

August 8, 1990

Oxy USA, Inc.

Wells CBMI B-28 and E-28

Mr. Fulmer

Good morning. My name is Tom Fulmer. I am the State Gas and Oil Inspector. To my left is Diane Davis, who will be recording the proceedings this morning. This morning's hearing is being convened pursuant to Section 45.1-361.35.G of the Code of Virginia. Permit application for B-28 was submitted to the Division of Gas and Oil on July 5, 1990 and shall be considered under the provisions of the Virginia Gas and Oil Act effective July 1, 1990. The proceedings will be conducted pursuant to Section 9-6.14.11 of the Code of Virginia, regarding proceedings to be conducted under Informal Fact Finding Hearings. The Division of Gas and Oil has received objections to the drilling of proposed wells CBM I-B28 by Oxy USA, Inc., located in the Garden District of Buchanan County. The plats indicate the following: surface owner - Burl Endicott, Tennessee Warren access road; mineral owner - Big Vein Tract #34.A. In summary the following objections to the proposed application filed with the Division were as follows: surface objection pursuant to Section 45.1-361.35.B - Burl Endicott objects to the application on the basis that the operations plan does not provide adequate erosion and sediment controls and adequate protection of fresh water zones. Tennessee Horn objects to the application on the basis of damage to his property. Coal owner objection pursuant to Section 45.1-361.11 and .12. Jewell Smokeless objects to the application on the basis of the drilling of B-28 would adversely impact their development of their coal lease. In addition to the objections raised above, Cabot Oil and Gas Corporations will be allowed to present testimony and evidence regarding the drilling of B-28 and file any objections which they may have on the matter of the drilling of B-28. I will consider Cabot's testimony and evidence at the conclusion of the objections filed formally under the provisions of the act by the surface owner and the coal operator. For the purpose of these proceedings would you please acknowledge your presence at this hearing by indicating your name and who you are representing and whether you will be represented by council.

The following were identified: Genell L. Endicott represented by council; Tennessee Horn represented by Don Johnson, Attorney; Jewell Smokeless Coal Corporation represented by Bob Brendlinger; Cabot Oil and Gas Corporation represented by Bill Weeks and Hugh Fain, Attorney; Oxy USA, Inc. represented by Mr. Bob Barnes and Richard Counts, Attorney.

Mr. Fulmer

For the purpose of notification under the notice of hearings for these proceedings, Mrs. Davis were all the parties required to be notified under Section 45.1-361.30 of the Code of Virginia been notified?

Mrs. Davis

Yes. Notice was sent by certified return receipt mail to all parties identified in the application, and at a later date was sent by

facsimile to Mr. Fain's office on behalf of Cabot Oil and Gas.

Mr. Fulmer

The proceedings will be conducted as follows: I will receive testimony and evidence from Mr. Endicott and Mr. Horn in that order and Oxy will then be allowed to cross examine and then Oxy will present testimony and Mr. Endicott and Mr. Horn will be allowed to cross examine. Then Jewell Smokeless will present testimony and evidence and Oxy will then be allowed to cross examine. Then Oxy will present testimony and evidence and Jewell will then be allowed to cross examine. This procedure will be used with Cabot and Oxy. I will first call upon Mr. Endicott to present their case, first in the case of CBM I - B-28.

Mr. Copeland

Thank you Mr. Fulmer. I am here on behalf of Mrs. Endicott. We have consulted with the representatives of Oxy USA and it appears based upon the amended plat and sight plan that is to be filed by Oxy USA, that Mrs. Endicott will not have an objection to the placement of the well. There is however, one stipulation that we have agreed to regarding water monitoring to protect her ground water that she drinks from the well located behind her home. That stipulation is that before drilling begins Oxy, at their expense, will conduct a pre-drilling test of the water from her well use testing from the following standards: acidity, alkalinity, chloride, conductivity, iron, manganese, PH, sulfate, dissolved solids and for any aquaflo products. The purposed foaming agent to be used in the well. At the conclusion of drilling when the drilling is finished, the same additional tests of her water system will be performed for the same items that I previously listed as well as the aquaflo to determine if there is any of that substance in her drinking water.

Mr. Fulmer

Thank you Mr. Copeland. Mr. Counts would you like to make a statement on Oxy's behalf?

Mr. Counts

Yes. Oxy agrees with the statement provided Mr. Copeland, that the withdrawal to the objection of CBM I-B28 stipulates, I think Mr. Copeland made this clear but that we will be...the Endicott's obtain their drinking water from a well and that is the source we will be testing, correct?

Mr. Copeland

Yes, from the kitchen sink.

Mr. Fulmer

Thank you Mr. Counts. Mr. Horn or...

Mr. Johnson

Donald R. Johnson representing Tennessee Horn. We objected on the basis of the road and making damage compensation for the road. We have been assured by the representatives of Oxy USA that they will see my client after the permit is granted for the purpose of assessing the damage that should be paid on the road. It has also been stipulated that Oxy USA will try to help my client locate a one acre mineral exemption on

her property which she claims around a dwelling house on the property and we will work with her and her family to try to locate that one acre exception. The coal, oil and gas rights that she owns on her surface tract.

Mr. Fulmer

Thank you Mr. Johnson. Mr. Counts?

Mr. Copeland

We withdraw our objection.

Mr. Fulmer

Mr. Counts would you like to make a...

Mr. Counts

Mr. Fulmer, on behalf of Oxy USA we agree with the statements made by Mr. Johnson. We would also on behalf of Oxy we would like to say that we appreciate very much the surface owners parties involved being here this morning and taking part in the process and also your cooperation. I would like to thank all of you very much.

Mr. Fulmer

Thank you. Next up is the coal owner objection. This again is Jewell Smokeless objecting the application on the basis of drilling of E-28 that adversely impact the development of a coal lease. If you would Bob, continue?

Mr. Brendlinger

We're just going to take these one by one like the B-28?

Mr. Fulmer

Yes.

Mr. Counts

Mr. Fulmer there also might be...we would like to present you with the amended application of CBM I-28. This involves a very small change of the location which is still within the grid system allowed and does not involve any notification of any additional authorities. It does not involve the use of any surface facilities other than those that were stipulated in the previous application.

Mr. Fain

Mr. Counts can you tell me approximately how far the distance of the change is?

Mr. Counts

Less than 150' specifically to the northwest.

Mr. Fain

Thank you.

Mr. Fulmer

If all parties...what I would like to do if agreeable among the parties, in the case of Jewell and in the case of Cabot, in both of these situations I have had to break them up basically because some of the objections were two different ones. Both Cabot and Jewell are involved directly in both of these wells. What I would like to do if it would be a benefit to us because I don't know how long this is going to go on, is that I would like to go ahead and clear up the surface owner objections on E-28. If that would be agreeable to all the parties. We could take a break...

Mr. Counts

Mr. Fulmer I advise us to go ahead and proceed on B-28 and I advised the surface owners on E-28

that they might want to check back after around 11:00 o'clock.

Mr. Fulmer

Okay. Would want to proceed now with this one?

Mr. Counts

I would rather go ahead and proceed. If the parties agree I would like to be able to go ahead and handle both B-28 and E-28. If we need to have a break if Cabot has no objection to that Jewell Smokeless has to any other extra parties at 11:00 o'clock when the surface owners come back in we could break and just handle that particular objection, I certainly have no objection to any other party sitting in at that time. It might work out better.

Mr. Fain

Cabot has no objection to that.

Mr. Brendlinger

Jewell has no objection to that.

Mr. Fulmer

The reason I asked you is that the party is still here.

Mr. Counts

They are?

Mr. Fulmer

I just noticed that they were still sitting out there.

Mr. Counts

Go off the record for just a second.

Off the record

Mr. Fulmer

Before we begin I would say that from the point of expediency of the two cases before the inspector this morning council for Jewell, Cabot and Oxy has agreed to hear testimony and evidence regarding B-28 and E-28 as one in conjunction with each other. In regards to the drilling of E-28 which as a surface owner objection I would like to go ahead and proceed on E-28 with the surface owner objection. I'm going to go ahead and make a statement on record for preserving the record on E-28. This mornings hearing is being convened pursuant to Section 45.1-361.35G of the Code of Virginia. Permit application for E-28 was submitted to the Division of Gas and Oil on July 5, 1990 and shall be considered under the provisions of the Virginia Gas and Oil Act effective July 1, 1990. The proceedings will be conducted pursuant to Section 9-6.14 laven of the Code of Virginia regarding the proceedings being conducted under informal fact finding hearings. The Division of Gas and Oil has received of the drilling of purposed well CBM I E-28 by Oxy USA, Inc. located in the Garden district of Buchanan County. The plats indicate the following: the surface owner - Minerva Matney heirs; mineral owner - C.L. Ritter Tract 27. In summary the following objection to the proposed application filed with the Division were as follows: surface owner objection pursuant to Section 45.1-361.35 - two heirs to the Minerva Matney heirs, Elmer Matney and Marie Keen Matney filed an objection to the drilling of the well. The basis of the objection were not specifically

given. Coal owner objection pursuant to Section 45.1-361.11. and .12 Jewell Smokeless objects to the application on the basis of E-28 would adversely impact the development of the coal lease. In addition to the objection raised above Cabot Oil and Gas Corp. would be allowed to present testimony and evidence regarding the drilling of E-28 and file any objections which they may have on the matter of the drilling of E-28. I will consider Cabot's testimony evidence at the conclusion of objections filed formally under the provisions of the Act by the surface owner and the coal operator. For the purpose of these proceedings will you please acknowledge your presence at this hearing by indicating your name and who you are representing and whether you will be represented by council.

The following were identified: Elmer Matney, not represented by council; Jewell Smokeless Coal Corp. represented by Bob Brendlinger; Cabot Oil and Gas Corp. represented by Hugh Fain, Attorney, also Bill Weeks; Oxy USA represented by Richard Counts, Attorney, and also Bob Barnes.

Mr. Fulmer

For the purpose of notification under this notice of hearing for these proceedings, Mrs. Davis was all parties required to be notified under Section 45.1-360.30 of the Code of Virginia been notified?

Mrs. Davis

Yes, notice was sent by certified return receipt mail to all parties identified in the application and notice was sent by facsimile to Mr. Fain at his office on behalf of Cabot.

Mr. Fulmer

The proceedings will be conducted as follows: I will receive evidence and testimony from Mr. Matney and Mrs. Keen in that order. Oxy will then be allowed to cross examine and then Oxy will present testimony and Mr. Matney and Mrs. Keen will be allowed to cross examine. Then Jewell Smokeless will present testimony and evidence and Oxy will then be allowed to cross examine. Then Oxy will present testimony and evidence and Jewell will be allowed to cross examine. This procedure will be used with Cabot and Oxy. I will call first upon Mr. Matney.

Mr. Matney

Well I think they should make it right with me before they do anything...go on my property. I've been on it a good many years and I ain't denying they don't have the mineral rights.

Mr. Fulmer

Your basic objection then is that you want to receive damage payments?

Mr. Matney

Yes. Before they do anything I feel that is the way it should be. Everything I have I pay for before I get it.

Mr. Fulmer

As a procedure, sir, we cannot determine damage between two parties. We do not have the authority under the law to do so. That is more appropriately under with the Circuit Court.

Mr. Matney

According to the letter I got I had 15 days to object according to this package here. And that is what I have done. I believe it should be made right before you do anything. Which....the water could become bitter and we won't drink bitter water. That gas you go down and get....who knows....it could become dangerous...if they're any leaks, somebody light a cigarette and...you couldn't get that bucket of rotten tators out of here...I might own that when it is all said and done...they nobody knowed it in 1914 I'll assure you of that. Who become the owner of the property to begin with was my brother, in 1914, soon be 76 years. I bought my acre in '48 I'll soon have that 42 years. I pay taxes and I figure I ought to have something...and I should know what it's going to be before it is disturbed...I got no way of knowing and I doubt if you all do...let's be honest about it.

Mr. Fulmer

Did you have any specific objection to the plan that was submitted within the application that was sent to you as to the construction of the sight?

Mr. Matney

That E-28 you come into a dirt road up there on Route 640, it will take you right around that mountain to that church and if they need go off of it and onto Island Creek if that's the way they want to go. I don't think they need to get on our strip of property nowhere. I think they ought to forget that one particular well. Of course...that problem myself. I had hoped to develop that property myself. I hope to park a trailer up there, but I got to build a road to it.

Mr. Stacy

Mr. Inspector may I may a statement?

Mr. Fulmer

Yes sir.

