

IN THE COUNTY OF WASHINGTON

VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY
VIRGINIA GAS AND OIL BOARD

OCTOBER 21, 2008

APPEARANCES:

BOARD MEMBERS:

PEGGY BARBAR - PUBLIC MEMBER
MARY QUILLEN - PUBLIC MEMBER
BILL HARRIS - PUBLIC MEMBER
KATIE DYE - PUBLIC MEMBER
DONNIE RATLIFF - COAL REPRESENTATIVE
BRUCE PRATHER - OIL REPRESENTATIVE

CHAIRMAN:

BENNY WAMPLER AND BUTCH LAMBERT - ACTING DIRECTOR OF DMME
AND CHAIRMAN

DAVID ASBURY - DIRECTOR OF THE DIVISION OF GAS & OIL AND
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BENNY WAMPLER: Good morning. My name is Benny Wampler and I'm acting director of the Department of Mines, Minerals and Energy and Chairman of the Gas and Oil Board. And I'll ask the Board members to start introducing themselves. Ms. Quillen?

MARY QUILLEN: My name is Mary Quillen. I'm the director of graduate programs with the University of Virginia here at Higher Education center and I'm a public member.

PEGGY BARBAR: Peggy Barbar, Dean of Engineering, Southwest Virginia Community College, public member.

KATIE DYE: Katie Dye. I'm a public member from Buchanan County.

SHARON PIGEON: I'm Sharon Pigeon with the office of the Attorney General.

DONNIE RATLIFF: I'm Donnie Ratliff with Alpha representing coal.

BRUCE PRATHER: I'm Bruce Prather. I'm representing the oil and gas industry.

DAVID ASBURY: Good morning. David E. Asbury, director of the Division of Gas and Oil and principle executive to the staff of the Board.

BENNY WAMPLER: Thank you. If you have cell phones we'd ask you to put them on silence or turn them off at this

time. Also, I don't know if you...I think most people heard that work in this business, but if you haven't, Bob Wilson passed away last month and I'd like to have a moment of silence in memory of Bob. (Silence.) Thank you. The first item on the Board's agenda today is a quarterly report on the Board's escrow account administered by Wachovia Bank and David Asbury will give us an update and you have a handout that David is presenting.

DAVID ASBURY: Thank you, Mr. Chairman. Each member I trust has this handout before them. This is an accounting as of September the 30th of our escrow account with Wachovia. It shows us beginning 2008 year in January at 18.514 million and as of September the 30th, 2008 our escrow account had grown to 23.06 million and that's where we stand year to date. On the bottom of the page it shows the portfolio quarterly interest earnings and the annualized interest earnings at 2.6% year to date. Additionally, with the financial world has been in turmoil over the past few months, I did want to make the Board aware that our office has been in frequent contact with the escrow agent, which is Wachovia Bank, particularly during the past three weeks. We stayed in frequent contact with them as their situation changed a couple of times during that period. And in the fluctuating and unsettled financial times, we believed it

was prudent to meet with Wachovia and their senior account managers regarding the Board's escrow account, which we did on October the 10th. The information that you have before you in the packet is a presentation that they made to us on October 10th and the recommendation were made to us about the new direction. There is a potential decision and recommendation inside this packet. I'll quickly go through this if that's okay, Mr. Chairman.

BENNY WAMPLER: That's fine.

DAVID ASBURY: Page two shows the Board members and this we hope was an update of the escrow account and the agents evolution with our escrow account from First Union Bank through what we know today as Wachovia. That's a brief history. It shows in September of 2006 negotiations with our Board and Wachovia's charitable services. They were retained and began being managed in that time period by Wachovia individually rather than to be transferred to another asset management agency. Page three describes deposits and the accounting services that Wachovia has established. Historically deposits in the escrow has been divided between two instruments. Instrument A is the Board's interest bearing bank money market whose yields has generally been indexed to the 90 day U.S. Treasury Bill and Federal Funds rate. B, the Board's institutional evergreen prime cash

money market fund, which is an institutional money market fund with diversified investment securities allowed under the Code of Virginia's legal investment for public funds. All of this money is under the Code of Virginia's investment criteria which includes a 50% collateralization of the funds. Page four goes through a bit of the history for each account. But on October 10th as this meeting was taking place, Wachovia Corporation and Wells Fargo reaffirmed their definitive agreement to merge and since that time, a lot of you may have been following this in the press, Citicorp had initially made an offer to Wachovia and subsequent to that offer, Wells Fargo made another buyout offer. Afterwards there were two or three days of discussions back and forth between the Federal Regulatory Agencies and Citicorp. Citicorp backed out of their offer and allowed the Wells Fargo merger with and buyout of Wachovia to proceed. So as we stand here today Wachovia again is going through their final merging documents and will be part of Wells Fargo Corporation. On page five, it shows one of the existing money market investment funds, which did put the costs of the overnight instruments in purchase of paper for short term corporate debt and securities. It did, while providing a higher yield, have a small element of risk. And as each of you know in the financial market, even though most of our

fund is backed by U.S. Treasuries there is no such thing as zero risk. But this U.S. Treasuries and some of the financial instruments that we are investing in have close to zero risk as such funds could have. But at question today in one of Wachovia's recommendations is our current investment for the Evergreen Institutional Prime Cash money market fund you see some of the criteria for the fund. It is AAA rated standard (inaudible) and Moody's fund. It has same day liquidity. And it has an average maturity of fifty days and it shows the assets there of 3.794 millions of dollars. On page six, Wachovia has made a recommendation to us rather than to have a portion of our money into this money market cash fund. The senior management advisors for Wachovia has recommended three different funds that is different from the Evergreen Fund. And you have those presented before you on page six, all of which have different levels of risk and reward. All of them have different days of maturity for their interest and also as you can see all three represent AAA rated standard (inaudible) and Moody's ratings. They all have different levels of assets held by the fund and the most invest in U.S. Treasuries and repurchase agreements. The repurchase agreements is at issue with the cash money market fund, which is an overnight repurchase of cash paper bank to bank or institution to institution, that's the element of risk in the

fund that we have now is that repurchase agreement or the overnight paper. So, they have worked with us and are making a recommendation for an alternative investment to the Board for one of these three funds. And I'll jump to page seven, working with Wachovia and their senior investment advisors they're recommending to us and to the Board, which I'll make that recommendation to you now, that our account balance that's within the Evergreen Institutional Prime Cash Money Market Fund to be transferred into Federated Government Obligations Fund. We are giving up about a percent of earnings potential, but it is also reducing our risk to as close to zero risk as we can with our escrow account and the funds month over month in our escrow account. So, that is their recommendations. And one of the things that we do agree with is this particular fund again is AAA rated, same day liquidity, forty-three days of maturity and has the highest number of assets in this particular fund of all funds recommended. I'll give you a moment to read their recommendations of why we should consider that on page seven.

(Board members review page seven.)

DAVID ASBURY: The October the 10th meeting included participation from our general services manager, Jackie Davis, who helped Mr. Wampler in negotiation...and the Board in the negotiations of the escrow account and Diane Davis our

program specialist and myself with the senior advisors from Wachovia, Patrick Dixon and Judy Barger. Jim Deel is also...who is the vice president of Wachovia also participated in the recommendation to the Board. The last piece of paper in your document from Patrick Dixon is a statement by their bank and Wachovia as to their stability and what it means for Wachovia with the purchase of and merger of Wachovia and Wells Fargo. And he outlines significant stability and potential for growth nationwide with Wachovia and Wells Fargo as they go forward. That's just for your general information. That's all I have, Mr. Chairman.

BENNY WAMPLER: Thank you, Mr. Asbury. I wanted to recognize Mr. Harris and if you will just state your name and who you represent.

BILL HARRIS: Yes, thank you. I'm Bill Harris a public member from Wise County.

BENNY WAMPLER: Thank you. For discussion, it appears that based on the four accounts that they presented as alternatives they actually are recommending the two at the bottom of page seven, is that the way you folks read it? And they are asking us to consider one or a combination of the two.

DAVID ASBURY: Mr. Chairman, excuse me for

interrupting.

BENNY WAMPLER: Mr. Asbury?

DAVID ASBURY: There's one additional thing that we need to consider. Our contract for this escrow account with Wachovia is up June 30, 2009. So, we will be preparing and the board will have an opportunity to look at the scope of work for our escrow account going forward and if possibly the November or December meeting. Thank you, Mr. Chairman.

BENNY WAMPLER: Discussion?

BRUCE PRATHER: I have a question, Mr. Chairman.

BENNY WAMPLER: Mr. Prather.

BRUCE PRATHER: During the upheaval of these repurchase agreements, did we lose any money through the Evergreen agreement with that at the present time?

DAVID ASBURY: No, we did not.

BRUCE PRATHER: Okay.

BENNY WAMPLER: Other questions or comments?

BILL HARRIS: Mr. Chairman?

BENNY WAMPLER: Mr. Harris.

BILL HARRIS: Are we talking about waiting until June 2009 before making changes, is that---?

BENNY WAMPLER: No---.

BILL HARRIS: Is this---?

BENNY WAMPLER: No. Two things going on, this is a

recommendation for the current account which has over 23 million dollars in it to further protect that account so that during the current money market situations you're not running a higher risk of losing money. And so far we haven't lost any money with the investments. This is their recommendation. They haven't picked one. They said the one or a combination of one. The other side of that coin is the current contract with Wachovia expires June 30, 2009. So, the Board will have before it a scope of work within the next two months to consider for the next contract that will go out for a contract that will be effective July 1, 2009.

SHARON PIGEON: But it may or may not be with Wachovia at that point.

BILL HARRIS: Yes. Yeah. You said that. Thank you.

BENNY WAMPLER: Other questions?

(No audible response.)

BENNY WAMPLER: Now, I realize we're financial experts here you know and where they've asked us to consider one or a combination of one, we could always go back and, if the Board chose, and have them select yet again the most superior of the two or a combination as an option as well or stay with what we have. Mr. Prather?

BRUCE PRATHER: Will there be other money market funds that are competing with Wachovia for this account

during this period of eight or nine months?

DAVID ASBURY: No.

BENNY WAMPLER: No. They have the contract through June the 30th---.

BRUCE PRATHER: Okay.

BENNY WAMPLER: ---and we'll put this out to bid. The scope of work, once approved by the Board, will be put out to bid and we'll have a new or maybe the same contractor that will be selected and the Board will make that selection based on the bids that come in. Other comments or questions?

(No audible response.)

BENNY WAMPLER: Is there a motion?

DONNIE RATLIFF: Mr. Chairman, I'd like to make a motion that we use the combination.

BENNY WAMPLER: Okay.

MARY QUILLEN: Second.

BENNY WAMPLER: Motion and a second. Any further discussion?

BILL HARRIS: Mr. Chairman---.

BENNY WAMPLER: Mr. Harris.

BILL HARRIS: Apparently, I think we have...we're in two accounts, is that right? One is, I don't want to use the word liquid, but fairly we can make withdrawals or make disbursements from that account without having to wait six

months without suffering a severe penalty and then the other one is a long term that sort of protects money. It seems to me we...I remember a discussion we talked about maybe having some money to operate with or to make disbursements as we have been.

SHARON PIGEON: Page three.

BILL HARRIS: Yes. So, these two then with that change, that structure in terms of one being more fluid than the other. When I read these I mean I read them but I don't know mentally if this is saying if this one is this and the other one is something else.

BENNY WAMPLER: They understand the liquidity. I'll let David talk about the specifics. He was in a meeting. But the bank understands the issue of the need to payout on a notice from the Board. So, I feel certain that there's a payout possibility with a short turn-around on this, but David?

DAVID ASBURY: That's correct, Mr. Chairman. The only issue with the cash money market fund was the repurchase of notes or paper bank to bank or entity to entity, institution to institution. There was that overnight risk or a two day risk where a note or instrument had been purchased and something happened to that bank or institution before those funds were recovered. That was the element of risk and

potential for loss because our state code requires these funds to be 50% collateralized. That doesn't mean that all the other 50% could be loss but that has that element of risk with this repurchase in the cash money market fund. These other funds have same day or next day liquidity. So, I don't think that's an element of question to us if we have a Board order within two or three days either fund that we choose will be able to meet our needs as far as disbursement of funds from the account.

BENNY WAMPLER: Other questions?

(No audible response.)

BENNY WAMPLER: We have a motion and a second. Any further discussion?

MARY QUILLEN: These two that are recommended, both do have same day liquidity?

DAVID ASBURY: Yes, ma'am.

MARY QUILLEN: That's stated on the---?

DAVID ASBURY: And is it...the motion that's first and second, is it to take the cash...use the money in the cash money market fund and divide it equally between these two recommended funds?

BENNY WAMPLER: I was going to ask for that clarification in order...did you all want to have the Bank decide...we'll go with the combination and let them decide or

do you want to make it 50/50?

DONNIE RATLIFF: I will trust that they would monitor it and have more detail information than what we have.

BENNY WAMPLER: Certainly the one that would earn the most and be the best protected would be the instruction. Second, agree with that?

PEGGY BARBAR: Yes, obviously the Evergreen would be the highest earning.

BENNY WAMPLER: Right.

SHARON PIGEON: So, we're only talking about this and leaving this as---?

BENNY WAMPLER: Uh-huh.

SHARON PIGEON: I think that needs to be stated.

BENNY WAMPLER: Yes, that's way he made it. Any further discussion?

(No audible response.)

BENNY WAMPLER: All in favor, signify by saying yes.

(All members signify by saying yes.)

BENNY WAMPLER: Opposed, say no. You have a unanimous decision. For clarification for the folks that are here before we go on, item 38 which was the Board considering post production allowances, has been continued until November. So, if you are here for that, that is continued

until November. I apologize, I'm battling a little bit of bronchitis here. So, I don't mean to be up here coughing and going on. The next item on the agenda is a petition from Equitable Production Company for pooling of a drilling unit supported by wells VH-539904 and VH-539905. This is docket number VGOB-08-0819-2308, its continued from August. I'd ask the parties that wish to address the Board in this matter to come forward at this time.

JIM KAISER: Mr. Chairman and Board members, Jim Kaiser on behalf of Equitable Production Company. At this time, we'd ask that this particular petition be withdrawn from the docket. If I may, I've got some other housekeeping I can---

BENNY WAMPLER: You may. That item is withdrawn.

JIM KAISER: Again, on behalf of...to turn your attention to item six on the docket.

BENNY WAMPLER: That's a petition from Equitable Production Company for pooling of 320 acre unit served by well VH-539923, docket number VGOB-08-0715-2275.

JIM KAISER: Jim Kaiser, again, for Equitable. We are continuing to identify additional parties to this unit so we'd ask the Board's indulgence in continuing this matter until the December docket.

BENNY WAMPLER: Without objection that's continued

until December.

JIM KAISER: And then on behalf of Chesapeake Appalachia, LLC item number 13.

BENNY WAMPLER: A petition from Chesapeake Appalachia, LLC for repooling of horizontal conventional unit 826879, docket number VGOB-08-0715-2287-01.

JIM KAISER: Yes, sir, we'd ask that item be continued until November.

BENNY WAMPLER: Without objection that's continued in November.

JIM KAISER: And then on behalf of Chesapeake Appalachia, LLC item number 31.

BENNY WAMPLER: A petition from Chesapeake Appalachia, LLC for pooling of conventional gas unit 827067, docket number VGOB-08-1021-2358.

JIM KAISER: And on behalf of Chesapeake, we'd ask that that item be withdrawn from this docket.

BENNY WAMPLER: That item is withdrawn.

JIM KAISER: Thank you.

BENNY WAMPLER: Thank you, Mr. Kaiser. Next is a petition and memorandum of law filed by S.T. Mullins and J. Scott Sexton on behalf of GeoMet appealing the decision of Director of the Division of Gas and Oil regarding Informal Fact Finding Conference IFFC 20908, docket number VGOB-08-

0617-2259. I'd ask the parties that wish to address the Board in this matter to come forward at this time.

TOM MULLINS: My name is Tom Mullins with the Street Law Firm in Grundy and I represent GeoMet.

GEORGE MASON: George Mason, law firm in Lexington, Kentucky. I'm here on behalf of LBR Holdings, LLC.

MARK SWARTZ: Mark Swartz on behalf of Island Creek Coal Company.

JONATHAN BLANK: Jonathan Blank on behalf of Island Creek Coal Company.

TOM MULLINS: Mr. Chairman, I have filed a motion to continue and it has been opposed. The basis of the motion to continue is, as the Board is aware, GeoMet made an election to file for a Writ of Mandamus concerning the prior action of the Board, that's been served and that is pending in the Circuit Court now. The Board is subjected to the Circuit Court jurisdiction on that issue now. I think it would not be proper to proceed at this point in time to hear this matter or these matters until that issue is resolved. I have contacted Ms. Pigeon to start the working of dates out to try to get that done. But since the matter is pending in the Circuit Court, I think it would be appropriate to continue that matter at this time. I know that Island Creek has filed their objections. It goes more to the merits of the Writ

itself which is up for the Circuit Court to decide. Their motion is not really addressed directly, in my opinion, the fact that jurisdiction of that issue is now in the Circuit Court. I would ask the Board continue those matters until such time as we can get a hearing before the Circuit Court. We've got some dates that are being looked at by the attorneys.

BENNY WAMPLER: Let me go ahead and call the others, because you're treating them as a package and we have been doing that and I'll go ahead and call them or attempt to. The other items are number four in the Board's packet VGOB-08-0617-2260 and number five VGOB-08-0617-2261. And we'd ask the parties that wish to address the Board in these matters to come forward at this time. We'll go ahead and do this again just for the record.

TOM MULLINS: Tom Mullins of the Street Law Firm in Grundy on behalf of GeoMet.

GEORGE MASON: George Mason, attorney representing LBR Holdings, LLC. We're here to support GeoMet's motion to stay and continue.

MARK SWARTZ: Mark Swartz on behalf of Island Creek Coal Company.

JONATHAN BLANK: Jonathan Blank on behalf of Island Creek Coal Company.

BENNY WAMPLER: Mr. Swartz?

MARK SWARTZ: We filed an opposition, it came out of Jonathan's office to the motion to stay and continue. Did we get it to you in time so the Board has actually been able to see it? I guess I won't go through it then in detail, but I would like to make a couple of points. First of all, Mr. Mullins started by saying that...or making a representation to you that jurisdiction is now in the Circuit Court of Wise County. I would disagree wholeheartedly with that. This is not...they did not take an appeal. Okay, if they took an appeal there might be some merit to that. They have filed an action for a Mandamus complaining that you didn't, as a Board, enter an order within thirty days as required by statute. That allegation is actually made in the complaint that they filed in the Circuit Court and it says that the principal executive to the staff had the duty and obligation to enter an order within thirty days. Well, what actually happened here was we had a hearing in June where you made a decision. I filed a motion to reconsider and we came back in July. I believe the hearing in June was on June the 17th and the hearing in July was on July the 15th. So, within a period of less than thirty days you made a decision to reconsider. I mean that is the substance of how ludicrous this Mandamus is. You didn't wait some extra long period of

time to do what you were supposed to do. Within the period of time that you had to enter an order, the Board met, a motion was made to allow a reconsideration to proceed on the advice of the Attorney General. I think it was...you concluded you had a right as a Board to reconsider a prior decision, that you made that right...made that decision within less than thirty days. Immediately after you made that decision, GeoMet moved for a continuance. Immediately... we came back the next month, GeoMet moved for another continuance. We...before we came back, I think Mr. Wampler had a conflict and indicated that he wanted to attend the hearing. So, you know, the fact that we're ninety days down the road is not Island Creek's responsibility, I mean they didn't cause that, and indeed the Board didn't cause the first two continuances. I mean you accommodated them. So, the delay here is really not to be laid at anyone's feet except the petitioner here for this continuance. So, you know, you weren't late, you made a decision to reconsider within less than thirty days. This is not an appeal. This is a Mandamus action.

The other point that I would make to you, and this happens repeatedly when I'm dealing with GeoMet, Island Creek is not a party to this Mandamus action. They didn't sue us. So, they're in Wise County, haven't named Island Creek, my

client, as a party and they come here in an action that I'm a party...my client is a party to and they say well, you know, in this action we didn't join them in so they don't have a right to pick dates, appear...this action that we didn't join them in is now pending, but that gives us an excuse to come into an action where they actually appear and say, oh, let's just stay this pending the outcome of some case that we didn't bother to make them a party to. I mean this is just not right. I would...I think we need to be done. I think that it's obvious that the Board needs to make a decision here. At that point, whoever is unhappy with the decision will have a right of appeal. We all know that. It's not like anybody here is going to be denied their day in Court, but I would think that we need to let you all do your job to decide the motions to reconsider, be done with it, let them exhaust their administrative remedy in front of you and then let's be up on appeal if somebody needs to be up on appeal if somebody needs to be up on appeal. I mean, we raised other issues in our response, not the least of which is under the circumstances there is no case, no statute, no nothing that GeoMet has brought to anyone's attention that would support a stay here. And I will also...in conclusion, I would also say they have not asked for a stay in the Circuit Court and they don't have one. That's all I have.

BENNY WAMPLER: Do you have anything further?

JONATHAN BLANK: I have nothing further.

TOM MULLINS: I do.

BILL HARRIS: Mr. Chairman, may I just ask one question. This Writ of Mandamus, can I get an explanation of what that entails? I mean, both of you have used that but I'm not sure if I'm clear on what that means.

TOM MULLINS: A Writ of Mandamus is...and I have a couple of other lawyers here to help fill in any gaps that I leave, okay. A Writ of Mandamus is what is known as an extraordinary writ. It is not something that is common. And it is utilized to have a governmental official do an act that a party feels is a non-discretionary act. In other words, it's something they are supposed to do under the law. And GeoMet has taken the position that when the Board voted in June when it approved the decision of Bob Wilson and it submitted an order, all prior to Mr. Swartz's filing of a request of reconsideration, that it was entitled to have an order entered at that point in time, a written order. That's the basis of the Writ. The reason that the hearing, as I remember it, and I found the transcript page on that case was continued in July was because the thirty day notice requirement for filing the request for reconsideration had not been met. So that period is actually an Island Creek

issue. So, when they're trying to lay all the blame at the feet of GeoMet I don't think that's accurate.

The Board actually in it's July minutes approved the action it took in June approving Bob Wilson's decision. So you have the actual vote, then in July you confirm that vote in your approval of the minutes. All that happened in that one continuance. So, now GeoMet has submitted to the Circuit Court, we have a decision by the Board and it was approved by the Board and we're asking the Circuit Court to have the Board issue its written order.

BILL HARRIS: Thank you.

MARK SWARTZ: Actually, the lawsuit concludes by saying that the plaintiff is asking the Circuit Court to order this Board to issue a Writ of Mandamus compelling you to enter an order based on your June 17, 2008 decision and the point being to try and prevent you from reconsidering that decision which you decided to do in July. So, that's...this is a tactical move to prevent you from reconsidering the decision and you agreed to reconsider it in July and we've been waiting now for months to get to a hearing to reconsider. So, that's where we are.

BENNY WAMPLER: Before I go to Mr. Mullins, I want to clarify one thing for the Board for your recollection. In June we continued. We did not hear all these cases that day.

We made a vote on one portion of it and we continued...it is all continued currently today on the Board's own motion.

Mr. Mullins?

TOM MULLINS: Not...I respectfully disagree with the Chairman---

BENNY WAMPLER: I understand.

TOM MULLINS: ---on that point. I think there was a final motion. I think the minutes reflect there was a final decision made. That's the written documentation of the Board. It's contained in the transcript. It's contained in the minutes of the Board's meeting in July and that may be the rub. I mean that may be the rub. But, certainly, GeoMet has availed itself of the Writ of Mandamus option and that is been duly served on the appropriate officials of the DMME and so forth and I'm assuming that will be heard as quickly as possible. We called and got dates. It's actually in Washington County. It's not in Wise County. We called and got dates from the Court and I've run those dates passed Ms. Pigeon, who is working out other issues in her calendar to try to accommodate those dates if she can. So...and, yes, he said it's a tactical move. Certainly every piece of litigation is a tactical move. I mean, there's nothing anybody does that's not tactical driven to try to achieve their goal and I'm not ashamed of that. And that is

certainly something that we're trying to do. We have a decision of the Board. We think we are entitled to have that decision memorialized in the form of an order that is pending before the Circuit Court of Washington County now and proper service has been had. And we think it prudent upon the Board to continue this matter until that is resolved.

MARK SWARTZ: Well, you notice he didn't say he was calling me or Mr. Blank to get dates because on another tactical move he didn't join Island Creek Coal Company in that case.

TOM MULLINS: There's a reason for that.

MARK SWARTZ: Right.

TOM MULLINS: It was...it would be improper to do so. Under a Writ of Mandamus they are not a proper party.

MARK SWARTZ: Yeah, we're not interested in the outcome of that, are we?

TOM MULLINS: Well you maybe...you can certainly attend and observe, but---

MARK SWARTZ: Couldn't participate though.

BENNY WAMPLER: Gentlemen, I'm not going to tolerate that.

MARK SWARTZ: I'm sorry, just having too much fun here.

BENNY WAMPLER: I understand. I have to dampen that

a little bit.

SHARON PIGEON: I have a little piece of information that I want to add for clarification. Generally speaking, I think that these gentlemen are more or less accurate than what they said. But just so it's clear, the hearing was on June 17 and on June 19, obviously you all know a very quick turn around, I received a draft of a proposed order from Scott Sexton on behalf of GeoMet. That proposed draft I responded back to Scott on the 23rd of June, but on that date I told him the order he proposed, as he had drafted it, went beyond anything that was decided at the June hearing. The language on that specifically was global. It tried to include GeoMet permits that were not part of that June 17 hearing. Regardless of your feeling on the outcome, the thrust of that draft was global and I advised him then of that. And I also advised him on the 23rd, that both David Asbury and Benny Wampler who are the two individuals who signed the orders were both coincidentally at Virginia Beach attending another function and would not be available to sign an order at that point. On June the 25th then, on behalf of Island Creek, Mark Swartz filed the motion to reconsider. After close of business on June the 25th, then Tom Mullins or rather Scott Sexton sent me a corrected order which then was limited to the decision that was actually made in June. Now,

perhaps we would have had a different posture had the original order on the 19th that was drafted and submitted for consideration not included language beyond what the Board had actually done. I don't know that it would have because again in addition to that information David and Benny were both out of town and unavailable to sign an order. You know, these were all very tight facts that occurred but I wanted to be very clear. No one held up an order anywhere along this line. This is extraordinarily quicker than we get to orders in any event but had the one on the 19th not had that global information inserted gratuitously, you know, we would have had a different order to consider. And we did not and so that order was unacceptable and we went back and by the time that the corrected order came out, the motion to reconsider had been timely filed and was in line then ahead of it. So, you know, if you're just looking at the sequence of events, I wanted you to be very clear on how that occurred. And I don't think there was any effort by anyone in that short of time frame between the 17th and the 25th I don't think anyone did anything to circumvent the development of events, but I just wanted you to be clear on those.

BENNY WAMPLER: Thank you, Ms. Pigeon. I've called the items, what you have before you initially is a request for a continuance and a request not to continue and the Board

needs to decide that and then we'll move forward with the other matters depending on how that occurs.

DONNIE RATLIFF: I move that we continue, Mr. Chairman.

BENNY WAMPLER: That we continue it?

DONNIE RATLIFF: That we hear it right now.

BENNY WAMPLER: Hear it, okay.

DONNIE RATLIFF: Yes. Deny the continuance.

BENNY WAMPLER: Deny the continuance. Okay, so there's a motion to deny the continuance.

