =A. In other words, to declare that a sealed gob unit in this configuration makes sense from a correlative rights and a conservation standpoint. The second thing that we're asking you to do today is if the Board believes that the creation of this sealed gob unit in this portion of the VP-8 Mine makes sense would be to then pool certain interests that have not leased in that unit. So it's a duel application. One is to create a unit and then if it's created to pool the interest in that unit. There are three additional things I want to tell you before we start the testimony just so you can kind of focus on how this application might be a little different from some of the other ones you've seen in the past. One item is, as I mentioned just a moment ago, this area of the mine has been very

recently sealed off and we would like the order -- assuming that we're successful and this unit is pooled, we would like the pooling order to, in effect, provide that production could commence today and catch up with the order. It usually takes 30 or 45 days for the order to get entered but we would -- in the past sometimes you have given us sort of a retroactive date to the date of hearing and we would ask that that happen here so that we don't have to vent gas. Then the other two things that make this somewhat different -- when we noticed this application and sent out copies of the notice of hearing and copies of the application and the exhibits this is one of those instances where we sent all this stuff to everybody we had leased from. And the reason we sent the application to the people we have leases from is -- and if you look at the line up here I think Exhibit =D-3 has a list of all of the leases -- we have a lot of leases that we have obtained with regarded to this proposed unit and there are pages of people that we have leases from. Every one of those leases as far as I know contains a pooling provision that allows the applicant to pool on a voluntary basis. So our position is we've got the right to pool on a voluntary basis. The problem is some of those leases restrict the size of the unit that can be voluntarily

pooled to units that have been created by the Board and some of those leases require that we give our lessors notice of applications to the Board to create drilling units. So to provide notice to all of the people that we have leases from that we're going to request that this Board create a statutory drilling unit we've given them all notice. We have gotten responses -- usually we don't get any. But we've gotten responses from two of our lessors, one of whom has written to Mr. Fulmer as a representative of the Board and that's Levisa Coal. We have a lease from them. We contend that it allows us to voluntarily pool their interest, to create this unit. Their response has been no. So our position in light of that response is we believe we have a lease that covers this. Levisa is telling us and the Board that they don't think that our lease covers this. We noticed them. Les is going to be asking you to amend today so that we can force pool them. I mean, once they say their lease isn't covered by this we feel like they become a claimant. We don't agree with them but when people tell us we have a claim typically we pool them. So we're going to be asking that Levisa who's named as a respondent be converted to a lessor that we're actually seeking a pooling order with regard to. We have also had contact from the Big

Vein companies. Yukon Pocahontas is one of the Big Vein companies and they have -- although I do not think they have communicated with the Board they have communicated with the applicant saying they've got the same position here, that they are taking the position that their lease -- it looks like they did send a copy to Tom.

MR. CHAIRMAN: They have.

MR. SWARTZ: That their lease may not cover this. So we're going to be asking that -- they're already a respondent but Yukon Pocahontas is also going -- that they be pooled. We can argue whether or not our lease covers this production. We feel pretty strongly that it does. They clearly believe that it does. So in the interest of being a prudent operator we feel like we need to pool. And I don't think that they're here. One of the letters said that they weren't even coming. So in those respects we're seeking to create a unit, to then force pool the unit. We've got two lessors who have taken the position their leases don't apply. We've talked about that. Then lastly Les will be specifically requesting that if you make any order you might agree to enter effective as of today so that we can start producing this gas and accounting for it as opposed to venting it. With that introduction I would

like to have Les sworn.

COURT REPORTER: (Swears witness.)

LESLIE K. ARRINGTON

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

DIRECT EXAMINATION

BY MR. SWARTZ:

Q. Would you state your name, please?

A. Leslie K. Arrington.

Q. And who do you work for?

A. Consol.

Q. Generally what are your duties and responsibilities?

A. Permitting the wells, force pooling and drafting all the applications.

Q. Did you draft the notice of hearing --

MR. CHAIRMAN: Mark, excuse me. Let me just stop you a minute. I think the Board has a decision to make on this before we proceed because you're, in effect, asking us to amend the application to a force pooling application here today based on these two letters.

MR. SWARTZ: Just with regard to those two people.

MR. CHAIRMAN: I understand. With regard to those two

people. The question is do we believe that that is something that we want to grant here today -- that type of an amendment -- or do we believe that we should continue it for them to be aware that it is a move to a forced pooling proceeding.

MR. SWARTZ: And my position on that is your pleasure is fine with us if we have an interim order allowing us to produce -- I mean, I don't want to waste 30 days of production. I would have no objection to a continuance to July if that's your pleasure. With regard to these two people --

MR. KING: Mr. Chairman, if we allow the force pooling they don't lose any of their rights, do they?

MR. SWARTZ: No. But --

MR. LEWIS: They're going to have to come back and claim that they are a claimant. Aren't they? Aren't they going to have to come back and prove that they are a claimant. You said that you didn't think that they was but you are going to force pool -- claim them as a claimant.

MR. CHAIRMAN: See, we're dealing here with parties who say they have a lease and that this is in violation of their lease agreements. Now, we're not into trying to move into what the court would have to ultimately resolve if the two parties can't resolve it. The Board

doesn't move into that arena at all. The question gets more simply to does the Board -- is the Board going to approve Buchanan Production Company to amend its application here to a force pooling application or do these parties need the time to be aware that it's moving to a force pool type application.

MR. BRENT: I certainly think that those parties need to be made aware that the nature of the hearing has changed.

MR. LEWIS: I'd like to make a motion that we continue it.

MR. SWARTZ: I don't have a problem with that but I would request that if it's continued to July that the Board seriously consider permitting production to occur between now and then and that the funds be suspended into a suspense account so that we're not venting a pretty significant amount of gas into the atmosphere which benefits no one.

MR. CHAIRMAN: These wells are already in place?

MR. SWARTZ: Nine of the thirteen proposed wells have been permitted as CBM wells.

MR. KING: I don't think we want to vent gas, do we?

MR. SWARTZ: Normally I would have came in here and continued this to July, but we've got the seals in place and we felt like if we weren't going to get a pooling order today and address this today we needed some kind of interim order allowing production so that we're not

wasting a significant amount of gas.

MR. CHAIRMAN: Are you currently producing these wells?

MR. SWARTZ: We could as of today.

MR. CHAIRMAN: Are you producing them under Oakwood II?

MR. SWARTZ: Some of them are producing what?

MR. ARRINGTON: The Oakwood II, panel allocation.

MR. CHAIRMAN: If you are permitted to continue production under Oakwood II what problems does that present until next month?