Mr. Stacy

I am F.E. Stacy and I am Mr. Matney's son-in-law. I am from Houston, TX and am here simply visiting on vacation and, also I am professionally in the Oil and Gas business, I work for Shells International Group. International contracts represented by contracts rights. I have been involved in domestic oil and Gas operations for over 12 years and I think basically if I might add to Mr. Matney's statement, I think he has basically two objections. One, I think it is his contention that the surface location may actually be on property on surface that is owned by Mr. Matney individually, he and his wife. Rather than the Opal Shortt property which is listed on the plat. Were not exactly sure about that but it does appear that perhaps the record checks and I assume that were made in Buchanan County Court House may have been incomplete, we will be doing some further checking, Mr. Matney may have further representation on that. And I think secondly and more importantly is the fact that Mr. Matney speaking for himself and the Matney Heirs feels like that surface damages should be

settled prior to any construction or work being done. I know that in Shells domestic operations we would never consider constructing any kind of surface locations, building roading to and out of any well location before all surface damages had been completely negotiated or had been filed in court. I don't know what Oxy's policies and procedures are nor am I familiar enough with Virginia Oil and Gas Law to make a statement as to that affect. But it does appear that there is quite a bit of uncertainty here. Certainly on the part of Mr. & Mrs. Matney as well as the Minerva Matney Heirs of which Mr. Matney is one. I think there just needs to be much more clarification involved here as exactly what are Oxy's plans and specifically where the location will be as to surface location.

Mr. Fulmer

To present the second question, as you are aware if you are in the Oil and Gas business, that surface damages are not within the realm of any State Government, that is Circuit Court...that is what I meant by that statement I made a while ago. The location of the well I think the contentions that have been brought up whether it is on the Elmer Matney property. You are contending it is your property? It is not part of the heirship. Is that what I'm understanding?

Mr. Matney

Yes. They sent everything out to the heirship which I am the holder of that. And he also said it was between Hale Creek and Dismal River. It is between Long Branch and Hale Creek. On the left side.

Mr. Fulmer

What I would like to proceed then to base the statement and I quite understand what you were talking about. What I would like to do is go ahead and proceed with Mr. Counts and see if we can't get any of this cleared up. Mr. Counts?

Mr. Counts

I would like to ask Mr. Bob Barnes a few questions Mr. Fulmer.

Mr. Fulmer

Are you going to have any cross examination with him?

Mr. Counts

Not at this point.

Mr. Fulmer

So you want to proceed with your testimony and evidence?

Mr. Counts

That is correct.

Mr. Fulmer

Go ahead and proceed Mr. Counts.

Mr. Counts

Mr. Barnes, would you state your employer and your title.

Mr. Barnes

Drilling specialist for Oxy USA.

Mr. Counts

And have you previously testified before the Oil and Gas Inspector and has your testimony been accepted?

Mr. Barnes Yes.

Mr. Counts Would you wish to advise Mr. Fulmer as to the specific changes based upon the amended plat which we have submitted today with guard to how those changes impact the drilling location?

Mr. Fulmer We talked about...E-28.

Mr. Counts Okay, I'm sorry. Mr. Barnes would you indicate for Mr. Fulmer on whose land the operations are going to be conducted and where the well sight will be located?

Mr. Barnes Our record checks shows it to be located on C.L. Ritter mineral tract and with the property owners being C.L. Ritter, Rufus Ricky Viers, and then leaving their property onto the Opal Shortt property. Minerva Matney heirs were notified to the top of the ridge-top construction and possibly impacted by operations of damages beyond our control.

Mr. Counts Mr. Barnes based upon your plat, as I understand, the access road and the well location near which are on the Minerva Matney tract. Is that correct?

Mr. Barnes To the best of our knowledge.

Mr. Counts And you have further indicated that and you have sent notice even though your plat does not show the access road as being on the Matney heirs tract. It could possibly have impact upon...it could have some spoilage or you could have some impact upon that tract of land?

Mr. Barnes Yes, but we have heard about damage near the construction.

Mr. Counts And in the event that it appears to you that damage may be necessitated, then will you contact Mr. Matney with regards to settling the damages?

Mr. Barnes Yes sir.

Mr. Counts And in the event that if the well is or the road is built without your anticipating any part of that road will be located or anything to do with that road will be located on Mr. Matney's tract of land that in the event that it does become the occasion that you would then approach him then with the damages?

Mr. Barnes Yes sir.

Mr. Counts Okay. Approximately how far from Mr. Matney's home is the well location?

Mr. Barnes I would estimate it to be 2000' approximation.

Mr. Counts And Mr. Barnes is the access road that you have on the plat is that the most efficient economical means of obtaining access to well CBM E-28?

Mr. Barnes Yes sir.

Mr. Counts Would you describe Oxy's use of the access road on this property with regards to what type of vehicular traffic will be on it. What will be conducted during drilling operations and the use thereafter?

Mr. Barnes The road is going to be implemented into a network to service the wells in that area. During drilling of course it will be roading in of the drilling equipment, it will approximately be one week in use. After that point, we will complete the well with frac equipment. That will be one day. The completion rig will be in there approximately a week. At the end of the completion operation they'll be daily traffic of a pick-up truck.

Mr. Counts Would you describe briefly the plans for the surface sight location and what plans and if there should be any impact of soil sediment control or should there be any run-off of Mr. Matney's tract of land from the well location based upon the Soil Erosion and Sediment Control Plan.

Mr. Barnes The road is going to be located on top of a ridge. The run off from the road should be very little since we are on top. It will be diverted down to natural drainage ways. Every effort will be made to keep the run-off in the natural drainage ways. The existing or proposed well sight is on a strip bench and that should keep the surface impact to a minimum as the sight is relatively flat. There should be some vegetation removal just brush and growth up out of the way, but the impact should be minimal on the existing strip bench.

Mr. Counts Mr. Barnes does Oxy have on file with the Inspectors office individual blanket bond which will not be released until this project area is stabilized?

Mr. Barnes Yes.

Mr. Counts Mr. Fulmer I don't have any further questions.

Mr. Fulmer Okay.

Mr. Matney You are talking about on Opal Shortt's property what number is it?

Mr. Barnes It is the E-28.

Mr. Matney Is that the same one we're talking about on my place?

Mr. Barnes Yes sir. It is the same one.

Mr. Matney In other words you're not putting anything on my property then?

Mr. Barnes Yes sir that is correct. I hope we didn't mean to get you upset on this...

Mr. Counts I understand it from the application we are looking at today for CBM E-28 is not located or the well sight or any part of the access road is located upon Mr. Matney's property?

Mr. Barnes That is correct.

Mr. Matney I got the idea that it would be up there on the strip job up there on that side. Off of my land you can go onto Island Creek property...I thought the thing was put backwards from where they out to have been was on me. I thought that way all the time. Didn't I tell you it looked backwards?

Mr. Stacy Yes you did.

Mr. Matney I sure did.

Mr. Barnes If everything goes right we should not be on you...

Mr. Matney But if you did you'll be on the Patterson's not on what I own. You was talking about that strip job they went up there on me and I thought that was what you were talking about.

Mr. Barnes I'm very sorry my mastering of the geography around here is not too good but that is...no we are talking about is on the Patterson side of your property..I mean over the hill from your house.

Mr. Matney I said that it wasn't between Hale Creek and the Dismal River it would be even on that job it would be between Long Branch and Hale Creek on the left side.

Mr. Barnes Long Branch and the Dismal we kind of...

Mr. Counts Based upon this most recent well relation can we assume that your objections are withdrawn on this?

Mr. Matney By all means.

Mr. Barnes I was kind of wandering where you were at.

Mr. Fulmer Mr. Matney would you care to at the point with this information brought out do you wish do withdraw your objection?

Mr. Matney Yes.

Mr. Fulmer Thank you Mr. Matney.

Mr. Counts Mr. Matney thank you very much we appreciate it your time.

Mr. Fulmer With the objections raised by Jewell Smokeless in the matter of the drilling of B-28 and E-28 by Oxy USA by agreement with the council I am under the impression that for both parties we will look at these two wells congruently? Am I correct?

Mr. Brendlinger

Yes.

Mr. Counts

You are correct sir.

Mr. Fulmer

Bob you can continue with B-28 and E-28.

Mr. Brendlinger

I would like to enter onto the record two documents and their maps. One is labeled Dominion Coal Corp. Red Ash Seam mining projections Hale Creek and Spruce Creek area, scale is 1" equals and 1000 and it is dated August 8, 1990. The other is Dominion Coal Corp. Jawbone Seam mining projection Hale Creek and Spruce Pine area, scale is 1" equals 1000 dated August 8, 1990. Jewell Smokeless Coal Corp. objects under the Virginia Code 45.1-361.30.D in that we have two seams that are under lease that the drilling of both B-28 and E-28 that both of those would adversely impact the mineability of the Red Ash and the Jawbone. We have put alot of money into the development and exploration, we are presently in the process of we have a couple of land purchase options for purchasing additional property in Spruce Pine to facilitate the access for Spruce Pine and Jawbone mines and we are continuing with our permit applications. We have not submitted maps to the State showing the projections but they will be filed with the permit application which will be submitted sometime in the fourth quarter of 1990. We have spent in excess of a million dollars in exploration and with the land purchase options and what we purchased in property already that has been close to two million dollars. We do feel that the mineral in both the Red Ash and the Jawbone is mineable and they are in close proximity to our Coke oven operations and we do feel they are important for the livelihood of our company the next 10 -20 years and the development of the virgin coal is important to us and any holes that are put down in the reserve areas is going to affect us with our mineability and affect us. That is our position with Jewell Smokeless Corp. We have discussed with Oxy USA some negotiations possible with them putting the holes down. We would like to set a time period as to when the holes would either be plugged or that we could mine through these respective holes. I think Mr. Barnes representing Oxy USA I think he can probably tell you more on that matter and I guess we feel that there is methods of the Coal Co. and the Gas Co. of working together and both actually getting their mineral resource out. We feel that with the mine through technology that's available today that there's ways that both of us can work together to have both the mines and the coalbed methane program. I think the most important part is the timing and I guess we all just have to work together if we want both operations to work.

Mr. Fulmer

Let me see if I am understanding this. I am hearing here is that your present negotiations with Oxy are you looking in alternate locations

or the same locations but on a time table base that you are trying to work out?

Mr. Brendlinger

Well E-28 we have an alternate location which we talked about yesterday, but it seems unlikely that they are going to be able to move that location. And on B-28 we really don't have an alternate location on B-28. So I guess what we are really at now is we are going to have to have an agreement that a mine-through would be at the cost of Oxy USA with the plugging of the area which we would mine through and then we would mine through the well and they would reinstall the casing and put the well back in operation which with all the down time would not be at Jewell's expense that would all be by Oxy USA, or if they could have a statement that they would have the well plugged by such a date that we could plan to develop the mineral at that time then I think that would be acceptable to Jewell Smokeless if we could work out an agreeable date.

Mr. Fulmer

Oxy? Mr. Counts?

Mr. Counts

Mr. Fulmer I would like to go ahead and proceed with the questions for Mr. Brendlinger if I may. As you have indicated this morning that you have two exhibits here this morning, are those of your mine plan?

Mr. Brendlinger

Yes they are of the mine plan for both the Red Ash and the Jawbone.

Mr. Counts

And are those surveyed plats or mine plan plats?

Mr. Brendlinger

These are mine plans which we have for our development from our Spruce Pine area. They have not been...what do you mean by surveyed?

Mr. Counts

...your entire plan been surveyed out and platted out?

Mr. Brendlinger

Well we have values which we start from really that's basically you start from a known point then you develop your mine from there. So it has been developed...or for the mine plan itself that's basically all you can do from there is to develop it from a known point where your is going to be as far as...

Mr. Counts

When do you indicate that these are dated today's date, have those been filed with record of with the DMLR or the Department of Mining?

Mr. Brendlinger

No they have not but they will be this fall when the permit application is submitted.

Mr. Counts

Mr. Brendlinger could I ask you some questions with regards to your mine plans? Let's just go with the Jawbone and I'll ask you a few questions.

Mr. Brendlinger

Okay, here is the document with the Jawbone Seam mine projections dated August 8, 1990 the two

holes B-28 is in red...we have the two holes B-28 and E-28. Our projections are shown here both of these holes are within the panels or development entries of our projected mines.

Mr. Counts

Would you state the location where E-28 is?

Mr. Brendlinger

E-28 is in red in that circle area this is the one that we had requested when we met with Mr. Barnes yesterday if they could move that in a more or less a south westerly direction or someplace just south of that would probably be satisfactory which wouldn't be much of a distance. But he had shown me this morning on the plat that it is more or less on the southerly portion and it is going to be difficult for him to move that.

Mr. Counts

Is E-28 located within a panel or a development or...?

Mr. Brendlinger

No it would be within the development panel itself so we could more or less work around that area if we had to. Then again if he could possibly move that 150' or so that would be on this mine bench which looks like he could possibly move that around a little bit more but with his quadrangle system here be out of the quadrangle from what he explained to me.

Mr. Counts

The development itself surrounding the longwall panel I am assuming that will be room and pillar?

Mr. Brendlinger

Yes that part there would.

Mr. Counts

So there would be a pillar that E-28 could be drilled through?

Mr. Brendlinger

Yes we could work with that and Mr. Barnes was explaining to me his system that they are going to triangulate the holes themselves. We were concerned about where they would be penetrating the seam and then with the vertical deviation that you have sometimes when you just have a small 50 x 50 block if that would be outside of the block itself then that would cause alot of difficulty once we're mining. So that's the...

Mr. Counts

Well Mr. Brendlinger if this well is already drilled prior to the time that you commence your longwall development would it not be within the realms of reasoning to be able to place that well within your mining plan within a pillar?