BRUCE PRATHER: I'll second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

BENNY WAMPLER: All in favor, signify by saying yes.

(All members signify by saying yes.)

BENNY WAMPLER: Opposed?

KATIE DYE: Abstain.

BENNY WAMPLER: One abstention. Ms. Dye has abstained. So, we will continue the case.

SHARON PIGEON: No.

BENNY WAMPLER: I'm sorry today I mean to continue with the case not to continue the case.

SHARON PIGEON: We have enough confusion.

BENNY WAMPLER: I picked up on your language. Mr.

Mullins.

TOM MULLINS: All right. How would you like to proceed? All three items have been called. Do you want to proceed with the rehearing of the consent to stimulate issue first or the 2500 foot rule issues first?

BENNY WAMPLER: that would probably be best is the agreement to rehear the---

TOM MULLINS: That would be Mr. Swartz.

BENNY WAMPLER: ---initial decision.

BENNY WAMPLER: I mean unless...I'm open for discussion. I would think that would be the appropriate starting point and then come back. Do you agree with that?

SHARON PIGEON: That was what the first issue should be.

BENNY WAMPLER: Right.

MARK SWARTZ: Okay, so then you would be moving actually, although you called them all together, you would be calling item number five first which is my petition.

BENNY WAMPLER: That's right, VGOB-08-0617-2261. The parties that wish to address the Board have already been identified and you may proceed.

MARK SWARTZ: Okay. This was...Mr. Wilson actually made two decisions with regard to some of these wells. There was a decision he made on the 2500 foot rule, which we'll

punt temporarily and then one that we're talking...that we're going to be talking about is the 21108 Informal Fact Finding Conference which pertained to three units including F-45 and F-44.

TOM MULLINS: Mr. Chairman, not to interrupt, but there's another procedural matter that needs to be addressed before that. There's a renewed motion to dismiss. As the Board will remember in June when we heard this case the first time, GeoMet had filed a motion to dismiss that the appeal of the consent to stimulate issue was not properly before the Board and it had a couple of reasons for that. The Board took the position that under Virginia Code Section 45.1-361-35, I believe it was, that the Board could hear the appeal. And specifically said that it would not rely upon the appellate statute contained at .23. We filed...in light of the renewed motion, we filed a new motion to dismiss and we cited authorities from the Attorney General's office and decisions from the Virginia Supreme Court, which guide this Board in deciding which one of those two statutes is the proper statute. If you remember, this is the whole jurisdictional does the Board have the power to act issue. And uniformly, the office of the Attorney General and uniformly, the Virginia Supreme Court has stated that when there is two statutes that govern an issue, in this case an

appeal of a permit, an appeal from a Director. You try to reconcile those two and when there is something in one that cannot be reconciled with the other, you must use the one that is more specific. In this case, the statute that is more specific is 25.1-361.23, which specifically deals with new permit applications. The Code Section the Board relied upon in June was a general statute for appeals from the Director. This one specifically deals with issues of new permit applications. Under .23, Island Creek for one well, since it did not file any written objections at all, cannot appeal. That's a requirement under .23. For all three of those permit applications, they were only allowed to object on the objection set forth in .11 and .12. Neither one of those code sections allows an objection to be based upon a failure to have a consent to stimulate. In fact, Bob Wilson would not allow Island Creek to advance that argument at the Informal Fact Finding Conference. He said that was a departmental requirement. That was not an objection that was available to a coal owner or a coal operator because it was not part of .11 or .12. Based upon that, that is not an issue that Island Creek can appeal to this Board. The last time the Board went forward under the impression that it had the jurisdictional power under .35, if I'm not mistaken.

MARK SWARTZ: 6.

TOM MULLINS: Excuse me, 36. However, the correct appellate code section is 45.1-361.23, which governs new permit appeals. And I ask at this time that the Board reconsider its decision, since that's what we're doing, as to its power to act and look to .23, see the deficiencies of Island Creek not having filed any objection to one well at all and not having the power to object on the grounds of consent to stimulate in all three.

GEORGE MASON: Mr. Chairman, before it starts, I just want to insure the Board knows that LBR Holdings, LLC agrees with GeoMet's position as stated by Mr. Mullins.

MARK SWARTZ: You addressed exactly this argument once before. When you did, Mr. Wilson was actually at that hearing and he said at page 225 of that transcript, "May I suggest that somebody addressed Section 45.1-361.36, appeals of the Director's decisions to the board, which states that any person withstanding under the provisions of 45.1-361.30, which means anybody who received notification," meaning of the hearing, "who is agreed by the decision of the director may appeal to the Board." And what you decided when there was a dismissal motion the last time, several months ago, was that 45.1-361.36 did indeed apply here. It is entitled "Appeals of Directors Decisions to the Board". It's a more generic provision. I would agree with Mr. Mullins that

there's an appeal provision from permit issues and then there's a more generic provision which allows people to appeal virtually any decision that the director might make. And sub A of that says, "Any person withstanding under the provisions of 361.30," meaning you got notice, "who is aggrieved by a decision of the Director may appeal to the Board subjected to limitations imposed by subsection B." And B says you cant raise a matter that wasn't raised by the Director at the hearing or that somebody else raised at the hearing. And if you look at the decision that Mr. Wilson authored with regard to this consent to stimulate issue on these F-45 and F-44 wells, he begins by saying that the reason there was a hearing was because he decided to have a hearing on the consent to stimulate issue that he had been asked on several occasions by GeoMet to have a hearing with regard to the policy of the DGO that had been in place for seventeen years with regard to requiring us...a consent to stimulate to be filed before they even proceed to entertain an application for a well work permit. So, you'll notice in the background section here Mr. Wilson was talking about... "this is how I decided to have a hearing is because they want...GeoMet wanted a hearing on this consent to stimulate issue. I wasn't hearing objections because this is a policy of our department." He then goes on to hearing date and

place and he says that he... "these are the people that I noticed of the hearing", and Island Creek Coal Company was somebody he gave a notice to. So, you know, he had standing under 30. He then goes through appearances. And Island Creek actually appeared at the hearing and he indicates that I showed up on their behalf. And he then proceeded to make a decision, which I appealed because you know Island Creek got notice of the hearing, appeared at the hearing, he made a decision, which we felt aggrieved us, and under the general statute, 361.36, we have a right to appeal things, you know, decisions of the Director which aggrieve us. And, obviously, the scope of his decision was, you know, I'm going to address this consent to stimulate issue and he did. And we didn't like the answer we got from him, which is why we're here. So, I think, you know, that under 361.36 Island Creek had an opportunity and a right to appeal, they did so and I think you have jurisdiction to hear that appeal under 361.36.

BENNY WAMPLER: Mr. Mullins.

TOM MULLINS: Well, obviously, I disagree with that. At the last hearing, it was late in the day. We were one of the last parties to be heard that day. And when this back and forth had been going on for a while and it got to the point that the Chairman, as he does from time to time, says I've heard enough. But one of the things that I didn't have

the opportunity to say, but I was able to proffer was this very argument, but it was after the Board's motion and vote. So, this was something that was put before the Board at that time, but because of the lateness of the hour and because of, I guess, of the tiresomeness of lawyers talking to you all day long, you decided to just proceed. And that's what happened. That doesn't change what you have the power to do. You have the power to do what the Code says you have the power to do. They have the rights conferred upon them that the Code confers upon them. No more or no less. Unfortunately, for them in this instance, they don't have those rights. The office of Attorney General has stated when it is not clear, which of two statutes applies, the more specific statute prevails over the more general. In addition, when statutes provide different procedures on the same subject matter the general must give way to the specific. That's a 2004 opinion of the Attorney General. We have...we've cited other authority for the Board. It is an accepted principal or statutory construction that statutes relating to the same subject matter not be read in isolation. You just can't look at 36. To determine legislative intent, statutes dealing with the same subject matter must be construed together to achieve a harmonious result resolving conflicts to give affect to each statute to the maximum

extent possible. In addition, when it is not clear which of two statutes applies the more specific statute prevails over the more general. Moreover, when one statute speaks to a subject in an general way and another deals with part of the same subject in a more specific manner, the two should be harmonized if possible, and where they conflict, the latter prevails. That's exactly what we have here. We have two statues. A general appeal statute, conceded by Island Creek a general appeal statute, and a specific appellate statue for issues concerning new permit applications. Clearly, under .23 ZZZ-41 should not be before this Board. They did not file any written objections, which is a requirement to be before this Board. And this Board, I believe, has imposed I know upon GeoMet one time in the past. All three are also driven by what objections are available to a coal owner or a coal operator. Consent to stimulate, again, I believe, was almost conceded, if not conceded, was not an issue raisable by Island Creek before the Director. If they couldn't raise it before the Director how could they appeal a decision that they weren't able to raise before the Director? .23 exists for that purpose. It is the specific appellate statute that gives this Board the power to hear new permit appeals from the Director. .36 does not apply. It's a general appellate statute. And I ask the Board to dismiss this appeal or these

appeals because it does not have the jurisdiction to entertain them.

MARK SWARTZ: If I could make one comment. I completely disagree with this idea that .23 is the specific statute which applies. Let's look at what Bob actually thought he was addressing because he tells us at the middle of the second page of his decision he says quote, "The primary argument presented at IFFC 21108 involved more fundamental aspects of requirements for consent to stimulate and the methods employed by DGO in its permit assessment procedures." What Bob decided in this decision is what is the DGO supposed to do or what should the DGO do when it looks at a permit application to determine whether or not it's complete and whether or not the DGO should proceed. He focused on a procedural question confronting the DGO, which was permit assessment procedures. He said that was what he was focused on. He was not deciding...because I assume if he felt he was he would have told us, he was not deciding some objection that someone had made to a permit application. He was deciding a complaint by an operator that the DGO was not properly assessing permit packages. He gave Island Creek notice because we were in some of these units that we could come to this hearing where he was going to address that issue and he decided it. This is not a permit objection issue.

So, .23 doesn't apply at all. You know, we...it wasn't decided on that basis. This was a procedural decision that the DGO made about how it was going to handle permit applications including this one and the ones in the future. So, 36 is indeed the statute that perfectly applies to this situation because this decision that Bob made did not resolve a permit objection. It addressed procedure and operating procedure of the DGO. And I promise that no matter what he says I won't say anything else on this issue.

TOM MULLINS: Okay. That's incorrect. I don't know how else to say it, but it's incorrect. It doesn't say that it is dependent upon an objection to be filed. I will read the actual statute. "With the exception of an aggrieved permit applicant, no person shall have standing to appeal a decision of the Director to the Board concerning a new permit application." It doesn't say objected to or not, "concerning a new permit application". That's what makes this one specific to new permits. This is smoke and mirrors. That's what the statute says. That's what binds the Board. The very language is concerning a new permit application. This is a new permit application. It concerns that. That's all it concerns. He is correct. He was not able to object below. There's a reason for that. Island Creek does not have the power to object below or here. They don't have that

jurisdictional right. That is not a right conferred by statute .11 or .12 to Island Creek. To try to advance the argument that .36 the general appeals statute applies is nothing more than smoke and mirrors. .23 specifically concern concerning an new permit application. That's why it's there. That's why this Board should use it. It's tailored for this circumstance. The Board does not have the jurisdiction to hear this. It should dismiss the appeal and I'm confident that Island Creek will file the appropriate complaint in Circuit Court.

BENNY WAMPLER: Thank you, Mr. Mullins. Do you have anything to add Ms. Pigeon?

SHARON PIGEON: Well, just to respond briefly because, obviously, the Board's not a party to this proceeding. To clarify what Mr. Mullins has said, I agree with him that his authority supports the traditional statutory interpretation rule that more specific statute controls over a general statute in statutory construction on the same issue. However, I agree with what Bob Wilson has previously indicated and what Mark Swartz is I think basically arguing, although kind of differs a little bit in getting there, this is a case decision. This goes beyond just the decision by Bob on objections to a permit. Whenever you have a case decision by an administrative agency you have

a right of appeal that goes with that under the Administrative Process Act and this discussion about whether or not there was consent to stimulate or whether or not objections could be made under the traditional coal veto, all those things are part of the package here. They don't fall under the specific objections to permits statute at .23. They do fall under the general appeals statute at .36. So, while what Mr. Mullins is saying is correct, that is when the issue is the same and in this particular situation the rest of the Act hasn't been written off while we consider the permit application. We still have other factors here that have been brought into play and the decision on those is a case decision that does result in the right to appeal.

BENNY WAMPLER: Okay, having heard all that Board, the Board has decided previously to hear this appeal and reconsider its earlier decision. Is there a motion to do that or do you want to go ahead with the hearing? If I don't hear a motion, I'm going to go ahead with the hearing and consider that a re-confirmation that the Board has the authority to hear it. Is that clear? Is there a motion?

DONNIE RATLIFF: I move that we move forward, Mr. Chairman. That we hear the case.

BENNY WAMPLER: Second?

BRUCE PRATHER: I'll second.

BENNY WAMPLER: Further discussion?

(No audible response.)

BENNY WAMPLER: All in favor, signify by saying
yes.

(All members signify by saying yes.)

BENNY WAMPLER: Opposed, say no.

KATIE DYE: Abstain.

BENNY WAMPLER: One abstention, Ms. Dye. Mr.
Swartz?

(Mr. Swartz passes out an exhibit.)

MARK SWARTZ: My presentation on behalf of Island
Creek is going to be very short because I think this is an
incredibly simple issue. The Island Creek Coal lease was in
the record in front of Mr. Wilson. It was in the record in
June here so you have the lease. And, basically, this is a
three step issue as far as I'm concerned. We have the
statutory definition of coal operator and I quoted that. "A
coal operator is any person who has the right to operate or
does operate a coal mine." We have an Island Creek lease
which says in part, and this is a direct quote from that
lease, "The lessors," which will be the Rogers, "let and
demise unto the lessee," which will be Island Creek, "the
sole and exclusive right and privilege of mining and removing
all of the coal from all the seams of coal underlying the

Raven or Red Ash vein or seam of coal." And then we have a statutory consent requirement, which I have quoted, and it says, "That you have...every permit application for a coalbed methane gas well shall include...", and then we're coming back to what Mr. Wilson was talking about was the procedures to assess permit applications. For seventeen years, as he indicated in his decision, the Division of Gas and Oil had required operators to submit a consent to stimulate with their permit applications and the Director would not proceed to assess a permit or consider a permit application unless and until that consent to stimulate was there or arrived at his doorstep. And as you'll notice in his discussion of you know what the DGO had done here, they got an application in May of '07, which they didn't process, because it didn't have a consent to stimulate which they had required to be part of the permit package for some seventeen years. GeoMet kept on them..on the Division of Gas and Oil about it and, you know, not quite a year later but along time later, in February of '08, Tom Mullins wrote to him again and he decided, Mr. Wilson did ultimately, that you know he would have a hearing on this issue of whether or not a permit application is complete when it arrives without a consent to stimulate, which had been their procedure. And he then had the hearing and wrote his decision. And my analysis of the definition,

the lease that he had in hand, and the statutory consent requirement is very simple. I think a person who shows up with a lease that says they have the right and privilege of mining and removing all of the coal is a coal operator because a coal operator is defined as somebody who has the right to operate or does operate a coal mine. And if a coal lease doesn't get you over that hurdle, I don't know what does. And when I petitioned for appeal, I indicated that I believed, and it was one of my grounds for appeal, that Mr. Wilson didn't really help us out in this regard because he did not offer an explanation to you or to Island Creek or to others as to why a person who has a coal lease which grants them sole and exclusive right and privilege of mining isn't a coal operator. His decision in this regard is to the extent you can make any guess as to why he did what he did is at the second to the last paragraph of his written decision and the only reason he offers is he says quote, "It seems illogical that two definitions would be used if there was no difference in the meaning of the two terms." And what he's saying is there's a definition in the statute of a coal operator, which I've quoted here, and there's a definition of coal owner which we'll be talking about in the next case. And he read them as being substantially equivalent and he says it's illogical that that be the case. Well, he needed to tell us

why Island Creek Coal is not a coal operator. And what I suggest to you, and I really think the decision you have before you is this simple, as people who speak English normally use the words, doesn't it make a lot of sense to conclude that if coal operator is defined as somebody who has the right to mine and a person shows up and says I have a coal lease that give me the right to mine that they're..a consent from them is required by subsection F2(a). It is literally...my argument is that simple. And that's all I have to say.

BENNY WAMPLER: Mr. Mullins?

TOM MULLINS: Well I'm going to break this into two pieces because I think the way the Board has taken jurisdiction over this issue is broader than what GeoMet filed. GeoMet filed this because we didn't get a permit. We didn't ask for a case decision. We didn't ask for anything other than we want a permit. So, to the extent that this is some bigger decision, I'll break this up into two arguments. One specific to this unit or these units and one more general. The...first I want to incorporate all the exhibits below because we incorporated in...and I think Mark will probably want to do this as well, we incorporated everything into all three of the matters that came up, all my written arguments---

BENNY WAMPLER: That's all brought forward and confirmed for both parties.

TOM MULLINS: Okay. There is a distinction and it's one that's easily overlooked and read through. And it takes reading the statute the definition of coal operator word for word and I'd like to do that. A coal operator means, "Any person who has the right to operate" not the right to mine, "...the right to operate or does operate a mine...a coal mine." It doesn't say you have the right to mine. It says, "...you have the right to operate a mine." That's a distinction with a substantial difference. To have the right to mine versus the right to operate a mine is the crux of the issue. To have the right to operate a coal mine, you have to have a license, you have to have permits, you have to have mine plans, you have to have ventilation plans. We submitted when this was heard the first time a decision by the Virginia Supreme Court, which found Island Creek had no operations in Buchanan County, don't have a coal mine. We submitted evidence from Tim Blackburn at the Informal Fact Finding Conference who went to the DMME office to see if there was a license or a permit for mining operations on file for Island Creek. There isn't any. What's attempting to happen is the sterilization of over 5,000 acres from a former operator who mined less than .4% of this 5,000 acres....4%, who doesn't

have a mine plan although its been requested, doesn't have a permit, doesn't have a license and the Code Section says "the right to operate" and not the right to mine. He's attempting to boot strap the 1962 agreement language, which is the right of entry language, gives them the right to be on the property and say that gives them the right to operate a coal mine. It's like saying you can own an automobile, but you don't need a license. You can just drive it on the road. You can't do that. You've got to have the permits or the licenses. If Island Creek wants to put itself in the position to operate or have the right to operate, they can do that. They can get a mine plan. They can get a prospecting permit. They can get a mining permit. They can buy their mining license. They can renew those on an annual basis, which is required by statute. They can get a surface disturbance permit, which is required by statute. In fact, it makes it criminal to engage in the conduct if you don't have all those. So, their simple argument that the lease, which gives them a right of entry just the relationship between the property owner and the mining company grants them the right to operate is not true. They have to have the other things to have the right to operate or to actually operate a coal mine. That's sort of the general argument.

The specific argument deals with a couple of

different issues and, again, they've been incorporated, but I want to highlight them for the Board. The Rogers folks, currently LBR Holdings, retained the right to produce the gas from this property. That's explicit. Now, this Board had held in the past that it cannot interpret those documents. We put the very question of whether Island Creek was a coal owner or coal operator into controversy at the Informal Fact Finding Conference. Mr. Wilson interpreted those documents and made a finding of title interest of Island Creek saying they were a lessee of the coal. That will come in in the other argument. I don't think this Board can allow the Director to do both things. I will interpret it to determine coal rights, but I won't interpret it to determine gas rights. In fact, .29F2 specifically says the consent to stimulate can be contained in a prior document of title and this requirement is not meant to abridge any existing contractual rights between the parties. We're dealing with a 1962 lease. The same lease they're claiming through... they're claiming their rights through. The director interpreted what those rights were because we moved at the Informal Fact Finding Conference to dismiss Island Creek as both a coal operator and a coal owner. We took their position they did not have the title rights. Once that comes into controversy he should have hands off on that entire issue and

said now you've got to...Island Creek you've got to go to the Circuit Court. He didn't do that. He interpreted the lease. He said the lease agreement, the agreement between the parties, that leases them the right to mine, was a lease of the actual estate, the coal, as opposed to and again that's a further argument of proffer to license, but once he does that, once he starts down that road of interpreting the lease agreement he can't stop. He can't then say now I'm not going to look at the gas rights retained. What's good for the goose is good for the gander. Once he...and that was a factual finding he made concerning the coal ownership issue. So, we have the lease agreement, the right to mine agreement that we submit grants LBR as their assignee of that right, GeoMet the right to stimulate the coal seam. In addition, two of these wells, 201 and 202, were force pooled units in which we force pooled interests of CNX Gas Company. And as we touched upon at the last hearing, CNX has a Master Cooperation Agreement with Island Creek and Consolidation Coal Company that gives them the blanket right to stimulate Island Creek's coal and Consolidation Coal Company's coal. Once we force pooled those interests, we get the rights of the gas owner that own those interests. So, for those two units, under that document is of record, we should have been deemed to have had the consent to stimulate by virtue of that

force pooling. The next argument concerns the constitutionality, and I understand that that maybe something that ends up properly before the Circuit Court, but again since Director Wilson decided to go in and decide whether Island Creek was a coal owner or not, under the terms of the lease, then I think it brings into question whether the act as being applied to GeoMet is impairing an vested right retained by the LBR Holdings folks in the 1962 lease. And it's our position it does. It has changed the playing field. All of a sudden we went from being able to produce the gas to not being able to produce the gas under this interpretation of the Board's...excuse me, the Director's refusal to issue a permit. Secondly, on a broader sense, to the extent that the statute has to be interpreted that way, then that is an impairment generally speaking of all agreements that existed prior to July 1, 1990, which this one obviously did. The statute provides that and it contemplates the director on the Board looking at an agreement, a titled document, to see where the rights to produce come from. It's contemplated by the statute. We submit to you that the agreement clearly leaves the right to produce the gas to the Rogers folks and to allow somebody 28 years later to say I can now stop you from producing the gas abridges and impairs those rights that were bargained and paid for between LBR Holdings predecessor

and title and Island Creek Coal company.

So, in summary, the statute doesn't say the right to mine...right to operate a mine. Generally speaking, that's what it says. You can't enlarge or reduce it. To have the right to operate, you've got to have a....just like drilling a gas well, you can't go out and drill a gas well without a permit. That's why we're here. You can't operate a coal mine without a license, without permits. To do so is a criminal act. We have the rights conferred under the Master Safety Agreement...Cooperation Agreement for 202 and 201. We have the right under 45.1-361.29F2A and B concerning the right to have those leased documents, those agreements between the parties looked at to see if the consent is there, which has been refused. And one other, I guess, factor, the notice provision says we have to notice coal operators within 750 feet. Well, first they're not a coal operator anywhere, but certainly not within 750 feet of any of these specific well bores. That's why we ask the Director to allow us to have Island Creek dismissed, he refused. I think that was erred. I think he should have allowed us and let the permit application dictate what he did, but he did not do that. So, I think the Board should reaffirm its prior action in affirming Bob Wilson's decision and find that Island creek Coal Company for these permits is not a coal operator and

therefore someone from whom GeoMet is required to obtain a consent to stimulate.

GEORGE MASON: Mr. Chairman, I would like to also add our support. LBR Holdings, LLC is a successor in interest to the original grantors under the lease and we agree with all the arguments as stated by Mr. Mullins on behalf of GeoMet that, you know, there was never any grant of coalbed methane, all other rights were retained in that lease. In fact, the lease that was introduced at that hearing it says, "Excepting and reserve to lessors 1) the entire ownership and control of all of the leased premises in the coal, stone, sand, water, timber, oil, gas and other minerals and products therein and thereon for all purposes (except herein and before expressly set forth as leased to lessee)." So, the gas, the oil, the coalbed methane, the right to extract that, the right of the consent to stimulate none of those were conveyed to Island Creek or any of its subsidiaries. And there has been, as far as my knowledge, Island Creek employs no miners. It operates no mines. It has no mining permits. And agree that the coal operator means, "any person who has the right to operate or does operate a coal mine" except for specifically in the statute. It doesn't have the right to operate. It does not operate a coal mine. Therefore, it's not a coal operator. Thank you.

BENNY WAMPLER: Thank you, Mr. Mason. Mr. Swartz?

MARK SWARTZ: Three general topics I want to talk about in response. I'll try to keep it relatively short. One of the things that's important to litigators is something called credibility and that essentially to lawyers means... and to people who make factual decisions, means how believable is the story that you're hearing. And to give you an example, if somebody is on the stand in the jury trial and he's testifying that the light was definitely green when he went through the intersection and you bring to his attention in cross examination a written statement that he gave to his insurance company that said, "I ran the red light.", it effects his credibility because he has told two different stories. GeoMet's credibility here with regard to whether or not a consent to stimulate is required under these circumstances is highly suspect. GeoMet is a farmoutee under a Farmout Agreement. GeoMet entered into an agreement with I think it was Equitable if I'm...Equitable Production Company that pertained to this acreage that we're arguing about today. And that agreement was signed on or about August the 16th of 2004, so a long time ago. That Farmout Agreement had a page nine. And I don't have enough copies, so I'm going to offer this and I'll pass it around and you're going to have to share it. But that Farmout Agreement at page nine---

TOM MULLINS: Mr. Chairman, I just want to object. I don't think that was a document that was tendered below.

MARK SWARTZ: This is a new hearing.

TOM MULLINS: And the representation at the prior hearing was no new evidence on behalf of Island Creek and we relied upon that. If he's going to submit new evidence, then I'd like to renew my motion to continue. He represented at the prior hearing and I've got the transcript, no new evidence, argument only.

MARK SWARTZ: Well, I guess where I'm coming from is when I'm hearing from him this extended argument, which he just made to you, that the Rogers oil and gas lease is pertinent to your decision, I thought it was pertinent for you to know when that lease was assigned or farmed out what GeoMet and Equitable provided with regard to whether or not a consent to stimulate would be required---

TOM MULLINS: Objection.

MARK SWARTZ: ---and so that's why I'm---

BENNY WAMPLER: Objection noted. We're going to go ahead and hear it.

MARK SWARTZ: At page nine of this Farmout Agreement, and I'll pass it around to you in a moment, at the bottom there's a paragraph with a capital letter E, and bear in mind now this is an agreement that GeoMet signed when it

took the farmed out lands that we're concerned about that these wells are...it has a section entitled consent to stimulate. And that section reads as follows: "Farmee", which is GeoMet, "and farmor," Equitable, "recognize that farmee will not be able to proceed with well permit applications to the Virginia Division of Gas and Oil until it obtains the prior written consent to stimulate coal formations from the current coal owner and operator/lessee, if any, on the farmout lands lying within the Commonwealth of Virginia...", and it goes on. And what I'm saying is when GeoMet acquired the lease interest that they're seeking to drill on, they agreed they needed a consent to stimulate from both the coal owner...well from the coal owner if it wasn't subjected to a lease and from the operator/lessee if it was subjected to a lease. And I'd like to offer this as my first exhibit today, and I guess I'll have to get a copy from you eventually because this is my only copy, but that's the language, that's the agreement. That's the first point I would make.