MR. SWARTZ: Well, the accounting -- ultimately the payout would be affected but the production records would be there. That would be fine. I mean, as long as we can produce on some basis from the permitted wells --

MR. CHAIRMAN: I think that would be cleaner for everybody.

MR. SWARTZ: That's fine. Just so there's no confusion here, what we will do then is simply advise these two companies that we have requested to convert and that they need to react to the extent they want to. We're not going to renotice everybody else.

MR. CHAIRMAN: I think that's fair.

MR. SWARTZ: That's fine and we don't have any problem with it.

MR. KING: Are you amending your motion to that -- does he have to amend the motion?

MS. RIGGS: We don't have a motion yet.

MR. KING: Oh, there wasn't a motion?

MR. HARRIS: There wasn't a motion.

MR. FULMER: In regards to the recent conversation here's something that wasn't never brought up. When you switch from existing Board orders to a sealed gob unit which has Board orders in it what do you do with those Board orders that exist?

MS. RIGGS: Those Board orders don't cover sealed gob gas.

MR. SWARTZ: But what we've done in the past is we have listed them in the order that would get entered here and we have caused them to become inoperative as of stated date. That's what we've always -- we've addressed because it's a problem. Now, I don't know internally how you handle that but that's what Sandy and I have --

MR. FULMER: The only reason I bring that up is there's no connection into it.

MR. CHAIRMAN: Except through the Board order -- the most recent order will lead the trail and that's where you're going to have to pick it up from.

MR. SWARTZ: And the other thing -- I don't want to overly complicate this, but one of the things that you all were talking about during Tom's presentation was how you allocate production from wells. The Board orders -- one of the functions of the supplemental order is to

get a mine plan filed. That's how production gets allocated. But from Tom's standpoint it's got to be presumably virtually impossible to reconstruct those mine plans and how they impact on an allocation. But there is a paper trail of mine plans and your Board orders say that if you're going to change your percentage of allocation you must file a supplemental mine plan to document how it's being allocated. But from Tom's standpoint that is an incredibly complex -- I'm not sure that he has the data to use those in that way, but for the people in the units they would be able to reconstruct it if they had to. So the same thing happens here. I mean, we're going to have production and ultimately depending on how this unit is handled the -- we're going to need some guidance on allocation. So we're going to have production for a 30 day period and we're not going to be able to allocate it essentially.

MR. HARRIS: Mr. Chairman, let me also ask the question what happens, per chance, that if there is an order put forth and it's not approved but we've allowed production? For what ever reason it's not approved, what happens then?

MR. SWARTZ: Presumably we would allocate it based on the prior Board orders.

MR. CHAIRMAN: The prior Board order, Oakwood II. They are producing under Oakwood II now. That's a question I asked. In other words, it's one of two ways. You can voluntarily continue it to next month if you want to do that or we can do an order, which ever one you want to do.

MR. SWARTZ: I feel like we need an order because we're going to pay this money differently ultimately. At least there's a good chance that we will and we probably need to have a paper trail.

MR. CHAIRMAN: A motion that would continue to next month and that would allow you to produce under Oakwood II in the interim and notice only these two parties.

MR. KING: That covers it.

MS. RIGGS: But would abate allocation until such time as the final -- if the application is acted upon and a system of allocation established track production but not commit to allocation.

MR. SWARTZ: If this thing gets addressed next month we're probably not going to be under the reporting deadline for production from today forward in terms of royalty accounting. We're not going to be required to pay that money under our leases until we're back here.

MS. RIGGS: Okay.

MR. SWARTZ: So as long as we get it resolved in the next 30

days we'll be okay.

MR. CHAIRMAN: Do we have a motion?

MR. KING: I so move.

MR. GARBIS: Second.

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

MR. SWARTZ: Thank you. We appreciate it.

ITEM III

MR. CHAIRMAN: The next item on the agenda is a petition from Equitable Resources Energy Company for the pooling of a coalbed methane unit under the Nora Coalbed Gas Field Order identified as VC-3655. This is docket number VGOB-97/05/20-0586. 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 be Mr. Dennis Baker and Mr. Bob Dahlin. Mr. Baker if we can hold off just a minute is distributing revised copies of Exhibit =A which is the well plat and Exhibit =B which designates the percentage of ownership within the unit.

MR. CHAIRMAN: Are there any others that wish to address the Board in this matter? Would you move on up to the table, please, and state your name for the record?

MS. BROWN: Do what?

MR. CHAIRMAN: Just tell us who you are for the record.

MS. BROWN: My name is Beulah Brown. I live in Abingdon, Virginia.

MR. CHAIRMAN: That's all we need to do right now. Do you want to state your name?

MR. BROWN: My name is Dick Brown and I live in Abingdon.
MR. CHAIRMAN: All right. And what we'll do is we'll let them put on their information --
MS. BROWN: I'm sorry. I don't hear all that well.
MR. CHAIRMAN: I'll speak up. They're going to go ahead and put on their information and you'll have an opportunity to question anything that they put on and then make a statement to the Board. Okay?
MS. BROWN: First I'd like to ask the Board a question.
MR. CHAIRMAN: Okay.
MS. BROWN: Has this VC-3655 been permitted already?
MR. CHAIRMAN: Has the well been permitted?
MS. BROWN: Yes.
MR. CHAIRMAN: Tom, do you know the answer to that?
MR. FULMER: Not off the top of my head.
MR. CHAIRMAN: Can you check that for us?
MR. FULMER: Yes.
MS. BROWN: The reason I ask is do operation plans -- are they issued before a permit? Does a company issue their operation plans before it's permitted or do they wait till after the permit takes it.
MR. CHAIRMAN: They have to submit an application. Is that what you're talking about?
MS. BROWN: No. I'm talking about their operations plans. I understand that some have received -- some of these

listed have received operation plans already. I did not. I don't know whether they have or not.

MR. KAISER: When they make their application for a permit they include they include the operations plan in the application for a permit.

MR. KING: It's all one, isn't it?

MR. CHAIRMAN: That's what I was trying to --

MS. RIGGS: It's a part of the application.

MR. CHAIRMAN: It's part of the application, Ms. Brown. The operations plan would be a part of the application. That's what we're talking about. Yes. Now, they can come before the Board and ask the Board to take action either prior to or after they have a permit. That doesn't interfere with what's going on with the Department as far as the issuance of a permit. Those are two separate actions. Okay?

MS. BROWN: Yes, sir. And I am suppose to ask them what they -- they mailed me material as to what they intended to do and I heard the last time I was here that they had received some -- contacted some more heirs. So I didn't receive anything about that. I don't know whether I was suppose to or not.