Mr. Brendlinger

No, not under the current law. With the gas laws that are applicable now we first of all I think it's a 300' radius around here and then you can go within 200' but any closer than that and if it was an existing well the gas company had a deviation law then we could possibly file an objection 101C petition which we would have to file which those sometimes take up to a year to get approval granted from Arlington, Virginia. So as you are developing in that direction it would take alot of planning. For

something we know in advance if the gas co. would give us permission to mine within 50' of that or work something out without us having to go through the 101C petitions. That's is a lengthy process there.

Mr. Counts

I would also like to draw your attention to the well plat on E-28. It looks like we will probably the location within this unit E-28 is within 20' of the unit boundary?

Mr. Brendlinger

Yes that's what it appears to be.

Mr. Counts

And would there be any other location that we could move this well to within the unit boundary that would be satisfactory?

Mr. Brendlinger

Well...it is close in that area.

Mr. Counts

Basically you can see our problems in terms of trying to work this out. We may have...Bob, approximately how many feet is that?

Mr. Barnes

I would say it is less than 50'.

Mr. Counts

Okay. Let me ask you this Mr. Brendlinger, if Oxy were agreeable to waver allowing you to mine within 50' of that well bore, and if Oxy would agree to move E-28 as far south as they can as long as it didn't run out of the strip bench as long as it could still be located within the unit boundary, and as long as Mr. Fulmer would still approve that location, would Jewell Smokeless in that case be willing to withdraw the objection to E-28?

Mr. Brendlinger

We would be willing and also that Oxy would have to bear all legal expenses for us to file the 101C petition to mine probably even closer than the 50' because we are going to have a block of coal in there and we are responsible for mining the coal. And if they come back on us and do you want us to pay for that block of coal? We do feel that it would be up to Oxy to pay for that coal that would be left in place or pay for legal expenses that would allow us to get closer to the gas well.

Mr. Counts

Mr. Brendlinger you have indicated that there should be some basis of the oil and gas and coal operators should be able to conduct operations concurrently. And what we are trying to explore is whether we could move it to where it is totally out of your entry as long as it could still be within that unit area and you have agreed that it probably can be moved. That is my assumption, but your request now is that Oxy pick up any legal fees or reserves losses as a result of that move?

Mr. Brendlinger

Well we do show this projections here and we do have a cut off line in this area. But as we mine in here we may be able to mine over here a little farther and the lessor themselves at that time we would be held responsible for any mineable and merchantable coal that is in that

tract. So that is where we are held by them to mine everything, these are projections and as time and we are in this area we could try to get what we could and that would mean an additional panel or we may try to get what we could in that side panel.

Mr. Counts

So that position could change there could be an additional...

Mr. Brendlinger

There possibly could be. These are preliminary projections and as time changes we will be drawing more exploration work and if these were known projections that we had followed then definitely that would be alright. As the lessor come and make inspections in our mines and if there is a nice block of coal I'm am sure they would tell us that we need to get the coal. Then if that was moved over and the gas well if we don't work something out prior we would either have to pay the lessor for the coal that was left in tact or work something out with Oxy.

Mr. Counts

For purpose of the record I want to clarify with the regard to E-28 that you indicated in your opening statement that if opposed that Oxy move the well bore approximately 100' to the south and that could be within another unit and you have no alternate proposed location within that unit boundary and that even if Oxy were to move the location 20' or 50' to the south that you would expect Oxy to pay any legal fees and any value of lost reserves that you suffer as a result of that?

Mr. Brendlinger

Yes.

Mr. Counts

You say with regard to E-28 that the mine plan could change and will get back to that later but you have indicated also that it will be room and pillar and within your development area, is that correct?

Mr. Brendlinger

We would be bringing up...yes, on that side.

Mr. Counts

Okay. What's the general method for removing pillars in there?

Mr. Brendlinger

They are usually left in place as you come back out but this particular panel is a shorter panel. We may just decide to go ahead and room and pillar that section in that area. With that particular method we would go ahead and pull that back out, you would have to leave a bleeder around the outer perimeter unless you have some type of evaluation point that if you established and you could probably pull it from in that area.

Mr. Counts

Would you agree that development pillars are generally left in place?

Mr. Brendlinger

They are with the longwall method, they're either squeezed out or there...

Mr. Counts So this method that you are proposing will be an exception to what's normally the practice of Buchanan County?

Mr. Brendlinger Well it is something that I guess we just need to protect ourselves with this particular panel. We may room and pillar this panel here it is a shorter panel we may just decide to go ahead and just use a room and pillar method on that. Then it is just...you can go either way with this particular set up that we do have.

Mr. Counts Mr. Brendlinger if Oxy was prepared to move this well to the south approximately 100', and as a result we are going to loose reserves from this area is Jewell Smokeless prepared to compensate Oxy for those well reserves?

Mr. Brendlinger How are you really going to be losing reserves from 100', how far does the well itself you do have that at the lower quadrangle?

Mr. Counts Just a general principal based upon the area we have recently had that if we drill any wells within this boundary we are going to loose a tremendous amount of reserves.

Mr. Brendlinger Well that's true, but we talked also that if we can work out some type of planning that if you did drill these wells and you had them plugged or we had mine through agreement then we can both work in the area. It's just a timing period we need to know exactly when a well that we can either mine through it or that it would be plugged. That way we can...

Mr. Counts Speaking of timing, what is a projected update for your longwall program?

Mr. Brendlinger It would be next year in the first part of the first quarter we will. We are right now facilitating the power and working with APCO and there in the process of constructing a line later in the fourth quarter of this year.

Mr. Counts And to what extent have the surface operations already been commenced in there, what so far have you done with the entry shaft?

Mr. Brendlinger We have not done anything with the entry shaft we basically just purchasing the property now and in the permitting stage will be next and on that particular area would be a slope going down into the Jawbone.

Mr. Counts What will be necessary for you to prepare part of the time that you can go into this longwall mining?

Mr. Brendlinger Well you would have to develop your slope and develop you development panels maybe to start longwalling the area. So that would be...

Mr. Counts How about surface facilities?

Mr. Brendlinger Well you have your surface facilities which will be completely constructed at the same time as you're going down so that bath house and the surface facilities themselves basically in the first quarter or the first six months would be the development stage probably.

Mr. Counts How long would you anticipate it will be before you have your first longwall operation actually producing coal?

Mr. Brendlinger It would probably be 1991 I would say sometime...well let's say '92.

Mr. Fulmer For the point of clarification is this your entry? Where are you coming in at?

Mr. Brendlinger We are coming in right here. That's just a projection that we would come off in here and then we really had a cut off up through here that would be access...

Mr. Fulmer You would come in here and whatever...okay. What is an estimated time between here and here?

Mr. Brendlinger That would probably depends on how many stations on how we develop it but it could be five years to get over into this side. Probably five years or so on that. The coal in this area we will probably come up in this area first and develop down this way. It could be five to ten years basically this area down through here.

Mr. Counts Mr. Brendlinger I see your longwall planning here on Bolling relatively well, but in areas like this where do you have your bleeders projected in those areas?

Mr. Brendlinger Well these are areas that will be difficult because these are shorter panels and these we room and pillar these. We need to look at some of these other tracts, there may be other possibilities that we could pick up this adverse tract here. There are other adverse tracts here that we could maybe extend these out and that's really where we could be rather lengthened out and longwalled up in this area.

Mr. Counts And what happens if your geological works indicate that you can't lengthen them and in fact may even be shorter?

Mr. Brendlinger Well that is where we would room and pillar.

Mr. Counts So there are parts of this plan which you have drawn up that could end up being room and pillar as opposed to being longwalled as shown on the plat?

Mr. Brendlinger Yes. The plan is a workable plan either way, we just feel like there is some areas that may be more economic actually to room and pillar than to use the longwall in them. That's basically how we are going to develop this mine here.

Mr. Counts

I am curious also in the same... some of these real short panels here...how expressive is it to isolate all the panels and develop your entries around there and your bleeders and...is that economical?

Mr. Brendlinger

No, well if you did room and pillar that would be economic to show...you can do these either way. Like on these we probably would just room and pillar these because they are shorter panels this one is probably about 700 or 800 feet so this would be economical to set up a panel here, but we are under lease and we are required to get all the mineable merchant coal so one way or the other we are going to have to mine this section.

Mr. Counts

Mr. Fulmer I would like to let the record show that since we are working from a map that Mr. Brendlinger has indicated that due to changes in geology and also the shortness of some of the panels that are indicated that the plan could change and it could be room and pillar operations that would be conducted as opposed to longwall mining. Is that correct Mr. Brendlinger?

Mr. Brendlinger

Yes, there is some areas that we would as we develop the property more, you basically do alot more exploration in your outer areas as you get closer to mining those areas.

Mr. Fulmer

I understand here Mr. Counts and I do accept that fact. The thing that I want to get in here is that we are getting too broad in scope we are talking about two wells E-28 and B-24 and I would like to confine our testimony to those two wells and the circumstance around that even though the whole map hinges on the...one of the questions that I would for my own purpose I understand that from where you might start from E-28, probably five years, don't know, I can understand and I can't pin you down for five years. On B-24 , where is B-24 located?

Mr. Brendlinger

The B-28 is right here.

Mr. Fulmer

Im sorry, I mean B-28. I stand corrected. What length of time are we talking about in that circumstance? Under ideal conditions, let's put it that way.

Mr. Brendlinger

Well you could probably be here and have it developed and longwall paneled let's say within five to eight years. We would probably be coming up on this side this looks like a better area for us, so within that time period.

Mr. Fulmer

If...let me ask this, being an arbitrary which requires me to be doing under the law here, in these circumstances, if say Oxy suggested yes we will plug those wells upon reaching 1000' from the borehole. Would at that time would Jewell give them an opportunity to drill an offset well within most cases were talking here about 200' into a block that may be there. I realize

The well is sitting right in the middle of a panel but that is probably...what does your panels run, 250?

Mr. Brendlinger A little longer than that...set up to 700' in width.

Mr. Fulmer You don't plan on running a 700' longwall in this project? I hope not.

Mr. Brendlinger No, we are in that area.

Mr. Fulmer Well the 700' so you are...it's just dead center you are talking 300' on each side. Right? Would this be I'm just throwing these out. I'm not trying to do anything. Would Jewell be willing to give an offset location?

Mr. Brendlinger So what you're saying is if the hole was in the panel itself and we was within a 1000' then Oxy would be more or less responsible to drill another hole into let's say a block that we had development..

Mr. Fulmer No, what I'm talking about here is the...do you want to mine the coal within the panel itself?

Mr. Brendlinger Yes.

Mr. Fulmer And Oxy is willing to plug that well and that you would find an alternate location which would be in the block next to it.

Mr. Brendlinger So what you are saying is that you would plug it and drill an alternate well at there expense.

Mr. Fulmer I would assume it would be at their expense.

Mr. Brendlinger That would be satisfactory. At that time if we were within a thousand feet I think that's where we would have to work out a distance we would have to be insured that it was plugged and we could mine through it at the time we would need to mine through the well.

Mr. Fulmer Okay, let's go the other route now. If would Jewell be willing to bear some expenses on the alternate location because of the recovering the coal?

Mr. Brendlinger No, I guess the company feels that if we did want to mine through then really they don't have to drill another location. What they can do is seal below the coal seam and above the coal seam and just insure the gases is plugged off and actually they can come up behind us. And we could back through that same hole and have to recase that section but that would be more or less the route that we would look at there.

Mr. Fulmer I'm sure that is a preferred route, the problem is that in my experiences is I don't believe that you will be able to do it. Basically because what happens is that the roof falls and to get into the bottom hole from the top hole

with 200' of drop is almost impossible with no...

Mr. Brendlinger

...how could companies have done that with the gas companies and they have been successful?

Mr. Fulmer

I will take from my experience we have drilled holes through mined out areas, but that is because we are starting from a point and going to a point but what you are saying is that you are going from a point up here and you're going to a point down here and you got a void in between and you've also got 200' of falling rock it's troublesome to do...

Mr. Brendlinger

Well it's like you said it is difficult to come back down to that hole...

Mr. Fulmer

So the most reasonable aspect would be the alternate one...I just don't...I'm just trying to be the arbitrary here I'm just trying to get some agreement here. I know that the opinion in most cases is that these are the things that need to be worked out and both industries are not taking any benefit from it. I'm sorry Mr. Counts I just had to throw that out sir...

Mr. Counts

That's alright sir, I don't mind. Obviously on the alternate well location under Mr. Brendlinger's scenario we have paid for two wellbores to extract the methane that should be extracted with that would totally destroy the economics. As I also understand it that Mr. Brendlinger's scenario not only is he going to longwall that entire area and do so very quickly but alot he is going to practice retreat mining and mine out the development as well as he comes out of the project. Based upon that scenario even if I located a wellbore within a pillar from what I understand Mr. Brendlinger is saying is that he is not willing to give me an alternate location.

Mr. Brendlinger

On the longwall panels themselves like in this area the what we have developed up on the side we won't be able to recover that in that area. The only way you can recover those is if you do room and pillar that area and you come back and then you can...

Mr. Fulmer

What's the difference in that and E-28? E-28 is within that development.