The second point that I would make is, you know, I agree on behalf of Island Creek that they are not...that that company is not a player but, you know, we've heard repeatedly that Island Creek has no mining permits, has no relevant licenses to mine. And we heard it again today. This is a

license to operate a mine issued by the Commonwealth to Island Creek for the BP4 underground mine. It expired July 22, 2008. It was issued June 27, 2007. I mean, it's just an example, you know. It's not a big deal. I don't think you need this, but I'm just responding to this continued assertion that Island Creek has no licenses at all. It's almost as if they're arguing Island Creek doesn't exist in this state. It has no presence in this state, which clearly is not true. That's the second point I want to make. The third point I want to make is to bring you back to the little handout that I passed around. And it's a silly argument, but it's really what you need to look at a lot of times when you're looking at statutory definitions. I'm hearing an argument from GeoMet that I've heard repeatedly that you need a permit to be a coal operator. Well, if the legislature had wanted to make the requirement that you couldn't be a coal operator unless you had a permit to mine they would have said so. This statute would...this definition would say a coal operator means a person who has a permit to mine. And it would have said that. I mean, although I don't always think that the legislators are the sharpest knives in the drawer, I think, you know, collectively if that was going to be what they wanted to require they certainly had the capability of doing that. So, this continued argument that if you don't

have a permit you cant be a coal operator is just wrong because if you have right to mine or you operate a coal mine you're a coal operator. We have a lease, which gives us a right to mine all of this coal. And that's my third point and I'm done.

BENNY WAMPLER: Mr. Mullins?

TOM MULLINS: Yeah. First, I'd like to take up the credibility argument. I think, if Im not mistaken, this was either submitted below. I know this was submitted in the one 98 case and this is a reclamation issue. This is not a right to operate a coal mine as my recollection of what's in the record. So, I think this is, if you want to talk about credibility, this is an issue of credibility. This was argued below. It was discussed below. And they certainly don't have the permits. I can cite you to the Virginia Code Sections that require permits. Number one, this license expires on its face in July. So, you can't even rely upon this. Even if I'm wrong. Even if I've misstated a fact, this is not something you can rely upon.

Two, as those who are in the coal business know there's all kinds of statutes that govern coal mining and mining in general. 45.1-234 require a permit for underground coal mine for any surface disturbance activities as part of the surface mine act. They don't have that. The general

statute for mining, if I'm not mistaken, is 45.1-181. It requires a permit. It's, again, smoke and mirrors. It is an issue concerning what gives somebody the right to operate a mine without a permit as set out in the one I just told you about, 45.1-234, they can't even have roads. They can't even drive a vehicle to a mine site. That's how all encompassing that permit for surface operations is. It's a ground disturbing activity. So, if they're in here trying to say they're an operation, then they should have said that to the Virginia Supreme Court. They should have said that before today. I think you can take notice of what's in the DMME's offices. There is no mine plans for VP4. Those of us who have lived in Buchanan County or been around Buchanan County or been around mining know that VP4 has been closed in for more than twenty years. Bad top. Bad bottom. No mining. To say that is an operation, and we're talking about credibility. You couldn't even fire it up now because all the equipment is so dilapidated and has been robbed for other operations. So, this provides nothing to you. Again, more smoke in mirrors.

Second, they're trying to stand upon the Farmout Agreement, and without weighting my objection to its consideration, they're trying to use rights between two parties not them, not them, to bolster and boot strap their

argument that somehow this after formed agreement impairs Rogers...the Rogers folks, that this after formed agreement is something they can rely upon. It's not. It's not between them. They're not a party to it. GeoMet has the consent to stimulate from Rogers, the coal actual owner of the 5,000 acres less a few tracts that the cousins as everybody knows are involved in. They have the coal owner's consent. We'll get into an argument of whether...in the next set of hearings of whether Island Creek is actually a lessee of a coal seam or merely has a license to mine the coal in that coal seam. But to say that that gives them the right which is not in .11, not in .12 but somehow that private agreement gives them the right to interpose an obstruction by way of requiring a consent to stimulate is not based on any law. We lost sight of the fact that Island Creek does not have the right under the Act to object to a well permit application based upon the lack of a consent to stimulate. It's not there, even if they were deemed to be a coal owner. Even if they were deemed to be a coal operator, that is not an objection allowable to them under the Act. This Board is getting ready to grant coal operators an objection the statute does not allow if it reverses the decision of the Director in this regard. The Act does not give either one of those entities the right to object on that basis.

So, in summary, again, they don't have the right to operate a mine. This document does not give them the right to operate a mine. The record below, if you read it, or have read it will show that this was thrashed out. This has been thrashed out before this Board before in the 198 case. They don't have a coal mine in Buchanan County. Everybody...the evidence is overwhelming on that point. So, I would ask the Board to again affirm the decision of Bob Wilson who as the members who were present will remember who came before this Board and explained his rationale to the Board at the June hearing and set out why he did what he did. I ask that you affirm Bob's decision and reaffirm your prior decision finding that a consent to stimulate is not required from Island Creek Coal Company for these permit actions.

GEORGE MASON: I agree on behalf of LBR Holdings with all of Mr. Mullins' arguments on behalf of GeoMet.

MARK SWARTZ: The statute says a coal operator is somebody who has the right to mine.

TOM MULLINS: That's not correct.

MARK SWARTZ: Has a right to operate or does operate a coal mine. Island Creek has a lease, which gives them a sole and exclusive right to mine this coal. GeoMet acknowledged that common sense interpretation when it entered into the Farmout agreement. That's all I have.

BENNY WAMPLER: Ms. Pigeon do you have anything to offer the Board in consideration?

SHARON PIGEON: Well, obviously, the Board is not a party to this matter. But as I indicated when the motion for reconsideration was first before this Board, I had some thoughts that not only did the Board have the authority to reconsider in certain cases, they were required to reconsider and that would be a situation where the facts were wrong or the law was wrong or whatever. And as Mr. Mullins has acknowledged we have previously as Bob indicated in his decision considered the public records of the agency as part of what was considered in the decision making process. I have gone to the agency, and asked them because I'm concerned about the ways and different ways that we have heard that Island Creek is not an operator. We've heard they're not an operator at all, we've heard they're not an operator in the county, we've heard that they're not an operator in a specific location to this permit application. The records of DMME indicate that there are seven active permits out by Island Creek right now. These permits all have bonds. They all have mine licenses. They all have NPDES for water discharges. They're all current. There are millions of dollars of bonds associated with these seven permits and they are all in the Southwest Virginia coal counties, some in

Buchanan County and some, I think, maybe others...but in any event they are all here. So, I think we need to be at least careful in the way our language is being used here. I have some extra copies for Counsel. I'm just concerned that these broad statements that they're not an operator, they don't have any licenses or they don't have any permits, all that sort of thing, I think unintentionally we're going farther with those statements than we need to. I think it's inaccurate and I'm assuming it's done by accident. I mean, we have photographs at all these locations with Island Creek's name and these numbers showing up. So, to say they're not an operator because they don't have any permits or licenses is just simply not true. Now, you know, that's not the whole argument that Mr. Mullins is made and that's something that the Board will have yet to consider. But I am a little also concerned with the statement by Mr. Mullins that Bob Wilson interpreted the lease. My memory from reading the transcripts for the proceedings that I did not attend and from hearing testimony on these before is that at least Mr. Whitt testified that the lease gave Island Creek the right to mine. So, you know, I think we need to be more careful in the language we're using. You know, you can still make your legal argument but Bob Wilson didn't interpret that lease.

TOM MULLINS: Yeah, I got---

SHARON PIGEON: Well, all right we disagree on that. But in any event, I have heard Mr. Whitt rather state that they have the right to mine. So, I don't think he had to interpret very far if he had that testimony. And then as far as this definitional section, you know, I think that is an important consideration anyone who has the "right to operate" or "does operate" a coal mine. And that's in the definitional statute, that is true. But I think that, for example, another place that you need to look is 45.1-361.30 where there at number two, for instance, it refers to coal operators and it goes on to say who have registered operation plans. Now, I'm not saying that that's the statute that controls this. What I want to call your attention to is simply the language there. There if coal operators meant someone who had an operational plan or a permit or whatever else, there would be a redundancy in adding that language. So, to me the definitional statute didn't include all possibilities. Obviously, here's just one example. I'm sure there are at least a couple of others. That language in and of itself to add the further distinction of which coal operators they're referring to in that statute tells me that coal operators under the general definition does not just mean those who have registered operation plans. So, I think that's additional information that is important that the

Board have in making their decision and I was uncomfortable with the way things were left previously when this information was either generally stated and I felt was misleadingly stated, intentionally or not, that's neither here nor there. I just felt that some clarification was called for for the Board.

BENNY WAMPLER: Thank you. I would also clarify, and I think Mr. Asbury can verify, I have always instructed the Director of Gas and Oil not to make decisions on leases as well as this Board has heard me say we don't interpret leases. Whether or not he did, I understand, can be debated. But I'm saying as far as the departmental instruction, it was to definitely not do that.

DAVID ASBURY: That is correct.

BENNY WAMPLER: Questions from members of the Board?

BRUCE PRATHER: I have a question.

BENNY WAMPLER: Mr. Prather.

BRUCE PRATHER: Do you think Bob Wilson had in his discussions...regarding this matter do you think he had that Farmout Agreement which agrees to consent? Do you think he had that part of that item when he was considering this? This is the first time I've seen this thing.

BENNY WAMPLER: You know, I wasn't there. I would believe that he did not have that. This is something that

was brought up today because as it was certainly said today because of something that was said by Mr. Mullins. So, you gentlemen were there?

TOM MULLINS: I don't think it was tendered at this hearing. I think he was aware of it because of the 198 case. He was familiar because that was an argument made in the 198 case.

MARK SWARTZ: That Farmout surfaced in some other things that Bob decided. It did not surface in this particular hearing in front of him. So, you know, could it have been on his radar, yes. Was it specifically on his radar at this hearing, no.

BENNY WAMPLER: Other questions?

(No audible response.)

BENNY WAMPLER: Is there a motion?

DONNIE RATLIFF: I move that we reverse the opinion of the Director, Mr. Chairman.

BENNY WAMPLER: Motion to reverse the decision of the Director.

BRUCE PRATHER: I'll second.

BENNY WAMPLER: And second. Further discussion?

(No audible response.)

BENNY WAMPLER: All in favor, signify by saying yes.

(All members signify by saying yes.)

BENNY WAMPLER: Opposed, say no.

(No audible response.)

BENNY WAMPLER: The decision is reversed. We're going to take a ten minute recess.

KATIE DYE: I abstain.

SHARON PIGEON: Ms. Dye abstained.

BENNY WAMPLER: Ms. Dye abstains. I'm sorry I didn't hear you.

(Break.)

BENNY WAMPLER: Okay, we're back on record. I'd ask everyone to come to order. We'll continue the cases as previously called. Mr. Mullins, number three for the Board, I guess...three and four.

TOM MULLINS: These are the 2500 foot rule issues. Below they were separated because Jewell Smokeless was a party. That's why there were two different opinions. For purposes today, I'm just going to argue them as if they were all one instead of three different ones.

MARK SWARTZ: No objection to that.

BENNY WAMPLER: Okay, thank you, Mr. Swartz.

TOM MULLINS: First, I would like to...I think Mr. Sexton submitted a written memoranda outlining the points that we rely upon...relied upon below and I'd like to make sure that gets incorporated as well as all the other

exhibits.

BENNY WAMPLER: That will be incorporated.

TOM MULLINS: And to briefly outline the issues that we raised below and which Mr. Sexton highlighted goes back to the lease agreement and the interpretation of the lease agreement. This is a case where I think Bob Wilson did, in fact, interpret the agreement. I think I highlighted a section wherein he did that. If I could put my finger on that. The decision I'm looking at concerns IFFC 21008. It's on page three and it's the first full paragraph. And he talks about the language in the lease. He talks about what he sees throughout the document. There are references to seams of coal leased and leased premises and the seam...that seems to indicate the lease conveys physical entities not merely the right to conduct activities. I don't know how much clearer it can be that he has interpreted that document. It says it right there what the lease means and what the phrases mean. And he obviously found that Island Creek was a coal owner. That's the crux of the argument. The definition of coal owner is set out in 45.1-361.1 and it says coal owner, it means, "Any person who owns, leases, mines and produces who has the right to mine and produce a coal seam." So, our argument below and our argument here today is that the agreement, the 1962 agreement, if you look at the

granting clause language grants only the right to mine. It does not grant an interest or title interest in the coal itself. Virginia has long recognized licenses to mine and I'm not talking about a license issued by the governmental entity. I'm talking about a license for folks to enter upon a piece of property. The ones that we are most familiar with are licenses to go to the movies or to go to a sporting event. You get a ticket. That ticket is actually a license to enter upon and occupy a real property. But it's the same concept. A license to do a thing. Title to the coal doesn't pass until its actually mined. It's also called a profit a prendre at law. And that's our argument as to what Island Creek got in the 1962 lease. It's an agreement for rights to mine. So...and, again, once this issue as to what the status of Island Creek was and whether they did get title rights or what title rights they obtained, once that became an issue that determination should not have been made by the Director. He did that. I've quoted the language where he interpreted that document. But he found them to be a coal owner by looking at the lease agreement and interpreting that lease agreement. He says he did in his written opinion. And once he did that, and I think again, you open up the agreement for further interpretation. This 2500 foot rule was again something created long after this lease agreement, license

agreement, whatever you want to call it, was entered into in 1962. To impose an obligation or a restriction upon the LBR Holdings folks and GeoMet through them to something that did not exist, was not a restraint and grants that unbargained for right to Island Creek Coal Company. Number one, it's unconstitutional, and number two, it's wrong. And if you're going to interpret the document as to coal rights and rights to mine and what those rights to mine are, then, I think you also have to interpret those rights for the LBR folks to produce the gas. And the failure to do so is a failure to provide due process to both parties. You're looking at it for one but you're not looking at it for the other. And I don't think you can do that. I think you have to read the entire agreement if you're going to read it. If not, you need to say Island Creek they've moved to have you dismissed, we don't know and we can't tell, go to Circuit Court Island Creek, have that figured out by the Circuit Court Judge not us. And when you get it resolved come back. That's not what happened even though we moved to have them dismissed and Bob did interpret the agreement. It's right in the agreement. So, my first argument is they don't qualify as a coal owner, therefore, they don't have the right to raise the 2500 foot rule objection.

Second, for two of the wells, just like we argued

on the consent to stimulate, there is the Master Safety Agreement, Master Cooperation Agreement, I forget the exact title of it, that they granted blanket consent to stimulate as we talked about earlier. It also granted spacing exception consents. And on those two wells where we force pooled those rights, that's a right incident to the drilling of the well. We should obtain those rights.

Third, our constitutional arguments. It's an imposition of a restriction that didn't exist when the parties entered into the 1962 agreement. It grants an impairment to one of the parties' ability to enjoy their estate. And the statute actually says you're not supposed to let that happen. You're not supposed to impair or abridge contractual relationships that took place before the act was passed. But that's what the effect of the 2500 foot rule is doing and the failure to look at the document that we assert grants that ability for us to produce is (inaudible) from our position and it takes away a vested right of Lon Rogers folks to be able to produce their gas. It's something they bargained for and they kept and they bought and they paid for. And now they can't do it because Island Creek is interposing a 2500 foot rule objection, something not contemplated by the parties in 1962, something not bargained for and something not vested in Island Creek in 1962. So to

allow the Act to be used for that purpose is an abrogation of that right and a failure to look to the document to see what rights we have when the statute says you can look at that document at least as far as consent to stimulate, I can't remember the 2500 foot rule, is a failure of the agency to perform fully the functions that the statute imposes upon them and that is to look at those title documents because it says title documents in the code, at least for the consent to stimulate, I know that's over with. That's so ingrained in my head right now, I'm trying to get it out. But...and a denial of due process because you're taking away something that we had. When I say we, I'm talking about the Rogers folks because we didn't come into it until recently. I'll summarize there.

BENNY WAMPLER: Mr. Swartz?

MARK SWARTZ: We're both trying to be merciful here.

BENNY WAMPLER: Mr. Mason, I didn't intentionally leave you out. I assume you support those---?

GEORGE MASON: Yes. And just to make sure that the Board understands, I represent LBR Holdings, LLC, which is a successor and interest under that 1962 lease and we join in and agree with all the arguments made by Mr. Mullins on behalf of GeoMet.

MARK SWARTZ: Basically, I have the same view of how

you look at these kinds of issues. We've got a slightly different statutory definition. I've quoted that. This time it's coal owner and in this definition it says a coal owner is any person who and there's a list of stuff and one of the things on the list is leases. So, then the next question would be is Island Creek someone who leases. And so I have quoted from the Island Creek lease provision that lease was in evidence in front of Bob and was in evidence when we were here earlier in the summer. The first four words of the lease, which is a fairly substantial document are, this indenture of lease. And then what I...I haven't quoted that, but what I've quoted is from the granting clause, in other words what are you getting when you're the lessee under this lease, "Lessor is hereby leased, let and demised unto the lessee," which would be Island Creek, "sole and exclusive right and privilege of mining and removing all of the coal and so forth." You saw that in the last hearing. And then the statutory distance requirement, this is just a quote from the statute and it says "if the well operator and the objecting coal owners". Our point here is, Island Creek is a coal owner because they have a coal lease and they have a right to the 2500 foot objection and Bob looked at the statutes and he looked at the agreement that we gave him, the coal lease, and he said in his decision pretty clearly, this

is a simple question to him and, you know, I did...I find that Island Creek has a coal lease and as such has standing under the distance objection statute to make an objection. In an effort to inject some humor, but I think to put all of this in perspective, when I was taking Con law in law school which was a really long time ago and we were reading decisions on pornography I remember that there was a reported decision in our case book, which I think was put there because it was kind of a joke, the Judge really couldn't define pornography, but he said it was something that he knew it when he saw it. Okay? And now how am I going to bring that to bear here? Bob Wilson knew a coal lease when he saw one, okay. And what we're hearing from Mr. Mullins is...on behalf of GeoMet, is that Bob had to interpret or make some kind of you know complex decisions with regard. He knew a coal lease when he saw it. This agreement is a coal lease and indeed on page three of his decision, Bob in this case is different than the one that we just heard, he actually tells us his thought process here. I mean, how did I get from point A to point B. That is, how did I decide that Island Creek was a coal operator? It's because I decided they had a coal lease. And then in the middle of the second paragraph on page three of his decision he says, "While the interpretation and adjudication of leases and other

contractual agreements is not within the purview of the Division of Gas and Oil" and I think we heard that earlier from the Chairman, "the question of standing must be addressed based on the documents exhibited at the hearing." "It seems intuitive"...and, again, we come back to how hard is this, "It seems intuitive" Bob said, "that any document that identifies affected coal seams and gives the exclusive right to mine coal is a coal lease." And it goes on from there. So, my response would be, we know the statutory definition, we know what the lease says, we know who has a right to a 2500 foot objection under the statute that gives that objection, and we know why Bob made the decision he made. It's because he determined that this agreement, which was in front of him, he recognized it as a coal lease. And that's all I have on these two.

BENNY WAMPLER: Mr. Mullins?

TOM MULLINS: Just a very short followup. While it may have appeared to be intuitive to Bob that he was looking at a...what he opined was a coal lease, he failed to distinguish the difference between the lease of a coal itself and a license or a profit a prendre neither of which vest an interest in the coal. And that has been interpreted as you can probably anticipate by the Virginia Supreme Court. And this is what they had to say, "In construing grants of mining

rights, care must be taken to distinguish between the conveyance of the minerals themselves in place which usually confers upon the grantee the exclusive ownership and control thereof and implies a license to dig for and remove them and the grant of an authority license or profit a prendre under which the grantee is entitled to mine the ore, stone, etc., and remove it. In which case he has no interest in the land or at any or say that actually mined." Bostic v. Bostic. That's the distinction. And the language in the lease, license, whatever you want to call it, "the sole and exclusive right and privilege of mining" and not leasing coal seams between here and here. The right to mine coal seams between here and here. That's a difference. There's a difference between a license, a profit a prendre, and an actual title interest. That's what Bob determined. That's the distinction he made. He said this is not a license or a profit a prendre. This is a lease of an estate in real estate. That's the only thing he could do and come out with the opinion that he came out with. It doesn't matter if it was intuitive to him or if he had to labor over the decision, that's what has happened here.

So, my position is Island Creek is not a coal operator, they had a license, a profit a prendre, to the right to mine the coal, but they are not a holder of an

estate in the coal. That's it.

BENNY WAMPLER: Mr. Mullins, the Supreme Court's decision or case you referenced, Bostic v. Bostic?

TOM MULLINS: Yes, sir. I can give you the citation. I was reading from Mr....I plagiarized from the best. I was reading from Mr. Sexton's written argument. I have a copy of the case if---

BENNY WAMPLER: That's okay. I just wanted to make sure we had the record clear on that.

TOM MULLINS: I can give you the citing language. It's 199 Va. 348.

BENNY WAMPLER: Thank you. Mr. Swartz?

MARK SWARTZ: Yes, sir. If you look at the statutory definition that I passed out, even if you were to take a leap of faith that this coal lease isn't a coal lease, which is what he's asking you to do, we've got the same issue we just had in the prior hearing. A coal owner is also somebody who has the right to mine. This lease gives us the right to mine. I mean, you know, you just can't get there from here. Bob made the right call. You know, Island Creek is a coal owner because they had a coal lease.

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Is there a motion?

DONNIE RATLIFF: Motion to affirm the Director's decision, Mr. Chairman.

BRUCE PRATHER: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

BENNY WAMPLER: All in favor, signify by saying yes.

(All members signify by saying yes, except Ms. Dye.)

KATIE DYE: Abstain.

BENNY WAMPLER: One abstention, Ms. Dye.

MARK SWARTZ: Good job.

TOM MULLINS: Thank you. You too.

MARK SWARTZ: I'm sure I'll see you again.

TOM MULLINS: I think so.

BENNY WAMPLER: Thank you, gentlemen.

TOM MULLINS: Thank you.

(Off record discussion.)

BENNY WAMPLER: Item six on your agenda, Board, has been continued until December. We're going to seven. This a petition from Range Resource-Pine Mountain, Inc. for a well location exception for proposed well V-537747. This is docket number VGOB-08-0819-2321. We'd ask the parties that wish to address the Board to come forward at this time.

GUS JANSEN: Gus Jansen on behalf of Range

Resources-Pine Mountain. If it serves your pleasure, this is also the same as item number 37. It got listed twice. It was continued and then reentered as item 37. We'd like to just move that to 37 and hear it at that time with the other items.

BENNY WAMPLER: Done, thank you. Next is a petition from CNX Gas Company LLC to repool coalbed methane unit J-36. This is docket number VGOB-08-0318-2159-01. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MARK SWARTZ: We would like to continue this if we could until December. We've got some...we've identified some additional respondents. So, we've got some notice issues and I'm appearing for CNX.

BENNY WAMPLER: And you are?

MARK SWARTZ: Mark Swartz, sorry.

BENNY WAMPLER: Thank you.

SHARON PIGEON: Until December?

BENNY WAMPLER: Until December.

MARK SWARTZ: Yes, please.

BENNY WAMPLER: That will be continued. Any other housekeeping?

MARK SWARTZ: No, wait a minute. I'm sorry, Katherine wanted a continuance.

BENNY WAMPLER: Well---.

SHARON PIGEON: When would you---?

MARK SWARTZ: And I...we did not have an objection to that. I'm sorry.

BENNY WAMPLER: Okay, continued until December then.

KATHERINE JEWELL: Yeah, I said November, but December.

MARK SWARTZ: December...if November works then November would be good.

KATHERINE JEWELL: December. Whenever we get it or---.

BENNY WAMPLER: You pick it out.

KATHERINE JEWELL: December would be fine. I mean, the well is already there.

BENNY WAMPLER: Done, December.

MARK SWARTZ: You think it would be better for you, okay. I'm sorry. Okay. I knew I didn't have an objection.

BENNY WAMPLER: All right, continued. A petition from Equitable Production Company for establishment of a provisional drilling unit consisting of 480 acres. Is this going to be a long hearing because if it is we're going to break for lunch?

RITA BARRETT: Mr. Kaiser is on his way down.

SHARON PIGEON: Oh, Mr. Kaiser is not even here.

BENNY WAMPLER: Could we have lunch here? Pardon?
Well, he's on his way, so we'll see what's next.

RITA BARRETT: Which item is this?

SHARON PIGEON: That was nine.

BENNY WAMPLER: CNX. Did he just leave?

RITA BARRETT: That's the one...item eight is the
one he continued.

BENNY WAMPLER: No, I'm going to fourteen if the
other folks...if that..is Kaiser coming? I know but he's not
here. Their attorney is not here.

RITA BARRETT: You can go ahead and go to fourteen.

BENNY WAMPLER: Go get your buddies. Next is a
petition from CNX Gas Company, LLC for pooling coalbed
methane unit M(-1), docket number VGOB-08-1021-2346. It's
number 14, Mr. Swartz.

MARK SWARTZ: Okay, we can do that. Mark Swartz and
Les Arrington. If it's number 14, is that M(-1)?

BENNY WAMPLER: M(-1).

MARK SWARTZ: Okay.

BENNY WAMPLER: Let the record show no others. You
may proceed.

MARK SWARTZ: Les, be sworn.

COURT REPORTER: Witness is duly sworn.

LESLIE K. ARRINGTON

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MARK SWARTZ:

Q. Who do you work for?

A. CNX Gas Company, LLC.

Q. What do you do for them?

A. Director of environmental and permitting.

Q. Who is the applicant here?

A. CNX Gas Company, LLC

Q. And who is CNX, the applicant, requesting be designating the Board's operator in the event this application is approved?

A. CNX Gas Company, LLC.

Q. Okay. And in that regard, is CNX Gas Company, LLC a Virginia Limited Liability Company?

A. Yes, sir.

Q. Is it authorized to do business in the Commonwealth?

A. Yes, it is.

Q. Has it registered with the Department of Mines, Minerals and Energy?

A. Yes, it has.

Q. Does it have a bond on file as is required by Statute?

A. Yes, it does.

Q. Okay. Did you yourself either prepare or cause to be prepared under your supervision the notice of hearing, application and exhibits with regard to this pooling application?

A. Yes, I did.

Q. And indeed, did you sign both the notice and the application?

A. Yes.

Q. What did you do to notify people that there would be a hearing today?

A. I noticed by certified mail return receipt requested on September 19, 2008. We published in the Bluefield Daily Telegraph on September 26, 2008.

Q. And when you published what appeared in the newspaper?

A. The notice of hearing and location exhibit.

Q. And have you filed your certificates with regard to mailing and with regard to publication with the director?

A. Yes.

Q. Okay. Do you wish to add any folks as

respondents today?

A. No.

Q. Do you wish to dismiss any?

A. No.

Q. Could you give the Board an indication what it is you've been able to obtain in terms of interest by lease or acquisition in this unit and what it is you're seeking to pool by order?

A. We've leased 94.8456% of the coal, oil and gas owner's claim to coalbed methane. We're seeking to pool 5.1544% of the coal, oil and gas owner's claim to coalbed methane.

Q. Have you provided the Board with a cost estimate?

A. Yes, we have. It was \$369,099.70.

Q. Okay, and that's for one well?

A. Yes, it is.

Q. Does it have a permit number?

A. 2352.

Q. I'm thinking that's the depth.

A. Depth, I'm sorry. 3104 and the depth is 2352, I'm sorry.

Q. Okay. Is this an Oakwood 80?

A. Yes, it is.

Q. Is the kind of well that you're proposing a frac well?

A. It is.

Q. Is it located in the drilling window?

A. Yes.

Q. Does this application require escrow?

A. No, it does not.

Q. Okay. And we don't have any unknown or unlocateables either, correct?

A. No.

Q. Is it your opinion that drilling one frac well in this Oakwood 80...in the window of this Oakwood 80 is a reasonable way to produce and develop the coalbed methane from within and under this unit?