MR. CHAIRMAN: I understand. Let's let them get into their application a little bit. We'll let them put their application on and then we'll make sure we get your

questions answered.

MS. BROWN: I just had some statements to make. I don't know that I have any questions to ask them.

MR. CHAIRMAN: Okay.

MS. BROWN: Other than I wanted to know if it had been permitted. I don't know what the process is because I don't have a copy of the Code and the laws and the rules and regulations. You all do. And I doubt if many citizens have that or know what to do. Do you think so?

MR. CHAIRMAN: Well, we hope so but I think you're right. I think a lot of them do not know all of the --

MS. BROWN: No, they don't. They're of a great disadvantage as we all are.

MR. CHAIRMAN: A copy of the law and regulations are available through the Division of Gas and Oil.

MS. BROWN: Well, yes, but I doubt if some know that.

MR. CHAIRMAN: We'll have Mr. Fulmer check and see if that has been permitted. I can't answer that until he checks and tells us.

MS. BROWN: I didn't know the process is the reason I asked about if it had been permitted and what procedure -- a certain sequence it goes through.

MR. HARRIS: Mr. Chairman, if I might suggest -- I don't know if we normally do this but can copies be placed in

public libraries or something like that? I mean, I know it's at the Board office but if on a Sunday afternoon I decide I want to read the regulations and the Board office is closed why couldn't they go to a public library and read a copy of that?

MR. CHAIRMAN: They can and they do have copies. But we will try to do as part of better distributing information to the public make them aware of that. But we do have copies at the public libraries. Do you prefer to tell us your statements first?

MS. BROWN: No. That's fine. You follow your usual procedure. I don't know what that is. I am at a disadvantage. My hearing is sort of well but it seems I have a fullness in the head. I think it's the air conditioning.

MR. CHAIRMAN: We'll all try to talk up and we'll ask them to as well. Did we swear our witnesses in?

COURT REPORTER: (Swears witnesses.)

MR. CHAIRMAN: You may proceed.

MR. KAISER: Thank you, Mr. Chairman.

DENNIS R. BAKER

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

DIRECT EXAMINATION

BY MR. KAISER:

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

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

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

A. Yes, it does.

Q. Are you familiar with Equitable's application for the establishment of a drilling unit and the seeking of a pooling order for EREC well VC-3655 dated April 17th, 1997?

A. Yes, I am.

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

A. Yes.

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

A. Yes, we do.

Q. Does the location proposed for well VC-3655 fall within the Board's order for Nora Coalbed Field Rules dated March 20th, 1989?

A. Yes, it does.
Q. At this time could you for the Board state the interest of Equitable in the gas estate within the unit at the time of the application and then today -- at the time of the hearing?
A. The interest leased in the gas estate at the time of the application was 90.7105 percent. At the time of hearing 92.2365 percent.
Q. Could you state the interest of Equitable in the coal estate within the unit both at the time of application and again at the time of the hearing today?
A. The interest in the coal estate leased at the time of application was 95.9366 percent. At the time of hearing the interest leased was 97.9349 percent.
Q. And the unleased percentages?
A. The unleased percentage in the gas estate at the time of the application was 9.2895 percent. At the time of the hearing the unleased percentage was 7.7635 percent. The coal estate unleased at the time of application was 4.0634 percent. At the time of the hearing it's 2.0651 percent.
Q. Are all unleased parties set out at revised Exhibit =B?
A. Yes, they are.
Q. Prior to filing the applications were efforts made to contact each of the respondents in an attempt to work

out an agreement regarding the development of the unit involved here?

A. Yes, it was.

Q. Subsequent to the filing of the application have you continued to attempt to reach an agreement with the respondents listed at revised Exhibit =B?

A. Yes.

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

A. We've been unable to acquire any additional leases.

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

A. Yes.

Q. In your professional opinion was due diligence exercised to locate each of the respondents named in the revised Exhibit =B?

A. Yes.

Q. And are the addresses set out in revised Exhibit =B to

the application the last known addresses for the respondents?

A. Yes.

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

A. Yes, we are.

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

A. Yes.

Q. Is Equitable seeking to force pool the drilling rights of a person designated as trustee if acting in such 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, we are.

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

A. Yes, I am.

Q. At this time could you advise the Board as to what those are?

A. Yes. $5 per acre consideration, a five year term with a one-eighth royalty.

Q. Did you gain your familiarity with the fair market value by acquiring oil and gas leases, coalbed methane leases and other agreements involving the transfer of drilling rights involved here and in the surrounding area?

A. Yes.

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

A. Yes.

Q. Based on this testimony and as to the respondents who not voluntarily agreed to lease do you recommend that the respondents listed in revised Exhibit =B and remain unleased be allowed the following options with respect to their ownership interest in the unit; 1) Participation. 2) A cash bonus of five dollars per net mineral acre plus a one-eighth of eight-eighths royalty. 3) In lieu of a cash bonus and one-eighth of eight-eighths royalty share in the operation of the well on a carried basis as a carried operator under the following conditions; Such carried operator shall be entitled to the share of production from the tracts pooled accruing to his interest exclusive of any royalty or overriding royalty reserved in any leases, assignments thereof or

agreements relating thereto of such tract but only after the proceeds allocable to his share equal A) 300 percent of the share of such costs allocable to the interest of the carried operator of a leased tract or portion thereof, or, B) 200 percent of the share of such costs allocable to the interest of a carried operator of a unleased tract or portion thereof?

A. That's correct.

Q. Do you recommend that the order provide that the elections by any respondents 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. Yes.

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

A. Yes, it is.

Q. Do you recommend this force 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 respondents be given 30 days from the date of the recordation of the order to file written elections?

A. Yes.

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

A. Yes.

Q. Does the applicant expect the party electing to participate to pay in advance that party's share of completed well costs?

A. Yes.

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 payments becoming due under the force pooling order?

A. Yes.

Q. Do you recommend that the force pooling order provide that if a respondent elects to participate but fails to pay respondent's proportionate share of well costs satisfactory to the applicant for payment of well costs the respondent's election to participate should be treated as having been withdrawn and void and such respondent should be treated just as if no initial election had been filed under the force pooling order?

A. Yes.

Q. Do you recommend that the force pooling order provide

that where a respondent elects to participate but defaults in regard to his payment of well costs that any cash sum becoming payable to such respondent be paid within 60 days after the last day on which such respondent could have paid or made satisfactory arrangements for the payment of the well costs?