Mr. Brendlinger

This is an area that would be feasible to put a longwall here but I on E-28 we do have this line here it's our cut-off line more or less for what we can mine and we just feel that in this area you can room and pillar. Like if this was a longwall panel here you can go ahead and develop this over here and room and pillar this area. But it's is just something that once you develop this you'll know more and you can come back and...

Mr. Fulmer

On E-28 you said more than likely they will be room and pillaring in that section, when you

pull pillars I'm not worried about it, in the case of B-28 what would that scenario more or likely be in...

Mr. Brendlinger

This is the longwall right in here so that would they could possibly redrill over into the development entries and that would be feasible here.

Mr. Fulmer

Thank you.

Mr. Brendlinger

Basically, once you mine and if your paneled they can come right behind and redrill another hole within five or ten feet and they can use the same location basically and just drill through there because there is nothing there. That would be the best that they can do then if they didn't have some type of mine through plan they could just redrill and off-set five to ten feet and redrill in that same area and more or less just use the same facilities they had set up before their collection of gas.

Mr. Counts

Mr. Fulmer I don't think this is going to help us any but at least for the record, I would like for it to show that E-28 is located within a development area. And Mr. Brendlinger on his map shows B-28 is probably within 20 feet of being within that development entry. Subject to topographic considerations etc. Oxy would be willing to locate this wellbore so that it was consistent with Mr. Brendlinger's plan. As I understand, Mr. Brendlinger even if we do that as the case of E-28 so he still does not withdraw his objection. Also, Mr. Fulmer I apologize also to Mr. Brendlinger having to go into so much depth with regards to mine planning but it is what we are trying to work with and although this one is not...but it has to be filed with DMLR or DM in order for us to be required to work but none of the less is for your cooperation that's what we are attempting to do. And it appears that this whole operation is the basis of Mr. Brendlinger's objection. You said that you were going to start at the first quarter of next year, can you tell me if the longwall mine has been approved at this time by Senior Management?

Mr. Brendlinger

Yes we are in the process we have had people go to Germany, they have looked at different longwalls in Germany and...

Mr. Counts

I see you have researched it but has it been approved as of this time by Senior Management?

Mr. Brendlinger

We have. What we are looking at at this time the budget and all that as far as the mine development and all that as far as the longwall the final approval has not been given at this time. We are working on our budgets for next year right now.

Mr. Fulmer

This is one map?

Mr. Brendlinger

We do have another one on the Red Ash seam.

Mr. Fulmer

Is there any difference?

Mr. Brendlinger

Well there is some, but one other point, all these areas that are highlighted in yellow I know you don't want to talk about these past holes, but if you take these two that are here and all these other ones you can see that our whole reserve basis in here we are getting several holes and I think anybody that is in development property and spend that kind of money that it takes to put a longwall system in your reserves, the value of these reserves are going to diminished quite a bit by the installation of all these holes through here. I think Island Creek themselves if they had this property here they would not want another gas company drilling all these holes. Is that correct?

Mr. Counts

Well Mr. Brendlinger I don't speak for Island Creek.

Mr. Brendlinger

Well if you had just held that property....

Mr. Counts

Let me suggest to you that with regard to accommodation of interest that if the gas operator conducts operations in there even based upon your longwall plan or without your longwall plan, the gas company is not or Oxy in this case is not going to be able to develop those without considerations to the coals consideration of surface considerations, etc., as a result of those considerations there will be reserves lost but will not be the total reserves that could be obtained. And in terms of coal and gas working together it is going to acquire accommodation of interest and that means that neither is going to be able to enjoy it's estate without regard to the other estate.

Mr. Brendlinger

Well any time you are mining there is no way that you know totally that you have a continuous reserve base. There's basically no way of knowing that and your projections do change that's really the important part to us is that these are preliminary projections for this reserve base here but...

Mr. Counts

I understand that Mr. Brendlinger, but if I could just get us back on track we are conducting cross right now and if I could continue with my questions. What is the methane content of the Jawbone in this area?

Mr. Brendlinger

It is very low, we have never experienced any problem with the methane in other mines. We have mines that would basically be at the same depth as what this is...

Mr. Counts

So you are able to conduct operations without having to degas?

Mr. Brendlinger

No, we have never had to use any type of vertical ventilation holes or no method to actually help other than the fans we have for bringing the gas out.

Mr. Counts So you do degas your mines through these fans?

Mr. Brendlinger Well through the returns, yes.

Mr. Counts If I'm not mistaken then all your other operations have been through a room and pillar stand point will that be impacted if you end up longwalling this property? Will you end up with more methane as a result of that?

Mr. Brendlinger Well this is actually a newer system of mining for us at that time we may need to look at other openings we may have to put some small ventilation shafts down and we will evaluate that more as you progress in the mine. There has been shortwall type of mining done by Jewell Smokeless in the past at the Youngbranch 15 and at the Red Ash. There has been some shortwall mining done by Pittston at Jewell Ridge No. 12, so there has been mining done at Jewell Ridge No. 12 that was in the Jawbone Seam. The seams in the past have been set up with longwalls and that actually probably been ten years ago, and the technology has changed. And we are...this is the property here and the technology would be changing and there is longwall equipment that can mine thinner seams like this and really...

Mr. Counts I'll get to that in just one second if I could. With regard to the methane that will be required to be degassed, do you have plans for capturing and marketing that methane?

Mr. Brendlinger No, we would not.

Mr. Counts So is that just going to be vented into the atmosphere?

Mr. Brendlinger It would probably be we may frac or we may just have a ventilation shafts...

Mr. Counts But nonetheless it will be end up being ventilated into the atmosphere, correct?

Mr. Brendlinger That would be correct.

Mr. Counts Thank you. What is you estimate with regard to the Jawbone Seam thicknesses in and around E-28 and B-28?

Mr. Brendlinger Well the map it says 36" around this E-28 up here at B-28 it is 43" of B-28. We have a J240 corehole there almost right beside the proposed B-28 location.

Mr. Counts Has that been submitted to the Inspector?

Mr. Brendlinger Yes, he has this basically the same map or should have.

Mr. Counts Is the Jawbone that these thickness currently being longwall mined in Buchanan County?

Mr. Brendlinger In the Jawbone Seam I am not aware at this time of any of the longwall operations in the Jawbone

Seam, there may be possibly...I don't think in Buchanan County.

Mr. Counts

Thank you sir. As Jewell Ridge currently have a longwall operation being conducted in Buchanan County?

Mr. Brendlinger

Pittston Jewell Ridge?

Mr. Counts

No, just Jewell Ridge.

Mr. Brendlinger

We are Jewell Smokeless.

Mr. Counts

Excuse me, Jewell Smokeless. I would like to correct the record.

Mr. Brendlinger

We do not have longwall type system in Buchanan County.

Mr. Counts

Has Jewell Smokeless ever had one in Buchanan County?

Mr. Brendlinger

We have had shortwall type system in our Youngsprings 15 Mine, it is our Red Ash Seam.

Mr. Counts

And when was that commenced?

Mr. Brendlinger

Probably 10 years ago I would say.

Mr. Counts

You said longwall operations had not been conducted, how long did that mine operate?

Mr. Brendlinger

It is still in operation, it is still one of our active mines. It's probably been in now for 15 years I would say and we developed a few panels by the shortwall method over there.

Mr. Counts

How many panels would you estimate that to have developed?

Mr. Brendlinger

The 15 mine?

Mr. Counts

Yes sir.

Mr. Brendlinger

Let's see there has been three or four, something like like...

Mr. Counts

So three or four panels in approximately 15 years?

Mr. Brendlinger

That was in a short time period they had it and they transferred the shortwall system out.

Mr. Counts

Yes sir I understand. Bare with me for just a moment please. Mr. Fulmer I don't have any more questions.

Mr. Fulmer

Thank you Mr. Counts.

Mr. Fain

Mr. Fulmer may I ask a question?

Mr. Fulmer

Just wait till we get through here and then you can ask questions. You can sit down if you want to.

Mr. Brendlinger

I would like to reiterate the importance of this block to the company. The purpose of this hearing is for B-28 and E-28 all these other ones in yellow is holes that had been filed with the DMME DGO and our hole reserve block is basically by the time we're done we are going to have holes spaced every couple thousand feet. The geologic conditions as we enter the mine...these projections are just preliminary projections and they may or may not change but as we have seen in most mining companies have in the area projections do change with the rules and thoughts and that's what makes it difficult for a mining company to just allow to have holes put down every couple thousand feet all through the reserve. It does make it very uneconomical to try to enter a mine like that because when you do have a hole that is put down and if you can not change your projections and you have a hole already installed then that's going to cost us X amount of dollars and if all these holes were put down it would look uneconomic for our company to actually purchase the longwall equipment and to longwall that area. Even room and pillar would be very difficult economically for the amount of holes. If there were just one or two holes it would be different but with the holes we have already had and probably the ones we will be getting in the future it is going to be more and more difficult and the whole reserve here is going to be actually ruined.

Mr. Fulmer

If the wells were drilled.

Mr. Brendlinger

If the wells are drilled.

Mr. Fulmer

I have a question about the Red Ash that I want to clear up since there are two mines put into the exhibit. One is there any substantial difference between this one and the Red Ash in regards to the two wells that we are considering today?

Mr. Brendlinger

Well on the Red Ash on the E-28 well it doesn't affect us in the Red Ash. Basically it is just the B-28.

Mr. Fulmer

And with what respects does it affect the Red Ash in B-28?

Mr. Brendlinger

Well it does affect our reserve if we set it up to superimpose the blocks and if we did come up here it would be a well in that area which would be difficult for us to do the project.

Mr. Fulmer

The Red Ash I haven't seen the maps but there again is a projected mine? It is not active?

Mr. Brendlinger

Yes. No, it is not active.

Mr. Fulmer

Okay, then in that regards we are looking at the same situation of projections and so forth?

Mr. Brendlinger

Yes.

Mr. Fulmer

As far as I'm concerned you can sit down. Rick do you want to present your testimony, go right ahead.

Mr. Counts

Yes sir. Mr. Barnes are you ready? Mr. Barnes this hearing convened to hear coal owners objections to CBM I E-28 and B-28 would you state your full name and your job title and employer?

Mr. Barnes

Robert A. Barnes I am a drill specialist for Oxy USA.

Mr. Counts

And Mr. Barnes had you previously testified before the Inspector and advised the Inspector as to your job responsibilities and your qualifications?

Mr. Fulmer

I will accept that on previous record.

Mr. Counts

Mr. Barnes has Oxy USA proposed to drill wells known as CBM wells B-28 and E-28 in the Garden district of Buchanan County, Virginia?

Mr. Barnes

Yes sir.

Mr. Counts

Then in taking not consideration the location for CBM Well B-28 and E-28 have you considered the recommendation of your geologist, topography, subsidence access roads, and general conservation measures?

Mr. Barnes

Yes sir.

Mr. Counts

Mr. Barnes is it your professional opinion based upon these factors of the location shown on the well work permit submitted by Oxy can be done safely with respect to persons engaging in coal mining at or near the sight?

Mr. Barnes

Yes sir.

Mr. Counts

Mr. Barnes is the proposed drilling location of this well above or in close proximity to any mine opening or entry travel way, air way, drainage way, passage way or to any proposed extension thereof at any operator that were abandoned or operating coal mine or any mine plan that has been submitted with DMLR of Division of Mines?

Mr. Barnes

There are no existing mine works in the area.

Mr. Counts

I see. Is it your professional opinion that the opposed well could be drilled safely and stimulated safely and taking into considerations the dangers from creep squeezes or other disturbances due to the extraction of coal?

Mr. Barnes

Yes sir.

Mr. Counts

To further your professional opinion that CBM Wells B-28 and E-28 can easily be drilled through existing plan pillars of coal or in close proximity to existing wells or such pillar

of coal taking into considerations surface topography?

Mr. Barnes

Yes sir.

Mr. Counts

In selecting the proposed location for this well have you attempted to determine whether any mine plans have been filed for the development of coal interest?

Mr. Barnes

There are research in preparing well packets there are no mine works with record.

Mr. Counts

Mr. Barnes would it be feasible to move either of these locations considering spacing requirements, topography, safety subsidence etc. to any mined out area or below the coal line?

Mr. Barnes

There is no mine works to comply with.

Mr. Counts

Do you with the Section 29 Tax Credit is time of the essence with regard to the drilling to these coalbed methane well B-28 and E-28?

Mr. Barnes

Yes sir.

Mr. Counts

Is it your professional opinion that based upon these facts that the location shown on the well work permit submitted by Oxy, USA are necessary to promote the safe and efficient exploration for the development of production utilization conservation of the coalbed methane resources underlined in these units?

Mr. Barnes

Yes sir.

Mr. Counts

I have no further questions Mr. Fulmer.

Mr. Fulmer

Do you have a cross examination?

Mr. Brendlinger

Well in an area such as this there has not been any other mining in the Jawbone or Red Ash Seam since...it is true that a company but since there has not been any other mining that's probably a valuable area to a mining company in that you do have a huge area that there is very few areas actually in the county of Buchanan that has a larger reserve basis like that and most of the areas in the Red Ash or some of the upper seams they have so many other punch mines around that it makes it almost impossible to access reserves and on this particular reserve that's basically what makes it appear that much more economic to us to the reserve.