A. Yes, it is.

Q. Is it your further opinion that if you combine your leasing efforts...successful leasing efforts of the applicant with a pooling order that the correlative rights of all owners and claimants would be protected?

A. Yes, they will be.

Q. In the event that the Board should approve this pooling application, what would your recommendation be with regard to lease terms for folks who are deemed to have been leased?

A. Yes. Five dollars per acre per year, five year pay up term with a one-eighth royalty.

MARK SWARTZ: Okay. I believe that's all I have, Mr. Chairman.

BENNY WAMPLER: Questions from members fo the Board?

(No audible response.)

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

DONNIE RATLIFF: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

BENNY WAMPLER: All in favor, signify by saying yes.

(All members signify by saying yes, except Katie Dye.)

BENNY WAMPLER: Opposed, say no.

KATIE DYE: Abstain.

BENNY WAMPLER: One abstention, Ms. Dye. You have approval. Next is a petition from CNX Gas Company, LLC for pooling of coalbed methane unit AX-131, docket number VGOB-08-1021-2347. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MARK SWARTZ: Mark Swartz and Les Arrington.

BENNY WAMPLER: Let me just tell Mr. Kaiser I'll come back to you right after lunch. We're going to break.

We'll get this and then---.

MARK SWARTZ: All right.

JIM KAISER: You're going to break for lunch after this?

BENNY WAMPLER: At noon, yes. So, if you all want to head out. Let the record show no others. You may proceed.

MARK SWARTZ: Mr. Chairman, I'd like to incorporate, if I could, Mr. Arrington's testimony from the prior hearing with regard to the applicant and operator, his employment and standard lease terms.

BENNY WAMPLER: That will be incorporated.

MARK SWARTZ: You called AX-131, correct?

BENNY WAMPLER: Uh-huh, 131.

ANITA DUTY: We're continuing that one.

MARK SWARTZ: Oh, that's the one we're continuing. Okay. Geez, I'm having a day here. I'm sorry. I thought we were continuing sixteen, but we're actually...now, just to make sure because I've screwed up twice. Anita, tell me, should we continue this one?

ANITA DUTY: Yes.

MARK SWARTZ: Why?

ANITA DUTY: We found some additional heirs and we need to offer them leases and notice.

MARK SWARTZ: Okay. And when...until when would you need it?

ANITA DUTY: Just November.

MARK SWARTZ: Okay.

BENNY WAMPLER: All right, that's continued. Any other housekeeping?

MARK SWARTZ: Not by us, I don't believe.

SHARON PIGEON: We no longer trust you.

BENNY WAMPLER: You have one---.

JIM KAISER: Yeah, I have some more housekeeping if you want mine before we go to lunch.

BENNY WAMPLER: Yeah, we'll go ahead. Excuse me. Mr. Kaiser?

JIM KAISER: Mr. Chairman, on behalf of Equitable Production Company item number 24 on the docket.

BENNY WAMPLER: That's a petition from Equitable Production Company for modification of Nora coalbed gas field rules to allow for drilling of additional well in units BY-49 and BZ-49, docket number VGOB-89-0126-0009-35.

JIM KAISER: Yes, Mr. Chairman, we'd ask at this time that that petition be withdrawn from the docket.

BENNY WAMPLER: Okay. Any further?

JIM KAISER: Be back around 1:00?

BENNY WAMPLER: Yes, 1:00 o'clock. Okay, number 16

on the Board's docket. A petition from CNX Gas Company, LLC for pooling coalbed methane unit AX-134, docket number VGOB-08-1021-2348. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MARK SWARTZ: Mark Swartz and Les Arrington, I think.

BENNY WAMPLER: Let the record show no others. You may proceed.

MARK SWARTZ: Okay. If I could, I would like to incorporate Mr. Arrington's prior testimony regarding the applicant, the operator, his employment and the standard lease terms.

BENNY WAMPLER: That will be incorporated.

LESLIE K. ARRINGTON

DIRECT EXAMINATION

QUESTIONS BY MARK SWARTZ:

Q. Les, you need to state your name for us.

A. Leslie K. Arrington.

Q. Okay. Is this a Middle Ridge unit?

A. Yes.

Q. How many acres?

A. 58.74.

Q. How many wells are proposed?

A. Two.

Q. Are they both frac wells?

A. Yes.

Q. And they are both in the drilling window?

A. Yes.

Q. Okay. What did you do to notify people there would be a hearing today?

A. We noticed by certified mail return receipt on September 19, 2008 and published Bluefield Daily Telegraph on September 25, 2008.

Q. And when you published what appeared in the paper?

A. The notice of hearing and location exhibit.

Q. And have you provided the director with certificates concerning your mailing and copies of the proof of publication that you got from the newspaper?

A. Yes, we have.

Q. Do you want to add any people as respondents today?

A. No.

Q. Do you want to dismiss any people?

A. No.

Q. Have you provided the Board with cost estimates with regard to the two wells?

A. Yes, we have.

Q. First of all, what is the total cost?

A. \$582,173.95.

Q. Okay. And then if you would turn to each of the wells and the information concerning them.

A. Yes. AX-134 is \$291,029.66 to a depth of 2329. It's permit number is 9695. AX-134A is \$291,144.29 to a depth of 2490 and the permit is not issued.

Q. Okay. With regard to this unit, what interests have you succeeded in acquiring and what interests are you seeking to pool?

A. We have leased 100% of the coal owner's claim to coalbed methane. We're seeking...we...sorry. We have leased 86.7211% of the oil and gas owner's interest of coalbed methane. We're seeking to pool 13.2789% of the oil and gas owner's claim to coalbed methane.

Q. Okay. There's an escrow requirement here, correct?

A. Yes, it is.

Q. And it involves a number of tracts. So, if you could kind of read them slowly.

A. Yes. Tract 1D, 1E, 1F, 1G, 1H, 1I, 1J, 1K, 1L, 1M, 1N, 1O, 1P, 1Q, 1R, 1S, 1T, 1U and 1V.

Q. Okay. And those tracts all require escrow

because of conflicts, correct?

A. Yes.

Q. And then there's also escrow requirement in some of those tracts because of unknowns?

A. Or title conflicts.

Q. Or title conflicts. And so there are multiple reasons with regard to several of the tracts and they are set forth in the exhibits?

A. Yes, in the exhibits.

Q. Okay. Are there any split agreements here?

A. Tract 1A, 1B and 1C.

Q. And there's an Exhibit EE that addresses that?

A. Yes, it is.

Q. And are you requesting that in the event that the Board would approve this application that it allow the operator to pay the people who have split agreements directly rather than escrowing their funds?

A. Yes, it is.

Q. Are these split agreements in this instance all 50/50 agreements, if you know?

A. I'm not sure---

MARK SWARTZ: Anita? Why don't we put Anita under oath.

(Anita Duty is duly sworn.)

ANITA DUTY

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MARK SWARTZ:

Q. Anita, you need to state your name for us.

A. Anita Duty.

Q. What do you do for a living?

A. I prepare the force pooling applications and the exhibits.

Q. For CNX?

A. For CNX, yes.

Q. With regard to the nature of the split agreements here, are they 50/50 agreements?

A. Yes.

Q. Thank you.

LESLIE K. ARRINGTON

DIRECT EXAMINATION RESUMES

QUESTIONS BY MARK SWARTZ:

Q. Les, is it your opinion that drilling two frac wells in the window of this Middle Ridge unit is a reasonable way to develop the coalbed methane resource?

A. Yes, it is.

Q. Is it your further opinion that if you combine a pooling...the terms of a pooling order with the leases and purchase agreements and other agreements that the applicant has succeeded in obtaining that the correlative rights of everyone having an interest or a claim to the coalbed methane produced in this unit will be protected?

A. Yes, it will be.

MARK SWARTZ: I think that's all I have, Mr. Chairman.

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: You did say they both are within the drilling window?

MARK SWARTZ: I think we said that.

LESLIE K. ARRINGTON: Yes, we did.

MARK SWARTZ: I think the plat shows that.

BENNY WAMPLER: I couldn't tell. One is really close. Other questions from members of the Board?

MARK SWARTZ: Excuse me, Anita, has set me up for yet another previously embarrassing moment. Could you....do you want to correct your testimony?

ANITA DUTY: Yes, I'm sorry. It's a seven-eighths/one-eighths royalty split agreement.

MARK SWARTZ: Okay.

BENNY WAMPLER: Okay.

MARK SWARTZ: Better to get it right.

BENNY WAMPLER: Oh, absolutely.

MARK SWARTZ: Okay. Thank you.

LESLIE K. ARRINGTON

DIRECT EXAMINATION RESUMES

QUESTIONS BY MARK SWARTZ:

Q. Les, look at the plat here. The Chairman has asked about the location.

A. Yes.

Q. You need to tell him directly though.

A. Okay. I do see the plat and the both wells are within the unit. One of them barely fit, but it is within the drilling window.

BENNY WAMPLER: Other questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

MARK SWARTZ: I do not.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

DONNIE RATLIFF: Second.

BENNY WAMPLER: Any further discussion?

(No audible response.)

BENNY WAMPLER: All in favor, signify by saying
yes.

(All members signify by saying yes, but Katie Dye.)

BENNY WAMPLER: Opposed, say no.

KATIE DYE: Abstain.

BENNY WAMPLER: One abstention, Ms. Dye. Next is a
petition from CNX Gas Company, LLC for pooling coalbed
methane unit AZ-134, docket number VGOB-08-1021-2349. We'd
ask the parties that wish to address the Board in this matter
to come forward at this time.

MARK SWARTZ: Mark Swartz and Les Arrington.

BENNY WAMPLER: Let the record show no others. You
may proceed.

MARK SWARTZ: I'd like to incorporate Mr.
Arrington's testimony concerning the applicant, operator,
employment and standard lease terms.

BENNY WAMPLER: That will be incorporated.

LESLIE K. ARRINGTON

DIRECT EXAMINATION

QUESTIONS BY MARK SWARTZ:

Q. Les, what kind of unit is this one?

A. This is the Middle Ridge. It has 58.74 acres.

Q. And how many wells are proposed?

A. Two.

Q. What did you do to advise the respondents that there was going to be a hearing today?

A. We mailed by certified mail return receipt on September 19, 2008. Published Bluefield Daily Telegraph on September 25, 2008.

Q. And when you published, what appeared in the paper?

A. The notice of hearing and location exhibit.

Q. And have you provided the Director with copies of your certificates in regard to mailing and the proof of publication that you got from the paper?

A. Yes.

Q. Do you want to add anybody as a respondent today?

A. No, but we did have a revised Exhibit B-3 doing a name change. That was all that was necessary.

Q. Do you have copies of that?

ANITA DUTY: Yes, I gave...I didn't know if everybody wanted a copy or not.

MARK SWARTZ: Okay, if you've got enough copies why

not and then I'll come back to you about that name change.

(Anita Duty passes out a revised exhibit.)

Q. So, you're answer, we don't want to add anybody but we do want to change a name---?

A. That's right.

Q. ---and revise the exhibit to do that?

A. We did.

Q. Anita is passing that out now. Do you know who it was or do I need to ask Anita?

A. Well, we've got it here. We're changing Billy E. Shelton, II to Billy E. And Diana A. Shelton.

Q. And that's the only change?

A. That's the only change.

Q. Okay. Have...how...I think you've indicated that there are two wells in the window here?

A. Yes, there is.

Q. And what's the total projected costs?

A. \$608,821.78. For well AZ-134, it's \$298,050.21 to a depth of 2609, permit number 9730. And AZ-134A, \$310,771.57 to a depth of 2581 and it's permit number is 9731.

Q. Okay. What interests have you acquired in this unit and what are you seeking to pool?

A. We've acquired 100% of the coal owner's

claim to coalbed methane and 89.7685% of the oil and gas owner's claim to coalbed methane. We're seeking to pool 10.2315% of the oil and gas owner's claim to coalbed methane.

Q. Is there an escrow requirement here?

A. Yes, for tract 2A, 2B, 2C, 2D, 2E, 2F, and 2G.

Q. And the reason for escrow, is it conflicts?

A. Conflicts, yes.

Q. Okay. I take it there are no split agreements in this unit that you are aware of?

A. No.

Q. Okay. Is it your opinion that drilling two frac wells in the drilling window of this unit is a reasonable way to develop the coalbed methane resource from within this unit?

A. Yes, it is.

Q. Is it your further testimony that if you combine a pooling order with your leasing and acquisition efforts that have been successful, the correlative rights of all owners and claimants to the coalbed methane within this unit will be protected?

A. Yes, they will be.

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

BENNY WAMPLER: Questions from members of the Board?

DONNIE RATLIFF: Just one quick clarification.

BENNY RATLIFF: Mr. Ratliff.

DONNIE RATLIFF: If you force pool someone who has a lease with someone else then they have a consent to stimulate. When you force pool that person into your unit do you consider that they have that...you pull that right in with them? I caught that in this last argument and I was still and I was still pondering...bouncing it around in my head.

MARK SWARTZ: Mr. Mullins made that argument.

DONNIE RATLIFF: I'm asking you.

MARK SWARTZ: I would have a lot of---

DONNIE RATLIFF: Do you think that right comes with it because you force pool?

MARK SWARTZ: I don't know the answer to the question of whether or not you're a third party beneficiary of somebody else's agreement. I just don't know. I will tell you that what I would be interested in that might answer the question or might not. Let's assume that you force pool an interest that's subjected a lease that has a consent to stimulate in it which I think is the question you asked me. If they participate in that unit, I think you've got a heck of an argument that a consent to stimulate---

DONNIE RATLIFF: We've seen that before.

MARK SWARTZ: Right. ---that the consent to stimulate comes with it. If they don't participate, I'm not sure that I know the answer to that because it's involuntary. It might be the same, but I don't know. But if you participate my answer would be absolutely yes.

BENNY WAMPLER: Other questions?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

MARK SWARTZ: No, I do not.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

BENNY WAMPLER: All in favor, signify by saying yes.

(All members signify by saying yes, but Katie Dye.)

BENNY WAMPLER: Opposed, say no.

KATIE DYE: Abstain.

BENNY WAMPLER: You have approval with one abstention Ms. Dye. If you are waiting for some of the other...if you're waiting for another case, if you'll let me know after lunch, I'll try to get to you so you won't have to sit here all day. Well, I'm going back to number nine next. But yours is CNX next? Let's do it, come forward.

MARK SWARTZ: Great because that's my last one.

SHARON PIGEON: We want to be rid of you.

BENNY WAMPLER: A petition from CNX Gas Company LLC for pooling coalbed methane unit BA-138, docket number VGOB-08-1021-2350. We'd ask the parties that wish to address the Board to come forward at this time.

MARK SWARTZ: Mark Swartz and Les Arrington.

JAMES GOFF: And James Goff.

BENNY WAMPLER: James Goff?

JAMES GOFF: Yes, for Irma Joyce Goff. She's my mother.

BENNY WAMPLER: Okay. Let the record show there are no others. You may proceed, Mr. Swartz. We'll let him put on the evidence and you can ask questions.

MARK SWARTZ: Mr. Chairman, I'd like to incorporate the testimony concerning the applicant and operator, Les' employment and standard lease terms if I might.

BENNY WAMPLER: You may. That will be incorporated.

LESLIE K. ARRINGTON

DIRECT EXAMINATION

QUESTIONS BY MARK SWARTZ:

Q. Les, could you state your name for us, again?

A. Leslie K. Arrington.

Q. Okay. What did you do to notify people we would have a hearing today?

A. Yes. We mailed certified return receipt on September 19, 2008. We published in the Bluefield Daily Telegraph on September 25, 2008.

Q. And what did..in that regard, what appeared in the paper?

A. The notice of hearing and location exhibit.

Q. Have you provided the director with your certificates concerning mailing and a copy of the proof of publication that you got from the newspaper?

A. Yes, we have.

Q. What kind of unit is this?

A. This is a Middle Ridge 58.74 acres.

Q. How many wells are proposed?

A. At this time, one well.

Q. And where is it located in relation to the window?

A. Within the drilling window.

Q. Okay. With regard to the question of whether or not you want to add any respondents today, what would your answer be?

A. At this time we'd like to dismiss one

respondent, Irma Goff, and due to the fact that we have an interest leased.

Q. Okay. And have you provided or has Anita provided the Board with a revised...with an Exhibit B-2 and a revised Exhibit B-3?

A. Yes, she has.

Q. And would it be true that the only changes to B-3 are to eliminate Irma Goff as a respondent?

A. Yes.

Q. Because? Because?

A. It's leased. That interest is leased.

Q. Okay. All right. And I take it you told me you want to dismiss that party. Do you want to add anybody else?

A. No.

Q. Okay. What interest have you acquired and what interest are you seeking to pool?

A. Yes. We've acquired 26.6895% of the coal owner's claim to coalbed methane and 67.4965% of the oil and gas owner's claim to coalbed methane. We're seeking to pool 73.3105% of the coal owner's claim to coalbed methane and 32.5035% of the oil and gas owner's claim.

Q. Okay. And, obviously, those numbers are coming from the last page of the exhibits that you handed out

today, right?

A. Yes.

Q. As opposed to Exhibit A page two that accompanied the application?

A. Yes.

Q. All right. Are there any escrow requirements here?

A. Yes, there is. For Tract 6A, 6B, 6D, 6E, 8A, 8B, 8C, 9A, 9B, 9C.

Q. And are there any split agreements?

A. Tract 4.

Q. Okay. And also tract 4?

A. Yes.

Q. Okay. Are there any split agreements?

A. I'm sorry, Tract 4.

Q. Oh, the split agreement is for Tract 4.

A. Split...yeah.

Q. All right. The...and if we...do we know Anita what the terms of that split agreement would be?

ANITA DUTY: 50/50.

Q. Fifty-fifty?

ANITA DUTY: Yes.

Q. Okay. And are we requesting, Les, in the event that the Board approves this application that it allow

the operator to pay the folks that have split agreements directly rather than escrowing their funds?

A. Yes.

Q. And with regard to the Exhibit E escrowed tracts would it be true that the reason for escrow would be a traditional conflict?

A. Yes.

Q. How many wells are proposed?

A. Just one.

Q. Is it a frac well?

A. Yes, it is.

Q. And this is a Middle Ridge unit?

A. Yes, 58.74 acres.

Q. And this proposed well is in the window?

A. Yes.

Q. Okay. Just barely, again?

A. Yes.

Q. Anticipating the Chairman's question.

A. Yes, it is.

Q. All right. What cost estimate did you provide for this unit?

A. \$320,749.39 to a depth of 2490.

Q. Is it your opinion that if you combined the leasing efforts and acquisition efforts that CNX has been

successful...I'm getting this...and with a pooling order that the correlative rights of all owners and claimants who have an interest or a claim to coalbed methane from this unit would be protected?

A. Yes, it would be.

Q. And is it your further testimony that drilling one frac well in the drilling window of this Middle Ridge unit is a reasonable way to produce coalbed methane from the unit?

A. Yes.

MARK SWARTZ: That's all I have.

BENNY WAMPLER: If I could go back to Anita. I think he asked you the question do we know what the split in the split agreement is and your answer was yes. Can you share that with us?

ANITA DUTY: It's 50/50, sorry.

BENNY WAMPLER: Thank you. Okay. Do you have a question?

JAMES GOFF: Yeah. I wanted to first apologize to the Board here, I didn't realize the...I know this is not a formal hearing but it's a lot more formal than I was anticipating and I'm familiar with these proceedings.

BENNY WAMPLER: Okay.

JAMES GOFF: I don't really...I don't get the feel

of how this is going or moving at this time. So...I mean, I had prepared objections and I'm not sure if anyone has those. Do I need to state those independently?

BENNY WAMPLER: We don't have those in our file. Do you have them Mr. Asbury?

DAVID ASBURY: I do not.

BENNY WAMPLER: So, he doesn't have that. But yes, you'll need to state your objections---

SHARON PIGEON: Who is he appearing on behalf of?

MARK SWARTZ: Just so I understand what's going on as well. Do you know if your mom is leased because our...I mean, well who are you here for?

JAMES GOFF: It's my mother. She's medically unable to be here. So, I prepared this objection on her behalf.

MARK SWARTZ: And, I guess, is this your mom and her address---

JAMES GOFF: Yes.

MARK SWARTZ: ---or her post office box?

JAMES GOFF: Yes.

MARK SWARTZ: I just---

BENNY WAMPLER: Is that the one that's leased that you just provided?

MARK SWARTZ: Yeah. I mean, we believe we have a lease from her.

JAMES GOFF: No, that's not true.

MARK SWARTZ: Anita, do we have a lease?

ANITA DUTY: The land department told me that we have a lease with her.

MARK SWARTZ: Well, as far as we know we have a lease. Obviously, that doesn't mean you can't object. I'm just saying our---

BENNY WAMPLER: We'll go ahead and take your objections on record. They represent...understand they represented to the Board that they have a lease from Irma Goff, Post Office Box 62, Doran, Virginia.

JAMES GOFF: Well, can I ask---

BENNY WAMPLER: Yeah.

JAMES GOFF: Excuse me, but how was this lease procured?

MARK SWARTZ: We'll just have to continue.

JAMES GOFF: That's what I...I would ask for a continuance because you know---

MARK SWARTZ: I guess our view is we have...I think you objected to a well permit as well?

JAMES GOFF: Yes. That...and, again, I apologize because I'm not familiar with these proceedings. I wish I had looked into it a little closer. I didn't think it would be this formal but---

MARK SWARTZ: Do you know if that has been set for a hearing?

JAMES GOFF: Yes.

MARK SWARTZ: Is that one of the one's that you set, David?

BENNY WAMPLER: That's for the well itself?

DAVID ASBURY: Yes.

BENNY WAMPLER: It's a different procedure here?

JAMES GOFF: Okay, I wasn't aware of that and---

BENNY WAMPLER: That's okay.

JAMES GOFF: -how that works.

MARK SWARTZ: And that one has been set for what, the 29th?

ANITA DUTY: 29th.

DAVID ASBURY: 29th.

MARK SWARTZ: 29th. Do you know you have a hearing coming up on that?

JAMES GOFF: No, I didn't.

MARK SWARTZ: Well, it's headed your way. Okay.

JAMES GOFF: Why haven't we been notified?

MARK SWARTZ: What we would propose is let's continue this until next month. Let's have that hearing, we'll get you a copy of the lease we have so you can digest it because it's obviously news to you---

JAMES GOFF: Yeah.

MARK SWARTZ: ---and if you've got an issue with the lease then you can track us down and we'll talk and I'll be back.

BENNY WAMPLER: Is that fair?

JAMES GOFF: Okay. That sounds good.

BENNY WAMPLER: Are you okay with that?

JAMES GOFF: Yeah, that's great. I mean, I'm really---.

BENNY WAMPLER: And if she has signed the lease really I mean we can hear your objections, but basically a leased party is not generally in a position to object once they sign because you're becoming party to the process.

JAMES GOFF: Well, I understand. I mean there may be some medical issues to consider here because my mother, her memory is not what it was.

BENNY WAMPLER: Well, one thing you need to consider, I'm not an attorney, but you need to---.

JAMES GOFF: And I'm not either.

BENNY WAMPLER: ---get power of attorney so that you could---.

JAMES GOFF: I understand that now---.

BENNY WAMPLER: ---act on her behalf.

JAMES GOFF: And believe me I thought that this was

going to be real informal and---

MARK SWARTZ: We don't have a problem with that. I'm...if there's an issues here we need to hear it---

BENNY WAMPLER: Yeah, we're okay too. We just want to get to the bottom of your questions.

JAMES GOFF: All right. Okay. All right.

MARK SWARTZ: ---and we'll deal with.

BENNY WAMPLER: Thank you.

JAMES GOFF: Thank you.

BENNY WAMPLER: We'll resume after lunch.

DAVID ASBURY: This is continued until November?

BENNY WAMPLER: This is continued until November, yes.

(Break.)

BENNY WAMPLER: Okay. We're back to order. Next is a petition from Equitable Production Company for establishment of a provisional drilling unit consisting of 480 acres for drilling horizontal conventional gas well served by wells VH-531022 and VH-531104. This is docket number VGOB-08-0916-2322 continued from September. We'd ask all parties that wish to address the Board in this matter to come forward at this time.

JIM KAISER: Mr. Chairman and Board members, Jim Kaiser, Luke Shanken and Rita Barrett on behalf of Equitable

Production Company. We'd ask that the witnesses be sworn at this time.

(Luke Shanken, Rita Barrett and Mr. Taylor are duly sworn.)

BENNY WAMPLER: Let the record show no others. You may proceed.

JIM KAISER: We'll start with Ms. Barrett.

RITA BARRETT

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY JIM KAISER:

Q. Ms. Barrett, would it be your testimony that everyone within this 480 acre provisional unit entitled to notice under 361.19 of the statute, that being all coal, oil and gas owners, have been notified of this application?

A. That's correct.

Q. And we don't have any unknowns interest owners within this unit?

A. No, it's all Penn Virginia.

JIM KAISER: Nothing further of this witness, Mr. Chairman.

BENNY WAMPLER: Questions from members of the Board?

Mr. Prather?

BRUCE PRATHER: Is this Roaring Fork?

RITA BARRETT: It is, Mr. Prather.

BENNY WAMPLER: Other questions?

(No audible response.)

BENNY WAMPLER: Call your next witness.

LUKE SHANKEN

DIRECT EXAMINATION

QUESTIONS BY JIM KAISER:

Q. Mr. Shanken, if you could state your name for the Board, who you're employed by and in what capacity?

A. Luke Shanken. Equitable Production Company as a geologist.

Q. And you've testified before the Board on numerous occasions as to the establishment of these provisional units?

A. Yes.

Q. Okay. Now, in conjunction with the...this one is a little bit different, right?

A. Uh-huh.

Q. And in conjunction with the handout that you have prepared for this particular hearing, if you would go ahead and begin your testimony now.

A. So, after the cover page, Exhibit AA, it's a

little bit different than the normal horizontal conventional units, it's a 480 acre unit with dimensions 3,733 by 5,600 feet with a 6,732 diagonal across. It still has 300 foot interior window with a 600 foot standoff from adjacent grid horizontal well bores. We should be able to drill surface location outside the unit so long as the production only comes within the interior window. A minimum of 600 feet distance between the horizontal well bore and any vertical well bore producing from the same horizon. And this will allow for multiple wells and/or laterals for maximum drainage of the unit and in some cases two or more wells may be able to use the same pad due to terrain restrictions. The next page just shows that unit with the dimensions on it, Exhibit BB. Actually dimensions, there's a typo there it says 3,733 by 3,733 but you can see from the dimensions below its actually 5,600 by 3,733 feet. Exhibit CC just lists some of the benefits of horizontal drilling. There's fewer issues with coal mining, less surface disturbance, we can more effectively extract the resource with horizontal wells, the laterals can reach into areas that are otherwise inaccessible by vertical well bores, higher depletion rates so we have shorter lives to wells, we get the gas out quicker, and this will encourage future development of the resource. You can see in Exhibit DD-1, this shows the location of the proposed

unit and relationship to Wise County, the quads and the rest of the field there. And then in Exhibit DD-2, actually shows why we're asking for this 480 acre unit. You can see the location of the two horizontal top holes we're able to get here with a 320 acre unit it would actually make it so we couldn't economically have enough length on the 531022 to drill that well. So, once we make this a 480 acre unit we're able to come across further and get that length on the 1022 that we need. You can see where the boundary of that 320 acre grid would be so if we had a 320 acre the way we would like to drill this lateral would end up crossing that and you know counteracting the interior window and all that other stuff that we set these units up for. We found that there is a certain length. We don't know exactly what it is but the longer the lateral usually the more productive these horizontals are. We'd like to drill them in this northwest, southeast direction as well to intersect the most fractures. So, the direction is where we want it to be and the length is where we want it to be with the 480 acre unit. With the 320 acre unit we wouldn't be able to get that.