A. Yes.

Q. Do you recommend that the force pooling order provide that if a respondent refuses to accept any payment to 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 or there is a title defect is a respondent's interest or in the event of conflicting claims to coalbed methane that the operator pay into as escrow account created by this Board into which all costs or proceeds attributable to the conflicting interests shall be held for the respondent's benefit until such funds can be paid to the party by order of this Board or until the title defect or conflicting claim is resolved to the operator's satisfaction?

A. That's correct.

Q. Mr. Baker, who should be named operator under the force pooling application?

A. Equitable Resources Energy Company.

MR. KAISER: I have no further questions for this witness at this time, Mr. Chairman.

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

(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 for the record, who you're employed by and in what capacity?

A. My name is Robert A. Dahlin, II and 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 witness been previously accepted by the Board?

A. Yes.

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

A. Yes.

Q. Are you familiar the proposed exploration and develop-

ment of the unit involved here under the applicant's proposed plan of development?

A. Yes.

MR. KAISER: Mr. Chairman, if I could have just one second, please. (Pause.)

Q. (Mr. Kaiser continues.) Mr. Dahlin, could you state the total depth of the proposed initial well under applicant's plan of development?

A. 1.560 feet.

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

A. Yes.

Q. What are the estimated reserves of this unit?

A. 300 million cubic feet.

Q. Are you familiar with the well costs for 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 regards to well costs in this particular area?

A. It was.

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.

Q. At this time could you state, please, for the Board both the dry hole costs and completed well costs associated with this well?

A. The dry hole costs are $71,850 and completed well costs are $167,200.

Q. Do these costs anticipate a multiple completion?

A. Yes, it does.

Q. Does this AFE 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, prevention of waste and the protection of correlative rights?

A. Yes.

MR. KAISER: Nothing further of this witness at this time, Mr. Chairman.

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

MR. HARRIS: Mr. Chairman, I do have one question in light of earlier discussions. I'd just like to ask about one of the line items here. If you go back to the first

sheet of your AFE where -- I'm going to ask about location restoration, the gross amount and net amount.

MR. DAHLIN: All right.

MR. HARRIS: The net amount -- I'm not an accountant. So the net amount -- what's the difference in those two figures?

MR. DAHLIN: It just reflects our level of participation in this well. We have other partners that really are of no consequence. The gross amount is the total amount for the well.

MR. HARRIS: That's actually available for that?

MR. DAHLIN: Uh-huh.

MR. HARRIS: Okay. Thank you.

MR. CHAIRMAN: Other questions?

(Witness stands aside.)

MR. CHAIRMAN: Do you have anything further?

MR. KAISER: Nothing further at this time, Mr. Chairman.

MR. CHAIRMAN: Ms. Brown.

MS. BROWN: Make my statement now?

MR. CHAIRMAN: Yes, ma'am.

MS. BROWN: Mr. Chairman, Director, members of the Board, my name is Beulah Brown. I've already told you that. I understand one of the duties of the Board is to "administer procedures for the recognition and protection of the rights of gas and oil owners with interests

in oil and gas resources contained in a pool." That's Section 45.1-361.15 of the Code of Virginia. Probably your rights are legal rights and should be protected under the Constitution. The word "forced" in connection with property rights has no place in a democracy. Statements made in the permit application pooling VC-3655 appear to be misleading. The Board should be aware that although EREC may have the right to develop gas and oil in the Nora Field they are not the sole owners of mineral rights. Individuals such as myself still hold rights to minerals and have leased to no one. I deny that EREC or any development company has obtained rights to my minerals and I require strict proof that they have this right. Amendment Five to the United States Constitution requires that all property seized can be taken only by just compensation. Surface disturbance and laying of pipeline across surface owners lands destroy property values without just compensation. I object to this permit for these reasons. I have a problem with the phrasing of the notice which I received from EREC about well number VC-3655. It's states, "Oil and gas, coalbed methane in and underlying the unit surrounding well VC-3655" and then adds the words "adjacent lands" plural. Since a 1992 letter I received from a Mr. Cron, copies includ-

ed, to which I replied that I did not wish to be included in EREC's plans I have been contacted several times. The last time I was told "We may not get this through but we're going to try." Gentlemen, I claim the recognition of protection for myself as required by the Commonwealth of Virginia. Thank you.

MR. CHAIRMAN: Thank you, Ms. Brown. Did you have any questions or comments?

MR. BROWN: The only thing I wonder is why some apparently got his second mailing of information and others did not, including -- there were topographic maps with some of this.

MS. BROWN: Maps and analyses and so forth.

MR. KAISER: She's talking about the permit, I think. We did add a second map. As you may remember, we continued this hearing from May because something in the title work showed changes on the plat and within the unit. Anyone who was not notified of the May hearing or anyone whose interest within the unit changed pursuant to this new information was notified of this hearing as far as the force pooling order. I think what he's talking about is the permit application.

MR. BROWN: Why do certain ones get the permit application and others not?

MR. CHAIRMAN: Are they coming on your surface? Is this

well located on your surface?

MR. BROWN: No, sir.

MR. CHAIRMAN: Then that's why that the others received that then. It's not actually going to be on your surface.

MS. BROWN: That's why I said that this is -- they say adjacent lands. What does that mean? To different people it may mean different things.

MS. RIGGS: I don't want to speak for the operator and if I'm incorrect please correct me, but did you get a plat? What they call a well plat?

MS. BROWN: Yes. I have that.

MS. RIGGS: This 60 acre unit that is the square is a unit created by the Board pursuant to field rules called the Nora Coalbed Methane Field. So the drilling unit is the 60 acres encompassed in this outer square. You're in Tract 7 which is this little tip right down here at the bottom. You'll notice that the well location is up here on a higher location. So the area they are talking about is the well and the area surrounding the well contained within this 60 acre drilling unit. That's what they're asking be pooled.

MS. BROWN: Adjacent can't mean outside that then? Does not mean that?

MR. CHAIRMAN: Correct.

MS. RIGGS: It means adjacent to the well but inside the 60

acre square. That's what they're asking be pooled, is the 60 acre drilling unit.

MR. KAISER: What we do when we draft our notice of hearing and our publication notice is identify the drill site tract and then cover the other tracts in the unit by saying adjacent.

MS. BROWN: That can be tricky.

MR. KAISER: Of course, the other tracts within the unit are identified both in Exhibit =A which is the well plat and revised Exhibit =B which breaks out the individual ownership within that unit.

MR. CHAIRMAN: To clarify for Ms. Brown, when you're saying adjacent lands you're intending it to be the adjacent lands within the unit.

MR. KAISER: Contained within the unit.

MR. CHAIRMAN: Contained within the unit. Would that be helpful if that had said that?