Mr. Fulmer

Mr. Barnes is being asked to testify as to knowledge which he is not testified here today and also which is outside the pervue of this agency with regards to the economic reserve basis available in the general area.

Mr. Fulmer

I understand Mr. Counts

Mr. Counts

Therefore I would object this.

Mr. Fulmer

Bob how about rephasing your question please.

Mr. Brendlinger Well is it true that I guess as a drilling specialist it has in mining then I'll ask this to Mr. Counts then. Can he answer a question such that deals with the mining?

Mr. Counts Not Mr. Barnes, I will present testimony by Mr. Lewellen if you would like to ask questions specifically with regard to B-28 and E-28 that with what we discussed with regard to the longwall plan certainly Mr. Lewellen will answer the question.

Mr. Brendlinger Okay I'll wait till that time and ask it.

Mr. Fulmer Are you through with testimony?

Mr. Counts No sir I would like to bring Mr. Lewellen. Mr. Lewellen would you state your name for the record please.

Mr. Lewellen Dennis Lewellen.

Mr. Counts And your employment?

Mr. Lewellen Division Geologist for Island Creek.

Mr. Counts Have you previously testified before the Inspector?

Mr. Lewellen Yes sir.

Mr. Counts Are you familiar with Oxy's application for well work permit CBM I B-28 and E-28?

Mr. Lewellen Yes sir.

Mr. Counts Has Island Creek been contacted by Oxy with respect to determining mutual acceptable locations for the wells?

Mr. Lewellen Yes sir.

Mr. Counts And was Island Creek able to reach an agreement with Oxy with an acceptable location for this well?

Mr. Lewellen Yes sir.

Mr. Counts At such time as Island Creek conducts mining within this area will decancellation of these seams be necessary in order to affect the safe and efficient exploration of Island Creek coal reserve?

Mr. Lewellen Yes sir these will be beneficial to Island Creek.

Mr. Counts What were the effect to build Island Creeks mining operations if this area could not be degassed?

Mr. Lewellen The effects will be we'll have to spend more money to degas the area and mining operations and of course adverse safety as well.

Mr. Counts Has Island Creek filed a mine plan under the area with DMLR?

Mr. Lewellen Yes, this is part of the BP-4 mine.

Mr. Counts Is these well locations consistent with that mine plan?

Mr. Lewellen Yes sir.

Mr. Counts Was that mine plan considered with regard to coming to an agreement with Oxy with regard to these locations?

Mr. Lewellen Yes sir.

Mr. Counts Is it your professional opinion that based upon location of this well that this location is based upon topography subsidence, access roads, and general conservation measures?

Mr. Lewellen Yes sir.

Mr. Counts Is it further your professional opinion the location shown on the well work permit can be done safely with regard to persons engaged in coal mining at or near the well sight?

Mr. Lewellen Yes sir.

Mr. Counts Mr. Lewellen your opinion with the drilling of CBM I B-28 and E-28 promote the safe and efficient exploration for the development of production and utilization and conservation of the coal and coalbed methane resources underlying this unit?

Mr. Lewellen Yes sir.

Mr. Counts I have no further questions Mr. Lewellen.

Mr. Brendlinger Mr. Lewellen what seam would the BP-4 mine be mining in?

Mr. Lewellen Pochohantas No. 3 Seam.

Mr. Brendlinger What is the thickness that you can mine in those particular areas?

Mr. Lewellen At this time we try to keep it above 48".

Mr. Brendlinger It appears like in your logs that was submitted with both E-28 and B-28 the seam showed up and 1.92 feet on E-28 and for B-28 I think it was 2.58 feet...

Mr. Lewellen That's not correct but we don't mine in that area because of the economic conditions right now.

Mr. Brendlinger But you had said that this was going to facilitate your mining?

Mr. Lewellen Yes, just like you we have future plans too and that is one of the larger areas and reserves

that we have left and down the road we will be going back to look at these lower seam areas.

Mr. Brendlinger

Well if you were let's say another company had come ...

Mr. Counts

I don't want to object Mr. Brendlinger's question but I would prefer that he rephrase it from a standpoint of Island Creek he can't testify as to being Jewell Smokeless.

Mr. Brendlinger

Well I'll just put it this way as being represented by Island Creek if a gas company had wanted to put down these two holes and also the other holes we had talked about in the hearing on July 12 would Island Creek protest these holes and could they economically mine an area such as that with those holes being drilled in places?

Mr. Lewellen

We would ask them to comply with the mine plan but we understand the problems with longwall mining and of course you can't have a hole in the middle of a panel, but we are working with companies in dealing with situations you are talking about and we are trying to cooperate with them.

Mr. Brendlinger

Let's say that the several holes that are already in the reserve basis for our particular mine would Island Creek Corp. look at putting a new insulation in such an area such as those if they were drilled?

Mr. Lewellen

I can't answer that.

Mr. Brendlinger

No further questions.

Mr. Fain

Mr. Fulmer I do have questions for Mr. Barnes and Mr. Lewellen now you said...

Mr. Fulmer

Wait a minute...let me...now is there any more evidence either one of you want to...

Mr. Counts

No further evidence just closing statement.

Mr. Fulmer

Okay. You may proceed to ask questions.

Mr. Fain

Thank you very much.

Mr. Fulmer

As long as it is relevant to coal objection.

Mr. Counts

And Mr. Fulmer, also I would like to enter an objection for the record from the standpoint that the fact Cabot has yet to demonstrate its standing, and also with reserve to have the right to object that may not be within the jurisdiction.

Mr. Fulmer

Is the questions that you want to ask pertaining to surrounding of the coal objections or do they have...

Mr. Fain

They have impact upon my objections so I am happy to wait until my turn comes up as long as

I have access to Mr. Barnes and Mr. Lewellen and also Mr. Brendlinger.

Mr. Fulmer

You will have access to them.

Mr. Fain

Then I will wait until you conclude your coal objections.

Mr. Fulmer

What I wanted to do is make sure that the coal operator has full benefit and then Oxy has full benefit in their coal objection until we go on to another type of objection which may have some relevance in your case. The one thing that I want to put on record here at this time to clarify the position to Oxy and to Cabot and for that matter Jewell Smokeless is that the determination of the division to consultation with council that Cabot Oil and Gas in this particular situation required to be notified under the definition of a gas owner. And let me again clarify where that has come from. That is under Section 45.1-316.30 A4 "all gas, oil and royalty owners within the distance specified in 45.1 361.17 that the distance of the nearest well completed in the same is less within the boundaries of the drilling units stand to the provision of the chapter." On Monday the Division in making it's determination contacted Oxy USA to determine whether that Cabot did have gas rights within 1250' of the well. I mean 1320' of the well. I'm sorry. That determination was made and therefore Cabot was notified. As a matter of standing there is some question as to whether they have standing or not based upon the position they wished to take as either a coal operator or a gas royalty owner. I also would like to enter into the record at this time in regards to the noticing and to rectify the record is that on June 20, 1990 McGuire, Woods, & Battle, Hugh Fain representing Cabot Oil and Gas submitted objections to the drilling of B-28 and E-28 and to be fair to council on both situations whether the E-28 and B-28 can be considered in this form. I wish to proceed under that and I realize that most council may object to the fact the we procede under this situation. One would want to and one would not want to. I plan on accommodating both of those parties in the situation. I want to read that brief out of the objections filed by McGuire, Woods and Battle on behalf of Cabot basically stating the objections of which the letter..." Cabot objects to those permits applications on the grounds that purposed wells will impinge on Cabot's gas interest and violates Cabot's property of statutory rights. Cabot owns the conventional gas rights underlying locations proposed for CBM I E-28 and CBM I B-28. Oxy has taken no measures to insure that Cabot will not be precluded from permitting and drilling a conventional gas well within 2500' of the proposed CBM I E-28 and CBM I B-28 according to Oxy. Proposed well work permit for CBM I E-28 and CBM I B-28 constitutes an unreasonable and arbitrary attempt by Oxy to explore for, market and produce coalbed methane

gas". I reserve the right at this time period to stipulate some questions. I wanted to further Cabot now goes on record and explains its position and its record and while it has been filed.

Mr. Fain

Thank you Mr. Fulmer. First I would like to thank the Inspector and his office for giving us notice of this proceeding here today, but I would like to as you indicated state Cabot Oil and Gas' projection to this proceeding going forward on the grounds that we were not given 10 days written notice as required under 45.1-361.35 and as much as the Division has determined that Cabot is a party that is entitled to notice of the permit application under 45.1-361.35 Cabot should have been given ten days written notice before this proceeding occurred and we did not. Cabot would request that if there is an adverse ruling to Cabot with respect to this hearing that the hearing be reconvened giving Cabot adequate notice to fully prepare for its presentation before the Inspector. Cabot would like to state for the Inspector the reason why it has standing also the State objections here before the Inspector and that right is given under 45.1-361.35 upon two basis. First Section A of 361.35 states that objections may be filed within 15 days by any party who received notice under 361.30. The Division has already determined that Cabot is entitled to receive notice under 361.30 therefore we are entitled to state our objections, and nowhere else in 361.35 does it exclude the right of the owner of a conventional gas lease rights as Cabot is to have their objections heard at the hearing. It is obvious and clear that the drafters would not give someone in Cabot's position the right to have notice and the right to state objections but then deny the right to have those objections heard at the hearing. So on that ground Cabot is entitled to have its objections heard today although subject to our objection that we weren't given proper notice. There is a second basis for Cabot's right to object and have those objections heard today and that falls under 361.35 subsection C. Cabot fits into that category as a royalty owner as royalty owner has been defined under the new Virginia Oil and Gas Act. The Inspector can look with me at page 6 of the new Act, the definition of royalty owner as the Inspector knows it has been changed from the definition in the old Act. In the old Act the definition of royalty owner specifically excluded the gas operator, the new definition of royalty owner does not. It says that royalty owner means any owner of gas or oil in place or owner of gas or oil rights and Cabot admits it is the owner of lease rights for gas and therefore, falls within the definition of royalty owner in the new Act. Therefore Cabot also has the grounds for having it's objections heard as a royalty owner under subsection C under 45.361.35.

Mr. Fulmer

...Would you complete the definition of royalty owner?

Mr. Fain

For the record I will read the whole thing. Royalty owner means any owner of gas or oil in place or owner of gas or oil rights who is eligible to receive payment based on the production of gas or oil. The Inspector may be concerned that the statement who is eligible to receive payment based on the production of gas or oil would tend to exclude someone in Cabot's position, Cabot takes the position that that is not the case. We has the lessee of gas rights stand to receive payment from the production from our gas within the lease, therefore, our second grounds for having our objections heard fall under subsection C as a royalty owner. Is there any additional argument that the Inspector like to hear about standing or would you prefer us to go forward with our evidence presenting our objections?

Mr. Fulmer

The standing part of it is a question that is continually going to be asked. In certain ways what I am trying to do is to get on record is Cabot's position and where they think they are in matter of these two wells particularly under the new Act.

Mr. Fain

For the record...

Mr. Fulmer

Based upon the decision rendered that would come out whether you have standing or not we're not going to make that determination at this point...I do recognize the fact that you have the right to appear and submit your objection.

Mr. Fain

It is important for basis of this standing that I make one clarification with respect to the letter I filed on July 20, 1990. And that is the following, we will present evidence today to also clarify this. Cabot is the lessee of the conventional gas rights for the land directly underneath the land for proposed location E-28 with respect to well location B-28 Cabot has the right and will have the right for the conventional gas lease for the area directly underneath B-28. That eventuality has not occurred yet because the paper work has not been filed. If you look at the deed record you do not see Cabot as the owner of the conventional gas lease rights but they will have them within 30 to 60 days I am lead to believe. The current owner of that conventional gas lease has not paid their shut-in royalties and under their lease they have lost their lease and under Cabot's lease they are entitled to obtain those lease rights. So Cabot will be the owner of those conventional gas lease rights shortly, it's just that the paper work has not yet been completed. So it is important...

Mr. Fulmer

For the matter of record who currently owns those leases?

Mr. Fain

I understand that it is Edisto.

Mr. Counts Mr. Fulmer if I could...

Mr. Fulmer Let him finish.

Mr. Fain That's all I have to say about the correction to my July 20 letter.

Mr. Fulmer Anything further?

Mr. Fain Yes sir I have some evidence to present today if it is appropriate now.

Mr. Counts Mr. Fulmer if I could I would like to enter my objections at this time with regard to standing just to know that I made note of it for the record.

Mr. Fulmer Thank you Mr. Counts, I appreciate that.