Q. And why is... I mean that's due to certain factors that exist here that geographically or terrain wise or---?

A. Yes. These are the only two spots that we

were able to get horizontal top holes in this location to have pads big enough to drill horizontal wells.

Q. So, you're not proposing switching the provisional size of the unit on a regular basis from 320 to 480 but this is a particular factual situation that in order to effectively produce the resource, it's basically the only way you can do it?

A. Yes.

Q. And how would that affect any adjoining units to this particular unit? Would they....would you be able to go back to 320s or are you going to have to do another 480?

A. Yeah. I mean, eventually to get everything to match up perfect you may have to do another 480 but this will match up with 320s that could be done around the area too.

BENNY WAMPLER: You're in the...you're in the Nora field?

A. Of the Roaring Fork.

BENNY WAMPLER: Roaring Fork field?

A. Uh-huh.

BENNY WAMPLER: I was thinking Nora field rules though where typically you took four of those and now you're changing...changing that.

Q. I guess it would...would this actually be and to kind of---?

A. Yes, this would be---.

Q. ---go with the Director's or Chairman's line of questioning, would this..would you actually be taking to form this 480 would you be taking six of the 80 acre CBM units?

A. It's actually just slightly offset from where..to get our lateral lengths that we want to..to get those 80 acres. But it is essentially six 80 acre grids but it's a little bit offset from the field rules for the CBMs.

Q. Where as in the Nora field you were doing one of those 320s. So, you're looking at 60...those aren't exactly---?

A. No.

BENNY WAMPLER: No, this would be 420 instead of 480. I'm a little concerned with that because before we had a lot of testimony of why we came up with those other field rules and as long as people stayed within you know that zone we haven't had a whole lot of testimony...geologic testimony here as to what would form a new unit so to speak. I've heard what you've said, but I think we have to be really careful when we are approving these because I'm aware that surrounding states have different shapes and this that and

the other and we've been pretty successful making sure everyone gets paid. And that's you know one thing I know all the Board members and myself included are concerned about is making sure that we're maximizing the production and making sure we have...we don't leave...we don't hit a favorable unit and skip one that's not kinda deal. And I'm not suggesting you're doing that. I'm just saying you need...you need to maybe tell us a little bit more geologically why you did this. I know you've talked about the laterals but maybe go into a little more detail about that.

A. Sure. This unit actually would butt up against a 320 acre unit. There's not going to be any spaces in between this unit and another. The natural fracture system in the shale here runs in a northeast southwest direction, essentially that's where the gas is in the natural fracture system and the shales so our laterals are trying to intersect as many of those natural fractures as we can so that's why we want these to be in the most...in some places the units don't allow for offsetting wells but in the most northwest to southeast direction as we can the more fractures we encounter the more gas we're going to produce from these wells. We've found...we don't know if it takes 3,500 feet is the maximum lateral, we needed 3,800 feet but we have found the shorter the lateral usually the less these

wells produce. So, if we actually drilled 531022 and wanted to make a 320 acre unit right on top of that we would be getting 2,800 feet of lateral as opposed to the 3,800 feet of total horizontal lateral we like to see in these wells.

Q. And that's because of terrain issues as to where you can locate the top holes?

A. Terrain is where we can put the top holes and then existing units that may...we may want to plan around here too, we don't want to space anything out. Like I said this will still match up with 320 acres, we're not going to leave a gap in between it and this just happened to be where if we wanted to drill both of these wells we need to make a 480 acre unit otherwise for 531022 we wouldn't be able to get a unit that would fit that would make us want to drill that well so it would never be drilled. If we don'tif we couldn't get a 420 essentially we would just make a 320 out of the one below it, use that for 531104 and never drill the 531022.

BENNY WAMPLER: Which is the one directly above it?

LUKE SHANKEN: Which is the one directly above it, yes, sir.

BENNY WAMPLER: And you wouldn't drill that because of what?

LUKE SHANKEN: Because of the length that we would

be able to get off of that. For what we know now we wouldn't be able to get a far enough length to make that well..to give that well its best chance to be economic.

MARY QUILLEN: Mr. Chairman, if I have just one question.

BENNY WAMPLER: Ms. Quillen.

MARY QUILLEN: On this, you said this would butt up to another 320 which is to the north of it?

LUKE SHANKEN: There is one directly to the south.

MARY QUILLEN: To the south. Okay, now what about in the north because this looks like its approximately half of a 320 grid.

LUKE SHANKEN: It would be half, yes.

MARY QUILLEN: And so what is above it? Is there terrain or unsuitable---?

LUKE SHANKEN: Currently, we don't have any wells to the area in the north so we don't have a whole lot of data. We kind of try to walk our production out from existing wells so as far as terrain we don't have any pipeline ran up there or anything to want to put another location but if we did we could just put another 320 right on top of it. And we haven't really looked for more locations that far to the north away from our existing production yet.

MARY QUILLEN: Okay, so there was nothing that was

actually driving this other than these wells right here?

LUKE SHANKEN: These wells right here, yes.

MARY QUILLEN: Okay, thank you.

BENNY WAMPLER: Okay, and let me maybe explain my rationale for questioning. The 80 acre and the 70 acre units are coalbed methane units, not conventional units. Conventional they can still do the circles. Excuse me. But we had a lot of testimony as to why we set that up, and we set that up in a checkerboard type situation, as I said, to make sure people get paid. You have to forget that though for conventional once you got the unit set up because you don't have the grid for conventional per se except the unit that their creating here. But I'm just trying to make sure that we are all cautious about how..what we are moving to, you know. Mr. Prather?

BRUCE PRATHER: I was wondering if you couldn't put a 320 acre to the north here and we give them some sort of variance on where that lateral goes off of the one to the north. I think that's what he's trying to do here. He's trying to put the lateral in a 320...two of them in a 320 down here. I don't understand why we wouldn't go to the north and have a 320 and we give him variance based on the geology as to where that lateral is going to go.

BENNY WAMPLER: No, he's picking up a lateral

extending past that 320.

BRUCE PRATHER: Sure, but what I'm saying is could we give him a variance that would allow him to do that and it would just extend the thing up to the thing. That way our grid system would be intact.

LUKE SHANKEN: So, you're saying having one 320 on top of the other and just being able to cross the boundary in this case?

BRUCE PRATHER: Yeah, and give you a variance.

JIM KAISER: Be able to get outside the interior window?

BRUCE PRATHER: Yeah. Could we do that?

JIM KAISER: Well, there you would really want to look at the correlative rights issue I think then. I mean, I think the 480...I mean you approved a 480 a month or two ago in this same situation for CNX. I'll remind the Board of that.

BENNY WAMPLER: I knew that.

JIM KAISER: Well, it's pretty relevant.

BILL HARRIS: Oh, I agree. Two just very quick questions and you may have addressed this but...and number one is just very elementary. You've called this a square and my map background leaves me---

LUKE SHANKEN: I can....rectangle I guess, sorry,

sir.

BILL HARRIS: So, I just wanted to point that out. Number two...and that's neither here nor there. But do I understand that this...and of course this is conventional versus CBM but this does not set the west side, the south and the north don't actually align with the 80 acre grids that's currently here for coalbed methane, is that correct?

LUKE SHANKEN: These are actually just a little bit off. They're not at a different...I don't want to say tilt or (inaudible) of the 80 acre grids that are already established but they don't...this does not overlay on top of the 80 acre grids.

BENNY WAMPLER: That's what I was questioning. The other did.

BILL HARRIS: Is there...yeah, I mean is there any reason why...I mean, even I know---.

BENNY WAMPLER: The other did.

BILL HARRIS: We're talking different---.

BENNY WAMPLER: Consol's did or CNX. That's why I was questioning him because he mentioned that it wasn't aligned with that.

LUKE SHANKEN: I'm sorry. It was just a matter of getting the maximum lateral length out of the unit where the two top hole locations were that we could. I mean, I guess

we put the provisional unit where we thought it would best fit these two locations, I guess, and that's why it is where it is.

BILL HARRIS: Well, I...something just keeps saying that this, you know...and I know that we're talking different things, conventional versus CBM, but I guess I want to somehow put those together for maybe not necessarily for correlative rights issues because I know that you do the same things here, you go in and you find out who owns what and do that. It just seems to me that it would be easier to lay that overtop of four 80 acre units or six 80 acre units and whatever and then that way...but, again, I know that we're talking different animals here. We're talking conventional, you know the spacing regulations are different for those. To me it just seems like if you went so far as to make 320 and 160 which appears to be six of those that it would be just as convenient to just lay it on top of six of the grids that already existed even though again I know CBM is different than conventional.

LUKE SHANKEN: I mean it probably...it could be done, but I'm not...obviously, we can move it however it is but I guess we just set these up looking at our maps. We use the cbm grids as a guideline on here but we still try to put our units where we can get our existing location so that best

fits those locations.

BILL HARRIS: And something else has been drilled here? You say that there's another 3 or 480 or what to the south of that?

LUKE SHANKEN: There's a 320 we...just to the south here.

BILL HARRIS: Okay, so there's another. Now, does that...and that does not overlay---?

LUKE SHANKEN: That will be just the same kilter, just a little bit off of where the 80 acre is.

BILL HARRIS: Okay, so that one actually...okay.

BENNY WAMPLER: That's what we're trying to avoid.

SHARON PIGEON: Yeah.

LUKE SHANKEN: No, it does not---.

BENNY WAMPLER: I know. But if you deviated this much then you know, understand that's why we're picking on you. Okay. Because what we have to try to avoid I think without coming up with...and I know this is provisional, don't get me wrong, but when we're even doing provisional we're trying to do something consistent with the other operators in the field. So, this scenario is what we would be concerned about I think. If you follow me?

LUKE SHANKEN: Yeah.

BENNY WAMPLER: And we're trying to keep you within

some patter that's consistent with the pattern we've approved before if that makes sense. It may not to you but I think---.

LUKE SHANKEN: Yeah.

BENNY WAMPLER: I'm not being critical. I'm just talking about we've all been through this and you haven't.

LUKE SHANKEN: We don't have any units approved or planned without getting anywhere off (inaudible) to the north or south or to the east or west as opposed to any of the other units. The (inaudible) are all the same on all the units we have planned and approved.

BENNY WAMPLER: I understand but that really doesn't answer my question because you could be...you could have somebody that's difficult to work with up in here and you just avoid them. I'm not saying you're doing that, understand. I'm just explaining to you. You could do it. I'm not accusing you. I want you to understand that. I'm just---.

JIM KAISER: Well, then let's go back to Ms. Barrett.

RITA BARRETT

DIRECT EXAMINATION RESUMES

QUESTIONS BY JIM KAISER:

Q. Ms. Barrett, there's three in this 480 acre unit, there would be three royalty owners that would be Penn

Virginia Operating Company, LLC, J. W. Construction Company and Steinman Development Company, LLC?

A. That's correct. And the majority of those Penn Virginia.

Q. Okay. And they're all three leased?

A. Yes.

Q. So, they've all three received, as we already established, notice of application and they are all three on board with it? They're not objecting?

A. Correct.

LUKE SHANKEN

DIRECT EXAMINATION RESUMES

QUESTIONS BY JIM KAISER:

Q. And if they wanted to structure this order or the approval of this order Mr. Shanken on us testifying here on the record and then, of course, we'll have to apply for the permit so they'll get a recheck when you apply for the permit on drawing the unit or establishing the unit such as it does comport with six 80 acre Roaring Fork CBM units can you do that and still get your locations?

A. It's possible. But I think in this case its going to shorten our laterals. And I think in a lot of cases if we can't alter the location of these provisional units a

little bit we're not going to be able to get the lengths we want on the laterals. And I know what you're saying and we don't do that..to do that.

BENNY WAMPLER: well I wasn't accusing you, but I don't understand why you can't. If you can explain to me why you can't I'll be on your side I'll promise you. But I can't understand why you can't do it because if you're here I'm going to just mess this up but let's say that you're unit is what you're generally saying that you're working within this as a general rule and you may be actually working a little bit like that but that's what I want you to tell...what are you....how does that look on that grid? If you overlay that on a grid...on this grid how does this look?

LUKE SHANKEN: It would be parallel. I think this 60 acre or the 80 acre CBM grid was a parallel line would be just a few hundred feet to the east or the west, I don't remember specifically in this case.

BENNY WAMPLER: It would be over in here some where?

LUKE SHANKEN: But it's a parallel line directly parallel with the unit.

BENNY WAMPLER: It would be somewhere over like that?

LUKE SHANKEN: Yes.

BENNY WAMPLER: So, you would have...and who owns

the land all the way around it? Who owns the minerals around it?

RITA BARRETT: The majority of that, Mr. Chairman, is Penn Virginia.

RITA BARRETT

DIRECT EXAMINATION RESUMES

QUESTIONS BY JIM KAISER:

Q. Would there be any oil and gas owners other than the three that have been noticed for this hearing on... either 300 feet either east of west of these unit boundaries?

A. No.

JIM KAISER: In this case, there's your answer.

DAVID ASBURY: Mr. Chairman, can I ask a question?

BENNY WAMPLER: Mr. Asbury.

DAVID ASBURY: Is there a disadvantage...and I understand there's been a lot of correlative rights issues years of testimony on how our field rules and units have been established on a coalbed level. And now we're talking about taking the coalbed level for correlative rights and other land other issues to conventional gas. Is there a disadvantage to the operators to be able to transfer those units to conventional gas?

A. You're saying overlay one unit right on top

of the other?

DAVID ASBURY: I'm just saying take...take the field rules and units that we've established...that the Board has established over time for coalbed methane and I'm thinking land management and working with their citizens, they understand these units and they have been a part of the unit development and is there a disadvantage for our operators to take that grid that exists and take it to conventional gas level.

JIM KAISER: I think that's what we've been doing when we establish these other units. We're just taking the cbm units and using the same grid and combining a number of them to get our bigger commission.

DAVID ASBURY: And we're taking it down to a conventional gas level.

JIM KAISER: Right.

BENNY WAMPLER: Mr. Prather?

BRUCE PRATHER: In your diagram up there, as long as you're working internally within your own lease you can carry those units pretty good. My problem is once I reach a boundary line am I going to say leave a gap in there in which this doesn't fit?

BENNY WAMPLER: Well, that was a concern. That's what I was getting at, you know, that I thought it was

different than the other proposals because even though we had approved a different configuration before they stayed within the...and I know that's not a perfect science too, but when you bring up that different issue it creates different questions. Not particularly where you're within your people...you know, same company and same mineral but when you...if you move out of that then we don't want something we've set a precedence with.

JIM KAISER: So, your concern then is when we do something this is not exactly three...doesn't exactly line up with the---?

BENNY WAMPLER: Either the 70 or the 80s.

JIM KAISER: Where are the 70s?

BENNY WAMPLER: Nora.

JIM KAISER: Nora are 60s.

BENNY WAMPLER: I mean 60s, sorry.

JIM KAISER: So, we've been doing 320s in the Noras, haven't we? 60 doesn't go into 320.

BENNY WAMPLER: Yeah, I know. I mean, that's why I'm...they're all provisional though and that's why I'm---.

JIM KAISER: Right and this is provisional.

BENNY WAMPLER: I understand.

JIM KAISER: So, I guess what you...what...getting back to I guess what both of you all are worried about is

that there may be if we do this then you may have a little strip of a hundred feet or something between the units?

BRUCE PRATHER: At the common property line.

BENNY WAMPLER: Or that somebody is going to come in and turn it the other way at an angle like I did that one

JIM KAISER: And I understand that because that's a correlative rights issue and you're going to have somebody that's unpaid.

BENNY WAMPLER: Right.

JIM KAISER: But in this particular case, if we can...if we're providing you with testimony that...and, again, we'll use the 300 feet because that's where your setback is on the interior window, if we can go 300 feet in any direction from that line and show that the royalty owners are these three royalty owners it shouldn't be a problem.

BENNY WAMPLER: Like I said, I don't have a problem with the scenario.

JIM KAISER: Okay. All right.

BENNY WAMPLER: I just wanted to get testimony and get an understanding of what the concerns would be when you get out of this scenario.

JIM KAISER: Right. No, they're all...I'm not...they're good questions.

BENNY WAMPLER: And you know, it's just one of those

where we haven't done conventional field rules, understand that.

JIM KAISER: Yeah, because of the...I mean the only reason this situation really arose I guess is because of where you can locate the top holes, the only way you can get an economic length to your lateral is to try to form this bigger unit.

BENNY WAMPLER: Yeah, and I understand that.

RITA BARRETT

DIRECT EXAMINATION RESUMES

QUESTIONS BY JIM KAISER:

Q. So, again, Rita, is it your testimony that if we look at this unit and go I guess...we're really only concerned...are we concerned in all four directions or just in the east and west? I guess just east and west because its butting up everywhere else.

BENNY WAMPLER: Right. In this scenario it's just east and west according to his testimony.

Q. Okay, so if we take the exterior boundary east and west line of this unit is where depicting it and attempting to establish the unit now if we go 300 feet can you testify that the royalty owners will be the same?

A. I can't testify to that today because I'm

going to have to have a map that shows me what is east or west of that. I mean, this tract three is only 57 acres and it looks like the majority of that tract is in this unit. I'm not sure how far to the east this tract extends out or who it hits. So, no I can't answer that today. Now, the west side, I think that we're good on but the east side I can't.

JIM KAISER: Okay, I guess, then that leaves us in a position of maybe continuing it and coming back with that testimony or proof or stating on the record that we'll form the unit along the lines of the six existing Roaring Fork cbm units.

LUKE SHANKEN: And it can be shifted, it's not----.

BENNY WAMPLER: And I understand your new unit is not something with six blocks in it. It will still be the one block but it's conforming to something that the Board's already approved and that people have come to understand.

JIM KAISER: So what's your pleasure. Which way do you want to go with this?

RITA BARRETT: It's up to you guys. I mean, I..like I said, I can't testify to the property to the east.

LUKE SHANKEN: I mean, we can move, I can shift it so that it's on the 80 acres.

BENNY WAMPLER: Your main concern is being able to

get the length of the line?

LUKE SHANKEN: Just to get the length and the direction---.

JIM KAISER: Right.

LUKE SHANKEN: ---is our main concern when we drilled this.

JIM KAISER: You've got to get a certain length to make it worth that kind of money to drill.

BRUCE PRATHER: I think we have the right to give him the variance. Like if you're crossing this unit I think we can give him a variance on that for conservation purposes.

LUKE SHANKEN: That works for us.

JIM KAISER: Yeah, that's---.

LUKE SHANKEN: If we can get our length and our direction that's really what we're concerned about, so.

BENNY WAMPLER: It's your call, not our call.

JIM KAISER: Do you want to move it or do you want to ask...request that they make a motion to allow us a variance? Which would you rather have?

BENNY WAMPLER: Ms. Quillen has a question.

MARY QUILLEN: I have one question. The statement that Mr. Prather just made, are you saying that the variance within this 480 acres?

BRUCE PRATHER: Yeah. See, that's the reason you've

got that little squiggly at the top there is to bring it into the 480 acre instead of the 320. But it's still intruding on the 320.

MARY QUILLEN: But not...right but not a variance that would angle it out of this foot print.

BRUCE PRATHER: The only thing I would say is that it would reconstruct the unit and leave the surface location where it is.

MARY QUILLEN: And can you still get the length that you need by doing that, by having that variance within that footprint?

LUKE SHANKEN: I don't know if I exactly understand. Are you saying stay with two 320 acre units and then crossing the line?

BRUCE PRATHER: Yeah.

LUKE SHANKEN: I mean, if we can still...if we can cross the 320 acre line that I have right here yeah, we'll be able to get...if we can still go about where we have it on the map here.

BRUCE PRATHER: Yeah, that's what I'm...that's what I'm proposing. We could give you a variance there based on conservation. I mean, there's no correlative rights or anything.

LUKE SHANKEN: I mean that fits our needs.

JIM KAISER: Yeah, based on the last argument, sure.

BRUCE PRATHER: Yeah. I'm really not supposed to testify on this.

BENNY WAMPLER: Well, you're just commenting.

MARY QUILLEN: I said as his statement (laughs).

LUKE SHANKEN: And I...that fits...if we can get our length and the direction we want then however is best to do it. If we can get that that's what we're trying to.

BRUCE PRATHER: Try to conform the (inaudible).

JIM KAISER: So, I guess...well, this application doesn't ask for that. Yeah, I don't think we can modify the relief requested on the fly. So, I guess we'll have to continue this and then come back and file it as two 320's with the request for the variance if that's what you...if---

RITA BARRETT: And as a land man, it helps us because we're constantly arguing with these guys about that.

(Jim Kaiser confers with Luke Shanken.)

BENNY WAMPLER: Continued until November or December, you call it.

JIM KAISER: I guess, it will have to be December, we'll have to refile the application.

BENNY WAMPLER: Continued until December. Next is a petition from Equitable Production Company for establishment of a provisional drilling unit consisting of 320 acres for

drilling of a horizontal conventional gas well served by wells VH-531024 and VH-539988. This is docket number VGOB-08-0916-2323. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

JIM KAISER: Mr. Chairman, Jim Kaiser, Luke Shanken and Rita Barrett again. It might be of some help to go ahead and call eleven and twelve also. I think we can combine these three.

BENNY WAMPLER: Okay, that will be docket number VGOB-08-0916-2324 and docket number VGOB-08-0916-2325. We'd ask the parties that wish to address the Board in these matters to come forward at this time.

JIM KAISER: Again, Mr. Chairman, Jim Kaiser, Rita Barrett and Luke Shanken.

BENNY WAMPLER: Sorry. Let the record show no others. You may proceed.

RITA BARRETT

DIRECT EXAMINATION

QUESTION BY JIM KAISER:

Q. Ms. Barrett, would it be your testimony that the people that are required by 361.19 to be given notice of this hearing for all three units have received that notice?

A. That's correct. We have some unknowns in

9574 but those were noticed by publication.

Q. Okay. And that's the number eleven?

A. That's correct.

Q. The one in the middle. There are some unknown entities in that unit?

A. That's correct.

Q. Okay. And we did publish as required by statute?

A. We did.

JIM KAISER: Okay. Nothing further of this witness, Mr. Chairman.

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Call your next witness.

LUKE SHANKEN

DIRECT EXAMINATION

QUESTIONS BY JIM KAISER:

Q. Mr. Shanken, again, if you would present your testimony in conjunction with the exhibits you've prepared for the Board for these three units, you know, delineating between them any testimony where its necessary.

A. Okay, these are three 320 acre horizontal proposed units---

Q. Conventional?

A. Conventional. They have dimensions of 3,733 feet by 3,733 feet with 5,280 foot diagonal. There would be a 300 foot interior window with a 600 foot stand back from adjacent grid horizontal well bores. We should be able to drill the surface location outside the unit so as long as production only comes from within the unit. A minimum of 600 foot distance between the horizontal well bore and any vertical well that produces from that horizon. This should allow for multiple wells and/or laterals from maximum drainage. In some cases we may be able to use two or more wells from the same pad to reduce restrictions. Exhibit BB on the next page just shows the unit with the dimensions. Exhibit CC, is the benefit of horizontal drilling. As before, there's fewer issues with coal mining, we have less surface disturbance, we can more effectively extract the resource with horizontal well bores. The laterals can reach into areas otherwise inaccessible by vertical well bores due to terrain issues and things like that with higher depletion rates with horizontals. So, it leads to shorter lives per wells, we can get the gas out quicker and hopefully this will encourage future development of the resource. You can see in Exhibit DD the location of these three units on comparison to Wise County there. DD-2 shows the unit for 531023 and

539957, both of those wells are planned inside that unit. DD-3 is the unit for 9574. I know there's two numbers there, but that's actually on DD-4 as the unit for 9576. You can notice that location is outside the unit but our production will come within the provisional unit. That's all I have.

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

BENNY WAMPLER: Questions from members of the Board?

BILL HARRIS: Mr. Chairman?

BENNY WAMPLER: Mr. Harris?

BILL HARRIS: I'm a little confused by...if you'll look at DD-2, so the unit that you're proposing is the darker green line?

LUKE SHANKEN: Yes.

BILL HARRIS: And the dotted grey lines are what?

LUKE SHANKEN: That's carter coordinates on our map, it probably shouldn't have been shown on here.

BILL HARRIS: So these aren't some other...you know, because---?

LUKE SHANKEN: No.

BILL HARRIS: You know, the first thing they raise is these don't fit.

LUKE SHANKEN: Yeah. No, those have nothing to do with it. I don't know how they originally set up but those

don't have anything to do with the units or anything, sorry.

BILL HARRIS: And, again, could you explain about the 1023 and the 957 down in the corner of the two---?

LUKE SHANKEN: Those would be planned to be drilled in a "v" kind of pattern off the same pad. One will be going more to the north kind of north/northeast and one will be going---.

BILL HARRIS: Toward the 3803 number that's there?

LUKE SHANKEN: What's that?

BILL HARRIS: Towards the 3803 number?

LUKE SHANKEN: No, they would both be staying within this unit. One would be drilled say more in the direction of where 4200 is and one would be drilled in more of the direction of where 4299.

BILL HARRIS: Okay. Gotcha. Gotcha. Thank you.

BENNY WAMPLER: Other questions?

(No audible response.)

BENNY WAMPLER: Anything further?

JIM KAISER: We'd ask that the application be approved as submitted, Mr. Chairman.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

KATIE DYE: Second.

BENNY WAMPLER: Further discussion?

(No audible response.)

BENNY WAMPLER: All in favor, signify by saying yes.

(All members signify by saying yes, but Bruce Prather.)

BENNY WAMPLER: Opposed, say no.

BRUCE PRATHER: Abstain.

BENNY WAMPLER: One abstention, Mr. Prather. You have approval. Next is number nineteen, the Board's docket number. A petition from Equitable Production Company for establishment of a 335.08 acre provisional drilling unit for drilling horizontal coalbed methane gas well served by well VCH-531090. This is docket number VGOB-08-1021-2351. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

JIM KAISER: Mr. Chairman, again, Jim Kaiser, Rita Barrett and Luke Shanken. And, again, I'd ask the Board's indulgence. I think it would probably be prudent to go ahead and call 20, 21, 22 and 23 and we'll combine all these. They're all a combination of four existing Nora units and it's almost all the same royalty owner on all five of them, so.

BENNY WAMPLER: Dockets number...also calling docket number VGOB-08-1021-2352, 2353, 2354 and 2355. We'd ask the parties that wish to address the Board in these matters to

come forward at this time.

JIM KAISER: Jim Kaiser, Rita Barrett and Luke Shanken.

BENNY WAMPLER: Let the record show no others. You may proceed.

RITA BARRETT

DIRECT EXAMINATION

QUESTION BY JIM KAISER:

Q. Ms. Barrett, now you kind of looked at me funny when I put them all together. The majority of these units...first of all everybody who owns an interest in the..in this case, oil, gas or coal has been notified as required by 361.19, correct?

A. That's correct.

Q. And the majority of the acreage in these units is Range Resources-Pine Mountain, correct?

A. That's correct.

Q. Now, there is one unit, I want to say it is item 21?

A. It's just 20...go ahead.

Q. Is it item 21 where we have a couple of unleased interests that we have...no?

A. No, that's unit 22.

Q. Item 22. So, that's unit for well 531109. That does contain a small percentage of unleased owners and we have filed a application for pooling on the November docket for that well?