MS. BROWN: I suppose so. But it's just like -- I think a gentleman over here mentioned a while ago about different people having different perceptions of things and even different definitions. What Webster says does not always hold true I've found out through some of the phrasing of the Board.

MR. CHAIRMAN: That's right.

MS. BROWN: It's very vague.

MR. CHAIRMAN: It can mean a lot of things to a lot of people. That's right.

MR. BROWN: It would be helpful if in the original mailings of things where they have the engineer's map showing the 60 acre unit if they would have also a locator map or something to show like on a topographic map where it lies in relation to the surrounding -- the rest of the area.

MS. RIGGS: Where the well is located?

MR. BROWN: Where it is planned at least. Well, yes, on that. But, as I have said, I am a college graduate and I have trouble reading that map or even telling where in the county that that is from all of that with a topographic map --

MR. BRENT: You're speaking of including a vicinity map that shows --

MR. BROWN: Something like that, yes.

MR. CHAIRMAN: That locates where this well is going to be.

MR. BROWN: I do see Frying Pan Creek on that map and Route 600, but that's -- it's very difficult to tell on this.

MR. HARRIS: If I might ask about that. In the newspaper when the announcements are made I keep thinking there have been those regional maps because it would show Buchanan County and it would show the tip of Virginia with Buchanan County darkened. What you're saying is

that in the information that you get as an individual it would be helpful to have something like that -- not the whole county but maybe a county map that has a block on it that identifies a region?

MR. BROWN: Something like that. Of that quadrangle. Is this in the Nora -- Duty?

MS. RIGGS: It's in Duty.

MR. BROWN: All right. If you just have that one section of the Duty and -- well, he has examples of it right there.

MR. CHAIRMAN: That's in the permit application itself.

MR. BROWN: Which we did not receive.

MR. BROWN: We did not receive anything like this in the mail.

MS. BROWN: They said it was because the surface didn't fall within the -- is that right? Is that the reason?

MR. CHAIRMAN: Yes. But it raises a good question, though, about how do you know where the well's going to be.

MS. BROWN: That's right. It's not specific enough.

MR. BROWN: You cannot tell that from this.

MR. CHAIRMAN: I can appreciate that. I think we can all appreciate that.

MR. DAHLIN: The plat for location purposes is very specific in the small scale but on the seven and a half minute quadrangle the relative position to the latitude and

longitude is also indicated by this tick mark.

MR. BROWN: Yes.

MR. DAHLIN: So the tick mark will locate you on the quadrangle if you line these corners up on the latitude and longitude and this specific location is where you are on the seven and a half quadrangle, just for information purposes.

MR. CHAIRMAN: Who does these?

MR. DAHLIN: We have a number of contractors.

MR. CHAIRMAN: If we give you a base map -- if the Department provides you a base map of all the quadrangles for Southwest Virginia can you print and make that as a part of this a location map on that or is that something that's extraordinary?

MR. DAHLIN: I don't have any personal knowledge of that level of detail as far as how we contract it out. It doesn't seem like it should be a real --

MR. CHAIRMAN: We have all the quadrangles on a CD that we could make available to you and we'd be happy to do that.

MR. BAKER: Mr. Chairman, are you referring to including a map such as that -- a topographic with our force pooling applications?

MS. RIGGS: A locator map.

MR. CHAIRMAN: As a part of this to specifically locate the

proposed well location.

MR. BROWN: This is not the same scale, though, as the seven and a half minute?

MR. DAHLIN: No.

MR. BROWN: See, that's part of the problem, I think, is lining these lines up.

MR. DAHLIN: Right. The boundary -- the border of this plat is on the scale of the seven and a half in the quadrangle. That's why this tick mark is different than the scale drawing in here that shows the local topography and the drainage. There's two different base maps covered here. One's to be a general map of the local area and that's where it's located on the ground and the other one is a reference point on the topo map. So this point is to the 2,000 scale whereas the other one is a very local scale.

MR. KAISER: The actual plats are done by a third party.

MR. HARRIS: I guess all we're saying is to get this -- if I thought I was involved I could look at this and say how does this fit in the real world. Of course, it sounds like it would be easy to do but if you back away two or three times from this -- what's the near by town -- how do you get an idea of where this is really located. I don't know --

MR. BROWN: My other concern, as I mentioned to some of you

vately. is that when you have a small corner within the unit what is to prevent the company from then using all of your land?

MS. RIGGS: Are you talking about surface?

MR. BROWN: Yes. It's my understanding that that has happened.

MR. HARRIS: That they used all of the land?

MR. BROWN: Yes. I'm not accusing anyone.

MR. KAISER: I know that. Using all of the land for what purpose?

MR. BROWN: If any part of your land extends within the unit.

MR. HARRIS: So if they need an access road --

MR. BROWN: I understand about access road -- if you have to have an access road that you can't be land locked from producing. It would be just like a right of way to property. You can't be isolated from your own land.

MS. BROWN: But you can't let them have use of all of it.

MR. BROWN: For any reason.

MS. BROWN: When just a corner falls within that.

MR. KAISER: First of all, the pooling order, should it be granted, does not grant us any surface rights on your property. Second of all, the way I understand the operations plan for this particular unit there wouldn't be any surface disturbance on your property. Third of

all. If we were to come back and attempt to drill a well in an adjoining unit in which part of your tract would be involved we would be right back in the same situation. If that helps any.

MS. BROWN: It may not in this particular case but I have heard that it does occur. I don't know.

MR. HARRIS: I would think the lease agreement would specify -- but at the time do the companies know what route they're going to take? When you all disturbance or using the land they may not be cutting a road through. It may be something else. But when you sign the lease -- see, I don't know the content of the lease.

MR. KAISER: They didn't sign a lease.

MR. BAKER: They haven't signed a lease.

MR. KAISER: They haven't signed a lease.

MR. BAKER: Ms. Brown has some property that she owns the surface and, I think, the mineral rights to that's situated to the west of this unit. The property -- Tract 7 Ms. Brown has a mineral interest in there's no surface ownership involved.

MR. CHAIRMAN: The pooling provision actually makes sure you get paid for that interest for that portion that's in there. Now, I understand that doesn't help those that don't want it produced at all. We understand that. That's another -- that's a legislative issue there for

sure. That one is. But you asked me the question when you first came here whether or not the well was permitted. It is not. Tom checked and it is not permitted yet.

MS. BROWN: I just thought that the plans were not available until it was permitted.

MR. CHAIRMAN: The plans are available at any point in time that an application is submitted to the office. So they will be available for review and comment and any party affected by that -- meaning if they're coming on your property -- should get proper notice and a copy of the application.

MR. BROWN: This is still very unfamiliar to us.