Mr. Counts Specifically though since Mr. Fain raised the issue of B-28 361.30 certainly contemplates notification of those who are owners who are of record in the event that Cabot has indicated that Mr. Fain is not an owner whether it is a mineral owner, coal owner, surface owner, royalty owner or whatever, no notification would have been required and would request a continuing objection with regard Well B-28 on that basis. With regard to the standing issue Cabot has indicated that ...is objecting on the basis of a royalty owner. Section 45.1-361.35 subsection C specifically does provide for objections by royalty owners however I would also refer you to the definition of a royalty owner meaning the owner of oil or gas in place or the owner of oil and gas or oil right who is eligible to receive payment based upon the production of gas or oil. The royalty owner in traditional since means the owner of of an oil and gas interest clear of the cost of production. A royalty owner as the owner of oil and gas or oil rights someone who might most normally be classified as an over riding royalty owner, etc., would be an owner who is not the owner of oil and gas in place but is entitled to receive payments based upon production and would be classified as a royalty owner. It is Oxy's position that Cabot does not qualify as a royalty owner under 361.35 or 361.30 and therefore would know the continuing objection to the record on that basis. Furthermore, the clear intent of objections being the parties being forwarded the opportunity to object when read the entire context of 361.35 from the oil and gas prospective would be owners from the interest in the same pool. Section 45.1-361.30 subparagraph 4 all gas or oil royalty owners within one-half of the distance specified under 45.1-361.17 obviously statewide spacing for that type of well or within one-half the distance to the nearest well completed in the same pool which angle is less or within the boundaries of the drilling unit established pursuant to the provisions of this chapter. This chapter is chapter 3, it says with regard to the regulation of oil and gas and oil development

and production in 361.27 duties responsibilities and the authority are. It is our contention that since Cabot is not an owner within the same pool we are within this hearing is within is under the spacing application issued by the Virginia Oil and Gas Conservation Board or to the coalbed gas field specified those pools to be spaced or the coalbed methane formation exclusively it does not apply conventional gas. As a result we feel like these results should be from any gas owner or royalty owner should be within that pools ought to be where the wells are to be located. I have no further statements to make at this time. Thank you Mr. Fain.

Mr. Fain

Surely Mr. Counts.

Mr. Fulmer

Proceed Mr. Fain.

Mr. Fain

I would like to make a brief reply to Mr. Counts' statement. He has overlooked the primary basis to our objection and that is as a gas lessee. Mr. Counts assumes that the only basis of our objection is under 361.35 C as a royalty owner. Primary basis of our objection is that under subsection A as someone who is entitled to notice as the Division has determined Cabot is, is then given the right to object and it only makes sense to have those objections heard. It says nowhere within Section 361.35 that we are excluded from having that right as a gas lessee. The second point I would like to make is I would like to clarify and make it more clear what the standing is under subsection C. As a royalty owner Cabot has a conventional gas lessee, Cabot has an obligation to protect its lessors and royalty interest. Cabot also is in the position to farm out this interest and therefore become a royalty owner under Mr. Counts' reading of the definition under the Act. I can't tell the Inspector whether those farm outs have occurred, I don't believe they have but I can't say that they haven't I don't know whether Cabot has made that determination or they haven't advised me of that. That is something that I can check on if the Inspector so desires. There is certainly a possibility that something that could occur. Finally with respect to Mr. Counts' suggestion that only those resource owners in the same pool are given the same standing to object I think you are entitled to notice of permit application. I believe the Division has already settled that issue in Cabot's favor. Cabot believes that when the Inspector reads that the Act in its entirety and reaches the section 35 and 30 it will see that there is no question that all resource owners in an affected area are entitled to be given notice and it only stands to reason that they should be because their rights may be affected. For example an oil lessee's rights may be affected by the fracing that occurs in a conventional gas lessee's program. Mr. Counts' client may be affected by a conventional gas well or coal mining operations or by operations of an oil lessee, so

that only stands to reason that the drafters of the Act intended to give notice to all people that are affected not just to those people in the same pool. With those clarification I would like to proceed and present some evidence.

Mr. Counts

I would only request that as Cabot has indicated their objecting as a royalty owner I would certainly agree with Mr. Fain that Cabot is in that position other than having farmed out acreage or having that of an over riding royalty interest that may well come within statutory definition. However, I would like to state that no proof of that has shown up until this point in time, Mr. Fain indicates that there could be an impact upon a conventional gas owners estate as a result of operations for coalbed methane. There has been no evidence presented of that and Mr. Fain will be presenting that evidence today and we would certainly be delighted to take a look at that. Since we have determined however that Mr. Fain is preceding on the basis his objections is under the basis of that as a royalty owner I would request that Mr. Fain indicate what the exact objection is as opposed to the preceding with the evidence if we could know what the nature of the objection is prior to going into the evidence Mr. Fulmer.

Mr. Fain

I will restate again that we are preceding with our objections on the basis of a gas lessee. I believe we have the right to state those objections under Section 361.35...

Mr. Counts

Mr. Fulmer I think that the state has determined that Cabot is at least entitled to notice at this time as a royalty owner but not as a oil and gas lessee. Mr. Fain indicates that nowhere is oil and gas lessee specifically included 361.35 I certainly see under no circumstance and oil and gas lessee is provided that opportunity. I since the State has determined that Cabot for the purposes of this hearing was to file notification of the royalty owner therefore would object upon that basis I would object to any objections on the basis any other part except that of a royalty owner.

Mr. Fain

Mr. Counts...

Mr. Fulmer

To get the clarification straight Mr. Fain... Cabot was determined to be required to have notification under that of a gas owner.

Mr. Fain

Not as a royalty owner is that correct?

Mr. Fulmer

That is correct.

Mr. Fain

It is upon that basis that we are submitting our objection today. As an alternative basis we also believe that we fit within the confines of a royalty owner. That is just an alternative position...as a gas lessee.

Mr. Fulmer

As far as the State goes the determination of whether or not Cabot should receive notice of

the hearings here is that of a gas owner as defined in the statute means that any person who owns leases or has interest or has a right to explore for, drill for, or operate a gas or oil well as a principal or as a lessee. In the event that the gas is owned separately from the oil the ...shall gas owner or oil owner. Under that basis the State determines that Cabot deserves to have notice of hearing.

Mr. Counts

I understand that I just want to continue my objection with regard to the fact that my perception that it applies to the gas owner within the same pool.

Mr. Fulmer

I do take that into consideration. Proceed.

Mr. Fain

I would like to call Mr. Bill Weeks with Cabot Oil and Gas.

Mr. Counts

Mr. Fulmer I still would like to state the nature of the objection. This is for B-28 and E-28 we have already addressed with regard to B-28 the fact that Cabot has not now presently owned interest underlying B-28. If we are going to proceed on the basis of E-28 I would at least like to know what the objection is prior to entering the testimony.

Mr. Fulmer

As I understand it Mr. Counts and it is a perfectly good question and I would have to go back to the June 20 letter in which the objections were made. If argument is to the propriety of that objection I most certainly would like to clear that out at this point and time. My understanding as far as the requirement and notification and right to object was that of an oil and gas lessee. Cabot has continued with royalty owner alot as an alternative. The other thing about the objections which is I would like to clarify up is the beginning of the third statement in the objection in the letter addressed July 20. In quotes "Oxy has taken no measures to insure that Cabot will not be precluded from permitting and drilling of conventional gas wells within 500 feet of the proposed CBM E-28 and B-28." As far as Cabot's prospective is that part of the objectionable process?

Mr. Fain

That is part of Cabot's objection.

Mr. Fulmer

On what grounds does Cabot base that objection on?

Mr. Fain

Cabot bases that objection as a gas lessee on the grounds that no provisions are made in the operations plan that Oxy has submitted under its permit application for any arrangements that will protect Cabot. No discussions have been engaged in or initiated by Oxy or as far as we know with Island Creek in an effort to try and locate for example sights that would be suitable for twin wells one for Oxy's coalbed methane well and one for Cabot's conventional gas well. These are the types of measures and they may be

more. These are the types of measures that Cabot feels should have been undertaken by Oxy in it's permitting process. It should have stated some means in its operations plans for protecting its conventional gas rights or the lessee's directly underneath their proposed well location. It should have contacted Cabot and or Island Creek to try and work together to try and find suitable joint locations where sights could be twinned or work out some other arrangement for alternate location or saving space within the field for the development of Oxy's rights and also for the development of Cabot's rights but these measures were not taken. That is the basis of our objection.

Mr. Fulmer

If that is the situation and this is made then you are deriving from this, correct me if I am wrong but this is the way I am reading it is because the objection under three paragraph three then that is the basis for the first two lines in the third paragraph?

Mr. Fain

That is correct. Because those failures are statutory rights are being abridged.

Mr. Fulmer

Is it being abridged because of the 2500' ?

Mr. Fain

That is the primary basis of our objection today.

Mr. Counts

Mr. Fulmer then I would object under paragraph F of 361.35 specifically states that the director shall have no jurisdiction to hear objection with respect to any matter subject to the jurisdiction of the board to set out Article 2 of this chapter. Such objection shall be referred to the Board in a manner described by the director. Article 2 objection are specifically conservation issues. I think that what Mr. Fain is discussing are complex issues the appropriate way there would be by way of the Circuit Court in the event that Mr. Fain is correct and these are conservation issues then the appropriate form would either from would either be in the form of a conventional application or a modification of the Oakwood Coalbed gas field, but certainly these objections violate these rights which are conservational rights are not within the jurisdiction of the Inspector's office.

Mr. Fain

Mr. Fulmer we obviously disagree and we think that it is time to clear up the adverse effects that may result to any resource owner it is during the permitting process. We believe the Inspector is invested with the responsibility to hear the objection of the resource owner potentially adversely affected by a current application, and we believe that the Inspector take those matters up during permitting process.

Mr. Fulmer

Mr. Fain I am just trying to get some clarification. On the 2500', what did the 2500' come from?

Mr. Fain

It is Section 361.12 of the new Act and 319 in the old Act.

Mr. Fulmer

361.12? This involves objection from the Coal owner?

Mr. Fain

That is correct. Cabot has concern that because of the coal owners right to object to any new well that is within 2500' of an existing permit of permitted well Cabot would be precluded from permitting any wells on the Oakwood field because as Oxy plans to complete the coalbed methane wells on 80 acre spacing. It would be the same as if you paved over and acreage preventing someone who owned the lease rights beneath that pavement to get to them.

Mr. Fulmer

Mr. Fulmer as Mr. Fain has indicated his objection is basically that based upon 2500' rolls which I have indicated in my opinion Oxy's opinion is a conservation issue basically conflict of uses but I think Mr. Fain's arguments is a conservation issue. But more importantly under 361.35 subparagraph D objections to permit program modifications may be raised by coal owners or operators pursuant to provision of 361.11 and 361.12. First off Cabot is not a coal owner or operator but in order to be able to raise that objection Cabot would have to be a coal owner or operator. I think it is clear on what Cabot is objecting to that comes from paragraph F and is not within the jurisdiction of the Inspectors office.

Mr. Fulmer

Thank you Mr. Counts. Let's proceed, Mr. Fain?

Mr. Fain

Thank you Mr. Fulmer. I would like to call Mr. Bill Weeks. Mr. Weeks would you please state your name and your position with Cabot.

Mr. Weeks

William H. Weeks and I'm landman for Cabot Oil and Gas Corp.

Mr. Fain

Mr. Weeks would you please explain the the Inspector Cabot's lease rights under the acreage for purposed E-28 well.

Mr. Weeks

We feel that under the E-28 well we own the gas rights or we have a lease under the E-28 and we are in good standing...

Mr. Fulmer

Do you own all gas rights?

Mr. Weeks

Yes.

Mr. Fulmer

Including coalbed methane?

Mr. Weeks

Yes.

Mr. Fain

Is it Cabot's coalbed methane under the C.L. Ritter Tract?

Mr. Weeks

I am not positive in that.

Mr. Fain

I believe that our lease excludes occluded methane gas on the C.L. Ritter Tract but we can

clarify that we have got a copy of the lease and...

Mr. Weeks

I believe you are right.

Mr. Fain

Have you reviewed the lease in question for the area where the proposed E-28 well would go in?

Mr. Weeks

I have reviewed it to some extent, yes.

Mr. Fain

And is it your testimony before Mr. Fulmer that Cabot Oil and Gas owns the conventional gas rights directly underneath the proposed location?

Mr. Weeks

Yes.

Mr. Fain

Mr. Weeks please explain to the Inspector the status of Cabot's lease rights under the location for proposed well B-28.

Mr. Weeks

As it has been determined we can't have good standing under the B-28 but we will have good standing it is just a matter of the paper work going through. Edisto did not...therefore they lost their rights under their lease and it is just a matter of time before Cabot will have those rights under B-28.

Mr. Fulmer

Let me clarify that up I am a little bit confused. Under the lease who does the Edisto Co. lease from?

Mr. Weeks

Ritter.

Mr. Fulmer

Ritter? And you are going to assume the lease from Ritter once the contract...by Edisto?

Mr. Weeks

Right.

Mr. Fulmer

I just want to...the way I'm hearing it is you automatically do it but you still have to get the lease from C.L. Ritter. That is my understanding. Is that the way I'm hearing it is you do have the lease but you farmed it out to Edisto and you are taking it back, but you are not doing that. You are going to get a lease from C.L. Ritter once they determine that Edisto has bridged their contract?

Mr. Fain

Is that correct Mr. Weeks or is that under our current lease the lease automatically reverts to us if Edisto fails to pay...

Mr. Weeks

My understanding is...

Mr. Fulmer

I just wanted to clarify that up now it don't matter to me but the way I was hearing it I didn't know whether you had a farm out or what.