A. That's correct, 1.2875% is unleased and we have it on the November docket for pooling.

Q. Okay. And these units are going to consist of putting together of four of the existing Nora units for vertical coalbed methane wells, right?

A. Yes.

JIM KAISER: Nothing further of this witness, Mr. Chairman.

BENNY WAMPLER: Questions from members of the Board? Call your next witness.

LUKE SHANKEN

DIRECT EXAMINATION

QUESTION BY JIM KAISER:

Q. Mr. Shanken, if you would go through the exhibits that you've prepared for the Board for these five horizontal coalbed wells.

A. If you look at Exhibit AA on the second page of that handout, these are 235 acre square units, approximately, I think there was some decimal points off of

some of those but the dimensions would be 3200 feet by 3200 feet with a 4520 lateral. There would be the 300 foot interior window which would make the actual dimensions once you add...take off the 300 foot, 2600 by 2600 with the 3677 foot diagonal. Again, the 300 foot interior window with a 600 foot standoff from adjacent unit horizontal well bores. We should be able to drill the surface location outside the unit so long as production comes within the unit within the interior window. This will allow for multiple wells and/or laterals for maximum drainage of the unit. In some cases, we may be able to drill two or more wells on the same pad due to terrain restrictions. Exhibit BB, shows the dimensions of those units or of this unit. Exhibit CC is the benefits of horizontal drilling. This is the same as with conventional wells. We have fewer issues with coal mining, there's less surface disturbance, we can more effectively extract the resource with the horizontals, our laterals can reach into areas otherwise inaccessible by vertical well bores, higher depletion rates with shorter lives to the wells and this will encourage future development of the resource. DD shows the location of the five proposed units we have for today in relationship to surrounding counties. And then if you start on EE-1, and this is...E-1 is the unit for 531090. The other wells there listed with the numbers of the existing coal

wells that are within that unit. EE-2, shows the unit for 531092. EE-3 shows the existing unit for 53...or shows the proposed unit for 539986. EE-4 shows the proposed unit for 531109. And EE-5 shows the proposed unit for well 531031. You can notice that well is outside the unit but production will come from the interior window of that unit.

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

BENNY WAMPLER: Questions from members of the Board?

DAVID ASBURY: Mr. Chairman?

BENNY WAMPLER: Mr. Asbury?

DAVID ASBURY: In each one of these exhibits, you identify a well. Are you identifying the unit as that well main?

LUKE SHANKEN: We don't...the unit won't...we're not saying we won't drill additional horizontal units inside the unit...horizontal well bores inside the unit. You know what I mean, we establish the unit.

DAVID ASBURY: My question is we'll need a specific identifier for this unit so that in the future both you and our customers and the DGO can understand and go to this reference unit.

RITA BARRETT: Yes, we are going to drill these particular well numbers in these units but we may in the

future drill additional wells in these units.

DAVID ASBURY: So, in each case, we would like to know the identifier for the unit.

JIM KAISER: I don't see why the initial original well can't be the identifier.

RITA BARRETT: Yeah, the original well would be the identifier.

DAVID ASBURY: Okay, very good.

BENNY WAMPLER: Where are the units?

LUKE SHANKEN: If you look the exhibit DD, it shows the units in relationship to Dickenson County and the surrounding counties there.

BENNY WAMPLER: So, you're in the Nora Field?

LUKE SHANKEN: Nora field, yes.

BENNY WAMPLER: Are these units changing the size of the Nora field rules?

LUKE SHANKEN: No, sir.

BENNY WAMPLER: They are consistent with the acreage that was in that particular...these particular units in all cases? Yes?

RITA BARRETT: Yes.

BRUCE PRATHER: I have a question.

BENNY WAMPLER: Mr. Prather?

BRUCE PRATHER: The unit here it looks to me like

you've got four units here. Is this fifth unit going to be 23, the one down here looks like it's in Wise County?

LUKE SHANKEN: That unit is in Wise County and that would be---.

BRUCE PRATHER: Is that 23? Which we haven't talked about yet?

MARY QUILLEN: Yeah, it says that it is in Wise County, 23 says it is in Wise County. There is one in Wise County.

LUKE SHANKEN: Yeah, that would be for number 23.

JIM KAISER: That will be well 1031.

BRUCE PRATHER: Well, that one is outside my jurisdiction.

BENNY WAMPLER: Other questions?

LUKE SHANKEN: We have spied our top hole for the first horizontal that we've drilled as part of this. We haven't drilled the lateral yet. So, I don't have any results for you guys for data on that, but here hopefully soon we should be able to get you guys something...some results and cbm horizontals here.

JIM KAISER: Not any of these but the first one that we have established.

LUKE SHANKEN: Not these but the first one we get established, yeah.

JIM KAISER: Let me clarify that.

BENNY WAMPLER: I started to follow up on that.

Other questions?

(No audible response.)

BENNY WAMPLER: Did you get the commitment that you wanted, Mr. Asbury?

DAVID ASBURY: Yes, sir. Thank you, Mr. Chairman.

BENNY WAMPLER: Do you have anything further?

JIM KAISER: Mr. Chairman, we'd ask that the application be approved as submitted.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

BENNY WAMPLER: All in favor, signify by saying yes.
(All members signify by saying yes, but Donnie Ratliff.)

BENNY WAMPLER: Opposed, say no.

DONNIE RATLIFF: I'll abstain.

BENNY WAMPLER: One abstention, Mr. Ratliff. You have approval. Go to number 25 and I'm going to turn it over to my co-hort Mr. Lambert who's going to replace me January 1st. He's going to replace me today and give my voice a

break.

(Off record discussion.)

BUTCH LAMBERT: We will proceed on with number 25.

This will be a petition from Equitable Production Company for disbursement of funds from escrow and authorization of direct payment of royalties on tract three. This is docket number VGOB-01-1016-0968-01. All parties wishing to testify before the Board come forward and be recognized.

JIM KAISER: Mr. Chairman, Jim Kaiser and Rita Barrett on behalf of Equitable production.

BUTCH LAMBERT: I see no other parties. You may continue Mr. Kaiser.

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY JIM KAISER:

Q. Ms. Barrett, we filed this petition in order to ask the Board for disbursement of funds from escrow and for direct payment to these parties on a going forward basis for Tract 3 in the unit for well number 504637 and those parties are Range Resources-Pine Mountain and Charles Dickenson and they've both to the best of your knowledge both of them received notice of this hearing today, correct?

A. That's correct.

Q. Okay. And along with the application seeking this disbursement, we filed in the letters as to the royalty split agreement between these parties, is that correct?

A. That's correct.

Q. And this will take care of all of Tract 3, I believe, so the escrow in account can be closed for that particular tract. It's a 75/25 split. And we also filed a spreadsheet denoting that split and the spreadsheet...and in disbursing the proceeds, the funds, the Board needs to pay particular attention to the owner percentage in escrow which is the next to the last column in the spreadsheet, correct?

A. Correct.

Q. And our numbers and the bank's numbers matched up exactly as of 6/30/08, is that correct?

A. That's correct.

Q. And so at this time, based upon the evidence in the application in the testimony that we've just taken, we'd ask that the Board disburse based on those percentages as to what's in the account now and to disburse on the 75/25 split on a going forward basis, is that correct?

A. That's correct.

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

BUTCH LAMBERT: Questions from the Board?

DAVID ASBURY: Mr. Chairman, I have one question.

BUTCH LAMBERT: Mr. Asbury?

DAVID ASBURY: Just in addition to something that we think will be an enhancement, this is not for this particular operator, this is just a general statement. In working with Wachovia who is our escrow agent, they have agreed as the operators would contact them for the escrow amount in these agreements because there has been some disagreement in the past in the orders presented to the Board that's held up the actual order of disbursement that the operators can and Wachovia will work with them to provide them with an email statement that these numbers are correct as of that date so that we would have...the Board would have additional evidence that Wachovia is in agreement with the spreadsheet of disbursement of a particular date. Thank you, Mr. Chairman.

JIM KAISER: I like that and we can just present that as an exhibit in our testimony.

DAVID ASBURY: Yes.

RITA BARRETT: You will provide us with their email contact?

DAVID ASBURY: We will.

BILL HARRIS: Mr. Chairman, I just wanted to make a comment. This is just something minor. I'm happy to see in

the, I guess from the letter from Range Resources where it does specify 75%/25% but it actually identifies who gets what because that's been my question before, you would see...agree to a 75/25 permanent split and I'm thinking well who gets which one. And I notice here that it actually does spell out that. So, that's good to see.

JIM KAISER: Also, hopefully we always identify on our spreadsheet what the split is too, so.

BILL HARRIS: Yeah.

BUTCH LAMBERT: Any further questions?

(No audible response.)

BUTCH LAMBERT: Do I have a motion to approve?

MARY QUILLEN: Motion to approve.

BUTCH LAMBERT: A second?

BILL HARRIS: Second.

BUTCH LAMBERT: All in favor, signify by saying yes.

(All members signify by saying yes.)

BUTCH LAMBERT: Opposed, no. It's approved Mr. Kaiser.

JIM KAISER: Thank you.

RITA BARRETT: Thank you.

BUTCH LAMBERT: Item 26 on the docket is a petition from Equitable Production Company for disbursement of funds from escrow and authorization of direct payment of royalties

on tract four. This is docket number VGOB-04-0921-1337-01. All parties wishing to testify before the Board please come forward and be recognized.

JIM KAISER: Mr. Chairman, Jim Kaiser and Rita Barrett again.

BUTCH LAMBERT: Seeing no others, you may proceed Mr. Kaiser.

RITA BARRETT

DIRECT EXAMINATION

QUESTION BY JIM KAISER:

Q. Okay, now this is a petition on behalf of Range and three different of the undivided interest owners in tract four being Freddie and Darlene Johnson, Teresa Patrick, Gaynelle Johnson and Carl Edward Sampson. They are not all the owners in Tract 4. So, the escrow account for that tract will need to remain open versus the previous one with tract three where we had everybody covered. But, again, would it be your testimony Ms. Barrett that in addition to the exhibit pointing that out and the royalty split agreements between Range and the three different parties here that all that information is included in the application we filed seeking this disbursement?

A. It is.

Q. And would it be your testimony that the four parties involved in this disbursement have been notified by certified mail return receipt requested?

A. Yes.

Q. And if we'll turn our attention again to the...now in this particular case since we have Range and then three separate conflicting claimants to the proceeds from this tract we have three different spreadsheets attached. Again, we would call the Board's attention to the next to the last column to the right as far as the owner percentage and escrow. And, again, would it be your testimony that at least of 3/31/2008 Equitable's figures and Wachovia's figures are matching?

A. Yes.

Q. And are we asking the Board to, one, disburse the funds that are in the account for that tract for these three parties...or four parties including Range based upon that percentage in that column upon the issuance of the order and then to pay them directly on a 75/25 split as denoted in the spreadsheet on a going forward basis?

A. We are.

JIM KAISER: Nothing further of this witness, Mr. Chairman.

BUTCH LAMBERT: Questions from the Board? Do I have

a motion to approve?

MARY QUILLEN: Motion to approve.

BRUCE PRATHER: Second.

BUTCH LAMBERT: All in favor, signify by saying yes.

(All members signify by saying yes.)

BUTCH LAMBERT: Opposed, no?

(No audible response.)

BUTCH LAMBERT: Approved.

RITA BARRETT: Thank you.

JIM KAISER: Thank you.

BUTCH LAMBERT: Next item is a petition from Equitable Production Company for disbursement of funds from escrow and authorization of direct payment of royalties on Tract 5. This is docket number VGOB-02-1217-1109-03. All parties wishing to testify before the Board please come forward and be recognized.

JIM KAISER: Mr. Chairman, Jim Kaiser and Rita Barrett again on behalf of Equitable Production Company.

BUTCH LAMBERT: Seeing no others. You may continue, Mr. Kaiser.

JIM KAISER: If you'll bear with me a minute, I'm trying to figure something out here.

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY JIM KAISER:

Q. Okay, again, in this particular case, we have the same...we filed the application on behalf of the same four parties as the application just heard. Is it your understanding they've all received notice of this hearing?

A. Yes.

Q. And would it be your testimony that along with the petition for disbursement, we filed an exhibit that again reflects that this is not all the owners that have been escrowed in this tract, just a portion of them, and that all the royalty split agreements between Range and these individual parties are attached to the application?

A. Yes.

Q. Correct?

A. Yes.

Q. And, again, we have one, two, three individual spread sheets. I'm showing the owners percentage in escrow again as of 3/21/2008 and it would be your testimony again then that Equitable's and Wachovia's figures match as of that date?

A. That's correct.

Q. So, we're asking the Board to keep the escrow account for this tract in this unit open but for the purposes of these four parties interest disburse based upon the percentage in the spread sheet upon issuance of the order and then going forward directly to the royalty owners and the percentages as represented in the split agreement?

A. Yes.

JIM KAISER: Nothing further of this witness, Mr. Chairman.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do I have a motion to approve?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion and second. All in favor, signify by saying yes.

(All members signify by saying yes.)

BUTCH LAMBERT: Opposed, no?

(No audible response.)

BUTCH LAMBERT: Approved.

JIM KAISER: Thank you.

RITA BARRETT: Thank you.

BUTCH LAMBERT: The next item is a petition from Equitable Production Company for disbursement of funds from

escrow and authorization of direct payment of royalties on Tract 2. This is docket number VGOB-99-0922-0749-01. All parties wishing to testify before the Board please come forward and be recognized.

JIM KAISER: Again, Mr. Chairman, Jim Kaiser and Rita Barrett on behalf of Equitable.

BUTCH LAMBERT: Seeing no others. You may continue, Mr. Kaiser.

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY JIM KAISER:

Q. Ms. Barrett, in this particular case we are on Tract 2 in this unit, correct?

A. Correct.

Q. And we have a application seeking disbursement of the funds in escrow for that tract. And attached to that application a...not royalty split agreement letters, but an actual royalty division order?

A. That's correct.

Q. It's signed between various Pobst/Combs heirs, I guess?

A. That's correct.

Q. Range isn't involved in this one are they?

A. No. This agreement, the royalty division between the Pobst/Combs heirs and Levisa Coal Company.

Q. Okay. I'm surprised I haven't seen more of these. And that agreement is attached to the application, correct?

A. That's correct.

Q. And it would appear that that would take care of all of Tract 2 in this unit?

A. That's correct.

Q. So, the Board could have Wachovia close the account as to that particular tract in that particular unit?

A. That's correct.

Q. And we have included with the application... have all of them been noticed---

A. Yes.

Q. ---as required? Okay, and in addition, we have included a spreadsheet in this particular case that shows the 50/50 split between the heirs and Levisa, right?

A. That's correct.

Q. And, again, the most pertinent column is the next to the last column on the right that shows the owners percentage in escrow for disbursement purposes and then we also show the owners amount based upon that percentage as of 6/30/2008. And, again, the Wachovia's and Equitable's totals

match up in this case, is that correct?

A. That's correct.

Q. And we would ask the Board to disburse upon the percentage...owner's percentage in escrow as represented in both the royalty division order and the spreadsheet that we have provided upon the issuance of the order of disbursement and disburse directly to these royalty owners going forward?

A. Correct.

JIM KAISER: Nothing further of this witness, Mr. Chairman.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do I have a motion to approve?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion to approve and a second. Any discussions?

DONNIE RATLIFF: I only have one question. I imagine this is public record now that it's before the Board?

JIM KAISER: Yeah. Well, it was recorded even before that if you'll notice at the top.

DONNIE RATLIFF: There's a lot social security numbers. There are.

SHARON PIGEON: Yeah.

DONNIE RATLIFF: That someway should be protected.

RITA BARRETT: That's...that's a good point.

JIM KAISER: I didn't even think about that.

RITA BARRETT: That's...this instrument wasn't recorded by Equitable. This instrument was recorded by CNX Gas Company. These folks are CNX lessors and this royalty division order was provided to us by Anita Duty at CNX for this application purposes.

JIM KAISER: This was recorded in 1990.

RITA BARRETT: Yeah.

SHARON PIGEON: Unfortunately, before we had the privacy protection.

DONNIE RATLIFF: I would suggest we block over those social security numbers before it becomes---

SHARON PIGEON: Redact that.

DONNIE RATLIFF: ---a public record. I think that's the only comment I have. I wouldn't want mine there. I know that.

RITA BARRETT: That's a good point.

BUTCH LAMBERT: What do we do, take up all the copies and burn them?

RITA BARRETT: Shred them. We can all sit here right now and black them out together.

DONNIE RATLIFF: They're some heavy hitters on this list.

RITA BARRETT: Oh, yeah. But this is probably of record in Buchanan County, Virginia.

JIM KAISER: Well, I know it is. It's got your book and page right on it.

BUTCH LAMBERT: Yeah, it sure does.

JIM KAISER: I guess, in 1990 you didn't worry about that kind of stuff. But that's a good point particularly given the uncertainty of things right now.

SHARON PIGEON: Well, of course, we take care on our Acts now to do that but this is from long ago.

BUTCH LAMBERT: Okay, your comment is noted, Mr. Ratliff, and we'll redact those numbers from the record. Any other discussion?

(No audible response.)

BUTCH LAMBERT: All in favor of approval, signify by saying yes.

(All members signify by saying yes.)

BUTCH LAMBERT: No?

(No audible response.)

BUTCH LAMBERT: Yours is approved, Mr. Kaiser.
Thank you.

JIM KAISER: Thank you.

BUTCH LAMBERT: Why don't we just give this folder to David.

SHARON PIGEON: Give him that and he can take it and shred it at the office. That will be good.

(Off record discussion.)

BUTCH LAMBERT: Next is a petition from Appalachia Energy, Inc for pooling of coalbed methane unit H-37. This is docket number VGOB-08-1021-2356. All parties wishing to testify please come forward.

(Jim Kaiser is out of the room.)

BUTCH LAMBERT: We'll recess for ten minutes. We'll restart in ten minutes.

(Break.)

BUTCH LAMBERT: Okay. We're ready to continue now with docket number VGOB-08-1021-2356. All parties wishing to testify before the Board please come forward.

JIM KAISER: Mr. Chairman and Board members, Jim Kaiser, Justin Phillips and Frank Henderson on behalf of Appalachian Energy, Inc.

(Justin Phillips and Frank Henderson is duly sworn.)

BUTCH LAMBERT: Seeing no others. Mr. Kaiser, you may proceed.

JUSTIN PHILLIPS

DIRECT EXAMINATION

QUESTIONS BY JIM KAISER:

Q. Mr. Phillips, we'll start with you. Could you state your name for the Board, who you're employed by and what capacity?

A. Justin Phillips, land manager, Appalachian Energy, Inc..

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

A. Yes.

Q. In fact, we pooled this unit for the original well earlier?

A. No, these are two wells---

Q. No, these are two new ones.

A. We done the increased density for these two.

Q. Increased density for this unit, okay. And are you familiar with the application that we filed seeking to pool any unleased interests within this unit?

A. Yes.

Q. Now, does Appalachian Energy own drilling rights within the unit?

A. Yes, we do.

Q. And prior to filing of the application, were

efforts made to contact each of respondents owning an interest and an attempt made to work out a voluntary lease agreement with each?

A. Yes, they were.

Q. And what is the percentage of the gas estate that's under lease to Appalachian Energy?

A. 100%.

Q. And the percent of the coal estate that's under lease?

A. 99.98%.

Q. And are all parties set out at Exhibit B-3 to the application?

A. Yes, they are.

Q. So, the only unleased interest that remains is 0.02% of the coal estate?

A. That's correct.

Q. Okay. And we have identified all of the respondents and there are no unknowns?

A. There are none.

Q. Okay. And to the best of your knowledge, are the addresses set out at Exhibit B to the application the last known addresses for the respondents?

A. Yes, they are.

Q. Are you requesting this Board to force pool

all unleased interests listed at Exhibit B-3?

A. Yes.

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

A. Yes, I am.

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

A. Five dollar bonus with a five year term and a one-eighth royalty.

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

A. Now, as to the one respondent who remains unleased, that being the .02% of the coal estate, do you agree that she be allowed the following options with respect to her ownership interest within this unit:

1) Participation; 2) a cash bonus of five dollars per net mineral acre plus a one-eighth of eight-eighths royalty; or 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/her interest exclusive

of any royalty or overriding royalty reserved in any leases, assignments thereof or agreements relating thereto of such tracts, but only after the proceeds applicable to his or her share equal, A) 300% of the share of such costs applicable to the interest of the carried operator of a leased tract or portion thereof; or B) 200% of the share of such costs applicable to the interest of a carried operator of an unleased tract or portion thereof?

A. Yes.

Q. Do you recommend that the order provide that any elections by the respondents be in writing and sent to the applicant at Appalachian Energy, Inc., P. O. Box 2406, Abingdon, Virginia 246212-2406, Attention: Justin Phillips, Regulatory?

A. Yes.

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

A. Yes, it should.

Q. Is it recommended that the order that if no written election is properly made by the respondent, then that respondent should be deemed to have elected the cash royalty option in lieu of participation?

A. Yes.

Q. Should the unleased respondents be given 30 days from the receipt of the recorded Board order to file their written elections?

A. Yes.

Q. If an unleased respondent elects to participate, should they be given 45 days to pay for their proportionate share of actual well costs?

A. Yes.

Q. Should the applicant be allowed a 120 days following the recordation date of the Board and thereafter annually on that date until production is achieved to pay or tender an delay rental or cash bonus becoming due under the force pooling order?

A. Yes.

Q. Do you recommend that the order provide that where a respondent elects to participate but fails to pay their proportionate share of well costs, then that election to participate should be withdrawn and void and the respondent should be treated as if no initial election had been filed under the order, that is deemed to have leased?

A. Yes.

Q. Do you recommend that the order provide that if a respondent elects to participate but defaults in regards to the payment of well costs, any cash sum becoming payable

to that respondent be paid within 60 days after the last date on which that respondent could have paid?

A. Yes.

Q. Okay. And in this particular case, does the Board need to establish and escrow account?

A. No.

Q. Okay. We've got a fee mineral tract?

A. Correct.

JIM KAISER: We do have a revised Exhibit B to reflect gas estate only. It's just a...it's nothing substantive. let me give those out.

(Jim Kaiser passes out revised exhibits.)

Q. And who should be named operator under the force pooling order?

A. Appalachian Energy, Inc.

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

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Mr. Kaiser, did I hear testimony that you have 100% of the gas leased?

JIM KAISER: It's on the revised exhibit.

BUTCH LAMBERT: Oh, okay.

SHARON PIGEON: We usually like to get those before

the testimony. That makes it so much better.

JIM KAISER: I apologize.

BUTCH LAMBERT: Any other questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do you have anything further, Mr. Kaiser?

JIM KAISER: No, sir. The next witness, Mr. Henderson.

BUTCH LAMBERT: Proceed.

FRANK HENDERSON

DIRECT EXAMINATION

QUESTIONS BY JIM KAISER:

Q. You need to state your name, who you're employed by and in what capacity?

A. Frank Henderson, Appalachian Energy, President.

Q. And what are the total depths of the two wells under the plan of development?

A. The AE-195 will be drilled to a depth of 2,042 feet. The AE-196 will be drilled to 2,072 feet.

Q. And the estimated reserves for the unit for both wells?

A. 375 million for the unit.

Q. Okay. And has an AFE been signed and submitted...reviewed, signed and submitted to the Board?

A. Yes.

Q. And was it prepared by someone knowledgeable in the preparation of AFE's, in particularly, knowledgeable in regard to well cost in this area?

A. Yes.

Q. Does your AFE represent, in your opinion, a reasonable charge for well costs?

A. Yes.

Q. Could you state both the dry hole costs and completed well costs first for AE-195 and then for AE-196, please?

A. AE-195, the dry hole costs \$160,058 with completed well costs \$407,923. Well number AE-196, dry hole costs \$161,733 with completed well costs \$397,740.

Q. Do these costs anticipate a multiple completion?

A. Yes.

Q. Does your AFE include a reasonable charge for supervision?

A. Yes.

Q. In your professional opinion, would the granting of this application be in the best interest of

conservation, prevention of waste and protection of
correlative rights?

A. Yes.

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

BUTCH LAMBERT: Questions from the Board?

JIM KAISER: I also have a revised B-3 that just
shows the one unleased party.

SHARON PIGEON: Mr. Henderson, what would you
testify to on a reserve?

FRANK HENDERSON: 375 million for the unit.

SHARON PIGEON: Now, that's different from your
application?

FRANK HENDERSON: Yes, it is.

SHARON PIGEON: So, you're correcting that now with
your testimony?

FRANK HENDERSON: I'm correcting that, yes, I'm
sorry.

SHARON PIGEON: Thank you.

BUTCH LAMBERT: Any further questions from the
Board?

(No audible response.)

BUTCH LAMBERT: Do I have a motion to approve?

MARY QUILLEN: Motion to approve.

BUTCH LAMBERT: Do I have a motion and a second?

BILL HARRIS: I have motion and a second.

BUTCH LAMBERT: I have a motion and a second. Any further discussion?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying yes.

(All members signify by saying yes.)

BUTCH LAMBERT: Opposed, no?

(No audible response.)

BUTCH LAMBERT: Approved, Mr. Kaiser. Thank you.

The next item on the agenda is a petition from Chesapeake Appalachia, LLC for pooling of conventional gas unit 826868. This is docket number VGOB-08-0...excuse me, -1021-2357. All parties wishing to testify before the Board please come forward and be recognized.

JIM KAISER: Mr. Chairman, Jim Kaiser, Dennis Baker and Stan Shaw on behalf of Chesapeake Appalachia, LLC. I'd ask that the two witnesses be sworn.

(Dennis Baker and Stan Shaw are duly sworn.)

BUTCH LAMBERT: Seeing no others, Mr. Kaiser, you may proceed.

DENNIS BAKER

DIRECT EXAMINATION

QUESTIONS BY JIM KAISER:

Q. Mr. Baker, can you state your name here, who you're employed by and in what capacity?

A. Yes. My name is Dennis Baker, employed by Chesapeake Appalachia as senior landman.

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

A. Yes.

Q. And are you familiar with Chesapeake's application seeking for establishment of a drilling unit and pool any unleased interests within that unit which was dated September 19, 2008?

A. Yes.

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

A. Yes, we do.

Q. Prior to the filing of the application, were efforts made to contact each of respondents owning an interest in the unit and an attempt made to work out a voluntary lease agreement?

A. Yes.

Q. What is the interest under lease to Chesapeake in the unit at this time?

A. Currently, Chesapeake has 82.201563%.

Q. And what percentage remains unleased at this time?

A. The unleased interest is 17.798438%.

Q. And are all the unleased parties set out at Exhibit B-3?

A. Yes.

Q. And I don't think we have any unknowns in this unit do we?

A. No.

Q. And are the addresses set out at Exhibit B to the best of your knowledge the last known addresses for the respondents?

A. Yes.

Q. Are you requesting this Board to force pool all unleased interests as listed at Exhibit B-3?

A. Yes.

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

A. Yes, I am.

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

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

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

A. Yes.

JIM KAISER: At this time, Mr. Chairman, regarding the statutory election options afforded any unleased parties and the time periods in which to make them and the ramifications of such, I'd ask that the testimony just taken in docket number 2356 be incorporated for purposes of this hearing.

BUTCH LAMBERT: That will be incorporated.