MR. CHAIRMAN: I understand. It's not simple. We certainly will tell you it is not simple. But it does take people interacting, checking with the office, talking with the Inspector, and talking with the people that are planning to do the operations. Even then there's a lot of issues.

MS. BROWN: I think there must be a lot for the State, too, if they really want to keep this thing in balance with the companies and citizens because there's some great injustices being done. It's rumored -- I don't go on the site and see. I have some.

MR. CHAIRMAN: Anything further on this application? Do you

have anything further?

MR. KAISER: Mr. Chairman, I just ask that the petition be approved as submitted.

MR. CHAIRMAN: Do we have a motion?

MR. GARBIS: Excuse me, ma'am. Ms. Brown, are all your questions answered? I mean, do you have any more concerns? Do you feel that you've had your day in court, so to speak?

MS. BROWN: I have concerns. I have big concerns over rumors and things that I have heard. It has to progress before you find out, you know. It's like I said, it's in the beginning stage here. I don't know.

MR. GARBIS: Well, what rumors have you heard? It's hard with us to deal with rumors but --

MS. BROWN: I know. I don't ask you to do that. That's why I haven't -- it's just where they go on there and they do the pipelines -- for instance, they're here in this unit right now but how much is it going to branch out and how much liberties and so forth are they going to take? Until it comes up you can't deal with it is all I know.

MR. GARBIS: I think it would explain -- and correct me if I'm wrong but there is no intention really to go on your property at all.

MS. BROWN: No. Well, I have a copy of a letter I received

from, like I said, Mr. Cron and then my reply to him. That was in 1992. He had asked me if I was aware of their activities in the county. I told him I was and that to please leave me out, that I didn't want to be included in. But it goes back to that word "forced". I don't believe in forcing people to pool or anything. That's wrong in a democracy. We all know that -- all of us. You don't force people to do things. The thing to do is you go in by the front door and you ask them and you give them a fair price for what you expect to receive.

MR. HARRIS: Mr. Chairman, if I might just make a comment. Ms. Brown, I think a lot of this goes back to the original Act and how it was envisioned. The State of Virginia -- that is the legislators decided however at that time that they're going to promote gas and oil production in the Commonwealth. The legislators decided to do that. And in order to do that the Board was established to oversee the regulations, to develop regulations to make sure that this goes smoothly. We don't decide who owns the property. We don't decide who owns the minerals. But all we're saying is there are certain legalities that must be followed. There's some grey area there. There are some areas that we don't control. What the State did in saying we want

this to go forward is they tend -- I don't know how to word this -- to encourage companies to do certain things and encourage citizens to do certain things. And I'm not sure how balanced this all seems and I think that probably a lot of the concerns that citizens may have may be best expressed through the legislators, the people that represent them, because that's where it all originated. I've questioned several times during this meeting what they mean by "reasonable" because reasonable to me and you may be different than reasonable to a company coming in and saying, "Well, this is going to cost too much to do this." But at the same time that was put into the statute when it was first developed -- into the laws when it was first developed. So a lot of this has to go back to the development of this. And if you think it needs correction or whatever your legislators do that.

MS. BROWN: Well, who owns the methane?

MR. HARRIS: I can't answer that. The courts really haven't been able to answer that. I think Sandy may be able to bring us up to date as to who does. But that's the big question. What the State was that rather than keeping it in the ground or venting into the air where it's not going to do anyone any good let's produce it and then settle the ownership issue later. Well, I think it's

easier for the State to do since because they're not the actual owners but the owners are saying if they're going to go ahead and produce regardless then what are my rights in this and again the legislation has to be in place to protect your rights. I'm not sure -- again, you probably need to talk to the legislators and have them look at this. I'm not trying to put you off by any means. We get people month after month that are frustrated. Several people have been to meetings and have frustration and a lot of it is just how the landowner is being treated. A lot of people feel like they are being --

MS. BROWN: That's part of the beauty of the Board according to the Code, your recognition and what you do that there's a balance in there.

MR. HARRIS: Yeah. But there are certain things we cannot control in that balance --

MS. BROWN: Well, I can't control any of the legislation. I have a vote. That's all. But you take a subject like this where not too many people are concerned in it, they know nothing of it that's going on back there, and a vote comes up and -- like for instance, this vote on this -- I forget -- the 939 or some such number as that where they allowed them to go in and do the methane. It was back a few years ago. It came up for a vote and

I asked my representative why he voted for it. It voted the rights of the surface owner away to any of the methane and he studied a second and he said there was no opposition to it. There was opposition but they don't have any way except by lobbying -- they can't do that. They don't have the expenses at their disposal. So, yes, like you say, there's plenty of grey area in there about rights -- property rights. But citizens, they have to insist and I claim all my rights with the State. I'm a sixth generation Virginian and that's just the way it is.

MR. HARRIS: Well, we respect that and honor that. But our hands are tied up to a certain point. We can look at certain things and other things we can't. About the only thing I can suggest is talk to your legislator who's suppose to be the person representing you. I'm not saying that legislator is not. I'm just saying that the rules when they were put in place is almost like you said, was how many people were at the meeting that said, "Wait a minute. Something ought to be done more." But certainly the State was there and the companies were there. How many representatives of the people were there I don't know. I'm not saying that I doubt there was many but sometimes these things appear to be one sided and all we do is go in and look at

what's been decided legally and courtwise what's on paper. All we can do is follow that, to see that those rules have been followed. We can't make a decision on whether or not the rules are fair. And that's for the courts and the legislature. That's why a lot of times we appear to hear and understand and then vote in favor of something that you all may oppose. Our hands are tied as to what we can do.

MS. BROWN: With your rules and regulations you have say so over that. Your rules and regulations, what you decide on.

MR. HARRIS: Oh, yes. Yes.

MS. BROWN: You're given right much power. I think the Code says that you -- discretionary criteria and several things where the meaning is vague. I believe that maybe Tom wants to say something here. All right?

MR. CHAIRMAN: Sure. Come on up if you like. We need you first just to tell us your name for the record.

MS. BROWN: I thank you.

MR. CHAIRMAN: Thank you.

MR. WISE: Tom Wise. I live in Abingdon. These names of the people that are in this property over there -- what percentage of them do you have to have to get a permit?