Mr. Counts

What verification does the lease specifically state that the lease from Edisto revert to Cabot in the failure to pay shut-in royalties?

Mr. Fain

It is my understanding Mr. Counts, Mr. Weeks can you testify about that?

Mr. Weeks

No...

Mr. Counts

Is it not a contractual assumption that based upon the expiration of the lease that that well is no longer held by production and as a result, Cabot may attempt to acquire those rights and execute a lease?

Mr. Fain

No sir, I believe it is the former. That is under our lease we are automatically entitled to...the rights owned by Edisto are automatically referred by Cabot it is just a matter of Ritter and Georgia Pacific making the formal and going through the paper work.

Mr. Counts

Mr. Fulmer in the event that the lease has reverted to Cabot which has not, as I understand the position that Cabot is taking, then certainly they are entitled to proceed on B-28. However, with regard to any question throughout the course of this hearing with regard to B-28 I would object to those questions continuing on the basis that Cabot was not entitled to notice and is not the owner and therefore, any question regarding B-28 would be outside the scope of the hearing.

Mr. Fulmer

Thank you Mr. Counts. Proceed Mr. Fain.

Mr. Fain

Thank you. Mr. Weeks would you state your understanding of Cabot's plans to develop the conventional gas rights in the Oakwood Field.

Mr. Weeks

We are certainly planning to develop our conventional gas rights under the C.L. Ritter lease in the near future.

Mr. Fain

Can you tell the Inspector if in fact the permitting process for several wells on the way?

Mr. Weeks

Yes, it is under way.

Mr. Fain

So Cabot intends not only the near future but currently to develop its conventional gas rights?

Mr. Weeks

Yes it does.

Mr. Fain

Mr. Fulmer that is all I have for Mr. Weeks.

Mr. Fulmer

Any other witnesses Mr. Fain?

Mr. Fain

Yes, does Mr. Counts have a cross examination first for Mr. Weeks?

Mr. Counts

Yes please. I just wanted to clear up with regard to the C.L. Ritter issue that Cabot is not the lessee of the coalbed methane rights under the C.L. Ritter lease.

Mr. Fain

Mr. Counts the lease will speak for itself. And my understanding is that the lease excludes occluded methane gas.

Mr. Counts

...can produce a lease into the record today?

Mr. Fain Do we have a copy of...

Mr. Weeks We do have a copy.

Mr. Fain Why don't we take a break and just take a look at it and clear that up?

Mr. Fulmer That is fine with me.

Off the record.

Mr. Counts We are back on the record. My last question for Mr. Weeks was whether or not Cabot's lease did cover coalbed methane rights under the C.L. Ritter property.

Mr. Weeks No, it excluded it.

Mr. Counts And specifically what is excluded?

Mr. Fain The lease speaks for itself, and if you would like a copy introduced into record that is fine. I don't know if that is an extra copy or not but we can read paragraph one of the lease into the record.

Mr. Counts Just part of it will be fine.

Mr. Fain Why don't you read paragraph one Mr. Weeks.

Mr. Weeks Okay, I don't think we need to ...what we paid for it own do we?

Mr. Fain No sir.

Mr. Weeks That in the consideration of paid receipt which is hereby acknowledged that royalties here and provided in the agreements of leesse's here and contained hereby grants leases of of the less exclusively but the lessee for the purpose of investigating, exploring, prospecting, drilling and producing oil and gas except occluded methane normally produced by admitted coalbed or any related or associated or adjacent rock materials. The pipelines, building tanks....

Mr. Counts That will be fine Mr. Weeks. In pieces we have already read from that if you will enter that into the record as Exhibit A.

Mr. Fulmer Get me a copy of that section.

Mr. Fain I don't think that is necessary, he read the provisions that he think is required...

Mr. Counts Well, I feel like that we need to know the ..under which Cabot is claiming...I will delay that point Mr. Inspector.

Mr. Fulmer Is that lease on file?

Mr. Weeks The lease is not in memorandum leases?

Mr. Fulmer I would for the record in follow-up for Mr. Counts is just a copy of that one page just for

the record because it is not on file anywhere.
For these purposes.

Mr. Fain

Can we ...one second to confer.

Mr. Fulmer

Yes.

Off the record.

Mr. Fain

We had an agreement that this page of the lease will be filed under...so that it can only be viewed by the Inspector in making his determination with the issues in the hearing today that in our concern is criteria and we just don't want to have to release information that is sensitive to the company. I don't see why we would have to...

Mr. Counts

Our only problem with the lease being held confidential that Mr. Fain's arguments today hinged around the potential detrimental impact upon the conventional gas estate as a result of the coalbed methane I would at least like to have the opportunity to review the language on that particular page with regard to that particular revision.

Mr. Fulmer

I would at this point in time as far as the ruling on this section that it would remain that until such time the Attorney General can make determination of whether it can be kept confidential under the Freedom of Information Act. At that time that it can be remain confidential it will be held confidential if it is not it will be returned to Cabot.1

Mr. Fain

Thank you Mr. Fulmer that is all that we can ask.

Mr. Counts

Mr. Weeks with regard to the well B-28 you have indicated that Cabot anticipates acquiring those rights and their term and you also indicated that under the terms of Cabot's lease that that well specifically reverts back to Cabot in the event of failure to pay shut-in gas royalties. Have you been able to review the lease and make a determination?

Mr. Weeks

With a quick review of the lease we could not find the provision like that as such. We do know that we are going to acquire those rights but we did not find it in the lease.

Mr. Fain

Mr. Counts for the record I would like to clarify an ad for supplement to the Inspector and to you and I could do that probably in ten minutes, but people are more familiar with this lease or contract right now in Charleston and I could make a determination in the next 15 to 20 minutes. I would like to clear that up, if we don't have...

Mr. Counts

I certainly don't have no objections to doing it that way. Do you know if there has been any court action of any type of judgement action

with regard to the fact the Edisto lease has been forfeited or terminated.

Mr. Weeks

I don't know that.

Mr. Counts

Do you have any type of agreement from Edisto that they abandoned their rights or sold those rights or conveyed those rights?

Mr. Weeks

I don't have that knowledge.

Mr. Counts

Have you determined that the owner of the surface so...is this an abandoned well or a producing well...Mr. Weeks?

Mr. Weeks

Which well is this?

Mr. Counts

The Edisto well, is it an abandoned well or is it a producing...

Mr. Weeks

As my understanding it is shut-in.

Mr. Counts

Do you have any idea how long it has been shut-in?

Mr. Weeks

I have no idea.

Mr. Counts

Have you made a determination that the owner of the surface is not entitled to that well bore?

Mr. Weeks

We have not made such a determination to my knowledge.

Mr. Counts

Mr. Weeks you have discussed Cabot's plans for development with regard to the Oakwood Coalbed Gas Field, which order has previously been issued by the Oil and Gas Conservation Board so we can make provisions that reference by this hearing. You have indicated that you have presently permitted seven wells, is that correct?

Mr. Weeks

I am not sure of the number.

Mr. Counts

Would that be a rough approximation?

Mr. Weeks

I don't think so.

Mr. Counts

Would that number be lower of greater or...

Mr. Weeks

I would think lower if any.

Mr. Counts

Do you happen to know on those seven wells...first off are you in charge of the permitting process Mr. Weeks?

Mr. Weeks

No.

Mr. Counts

I will ask this question and will certainly understand if you do not know the answer but do you know if Oxy has been notified with as a result in the notification for the wells that have been permitted?

Mr. Weeks

I don't know that.

Mr. Fain

Let me say that for the record if I can clear anything up. I don't know if any wells have been permitted I know there are applications on file. It is my understanding that it is Cabot's position that Oxy will be notified as a coalbed methane lessee as required under the statute if any of these wells are in the Oakwood Field in areas where Oxy has coalbed methane gas rights.

Mr. Counts

Do you know if Oxy has been identified?

Mr. Fain

I do not know if Oxy has been identified I do not know if any of the permits have been filed are in the Oakwood Field or rather if they are in the C.L. Ritter Tract but no actually in the Oakwood Field. That is Cabot's position that Oxy will be notified if there is a permit application going into an area that Oxy has coalbed methane rights.

Mr. Counts

Mr. Weeks as I understand the essence of your objection concerning is Oxy has in no way made provisions for Cabot wells that Cabot may wish to permit and drill within the boundaries of the Oakwood Coalbed Gas Field?

Mr. Weeks

That is reasonable, yes.

Mr. Counts

Mr. Weeks your lease from C.L. Ritter Co. does it cover all bases except coalbed methane or does it have a vertical clause provision that it covers formation only to a specific depth?

Mr. Weeks

Not to my knowledge. To my understanding the lease covers everything except coalbed methane.

Mr. Counts

The lease shall specifically state that. Does Cabot presently have plans to drill or conduct its drilling operations within the Oakwood Coalbed Gas Field in terms of X wells per year of anything of that nature sir?

Mr. Weeks

Not to my knowledge.

Mr. Counts

Okay. Mr. Fulmer I do not have any further questions for Mr. Weeks.

Mr. Fulmer

Mr. Fain?

Mr. Fain

Just one follow-up. You said in response to a question by Mr. Counts that there is no plans to develop additional plans within the Oakwood Field that is to your knowledge?

Mr. Weeks

That is to the best of my knowledge.

Mr. Fain

Is it your understanding that Cabot does to intend in the immediate future to attempt to recover the conventional gas lease rights in the Oakwood Field in the areas that are underneath the Oakwood Field?

Mr. Weeks

Yes.

Mr. Fain

Thank you. Nothing further.

Mr. Fulmer

Mr. Counts to do you have any evidence you would like to present?

Mr. Fain

I have some additional evidence. I would like to ask some questions of Mr. Barnes if I may. Mr. Barnes were you aware when Oxy filed its permit application for E-28 and B-28 that Cabot is the lessee of the conventional gas rights that underlie those tracts specifically I will limit my questioning to that point of the E-28 well location.

Mr. Barnes

Yes sir I was.

Mr. Fain

Did you make any effort or do you know that if any one else at Oxy made any effort to contact Cabot about the potential effect on their conventional gas lease rights that may occur from the coalbed methane application for B-28 and E-28?

Mr. Counts

Could you please be more specific with regard to....I didn't understand the question.

Mr. Fain

Did you understand the question Mr. Barnes?

Mr. Barnes

Could you repeat the question please?

Mr. Fain

Did you or do you know if anyone else at Oxy who contacted Cabot to discuss with them any potential adverse effects that may result from the permitting and drilling of coalbed methane well B-28 and E-28.

Mr. Counts

I would like to ask Mr. Fain if he could be more specific with regard to what type of adverse effect.

Mr. Fain

Let me make it more broad. Did you contact Cabot to discuss anything about E-28 and B-28?

Mr. Barnes

I can just speak for myself, but I did not attempt.

Mr. Fain

Do you know if anyone else at Oxy did?

Mr. Barnes

I am not aware if they did.

Mr. Fain

Was there any discussion that you are aware of that within Oxy that were decided specifically that Oxy would not contact Cabot?

Mr. Barnes

There was no discussion to exclude Cabot, no sir.

Mr. Fain

Okay. Have you seen a copy of Cabot's objection letter dated July 20, 1990?

Mr. Barnes

No sir I have not.

Mr. Fain

Do you know if anyone else at Oxy has seen a copy of Cabot's letter dated July 20, 1990?

Mr. Barnes

Right now we are strung out over three offices and I can't speak for them. We are in a transition stage and to my knowledge I just

can't answer...I don't know if anybody has seen it or not.

Mr. Counts

Mr. Fain, Mr. Barnes is basically in charge of the making sure that the locations are safe and that the locations are prepared. The majority of the functions with regard to the notification and lease hold ownership conventional gas leases', etc. would be unfunctional in the land department as opposed to Mr. Barnes.

Mr. Fain

Mr. Barnes with clarification of the council I would like for you to tell me if you are aware of any conversations or discussions with land personnel or anyone else at Oxy who have knowledge or contacts between Oxy and Cabot with respect to its objections that Cabot stated in its July 20, 1990 letter.

Mr. Barnes

I don't know how to answer your question. I do not know if they contacted them or not. Discussions were...

Mr. Fain

Have you heard of any discussions within Oxy to a decision not to contact Cabot with respect to Cabot's objections stated in its July 20, 1990 letter?

Mr. Barnes

I have heard no discussions to exclude Cabot.

Mr. Fain

Whose specifically been responsible at Oxy for contacting Cabot or anyone else who makes an objection to a permitted well or a well that is submitted for a permit?

Mr. Barnes

The permitting procedure is under my supervision. If the name is left off of the permit package it is my fault.

Mr. Fain

And if someone files an objection to a permit that has been submitted by Oxy is it your area of responsibility to respond to those objections and try to clear them up before the hearing?

Mr. Counts

I would say...would you clarify the...that may have an impact on what type of an objection it is. If it is a surface owner objection, Mr. Barnes would be out on the field trying to handle that. If it was on the other hand they land on their objection that may not be the case and it may be referred someone else.

Mr. Fain

Who is responsible to responding to coal owner objection?

Mr. Barnes

I am responsible under supervision of the project manager.