Q. Mr. Baker, does the Board need to establish an escrow account for this particular unit?

A. No, they do not.

Q. And who should be named operator under any force pooling order?

A. Chesapeake Appalachia, LLC.

JIM KAISER: Nothing further of this witness, Mr. Chairman.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Call your next witness.

STAN SHAW

DIRECT EXAMINATION

QUESTIONS BY JIM KAISER:

Q. Mr. Shaw, if you'd state your name, who you're employed by and in what capacity?

A. Chesapeake Appalachia...well, Stan Shaw, Chesapeake Appalachia, LLC, reservoir engineer.

Q. And are you familiar with the plan of exploration for this well?

A. Yes.

Q. And what's the total depth of the proposed well?

A. 7,617 feet.

Q. And the estimated reserves for the unit?

A. 1 bcf.

Q. Are you familiar with the well costs?

A. Yes.

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

A. Yes.

Q. Was it prepared by an engineering department knowledgeable in the preparation of AFE's, and in particular in the case of this horizontal well, knowledgeable in regard to well costs?

A. Yes.

Q. And in your opinion, does it represent a fair and reasonable estimate of well cost?

A. Yes.

Q. Could you state the dry hole cost and completed well cost for this unit?

A. Dry hole costs are \$1,023,936 and completed well costs are \$1,940,972.

Q. Do these costs anticipate a multiple completion?

A. Yes.

Q. Does your AFE include a reasonable charge for supervision?

A. Yes.

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

A. Yes.

JIM KAISER: Nothing further of this witness, Mr. Chairman.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do I have a motion to approve?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion and a second. Any discussion?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying yes.

(All members signify by saying yes.)

BUTCH LAMBERT: Opposed, no? Approved. Thank you.

JIM KAISER: Thank you.

STAN SHAW: Thank you.

DENNIS BAKER: Thank you.

BUTCH LAMBERT: Item number 32 is a petition from Range Resources-Pine Mountain, Inc for well location exception for proposed well V-530058. This is docket number VGOB-08-1021-2359. All parties wishing to testify before the Board please come forward and be recognized.

TIM SCOTT: Mr. Chairman, I'm Tim Scott representing Range Resources-Pine Mountain. We'd ask that this matter be continued until November. We discovered another well and we had to do additional notice.

BUTCH LAMBERT: Okay, that will be continued until November. The next item is a petition from Range Resources-Pine Mountain, Inc for a well location exception for proposed

well V-537912. This is VGO...docket number VGOB-08-1021-2360. All parties wishing to testify before the Board please come forward and be recognized.

TIM SCOTT: Tim Scott, Gus Jansen and Phil Horn for Range Resources-Pine Mountain, Inc.

(Gus Jansen and Phil Horn are duly sworn.)

BUTCH LAMBERT: Seeing no others, Mr. Scott, you may proceed.

TIM SCOTT: Thank you.

PHIL HORN

DIRECT EXAMINATION

QUESTIONS BY TIM SCOTT:

Q. Mr. Horn, would you please state your name, your...by whom you're employed and your occupation please?

A. My name is Phil Horn. I'm land manager for Range Resources-Pine Mountain, Inc.

Q. Are you familiar with this application currently pending before the Board?

A. Yes, I am.

Q. And are you familiar with the ownership of the oil and gas underlying this tract?

A. Yes, I am.

Q. Who owns the oil and gas?

A. Range Resources-Pine Mountain, Inc. owns 100% of the oil and gas in this unit.

Q. And we have an offset for just one well, is that correct in this one?

A. That's correct.

Q. And who operates that well?

A. Equitable Production Company.

Q. Does Pine...Range Resources also participate in the operation of that well?

A. Yes, we do.

Q. So, you're both an owner and an operator, is that right?

A. That's correct.

Q. We have parties listed on Exhibit B to the application or the notice of hearing. How were those individuals notified?

A. By certified mail.

Q. And that proof of mailing was provided to Mr. Asbury?

A. Yes, they have.

TIM SCOTT: That's all I have for Mr. Horn.

BURCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: You may call your next witness, Mr.

Scott.

TIM SCOTT: Thank you.

GUS JANSEN

DIRECT EXAMINATION

QUESTIONS BY TIM SCOTT:

Q. Mr. Jansen, would you please state your name, your...by whom you're employed and your occupation, please?

A. Gus Jansen, employed by Range Resource-Pine Mountain, Inc., manager of geology.

Q. Did you participate in the preparation of this application?

A. Yes, I did.

Q. Would you please tell the Board why we're seeking a well location exception for this particular...in this application?

A. Yes. If the Board members would refer to Exhibit AA which I handed out previously you'll see the existing wells that are located nearby of our proposed 537912 well to the northwest. We're proposing this well on a topographically favorable area to do this well. If we move the well any further to the southeast or the southwest we're getting into some very steep terrain areas. We've also got

further development proposed to the northeast and to the southeast and southwest of this well in the future. And without drilling the well at this location we would be stranding additional acreage. The cross hatched green acreage shown on this map is the acreage that is currently not in a unit.

Q. And how much is that approximately?

A. That acreage is approximately 105.96 acres.

Q. Okay. And what would be the loss of reserves if this application were not granted?

A. Approximately 350 mcf.

Q. Okay. And in your opinion, would the granting of this application promote conservation, promote waste and protect correlative right?

A. Yes, it would.

TIM SCOTT: That's all the questions I have for, Mr. Jansen.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do I have a motion to approve?

MARY QUILLEN: Motion to approve.

BUTCH LAMBERT: Do I have a second?

BUTCH LAMBERT: I have a motion and a second. Are there any discussions?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying yes.

(All members signify by saying yes, but Donnie Ratliff.)

BUTCH LAMBERT: Opposed, no?

DONNIE RATLIFF: I'll abstain.

BUTCH LAMBERT: One abstention from Mr. Ratliff. Approved. Thank you, Mr. Scott.

TIM SCOTT: Thank you.

TIM SCOTT: I'd like to...before we get started I'd like to tell the Board that I've made some inquiries on some newspapers. I kind of twisted a few arms and I think other than the Lebanon News which we've used this time, they're very, very excited about doing these types of notices for...they're a little bit more expensive but most of these are weekly papers. so, I think, we've basically hit a home run with these folks. So, we've now been able to do the Dickenson Star, the Lebanon News and I think those will be newspapers that will be more satisfactory to the respondents in each of these. So, that's how we've handled it this time.

BUTCH LAMBERT: Okay. Thank you, Mr. Scott. We appreciate that. The next item is a petition from Range Resources-Pine Mountain, Inc. for the establishment of a

drilling unit and pooling of conventional gas unit V-530107. This is VGO...docket number VGOB-08-1021-2361. All parties wishing to testify before the Board please come forward and be recognized.

TIM SCOTT: Tim Scott, Ian Landon and Phil Horn for Range Resources-Pine Mountain, Inc..

(Ian Landon is duly sworn.)

BUTCH LAMBERT: Seeing no others, Mr. Scott, you may proceed.

TIM SCOTT: Thank you. Actually Mr. Horn's testimony with regard to his occupation and the job description, I'd ask that be incorporated by reference for our next several hearings.

BUTCH LAMBERT: It's approved.

PHIL HORN

DIRECT EXAMINATION

QUESTIONS BY TIM SCOTT:

Q. Mr. Horn, did you participate in the preparation of this application?

A. Yes, I did.

Q. And is this unit subject to statewide spacing?

A. Yes, it is.

Q. What's the acreage total?

A. 112.69 acres.

Q. And does Range Resources-Pine Mountain own drilling rights in this unit?

A. Yes, we do.

Q. And are there any parties respondent listed on Exhibit B3 who we are going to dismiss today?

A. No, we are not. No, they're not.

Q. What percentage of this unit does Range Resources-Pine Mountain have under lease?

A. 64.35%.

Q. And with regard to this unit, do we have...we have unknown parties, is that right?

A. That's correct.

Q. So, we didn't....we couldn't attempt to do any certification by mailing but we did publish is that right?

A. That's correct.

Q. And what was the newspaper we used?

A. The Dickenson Star.

Q. And on what day was that notice published?

A. September 24, 2008.

Q. And we do have unknown owners in this unit, is that right?

A. Yes. The tract 5 is...the owners is 100% unknown.

Q. Okay. And what's the percentage of that unit that's unknown?

A. 35.65%.

Q. How do you try to locate these individuals?

A. Our partner Equitable has drilled CBM wells. As you can see on the plat that VC-4660 was drilled on this piece of property and these people sold the coal in 1890 and then in 1897 they sold the surface and they retained oil and gas and basically there's no trail to find them. It was over 100 years ago.

Q. So, you've...you've checked the records in the courthouse as well as phone books and so on, adjoining property owners?

A. Correct. Right. That's correct. They hadn't had it...they hadn't owned the surface for like 110 years.

Q. Did you...have you filed a proof of publication with Mr. Asbury?

A. Yes.

Q. Okay. Is Range Resources-Pine Mountain authorized to conduct business in the Commonwealth?

A. Yes.

Q. And do you have a blanket bond on file with the department?

A. Yes, we do.

Q. If you were able to locate these individuals and reach an agreement with them what would be the lease terms that would be offered?

A. Five dollars per acre for a five year lease that provides for a one-eighth royalty.

Q. And do you consider that to be fair compensation in this area?

A. Yes, I do.

Q. With regard to this unit you just mentioned earlier that we have unknowns so have an escrow requirement, is that right?

A. That's correct.

Q. Has an Exhibit E been provided with the application?

A. Yes, it has.

Q. And which tract, again, would be subjected to escrow?

A. Tract 5.

Q. Now, with regard to any elections that these individuals have made, if you could reach an agreement what would be the address that would be used?

A. Range Resources-Pine Mountain, Inc., P. O. Box 2136, Abingdon, Virginia 24212.

Q. And would that be the address for all correspondents with regard to---?

A. Yes. Attention to Phil Horn, that's correct.

Q. All right. And then you are asking the Board to pool the unleased interests listed on Exhibit B-3, is that correct?

A. Yes, we are.

TIM SCOTT: That's all the questions I have for Mr. Horn.

BUTCH LAMBERT: Any questions from the Board?

(No audible response.)

BUTCH LAMBERT: Mr. Horn, did I hear you say that the way that you tried to track down these heirs was just from the fact that there was already a CBM well and you used that information?

PHIL HORN: Equitable had drilled several CBM wells years ago and they couldn't find them and then we inquired also and we couldn't find them. What's happened is they sold the coal back in 1800s, that's really all people thought about so when they...they owned the property in fee, they sold the coal and then when they sold the surface they

excepted the coal and minerals and they probably didn't...weren't even aware there was oil and gas and we've...like I said Charles W. Grizzle signed the deed back in the 1800s and we had no luck trying to locate them. Usually we update Equitable's records, our partners, that's what I was testifying to.

BUTCH LAMBERT: So, in this particular one, you didn't physically go out and ask folks about the Grizzles for this particular well---.

PHIL HORN: No, we did not.

BUTCH LAMBERT: ---you just relied on information from Equitable?

PHIL HORN: Yes.

BUTCH LAMBERT: Okay. Any further questions from the Board?

(No audible response.)

BUTCH LAMBERT: Call your next witness, Mr. Scott.

IAN LANDON

DIRECT EXAMINATION

QUESTIONS BY TIM SCOTT:

Q. Mr. Landon, would you please state your name, by whom you're employed and your occupation please?

A. My name is Ian Landon. I'm operations

manager for Range Resources-Pine Mountain.

Q. And you also participated in the preparation of this application, is that right?

A. That is correct.

Q. Are you familiar with the projected well depth for this unit?

A. Yes, I am.

Q. What is that, please?

A. It's 6,207 feet.

Q. And what are the estimated reserves for this unit?

A. 300 million cubic feet.

Q. And did you also participate in the preparation of the AFE that was presented with the application?

A. Yes, sir.

Q. And with regard to the cost of this well...projected cost, what's the estimated dry hole costs?

A. \$324,836.

Q. And the completed well costs?

A. \$638,560.

Q. And that AFE was submitted to the board, is that right?

A. That's correct.

Q. And with regard to that AFE, is there a reasonable cost for supervision included in that...in those figures?

A. Yes.

Q. Okay. In your opinion, would the granting of this application be...promote conservation, prevent waste and protect correlative rights?

A. Yes.

TIM SCOTT: That's all I have for Mr. Landon.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do I have a motion to approve?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion and a second. Are there any discussions?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying yes.

(All members signify by saying yes.)

BUTCH LAMBERT: Opposed, no?

DONNIE RATLIFF: Abstain, Mr. Chairman.

BUTCH LAMBERT: One abstention, Mr. Ratliff.

Approved, Mr. Scott.

TIM SCOTT: Thank you.

BUTCH LAMBERT: The next item is a petition from Range Resources-Pine Mountain, Inc. for establishment of a drilling unit and pooling of a conventional gas unit V-530116. This is docket number VGOB-08-1021-2362. All parties wishing to testify please come forward and be recognized.

TIM SCOTT: Tim Scott, Ian Landon and Phil Horn for Range Resources-Pine Mountain, Inc.

BUTCH LAMBERT: Seeing no others. Mr. Scott, you may proceed.

TIM SCOTT: Thank you.

PHIL HORN

DIRECT EXAMINATION

QUESTIONS BY TIM SCOTT:

Q. Mr. Horn, are you familiar with this application?

A. Yes, I am.

Q. And, again, is this unit subject to statewide spacing?

A. Yes, it is.

Q. And the acreage figure, please?

A. 112.69 acres.

Q. Does Range Resources-Pine Mountain have

drilling rights in this unit?

A. Yes, we do.

Q. And do we have any parties respondent listed on Exhibit B-3 that are going to dismiss today?

A. No, we do not.

Q. We have unknowns, again, is that correct?

A. That's correct.

Q. And what percentage of the unit do we have that effects..that has unknown owners?

A. There's .89% of the unit that's unleased.

Q. And what percent of the unit does Range Resources-Pine Mountain have under lease?

A. 99.11%.

Q. With regard to notice of this hearing, how was that done?

A. It was published in the Lebanon News.

Q. On what date, please?

A. October 1, 2008.

Q. Now, this is sort of an unusual situation that we find. We have what type of acreage situation do we have here Mr. Horn?

A. This is a...this is a cemetery tract that Steven Rasnake sold minerals under a 1500 acre tract and he reserved the cemetery and in doing so according to our title

opinion that Mr. Scott rendered he also reserved oil and gas.

Q. Now, with regard to attempting to locate these individuals, you've had land personnel out there, is that right?

A. Yes.

Q. You've had an attorney examine the title that this is...well, now during the course of this examination there was a chancery suit found, is that correct?

A. That's correct.

Q. And that chancery suit was to partition lands...surface lands, is that right?

A. That's correct.

Q. With regard to that, the individuals who are listed as parties defendant are they readily identifiable?

A. No. We couldn't...we couldn't determine that they were actually heirs of Steven Rasnake. They just---

Q. There was no quantum of interest set out of who these individuals derived their interest, is that correct?

A. That's correct.

Q. And you all did attempt to locate that chancery file, is that right?

A. That's right.

Q. And as the usual course in Russell County it was not available, is that right?

A. That's correct.

Q. Okay. Because they just said it's up there somewhere, is that right?

A. That's correct.

Q. We...what other efforts have you made to try to locate these individuals other than just courthouse records?

A. Believe it or not I talked to three people here this morning and they thought that maybe they were heirs of Steven Rasnake but turned out they weren't so they went ahead and left but we've asked around. Like I said, most of this is company property out there, former Clinchfield fee property and we just...it's hard to..if they don't leave a will or list of heirs at the courthouse it's hard to get a track on them and this took place over 100 years ago so.

Q. But we did find a Steven Rasnake listed in the list of heirs but its not our fellow, isn't that right?

A. Right. It's a fellow in Tazewell County.

Q. Right. Okay. Now, you have filed proof of publication of your publication in the Lebanon News, isn't that right?

A. That's correct.

Q. Okay. Again, Range Resources-Pine Mountain, Inc. is authorized to conduct business in the Commonwealth?

A. That's correct.

Q. And there's a blanket bond on file?

A. Right.

Q. If you were able to reach these folks and find out who they are, what type of lease terms would you offer them if you could reach a voluntary agreement?

A. Five dollars per acre for five year lease that provides a one-eighth royalty.

Q. And again would you consider this to be fair compensation in this area?

A. Yes, I do.

Q. Okay. And, again, we...we're seeking to pool those unleased interests. And what is that percentage again?

A. .89%.

Q. Okay. Now, as again we've said we have unknown individuals, so there's an escrow requirement, is that right?

A. That's correct.

Q. And was an Exhibit E provided to...with the application?

A. Yes, it was.

Q. Okay. And what tract or tracts are

subjected to escrow?

A. Tract 2.

Q. Okay. Now, if you were able to identify those individuals and reach an agreement, what would be the...or if we're pooling these individuals, what would be the address to be used for all notifications with regard to the order?

A. Range Resources-Pine Mountain, Inc., P. O. Box 2136, Abingdon, Virginia 24212.

Q. Are you also requesting Range Resources-Pine Mountain be named operator, is that right?

A. That's correct.

Q. And all communications should be sent to that address?

A. That's correct.

TIM SCOTT: That's all I have for Mr. Horn.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Call your next witness.

IAN LANDON

DIRECT EXAMINATION

QUESTIONS BY TIM SCOTT:

Q. Mr. Landon, again, you've worked for

Pine...Range Resources-Pine Mountain?

A. That's correct.

Q. Right. And are you familiar with this application?

A. Yes.

Q. You've participated in the preparation thereof, right?

A. Yes.

Q. And what is the total depth of the proposed well?

A. 5,253 feet.

Q. And what are the estimated reserves for this unit?

A. 350mcf.

Q. What's the...and you participated in the preparation of the AFE, is that right?

A. Yes.

Q. So, you're familiar with the well costs?

A. Yes.

Q. What is the anticipated dry hole costs?

A. \$286,747.

Q. And the completed well costs?

A. \$582,262.

Q. And you, again, prepared the AFE, is that

right?

A. Yes.

Q. And there's a reasonable charge for supervision set out on that AFE?

A. Yes.

Q. Okay. And in your opinion, would the granting of this application be in the best interest of protecting correlative rights, prevention of waste and promote conservation, is that correct.

A. Yes.

TIM SCOTT: Okay. That's all I have for Mr. Landon.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do I have a motion to approve?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion and a second. Any discussion?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying yes.

(All members signify by saying yes, but Donnie Ratliff.)

BUTCH LAMBERT: Opposed, no?

DONNIE RATLIFF: I'll abstain.

BUTCH LAMBERT: One abstention, Mr. Ratliff. Thank you, Mr. Scott.

TIM SCOTT: Thank you.

BUTCH LAMBERT: The next item is a petition from Range Resources-Pine Mountain, Inc. for the establishment of a drilling unit and pooling of conventional gas unit V-530117. This is docket number VGOB-08-1021-2363. All parties wishing to testify before the Board please come forward and be recognized.

TIM SCOTT: Tim Scott, Ian Landon and Phil Horn for Range Resources-Pine Mountain, Inc.

BUTCH LAMBERT: Seeing no others, Mr. Scott, you may proceed.

PHIL HORN

DIRECT EXAMINATION

QUESTIONS BY TIM SCOTT:

Q. Mr. Horn, are you familiar with this application?

A. Yes, I am.

Q. And is this unit also the subject of statewide spacing?

A. Yes, it is.

Q. What's the acreage figure for this unit?

A. 112.69 acres.

Q. Does Range Resources-Pine Mountain have drilling rights in this unit?

A. Yes, we do.

Q. Are we going to dismiss anybody today from B3?

A. No, we are not.

Q. Okay. What is the percentage that Range Resources-Pine Mountain has under lease?

A. 99.74%.

Q. And how was notice of this hearing provided to respondents on B-3?

A. By certified mail.

Q. And by what other method.

A. Notice of hearing was published in the Dickenson Star.

Q. On what date, please?

A. September 24, 2008.

Q. Have you provided proof of publication and proof of mailing with Mr. Asbury?

A. Yes, we have.

Q. Okay. Again, Range Resources-Pine Mountain is authorized to conduct business in the Commonwealth, is

that right?

A. That's correct.

Q. And a blanket bond is on file, is that right?

A. That's correct.

Q. The individuals who are listed on Exhibit B-3, if you were able to reach a voluntary agreement with these persons, what would the terms be that you would offer?

A. Five dollars per acre for five year lease that provides a one-eighth royalty.

Q. And do you consider this to be fair compensation in this area?

A. Yes, I do.

Q. What is the percentage of the oil and gas estate that Range Resources-Pine Mountain is attempting or seeking to pool here?

A. .26%.

Q. And with regard to this unit, do we have any unknowns?

A. No, we do not.

Q. And no conflicting claims, is that right?

A. That's correct.

Q. So, the Exhibit E that we've provided to the Board simply has none on there, is that right?

A. That's correct.

Q. Okay. Are you requesting that Range Resources-Pine Mountain be named operator for this unit?

A. Yes, I am.

Q. And if you...what would be the address regarding any elections made by any parties respondent?

A. P. O. Box 2136, Abingdon, Virginia 24212.

Q. Is this the address for all communications?

A. Yes, it is.

TIM SCOTT: Okay. That's all I have for Mr. Horn.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: You may call your next witness, Mr. Scott.

TIM SCOTT: Thank you.

IAN LONDON

DIRECT EXAMINATION

QUESTIONS BY TIM SCOTT:

Q. Mr. Landon, did you participate in the preparation of this application?

A. Yes, I did.

Q. And are you familiar with the total depth of this proposed well?

A. Yes, I am.

Q. And what would that be?

A. 5,710 feet.

Q. And what are the estimated reserves for this unit?

A. 300 million cubic feet.

Q. And we provided a signed AFE that was submitted with the application, is that right?

A. That's correct.

Q. So, you are familiar with the well cost?

A. Yes.

Q. What is the estimated dry hole costs?

A. \$306,716.

Q. And the estimated completed well costs?

A. \$611,014.

Q. And you just testified you did participate in the preparation of the AFE?

A. Yes.

Q. And does the AFE include a reasonable charge for supervision?

A. Yes, it does.

Q. And in your opinion, would the granting of this application be in the best interest of conservation, prevent waste and protect correlative rights?

A. Yes.

TIM SCOTT: Okay. That's all I have for Mr. Landon.

BUTCH LAMBERT: Questions from members of the Board?

(No audible response.)

BUTCH LAMBERT: Mr. Horn, what did you testify that the dry hole cost was? Oh, I'm sorry, Mr. Landon.

IAN LANDON: \$306,716.

BUTCH LAMBERT: Just a few dollars off on what you're submitting here, \$306,798.

TIM SCOTT: Let's see here---

DAVID ASBURY: Mr. Chairman, the Exhibit we have in the permit says dry hole cost are \$306,716?

IAN LANDON: Right, yes.

MARY QUILLEN: That's what I have down here.

BUTCH LAMBERT: Is that what you have?

DAVID ASBURY: Right.

BUTCH LAMBERT: Oh, that's right. Oh, I'm sorry, I was looking at the wrong column. I apologize. You're right. You're correct.

SHARON PIGEON: 306?

IAN LANDON: Okay, you scared me.

BUTCH LAMBERT: Well, wait just a minute there's still a discrepancy here. What was your figure, David?

DAVID ASBURY: Dry hole cost was \$306,716 and completed cost was \$611,014.

BUTCH LAMBERT: Okay.

SHARON PIGEON: We have \$301,716 or \$306,798.

IAN LANDON: If you'll look below there's a separate category.

MARY QUILLEN: Down on the bottom.

IAN LANDON: the way our add fees are set up there's a plug in abandonment charge that gets rolled into your dry hole costs and it doesn't show up.

SHARON PIGEON: Okay. It's in the fold?

BUTCH LAMBERT: Okay. It was down in that fold.

Okay. Thank you. Any further questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do you have anything else, Mr. Scott?

TIM SCOTT: That's all. I'd just ask the application be approved as submitted.

BUTCH LAMBERT: Do I have a motion to approve?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion and a second. Any further discussions?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying

yes.

(All members signify by saying yes, but Donnie Ratliff.)

BUTCH LAMBERT: Opposed, no?

DONNIE RATLIFF: I'll abstain, Mr. Chairman.

BUTCH LAMBERT: One abstention, Mr. Ratliff. It's approved. Thank you, Mr. Scott. Item 37 was duplicated. 38 is being continued.

SHARON PIGEON: 37 is going to be heard now, though.

MARY QUILLEN: That's the one that they moved up.

BUTCH LAMBERT: Moved it up, okay.

TIM SCOTT: Mr. Chairman, on this particular docket number I'm going to ask the Board to give me some advice as to how they want to do this. I'm...I generate lots and lots of paper and when you have an additional well that is found during between one hearing and the next I send out revised notices of hearing and revised notices of applications which is what created the problem with two docket numbers on the docket for this month. If...I think that's the appropriate way to do it instead of just doing it at the hearing because it may change a coal operator's position on how they might either agree to consent to the application or not do it.

SHARON PIGEON: On a thesis edition?

TIM SCOTT: Yeah. Actually, it's a revised notice

of application. And then we had actually messed up the docket number so this is a third go round on this one. And so we have a revised notice of application and then a second revised notice of application. So, that's why this folder is a little bigger than normal. But I would ask if that's what the Board wants me to do, I think its appropriate for anybody who's receiving notice of a situation like this and I continue to do it. I did it, again, this month on the one that we continued that was earlier on the docket. If that's the Court's...the Board's pleasure, that's the way I'll do it from this point on.

SHARON PIGEON: Just to make sure I understand, you're saying that looking here at your Exhibit AA that one of these wells was not originally on?

TIM SCOTT: Yes, ma'am. That's right.

SHARON PIGEON: I think you're correct in resending it.

TIM SCOTT: Okay, thank you.

BUTCH LAMBERT: Okay. This item is a petition from Range Resources-Pine Mountain, Inc. for a well location exception for proposed well V-537747. This is docket number VGOB-08-0819-2321. All parties wishing to testify before the Board please come forward and be recognized.

TIM SCOTT: Tim Scott, Gus Jansen and Phil Horn for

Range Resources-Pine Mountain, Inc.

BUTCH LAMBERT: Seeing no others, Mr. Scott, you may proceed.

TIM SCOTT: Thank you.

PHIL HORN

DIRECT EXAMINATION

QUESTIONS BY TIM SCOTT:

Q. Mr. Horn, you are familiar with this application are you not?

A. Yes, I am.

Q. Okay. And we've revised the application is that right?

A. Correct.

Q. And what was the reason for that?

A. When we were doing these Exhibit As, which we usually do, after we filed and before we come here, which we're getting ready to change and start doing them all at the same time, we realized that we had left 536766 well off. It was like 51 feet too close.

Q. Okay.

A. So, we continued it last month and then Tim filed a revised application.

Q. And then we've noticed these individuals

twice now, is that correct?

A. That's correct.

Q. And we've done it with...by certified mail, is that correct?

A. That's correct.

Q. So we have two proofs of mailing that we've provided Mr. Asbury, is that right?

A. Yes.

Q. Are you familiar with the ownership of the oil and gas encompassed by this unit?

A. Yes, I am.

Q. And who owns the oil and gas?

A. Range Resources-Pine Mountain, Inc. owns 100% of the oil and gas.

Q. And we have two wells, is that right?

A. That's correct.

Q. Well V-535656 and 536766, who operates those wells?

A. Equitable Production Company.

Q. And you also participate in the operation of those wells?

A. That's correct.

Q. Okay. And, again, notice was effected by certified mail, is that right?

A. That's correct.

Q. And you've provided proofs to Mr. Asbury?

A. That's right.

Q. Of each of the times that we've done this,
is that right?

A. Yes.

TIM SCOTT: That's all the questions I have for Mr.
Horn.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: You may call your next witness, Mr.
Scott.