MR. BAKER: Well, I guess on your drilling unit you have to have surface rights. Uh --

MR. WISE: I mean for the mineral rights.
MS. RIGGS: To pool a conventional unit you need 25 percent of the interest. For coalbed methane there is no statutory threshold.
MR. CHAIRMAN: There's no percentage required for coalbed methane. For a conventional well it's 25 percent.
MR. KAISER: A petitioner has to have at least 25 percent interest within the unit in order to have standing to file the application.
MR. WISE: We've got bunch of names here that you've got addresses to and everything whether they've got paid for all of this or not. I don't know. I know I ain't.
MR. BAKER: This is a copy of the permit application that's been --
MR. WISE: These are the names with no address. They can be found. They're living somewhere. There are names that are not on here that people should be.
MR. BAKER: Well, there may be some names that we haven't run across yet. We've got everyone that we could identify.
MR. WISE: Are you suppose to go and steal our gas and whatever.
MR. BAKER: We don't intentionally intend to steal anyone's gas.
MR. KAISER: Once again, what he has is a copy of the permit

application that apparently identifies --

MR. WISE: I've got names of the owners of the gas property.

MR. BAKER: Probably the same individuals that we have listed on the exhibit.

MR. CHAIRMAN: Are you aware of other owners of property that they don't have listed?

MR. WISE: I think so.

MR. CHAIRMAN: Where do you live, Mr. Wise?

MR. WISE: In Abingdon.

MR. CHAIRMAN: In Abingdon?

MR. WISE: Yes.

MR. CHAIRMAN: Could you provide that information to our office there in Abingdon and work with us on this?

MR. WISE: Well, I'll think about it.

MR. HARRIS: I'm not sure I understand your concern. I know Sandy and I were talking and I apologize because I didn't hear all of your presentation. Did you have a concern that everyone hasn't been noticed meaning notified that we are here doing this or are you concerned --

MR. WISE: That their lease is signed. Some of them don't that they know of. I've got one fellow that's going to send his money back - - the check and tell them to forget about it.

MR. HARRIS: I don't know what to do about that.

MR. WISE: I know, but I'm just telling what they're doing.

MS. RIGGS: With respect to a pooling application you've got two types of parties. You've got those that have entered into voluntary leases and then you've got those like Ms. Brown who have not. The operator is required to name all of those parties, both the leased and unleased, give them notice of the proceeding and what they're asking the Board to do is to pool all of those interests and allow the unit operator to go forward with production and to establish an escrow account for the payment of the royalties until such time as ownership of the gas is determined. What they're required to do -- a permit application is one thing. That's to permit the actual drilling of the well. What they're here today for is the pooling of the 60 acre drilling unit. They have attached a list of owners that they say own the coal and gas within that 60 acre unit. They're asking the Board to pool those interests and allow them to go on and drill the well once they get a permit and if they get a permit and produce the gas out of that 60 acres and to pay royalties to all the folks within that 60 acre drilling unit. Now, if I understand what you're saying is that you have a copy of the permit application. Do you have a copy of the pooling application that we're here on today? I think

we're mixing apples and oranges here is part of the problem. I mean, we've got two different proceedings that are going at the same time.

MR. CHAIRMAN: But to answer his question, he asked the question about what percentage is required and I think we answered that. There's no percentage stipulated in the Act, no minimum percentage. Only for conventional nature gas well. Coalbed methane doesn't -- it presumes there will be a conflict of interests. It sets up with that kind of presumption that there will be these type of conflicts.

MS. RIGGS: Their testimony was that they have received leases on 92.2365 percent of the gas and on 97.9349 percent of the coal. So those percentages are the parties within the 60 acres that have signed voluntary agreements with them. They say that 7.76 percent of the gas owners have not signed leases and 2.06 percent of the coal owners have not signed leases.

MR. HARRIS: I need to be quiet, I guess, but let me take a stab at this. If 98 percent of the people agree and you're in the two percent that says no, I don't want to sell the gas or whatever -- again what the State -- it would be nice to be able to go in and block off your gas and pump everything but since everybody else agrees we're going to let this happen. That's not feasible.

It's not practical. And again, the State is in the business of promoting the use of gas and that's why all of the regulations were set up. Again, if you look back it doesn't really address -- this is not going to make you happy. But it doesn't really address whether or not you like it or not. What the State does is says we'll decide who owns it, divide it up, give everybody a little money whether or not you're happy with it. I mean, you may not want to sell that gas but if they start pumping gas elsewhere and your's is not shut off it's eventually going to go. What the State says is you may not want it pumped but the State is about the business of promoting gas production. So they're going to pump it. That's what the law essentially says. So what we have to do is we make sure that you're paid for your part that you own. You may not have wanted to sell it but we can't say that we can shut your's off and hold two percent of the total. There's no way physically to do that. And what the State has decided to is we'll proceed with the production and if there's any claims or whatever of ownership -- and I don't know what happens to the people that say I don't want to do this because they get pooled along with everybody else. They get a part of the money. I mean, that's the reality of it. But again it goes back to the legis-

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 June 17th, 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 16th day of July, 1997.

Deborah J Bise

DEBORAH J. BISE
NOTARY PUBLIC

My commission expires September 30, 2000.

lation that needs some addressing or revisiting or whatever.

MR. KAISER: If I might add to what Mr. Harris had to say, the Board is charged with promoting the efficient recovery of reserves, preventing waste and protecting correlative rights which certainly all enter the picture under this application.

MR. HARRIS: We try to make sure you get your share but we can't deal with whether or not you wanted to get your share. That's beyond us. I hate to put it that but I don't know of any other way to put it. I'm not saying it makes us happy to do that.

MR. GARBIS: There may be another way to look at it. If you have out of 100 people 98 that say yes, I want to sell my gas and there's just two that say no, I don't want to sell my gas you could say that it's not fair to the other 98 people out of the 100 who want to at least obtain some benefit from it. So here I guess you can say the majority -- in this case the majority are in favor of selling their gas.

MR. LEWIS: But yet still the other two will get their percentage.

MR. GARBIS: You'll still get reimbursed for your mineral rights.

MR. WISE: Yeah. I understand that. But we have no choice

because (Inaudible.) We simply had no choice to start with.

MR. HARRIS: Go to your legislator. I hate to keep saying that because it sounds like we're putting you off, but that's about the only way that can be adjusted because the State has decided -- how ever that was done, through the legislative, through the representatives -- we're going to go ahead with this production.

MR. WISE: I didn't have no choice to start with. I didn't -- why come up here and spend two or three days for nothing?

MR. HARRIS: I hate to look at it that way, but just gaining a little bit of knowledge about it -- it just helps to know -- and that's what I said earlier. It helps to know what to expect. A lot of times if you know that then that will reduce maybe some of the confusion of some of the concern. I don't know. I'm not saying the concerns aren't valid. But once these things are in law, I guess, we have to deal with what's there in law. I agree that some of this is not fair and I can't do anything. None of us can do anything.