GUS JANSEN

DIRECT EXAMINATION

QUESTIONS BY TIM SCOTT:

Q. Mr. Jansen, are you familiar with this
application?

A. Yes, I am.

Q. And did you also participate in the
preparation of this application?

A. Yes, I did.

Q. Please explain to the Board why we're
seeking a well location exception for this particular well.

A. Yes. If the Board will again refer to Exhibit AA you'll see that the existing wells in the area which are identified with a circle and the little spikes around it, those are existing drilled wells and then the one well to the southeast the 537748 well is permitted and currently being drilled at this time. And you can see that there's a substantial amount of acreages not in the unit that we would like to include in this unit for 537747. There was no other location without moving this well any direction to get a legal location.

Q. What's the acreage that would be stranded without the granting of this application?

A. The acreage stranded would be approximately 99.09 acres.

Q. And what would be the...the loss of reserves?

A. Approximately, 400 million cubic feet.

Q. Are you familiar with the proposed well depth?

A. Yes. The well depth proposed is 6,407 feet.

Q. In your opinion, if this application is granted its going to prevent waste, is that right?

A. That's correct.

Q. Promote conservation and protect correlative

rights?

A. That's correct.

TIM SCOTT: That's all I have for Mr. Jansen.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Mr. Scott and Mr. Jansen, looking at Exhibit AA, why is there such a gap between 7747 and 7746 and then again 7748?

GUS JANSEN: Are you talking about the area between---?

BUTCH LAMBERT: Yes.

GUS JANSEN: ---the area right here? Primary the reason for those is topographic reasons if we...and there's also some existing CBM wells in this area that prohibit us from going into the same location or right on top of those as pipeline facilities and other issues out there and those are the best locations that we could get to at this point in time with the...and the 7746 well has already been drilled in the past. So, those wells have already drilled.

BUTCH LAMBERT: So---.

SHARON PIGEON: You couldn't move over closer to that well because of cbm wells?

GUS JANSEN: Yeah. Well, if I move my 7747 well closer to the 7746 well we get into the steep topography down

in the---.

TIM SCOTT: And that's depicted on the topographic features right there, is that right, Mr. Jansen?

GUS JANSEN: That's correct.

TIM SCOTT: Okay.

BUTCH LAMBERT: So, the answer would be topography?

GUS JANSEN: Topography is the main reason for that. And other facilities that are in there, yeah.

BUTCH LAMBERT: Any further questions from the Board?

(No audible response.)

BUTCH LAMBERT: Is that all you have, Mr. Scott?

TIM SCOTT: Yes, sir.

BUTCH LAMBERT: Do I have a motion to approve?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion and a second. Any further discussion?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying yes.

(All members signify by saying yes, but Donnie Ratliff.)

BUTCH LAMBERT: Opposed, no?

DONNIE RATLIFF: Abstain, Mr. Chairman.

BUTCH LAMBERT: One abstention, Mr. Ratliff. Thank you, Mr. Scott.

TIM SCOTT: Thank you, very much.

BUTCH LAMBERT: At this time, we'll move into public comment. Those wishing to provide comment to the Board please come forward and be recognized.

CATHERINE JEWELL: Catherine Jewell. I'll begin.

BUTCH LAMBERT: Yes.

CATHERINE JEWELL: In the 17th and 18th centuries privateering was encouraged by England and other governments. It was considered acceptable to capture a Spanish ship as long as a crown got a cut of the booty. The state rewarded successful pirates by calling them "privateers", giving them knighthood and making them part of society. It did not seem to matter that these operations violated human rights in the process only that the ends justified the means. The fact that the operations often took place out of site on the high seas and for the most part were conducted on adversaries and endowed the state with riches they otherwise would have not obtained figured strongly in these justifications. Governments that condone privateering like enterprises conducted on their own citizens in violation of a social contract between the state and its citizens seldom survive.

The very idea of social contract is to protect human rights. Many of the gas operators in Virginia act like modern day privateers. Their operations, however, are not conducted on adversarial ships on the high seas but on the citizens in the gas fields of Southwest Virginia. As with the privateers of old, their operations are backed by financiers who invest with the expectation of enormous rewards. Their decisions including distribution of the bounty are made in the Board rooms instead of being made on the deck of the ship. Like privateers they enter into friendly territorial agreements with like minded operators and attempt to eliminate new competitors that threaten their territory. And as in the past the state has enacted statutes enabling these operations, issues license and permits to the privateers, provides incentives to them and claims no responsibility for their actions. Privateers today are likewise rewarded in the state through tax incentives and the gifting of private property belonging to others. In return the state receives a share of the booty. Gas privateers believe the regulations, actions and orders of DGO, the Board and the Board have conferred them with legal power or authority to interpret the language and intent of severance deeds to decide the extent of their efforts to locate unknown owners, to trespass on private property whenever they please, to take and use as

much of the surface as they see fit without any agreement of the owner, to determine the value of the property, surface, timber, gas, coalbed methane and the compensation, if any, the owner of said property should receive, to encumber the surface property with wells, pipelines, roads and power lines which will restrict the surface owners use and enjoyment of the property for decades to come and will decrease the value of his property and his ability to use his property, to effect the integrity and future mineability of the coal estate, to determine the price, usually one dollar or five dollar, the gas owner agreeing to the pooling order will receive as a signing bonus, to determine what constitutes reasonable costs without the need to provide actual accounting of the cost, to determine the price the royalty owner will receive for his assigned portion of the gas, to determine at what point the owners volume will be determined, to keep escrow accounts on force pooled individuals whose name and address are known, provide them with no information on the existence of the accounts, let alone monthly statements, and require a percentage of the funds prior to disbursing them and to breach contracts without consequences. There's nothing in the Gas and Oil Act of 1990 that confers these powers to gas operators. In fact, if you read the construction of the Act there's a list of seven objectives,

many of which appear to be flagrantly ignored. For the five year period from January 2003 through December 2007, 787 petitions were submitted by gas companies from force pooling of coalbed methane. The Board approved every one of them. The Act allows for pooling of 100% of the gas interest for coalbed methane units and 75% of the gas interests in units for conventional wells. This whole setup has removed the free market from oil and gas leases and as a result few people are actually getting paid a fair market price for their gas. The majority of leases signed today have the same language as a force pooling and force pooling orders a state dictates who will conduct the operations, the signing bonus assuming one signs, the royalty to be paid for the gas, and allows a gas company to determine the reasonable costs without any requirements to verify these costs. To identify owners who are force pooled usually have their money escrowed with companies and receive no statement as to the amount or deductions made from one-eighth and they have to arrange to get their escrows. I find it hard to believe that my government can seize property and the property rights of private land owners and give them to the gas privateers. I find it hard to believe that my government would take private property for private use. At least when property is taken for public use the value of the property and the damage to

the residue is expertly appraised by a third party and the owner is compensated and has the right to redress.

Exploration for gas and oil in Southwest Virginia is not a high risk business and there is absolutely no justification for the pathetic royalty clause in force pooling orders. The fact is we have some of the most productive gas wells in America and technology has enabled more accurate finding of the pools and for removal of greater volume than ever before. The gross of gas wells in Southwest Virginia has been phenomenal. In 2007, 556 new gas wells were drilled for a total end count of 5,735. Twenty-four companies operated in this area with four companies accounting for 96% of the production of the gas wells. Equitable...CNX led with 45, Equitable 44, Chesapeake 5, Range Resources 2. Reported production from these wells for 2007 was 112 bcf. The value of this gas based on the average TECO and Dominion index ranged between 790 to 809 million. At the end of 2007, seven counties had gas wells, Buchanan with a lead, Dickenson coming in second and Wise, Russell, Tazewell, Lee and Scott. At the close of 2005, CNX, which conducted practically all of its operations in Southwest Virginia, reported three year average annual profits of 58.5%. At that time, they operated 1,862 wells, had 952 miles of gathering pipelines and compression stations located in Buchanan County. It is

illuminating to compare the current profit margins of the gas companies to those of other corporations. CNX's current profit margin is 28.8%. Chesapeake Energy is 18.6%. Equitable is 18.9%. Range Resources is 26.7%. And GeoMet is 10%. Let's compare that to Walmart which is 3.4%, Alpha Natural Resources which is 1.5%, Eastman Chemical which is 4.4%. The profit margin for Exxon Mobil, the company dragged before the senate and asked to explain their gas prices is 11.3%. With respect to the share of the booty the state and locals received in physical year of 2007, total state and local taxes reported on coal, oil and gas was 39 million. 17 million of this came from gas. It's interesting to compare this was a 7.9 billion in property taxes paid to the state and localities. For every one dollar in severance taxes received two hundred in real estate is spent. If the Virginia gas fields were located outside of Southwest Virginia, I seriously doubt that there would be gas privateers operating in the state. There's a lot of wrong here that has gone on and it needs to be made right. I raise many of these issues and my comments to the Boards and my comments on regulations and now it needs to be conducted into the 23 million held in state and those unknown millions in internal escrow and expense accounts held by the corporation. The Act authorizes the Board to collect data, make

investigations, examine property, leases, books and records and require or provide for keeping the records and the making of reports as are necessary and proper to perform its duties. A complete accounting needs to be done on royalties held in these funds and the deductions need to be determined. When conflict in ownership do not exist gas companies should be required to distribute the money to those accounts to the identified owner and provide a complete accounting of all deposits and deductions from the one-eighth royalty. Action needs to be instituted on companies that have abused these accounts. The use of force pooling needs to be eliminated. Some states have no force pooling. New York requires gas operators control a minimum of 60% of the property in the unit and 100% of the property through which the well will be drilled before force pooling will be considered. Indiana operators seeking force pooling have to make a diligent and reasonable attempt to negotiate leased terms with unleased owners and to have successfully leased a substantial majority of the acreage in the unit before they can apply for force pooling. It's easy to see how statutory force pooling to the extent used in Virginia removes the free market system for oil and gas leases low as to the value of the gas estate, removes the gas owners ability to negotiate for more favorable lease and has the right to choose which operator

with whom he or she wants to work. The force pooling order needs to be changed. At a bare minimum, it should allow for a reasonable signing bonus versus a one dollar to five dollar currently used. It should as a very minimum require the payments of royalties of one-eighth of all oil, gas, liquid hydrocarbons and other products produced from the well calculated at the well head and paid free and clear of all costs, expense and risks incurred. And this should be sold...priced and sold at general market price. Prices should be tip the line as the monthly index by TECO or the Dominion Appalachian index, whichever is used by the company. The force pooling provisions should also include a Pugh clause stating that the lease terminate and all non producing areas where the primary term, say two years, ends or terminate...and not...without continually allowing a renewal of these leases. This may prevent operators from tying up property in the area and allow for competition among operators. Thank you very much.

BUTCH LAMBERT: Thank you, Ms. Jewell. Please state your name for the record.

RONALD RATLIFF: Ronald Ratliff. And I apologize if I wasn't supposed to be up here when she was there.

KATHERINE JEWELL: No problem.

BUTCH LAMBERT: That's all right.

RONALD RATLIFF: My question, and I guess I'm here more out of frustration than I am anything with the CNX. They have put a well on our properties and we've had a lot of things to happen but one of my questions to you all is about the permitting process. I mean, am I misunderstanding or should they send us a certified letter stating you know that they are going to drill the gas well. Also, and I suppose that it's the same way in their permit, but when they came in to do..to drill the well they come through and they proposed a power line down a certain side and all, well they come back and when no one was around and cut a 75 foot swat across moving the power line going a complete different way, it doesn't even show that and I just wonder what we as a land owner what rights we have. And they drill one well, all right, they came back yesterday and I talked to them and I don't know why but they let me tape the conversations and on the conversation we was talking about the well that they were going to drill really close to our other properties and they said well we will move that down because we realize that's close to your property. And we told them you know it's not just close it's on our properties. Well, they came back and their engineers spent two to four hours there and when they left they said we have to go back to the office and tell you, we can't tell you. Well, they came back yesterday and cut

timbers off our property. But we never got a notification or anything and I just wonder how they can do it. I mean, should they not contact us? Can they just come right up against your property and drill wherever they want to? What steps do we take to protect our property? It's not that we want money out of our property and I'm talking about the people who did not have education, they thought they could just do what they want I think. They live in a house that many of you grew up in like I did that's got holes in the walls still yet. My uncle...my mother is 75 and my uncles are getting up in age and it's an old wooden house that's been there since 1920s and they live in it and these people just run rough shot over it. And I question how do we go about protecting ourselves? What can we do? And I don't know, maybe they're supposed to read the paper, but I hate to tell you some of them don't read. And it's not fair. I guess I'm just so frustrated about CNX and what they've done and I mean they've told me so many different things. And I'm not accusing them of lying, I'm just accusing of telling me a different thing every time they show up on the property. My question is, what do we do? Who do I see? Is this a correct Board or do I go see someone else about the permits and what they're doing and what they're supposed to do?

DAVID ASBURY: Can I answer some of the questions,

Mr. Chairman?

BUTCH LAMBERT: Yes.

DAVID ASBURY: Mr. Ratliff, I'll address different parts of your question. First, in the permitting process, each gas operator is required to give notice to the surface owners gas and coal owners that they are about to disturb property on/or access gas and mineral rights. They typically use tax records and the addresses of individuals on land tracts within the county courthouse and tax deeds. So, they will use those records of those individuals who through title search and deed search to give notice of that particular property. If you are the gas owner you have certain rights to either lease with the operator or make elections with the operator and/or object. If you are a coal owner you have rights to object. If you are a surface owner you also have specific rights to object understanding that if the gas operator has a right to produce and access their gas then their rights...they have rights as well to come in and obtain and produce their gas. If you have a notice issue, which is a serious issue, then you can contact us our Division of Gas and Oil office and we can look at the specific well or pipeline that has been permitted and we can make sure from our records and from your records that you were or were not noticed. We do not address private lease agreements and we do

not address property rights issues between private individuals. That's something that we're not charged to do. Okay?

RONALD RATLIFF: Yes. And I understand that. I guess that's my question. I'm questioning you about the notification because in my conversation with CNX and I'm sure I was talking to someone, a field representative I'm sure, but I did go to the main office and talk to them and I'll tell you exactly what happened. I went up and that was my question, who did you contact? I said I know my mother and my uncle that live in my home place was not contacted. He said, "Oh, we contacted people close by. We went and tried to see them." I said well my mother lives five miles from the site but she never heard anything about it. They come up with some other excuses. So, I went to their office and I asked them to produce the signed copies where they had sent certified mail and the young man brought it in and he sat there and I asked could I just see the names and the young man said, "I don't think he's got a right to see them." And the gentleman who was in charge said, "Show him the names." On three different occasions, he told him show him the names. And, finally, the young man said, "Well, I don't think you want to show it to him? Do you want to know why? They had one. One person and that was the person that lived in one of

the houses they had sent it to. And I honestly think that's all they sent out and I don't understand why. It's just like you know we can do what you want to and in a conversation and I've got it on tape. We come walking back out of the woods when I asked him, I said, "Listen, we want to build a cabin right here, would you move that down just a small area, just a small ways down off from our property?" And they don't show it as on our property, but they couldn't...the engineers couldn't say it was somebody else's property. So, they said, "Oh, sure we'll move it." But yesterday they come in and cut timbers. But as we walked back out of there the conversation come to the point of well the young man that does it and his first name is Derek and I know his last name, but I'll think of it later. But he looked at me and my uncle and said, "Listen you all better be glad that we didn't go through the middle of your hay field." Said we could have done it if we wanted to. And that's sad I mean that people are that much above the law and you don't have any rights. And it's like they said, you know, "Hey, this will be for 80 years. We're going to do it. You can't build a cabin there because we're going to drill this well."

DAVID ASBURY: One of the things you need to know and our citizens, we explain this everyday, our Division of Gas and Oil office is an advocate for our citizens and we do

have missions. We recognize that our citizens have rights as well as our gas operators have rights. If you own the surface and the gas rights have been given away or purchased in some prior period the gas operator has rights to come and access his rights with right of way. Now, if it's a property issue again property issues and private lease agreements we do not you know that's something for the Circuit Court...but your remedy if you think there is a trespass is with your county Sheriff's Department. If you think your deed or your property has been incorrectly passed or disturbed without proper rights then from a property issue your remedy in your venue is the county Sheriff or trespass and the Circuit Court to determine who has the correct property rights.

RONALD RATLIFF: Okay, I understand that. But my question is, your responsibility, as I listen to you talk, is your responsibility approving permits for them to drill these gas wells, is that something that you all take care of?

DAVID ASBURY: Yes. The Division of Gas and Oil reviews---

RONALD RATLIFF: Okay. In that, is it the way they run their power lines, the way they run their gas line and all? I mean, do you approve that or do they just do...? I know on the adverse of the math that I've got they show the way its going to be run that they sent to us, well they come

down this way and cut straight across and go back down the other and it shows its going to go straight through. I mean, is that not...can they---?

DAVID ASBURY: We do look at our inspectors and I do as well once the inspectors review it we look at each permit, we look at operations plan that is part of the permit and that operations plan is approved and then the inspectors actually inspect that particular plan on the ground. Now, the only way that its possible for them to get outside of the permitted area and go a different direction is if the gas operators come back and do a modification to that operations plan.

RONALD RATLIFF: How can I go about checking this out?

DAVID ASBURY: Our records are free and open to the public.

RONALD RATLIFF: Okay.

DAVID ASBURY: If you have a gas well and if you have a gas well number or permit number our information is available to you during normal business hours.

RONALD RATLIFF: I guess, I talked to someone in your office yesterday and they're going to call me in the morning. And I appreciate, you know, them doing that because I do have a serious question. I'm not here griping about

anything. My question is...and I feel very, very badly for my uncle and aunts that they feel like they've really been done wrong and I just see so many people...if this had been someone that had a little bit of education, I mean, most of them haven't been to school a day in their life and I feel like they just come in and just go over them. I mean, it's just like they said, "Oh, we'll move the gas well down." They didn't move it because now, I guess, I assume that is because they had it permitted there and they're not going to change it without coming back to you.

DAVID ASBURY: Well we have a stewardship idea in our division as well as far as environmental compliance and we...it's a top priority to be environmentally compliant in the state of Virginia and have the minimum amount of disturbance of our environment.

RONALD RATLIFF: Well, and I---

DAVID ASBURY: But if they're permitted and they have a particular route for gas pipeline or electricity lines, things of that nature, they have to follow that permit or they have to come back and re-notice and modify that permit.

RONALD RATLIFF: Well, and I was kind of sure that's the way they work because I mined for twenty plus years and I know what I had to go by to do that but these people seem

like they feel like they can do anything they want to. And I apologize for it. You know, I hope you're not thinking I'm venting at you. I'm just frustrated with CNX.

BUTCH RATLIFF: Well, Mr. Ratliff, I strongly suggest that you contact our Division of Gas and Oil in the morning and---

RONALD RATLIFF: They're going to give me a call---

BUTCH LAMBERT: Okay.

RONALD RATLIFF: ---they've already...and I appreciate it. They have worked with me. I've called them on a couple of occasions and they've told me mainly what the gentleman has told me. And I really appreciate it.

BUTCH LAMBERT: Okay, thank you, Mr. Ratliff.

RONALD RATLIFF: Thank you.

BUTCH LAMBERT: Any others?

KATHERINE JEWELL: I didn't get a chance to hand these out. This has got everything I basically mentioned.

BUTCH LAMBERT: Please state your name for the record.

JUANITA SNEEUWJAGT: My name is Juanita Sneeuwjagt. And I know we're tired, it's been a long day and I won't take too much of your time so we can go on home and rest a while. A couple of housekeeping things, I want to go on the record and this is my public statement that I'm absolutely against

the gas companies taking post production costs from the royalty owners checks. This is my statement that I want to make. So, in housekeeping things, also a note for the first time in eighteen years although I've only been coming here thirteen years, but I know people who have been coming here for eighteen years, counsel for gas operators are using the term protecting correlative rights, I just think that's a bit interesting that gives it new verbiage that's been tossed around. The other thing is that I request attorneys to be sworn in as others are sworn in because they do a tremendous amount of testifying. I don't know if anybody has noticed that but me. Also, I heard the gentleman here say that Dickenson County Star had been notified and appreciate that. We have requested that a few times because we no longer get the Bristol newspaper. So, we'll go on to my little type up here. My name is Juanita Sneeuwjagt. I am president of the committee for the Constitutional and Environmental Justice, Incorporated. I represent 15,799 people in Dickenson County and many more in Southwestern Virginia. In other words, I advocate for Southwestern Virginia, but I reside in Dickenson County that's why you'll hear me talk a lot about Dickenson County. I come before you today to beg and plead for you to vote in favor of zero post production cost be removed from people's royalty checks. The people of Southwestern Virginia

have been brought to their knees yet again by gas companies who exploit them. The issues are grave and they're dire consequences relating to the 1990 Act when policy makers sanctioned and blessed the raping and gutting of southwest Virginia for the purpose of removing the natural gas under the land surface. The people are without nutritious food, cannot afford necessary medications and do not have adequate housing and if they did could not afford to heat them. They cannot be here to plead for themselves because they cannot afford the gas to put in their cars to drive here. The people are angry as I just heard that gentleman say. People are angry, frustrated and without hope. The suicide rate is an alarming 70%. That's in Dickenson County. 65% of school children in Dickenson are on free lunch programs. In Dickenson County, 706 households are on food stamps. The state reports Buchanan county with 1,133 people on non-public assistance and Dickenson County with 876 on non-public assistance. And you'll find out shortly what I'm getting to by giving you all these stats. There's a massive migration of people leaving Buchanan and Dickenson Counties. In 2000, Buchanan had a population of 26,978 which diminished to 23,773 in 2007. Dickenson had a population of 16,395 in 2000 which diminished to 15,799 in 2007. Not one good reason exists to stay. Large companies destroy the land, sink the

water, push the trees over to lay there and rot, destroy roadways and echo systems. Much worse, the souls and spirits of humanity are destroyed. You're invited and I will personally take you on a tour if anybody will contact me, you're invited to visit Middle Of The World, Frying Pan, Keen Mountain and a whole host of others to witness the total and complete destruction. All sustaining life is destroyed to develop the gas under the land. County and state leaders attempt to misguide us with pontifications of great economic development and increased numbers of jobs. None of that has happened. They didn't really mean to lie to us. All of Southwestern Virginia is poorer because of the gas...the rich gas finds. This is one of the greatest takings in U. S. history. It's a reverse Robin Hood, take from the poor and give to the rich. It is unconscionable to allow this degradation of people, to throw them away in order to line the pockets of big business. Page two, please. This Board was put into place to protect the correlative rights of the people and to regulate the gas companies. I have attended these meetings for fifteen months and have yet to learn of a gas company request being denied. I hear postponed until you bring back sufficient drawings or evidence or whatever. I've heard old people, young people, middle aged people, sick people, crippled people plead with this Board to uphold the

constitutional civil rights, to give them some hope and some help. I witness their defeat and their stiff shoulders as they are turned away. This is a daunting task for you, Board, and I know much soul searching goes into your decision making. No doubt you're defending the rights of the gas companies which were passed into law would ask yourselves if you're defending the rights of the people. Politicians along with gas barons were screaming for sustainable energy. We're realistic and realize the gas must be cultivated. We must find ways to sustain ourselves in our homeland. What I'm asking you to do is uphold peoples rights and disallow the gas companies to exploit the land and the people as they're presently doing, in other words, level the playing field. Compare the poverty rates which I've already given you with a net profit margins of the gas companies and that will be on page three, don't turn there yet. The companies and their officers are making obscene amounts of money while the people they're taking from are suffering. There will come a day of reckoning, a day of judging, and neither the government or the gas company will be in charge of the judging. On page three, and I won't go through all of that, Equitable, CEO Gerber is bringing in \$22,185,000,000. These figures aren't all inclusive because there lots of exercisable and unexercisable stock options, health benefits, etc., etc. and

you can read all of that for yourself. No financial data on Pinkerton for Consol or CNX in other words. Range Resources, which owns Pine Mountain Gas and Oil, Pinkerton receives \$4,259.290,000. Now, I'll say it, again, these are not all inclusive. They have huge incentive packages to work with. Now, I guess what I'm saying to you is that's a good salary, you know, no matter how you slice it that's a good salary. But couldn't some of this money come to the people as zero post production cost and just let them have enough money to eat, to buy their medication, to heat their homes, to raise their children. This is all I'm asking you. And I'm begging you to consider all that I have said and drive home safely. And thank you for listening to me.

BUTCH LAMBERT: Thank you, ma'am. Are there any others for public comment?

DAVID ASBURY: Mr. Chairman...go ahead.

BILL HARRIS: I do have a question about the actually docket item 38. I notice that we continued that. Was there a reason given for that?

BUTCH LAMBERT: We had received several requests to continue that item and I'm not sure we had enough information and some other information to be coming forward...to be coming to help us make a rational decision, so.

BILL HARRIS: Well, now I think...well, with all due

respect I think we made a rational decision but the..there is a meeting for tomorrow that's---?

SHARON PIGEON: Thursday.

BILL HARRIS: ---Thursday that has been called, okay. And that's to further discuss the issue then?

BUTCH LAMBERT: Yes.

BILL HARRIS: Okay. Thank you. I'm just...okay, well. I was hoping for some clarification and I guess we'll find out Thursday.

SHARON PIGEON: I think you had indicated at your meeting that you would like to have some information from operators---.

BILL HARRIS: Yes.

SHARON PIGEON: ---and several of the requests came from operators wanting to provide information. So, I think you were wanting to get that and they were offering to provide it and there was no specific laundry list of requested information. But we thought it would certainly be helpful for you to have any additional information. That was the...I mean, you had indicated you wanted that, they requested continuances on their own to provide that so it seemed appropriate.

BILL HARRIS: Okay, thank you.

BUTCH LAMBERT: Any other comment?

(No audible response.)

BUTCH LAMBERT: Mr. Asbury?

DAVID ASBURY: Yes, Mr. Chairman, I've got one item just to make the Board aware of an issue that we had and it goes back to the coalbed methane unit and pooling for a conventional wells. Last month we did have this unit from CNX Gas that had a diagram of the 80 acre coalbed units and they were drilling a conventional gas well unit and going across three of these acres. They are reconsidering and we placed on the docket to come back and do additional pooling or repooling of this and reclarification of this particular well and its CBM AB78CV. We have given them a permit. We did give them permission to drill but not to produce until this issue is resolved and they will be on the November docket.

BUTCH LAMBERT: Thank you. Has everyone received a copy of the minutes of last meeting and had a chance to review those?

DONNIE RATLIFF: Move to approve the minutes as presented.

BUTCH LAMBERT: Do I have a second?

MARY QUILLEN: Second.

BUTCH LAMBERT: All in favor, signify by saying yes.

(All members signify by saying yes.)

BUTCH LAMBERT: Opposed, no?

DONNIE RATLIFF: I'll abstain.

BUTCH LAMBERT: One abstention. (Laughs.) This will
conclude our meeting. Thank you.

STATE OF VIRGINIA,

COUNTY OF BUCHANAN, to-wit:

I, Sonya Michelle Brown, Court Reporter and Notary Public for the State of Virginia, do hereby certify that the foregoing hearing was recorded by me on a tape recording machine and later transcribed under my supervision.

Given under my hand and seal on this the 14th day of November, 2008.

NOTARY PUBLIC

My commission expires: August 31, 2009.