MR. WISE: I'm just telling you all what I think about it.

MR. CHAIRMAN: You have every right to do that. We respect that very much.

MR. WISE: And I'm not going to sign no lease with them.

They ain't got enough money to buy a lease from me.

MR. CHAIRMAN: And nothing we're going to do is going to make you do that.

MR. WISE: I know that.

MR. CHAIRMAN: Okay. We thank you. We appreciate it. Any other questions or comments, members of the Board? Do we have a motion?

MR. GARBIS: I make a motion that we approve the application.

MR. BRENT: I second it.

MR. CHAIRMAN: Motion and a second. Any further discussion? All in favor signify by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.) We have an approval. Thank you. Thank you for your time.

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

ITEM VII

MR. CHAIRMAN: The last item on today's agenda is a petition from Equitable Resources for a well location exception for proposed well V-2331. This is docket number VGOB-97/06/17-0590. We'd ask the parties that wish to address the Board to come forward at this time. Did you folks want to address the Board on this matter?

MR. MULLINS: I might have some questions. I'm not sure.

MR. CHAIRMAN: Do you want to come up so you can hear what's going on? You are welcome to do that. Ma'am, did you want to come up also?

LADY IN AUDIENCE: No.

MR. KAISER: Mr. Chairman and members of the Board, I'm JIm Kaiser representing Equitable Resources Energy Company. Our witnesses in this matter will be Mr. Bob Dahlin who's been previously sworn and Mr. Don Hall who needs to be sworn at this time.

COURT REPORTER: (Swears witness.)

MR. KAISER: Our first witness in this matter will be Mr. Hall.

DON HALL

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

DIRECT EXAMINATION

BY MR. KAISER:

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

A. My name is Don Hall. I'm with Equitable Resources Energy Company and I'm a district landman.

Q. Have your qualifications as an expert witness in these matters been previously accepted by the Board?

A. Yes, they have.

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

A. Yes, sir.

Q. Are you familiar with the application requesting a location exception for well V-2331?

A. Yes, I am.

Q. Have all leased parties within the unit been notified as required by Section 4.B of the Regulation?

A. Yes, sir.

Q. Would you indicate for the Board the ownership of the oil and gas underlying well V-2331?

A. A&R Coal Company -- LLC owns 80.475 percent of the unit and the other 19.55 percent of the unit is owned by various people from which we have leases.

Q. So Equitable has a voluntary oil and gas lease from

each interest owner within the unit?

A. Yes, we do.

Q. Does Equitable have the right to operate the reciprocal well -- from the well in which we are seeking an exception being P-68?

A. We do.

Q. Mr. Hall, in conjunction with the exhibit that you have provided the Board members with could you in your own words explain why we are before the Board requesting this particular location exception?

A. As you can see from the exhibit, the P-68 which is the reciprocal well is highlighted in green at the top of the page, the proposed V-2331 access road and well is in yellow, the blue area highlighted as a farm pond on Mr. Large's property and --

MR. CHAIRMAN: Excuse me. Does the gentleman have a copy of this?

MR. MULLINS: Yes.

A. (The witness continues.) The highlighted red line is the 2,500 foot distance from P-68. The 2331 is actually located 2,300.58 feet from there. The reason the well --this well was originally permitted by A&R back in 1987 and then I think it was 1991 or 1992 we purchased A&R and this location expired and we're re-permitting it. The location has been approved by the

coal company where it is and it's where Mr. Large would prefer to have it on his farm. He has a real nice level farm there and we're trying to stay over next to his property line and stay out of his pond area. If we put the well at the proper distance 2,500 feet we'd be right in the edge of the pond. To eliminate being in the pond we would have to move on beyond the pond which would extend our spacing greater than 2,500 feet. So this particular area here, as I say, is where the coal company would prefer to have it and where Mr. Large would prefer to have it.

Q. And Mr. Large is a surface owner?

A. Yes.

MR. CHAIRMAN: Is this Mr. Large here?

MR. KAISER: No.

MR. MULLINS: I'm Philip Mullins. I own the property where P-68 is.

MR. CHAIRMAN: Okay.

A. (The witness continues.) Again, if we move the well more to the southwest we'd be on a -- across Mr. Large's property line we would be on a very steep hillside there that averages probably greater than a 50 percent grade as you can see from the contours on the map. This location that we have here, like I said, has been permitted at this point before and it's basically

an effort to try to stay out of the farm pond and stay out of the majority of Mr. Large's fields there and minimize the impact on his farm.

Q. So would you say that this location provides a satisfactory accommodation of the owners of the other estates within the drill site tract?

A. Yes, sir.

MR. KAISER: I have nothing further of this witness at this time, Mr. Chairman.

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

(Witness stands aside.)

MR. CHAIRMAN: You may proceed.

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 for the record who you work for and in what capacity?

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

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

and Oil Board as an expert witness in these matters?

A. Yes, I have.

Q. Are you familiar with the request for a location exception filed by EREC for well V-2331?

A. I am.

Q. In this event this location exception would not be granted would you project the estimated loss of reserves which would result in waste?

A. We would expect 650 million cubic feet of gas.

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

A. 6,105 feet.

Q. And this is consistent with the formations included in the well work permit before the DHME?

A. That's correct.

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

A. Yes.

Q. Is EREC requesting that this location exception cover conventional gas reserves to include the designated formations from the surface to the total depth drilled?

A. That's correct.

Q. Mr. Dahlin, in your professional opinion will the granting of this location exception be in the best interest of preventing waste, protecting correlative

rights and maximizing the recovery of gas reserves underlying the V-2331?

A. Yes, it would.

MR. KAISER: I have nothing further of this witness at this time, Mr. Chairman.

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

MR. KING: Is 6,000 feet the normal depth in this area?

THE WITNESS: Yes, it is.

MR. CHAIRMAN: Mr. Mullins?

MR. MULLINS: At this time I think all the questions I have have been answered. I have no objection to you giving them this variance.

MR. LEWIS: You don't. You don't have any objection?

MR. MULLINS: No. I had some questions to begin with but I think they've all been answered and I don't have any objections now. Anything further?

(Witness stands aside.)

MR. CHAIRMAN: Do you have anything further?

MR. KAISER: No, sir. Mr. Chairman, we just ask that the application be approved as submitted.

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

MR. BRENT: Second.

MR. CHAIRMAN: A motion and second. Any further discussion? All in favor signify by saying yes. (ALL AFFIRM.)

Opposed say no. (NONE.) The petition is approved.

Thank you. That concludes today's agenda. Thank you all.

(End of Proceedings for
June 17, 1997.)