Mr. Fain

And normally when someone makes a coal owner for example, makes an objection to a well application for Oxy you contact the coal owner to discuss that objection is that correct?

Mr. Barnes

...size and the scope of the objection. it is possible to move the well out of the way.

Sometimes with the scope of this I have to get...

Mr. Fulmer

I would like to know at this point in time what relevance is this in your mind?

Mr. Fain

Well Mr. Fulmer I'm trying to show the Inspector that there has been no effort to contact Cabot before the permit was filed to discuss any possible ways to look for twin locations or to find other solutions to the detriment that may occur to Cabot as a result of the permit process and second I am trying to show that after Cabot filed it's objection dated July 20, 1990 no effort was made to contact Cabot to resolve the objection stated.

Mr. Fulmer

I assume that I can take it under consideration since we are having these proceedings today that evidently that didn't occur anyhow so I think that is kind of obsolete and I understand what you are getting at and I will go on record as saying obviously I do not believe nobody talked to each other so we will just let it go at that.

Mr. Fain

Okay, thank you. Mr. Barnes did you or any other Oxy personnel that you are aware of consider any alternate locations or any locations for the E-28 and the B-28 that would be conducive to twin locations?

Mr. Barnes

Sir I have had 12 years experience...

Mr. Counts

I would object to that Mr. Chairman there is no reason why Mr. Barnes should have to give consideration to a twin well location.

Mr. Fain

I would object to Mr. Counts interrupting my examination. Mr. Barnes is a drilling specialist he is the one responsible for finding the drilling of sights and supervising the application process...

Mr. Fulmer

Can you rephrase your question in the format of basically was it a consideration of Oxy to develop sights that would accommodate two wells?

Mr. Fain

Mr. Barnes was it a consideration of Oxy to develop well sights that would accommodate two well?

Mr. Barnes

I would like to say at this point that in my 12 years experience it has been my experience that each individual operator is responsible to their own location. I have never had that problem, you got your own location you did your own permit.

Mr. Fain

I understand that. So the answer to my question is no, that there was no consideration?

Mr. Barnes

No consideration.

Mr. Fain

Thank you. Mr. Barnes Island Creek and Oxy are related companies is that correct?

Mr. Barnes Yes sir.

Mr. Fain What is their relation between the two?

Mr. Barnes Both are owned by Occidental Petroleum Co.

Mr. Fain Do you know if you are anyone else at Oxy had discussion with any Island Creek representatives with respect to locations to coalbed methane wells that would be suitable for twin well sights?

Mr. Counts We can object to that Mr. Chairmen, excuse me Mr. Inspector, any discussion that Mr. Barnes may have had with regard to Island Creek is stated for the purposes of the record today with regards to trying to locate a well consistent with Island Creek mine plan.

Mr. Fain Mr. Barnes are you capable of answering that question? Do you know if any such discussions occurred?

Mr. Barnes I'm not aware of such.

Mr. Fain Thank you. Mr. Barnes I would like to refer you to the map that we were on earlier and would you please point out for the Inspector the location of proposed coalbed methane gas wells on this map?

Mr. Barnes The two wells in question today are the E-28 and B-28.

Mr. Fain Would you please point out for the Inspector the other proposed locations for this area.

Mr. Counts Mr. Inspector I would object. Again this hearing is for the purposes of B-28 and E-28 and if there is any wells that would be within a 2500' roll that is not to be included as an objection here today.

Mr. Fain Mr. Fulmer this goes directly to the substance of our objection. I think I can restate it to clarify Mr. Counts' concerns. Mr. Barnes would you please point out other proposed locations that are within 2500' of the E-28 well?

Mr. Barnes There are no other locations within the 2500' of the E-28 location.

Mr. Fain How far is the B-28 well location from the D-28 location?

Mr. Counts Mr. Fulmer once again we are getting into other wells other than E-28 and B-28. And Mr. Barnes is already stated that the wells are within the 2500'.

Mr. Fain Mr. Fulmer I think this impacts the E-28 and B-28. I just like to get the record clear...

Mr. Fulmer Now to some certain extent that has some validity as to how far the spacing goes under statewide spacing. 2500' has no validity here.

Mr. Fain

I'm sorry?

Mr. Fulmer

2500' does not have any validity because its backed by a coal objection. You can most certainly ask wells within 2500' that would be subject to coal objection. I have no problems with that.

Mr. Fain

Let me ask you this. The D-28 and the E-26 are not within 2500' of the E-28. Is that correct?

Mr. Barnes

Are there any proposed locations at this point that you know of that are within 2500'...

Mr. Counts

Objection to that question again Mr. Fulmer. I think that he thought that there were no other well locations within 2500' of B-28.

Mr. Fain

I'm sorry I didn't hear that argument to E-28.

Mr. Barnes

The answer is the same to B-28.

Mr. Fain

Do you know that if Oxy has plans to permit well applications that would be within 2500' of the E-28 and B-28?

Mr. Counts

Objection here Mr. Fulmer, that is outside the scope of this area.

Mr. Fain

Mr. Fulmer I don't think that it is.

Mr. Fulmer

Under what basis do you...each well is done on an individual basis so in this hearing we are concerned with B-28 and E-28. Any permitted or applied for permits after these wells need to be dealt with on individual basis, so I don't see the significance here. Going back to the 2500' again is a coal objection, so I'm at loss here Mr. Fain...as far as its relevance to the two wells that we got here what relevance would some kind of proposed well down the road be of any relevance because it would be heard on its own.

Mr. Fain

I'll try to take you through the woods with respect to Cabot's position, Mr. Fulmer. All of our objections to the B-28 and E-28 relate to the fact the if Cabot tries at a later date to put a well down within 2500' of an existing well, under Section 361.12 Cabot may be precluded from putting down that well. It is significant and important for the Inspector to understand the scope of the drilling program that Oxy...

Mr. Fulmer

I do understand that Mr. Fain but I would have to relate you back to the fact that 312 involves the coal owners objection and there's not a coal owners objection then your rights are not being impinged in the aspect you are talking about. I am having problems with the relevance of that in this situation.

Mr. Fain

The relevance is that once Oxy completes its coalbed methane drilling in the Oakwood Field there will be no locations in the Oakwood Field that will not be within 2500' of another well.

It is without dispute that Cabot will be in a position of potentially not being able to put down any well locations.

Mr. Counts

Mr. Fulmer I am aware of no situation that Virginia Gas and Oil Act which is the absolute prohibition against a well within 2500'. The coal owner certainly has a right to object and they may also not object. There may be also multiple coal sights, but there is not one coal sight that we are looking at. There are also right now we are talking about according to Mr. Weeks less than seven developed programs. Everything we are talking about is purely speculative. The questions that Mr. Fain has are with regard to the 2500' rule are raised under paragraph D of 361.35 but can only be raised by a coal owner or operator. Mr. Fain's objection is based upon in my opinion or Oxy's opinion conflicts of the situation which is covered in paragraph F at the very least. And again I will state that it is my opinion that the Inspector has no jurisdiction to hear those issues. Those issues with regard to conservation are probable before the Oil and Gas Conservation Board not the Inspector.

Mr. Fain

Mr. Counts has stated his objections about three or four times and he will have a closing argument and he can state it again.

Mr. Fulmer

Let me see if I can clarify this up just to save a little bit of time. As my understanding here Cabot's objection is the fact that with increased well drilling in this area in regards to the development of E-28 and B-28 and any subsequent proposed wells Cabot's objection is a fact that under 361.12 then Cabot would be precluded from drilling. That is Cabot's assumption at this point, am I not correct Mr. Fain?

Mr. Fain

That is correct. And also in conjunction with the entire drilling program planned by Oxy there is great potential for the complete waste of all Cabot's conventional gas resources and more specifically in terms of Cabot's standing at this hearing Cabot will not be able to get it's economic reserves.

Mr. Fulmer

Just for the matter of saving time, I think that is the whole jest of this situation, right? Would anymore testimony here clarify it any better than what we are looking at?

Mr. Fain

Just for the record I would like to ask several questions of Mr. Lewellen.

Mr. Fulmer

Are they relevant to the well bore itself as far as drilling the well and to your lease rights?

Mr. Fain

They are similar in perhaps that we could get a stipulation as you did earlier. I just want to say for the record whether or not if he is aware of any discussions within Island Creek with Oxy

to try and find twin locations where E-28 and B-28 or locations that would be susceptible to twin locations.

Mr. Fulmer

I have no problem with you asking the questions and if he wants to answer that's fine.

Mr. Counts

Council has no problem with that.

Mr. Lewellen

I am not involved with the Cabot permit with Island Creek.

Mr. Fain

You are familiar with no discussions with....

Mr. Lewellen

No, I have not been involved with the work with Cabot and Island Creek permitting seven or nine wells...

Mr. Fain

I'm sorry 791?

Mr. Lewellen

Seven or nine but beyond that I haven't been involved in the negotiating or discussions. I can't help you.

Mr. Fain

That's is all the questions I have. Thank you.

Mr. Counts

That is all I have Mr. Fulmer.

Mr. Fulmer

Do you want to make a brief statement?

Mr. Fain

I would like to make a very brief closing argument. I appreciate the Inspectors indulgence to putting on our evidence and stating our objections today. Any time you get two lawyers together it is likely that they are going to be long winded and take up everybody's time. We tried to be brief and to the point and I will try to be brief now. Cabot understands that the Division has made the determination that it is entitled to receive notice of coalbed methane applications in the Oakwood Field that Oxy intends to seek permits for. Cabot appreciates that ruling and looks forward to receiving notice of future applications. It is Cabot's position that under 361.35 those who are entitled to receive notice of a permit application or entitled to state objections within 15 days of receiving notice of the application and Cabot has done that with respect to wells B-28 and E-28. Cabot further takes the position that under 361.35 subsection A Cabot is entitled to have it's objections heard and that it has standing to state it's objections. Cabot's objections as reflected in the evidence today relate to the fact that no effort has been made by Oxy in it's permitting process to accommodate the concern that Cabot has with respect to it's ability to enjoy it's conventional lease rights. Oxy was aware that Cabot owns the conventional lease rights under the E-28 well and yet Oxy made no effort to contact Cabot before submitting it's permit application to discuss with Cabot how Cabot may be affected by this well application. Cabot takes a position that respect to all of the wells being permitted by Oxy in the Oakwood

Filed particularly with respect to E-28 and B-28 those well permits and those wells if they are put in may adversely effect Cabot's ability to recover it's resources. Therefore, Oxy has an obligation to make some provisions in it's operations plan and in its permitting process to work out concurrent development of Oxy's lease hold rights and Cabot's lease hold rights. Cabot has suggested two such methods of trying to work out his dilemma. One is working together with Oxy, Cabot, Island Creek, and Jewell Smokeless and other resource owners to get twin sights that would be suitable for twin well locations. Another method might be reserving areas within the Oakwood Field where Oxy can develop it's rights and Cabot can develop their rights and then after a certain period of time when these gas rights have played out, flip-flopping and then developing the alternate locations. There may be other more creative methods of working out this problem but it is a problem. Cabot hears from the Inspector that it is a coal objection under 312 that Cabot is raising but that is not true. Cabot is affected by the Virginia Oil and Gas Act and the way it is drafted. Cabot is entitled to have it's concerns addressed. Cabot is not making a coal objection, Cabot is pointing out to the Inspector and to the Division that because of the way the Virginia Oil and Gas Act is drafted Cabot stands to loose the right to develop it's entire lease hold estate as a result of Oxy's coalbed methane program. Cabot respectfully admits that this waste should not occur for Virginia's sake and economic impact should not result to Cabot. It can be easily resolved just like all concurrent use problems are resolved. For example between conventional gas owners and coal owners. By working together to find locations that are suitable for the development of conventional gas and Oxy's coalbed methane gas. Thank you very much.

Thank you Mr. Fain. Mr. Counts?

Thank you Mr. Fulmer. As previously noted for the record Cabot is of the opinion, excuse me Oxy is of the opinion that Cabot does not have standing under Section 361.30 or 361.35 either as a gas owner, as a coal owner which their objections have been based upon today, or as that of a royalty owner. In order to object to the B-28 and E-28, Oxy further objects to Cabot's objection to the location to well B-28 as it appears from the record that Cabot has no interest underlying the minerals under B-28 as of this time. It is obvious that in Mr. Fain's has certainly stated for the Board that Cabot's concern is being able to have drill sights available to it with regard to any type of project that it might subsequent develop in Buchanan County, Virginia. Cabot has also indicated today that there may be certain occasions where rights are farmed out from Cabot. I think it is important to recognize that we only have three estates today that we

Mr. Fulmer

Mr. Counts

are discussing in front of the Board. We have the conventional gas estate as far as we know it covers all depths. We have the coalbed methane estate. We are also looking at objections from the coal owners estate. There is nothing to preclude to be sure that there may not be deeper development by another lessee of deeper oil and gas rights. There is nothing to preclude the fact that there may not be development subsequent by another oil and gas lessee of shallow gas rights. There is nothing to preclude the development subsequently of the possibility of oil rights for Buchanan County, Virginia. To assume that one by permit can anticipate all the possible uses of the acreage in question would submit is without merit. From a jurisdiction standpoint, these issues brought to the Inspectors office today are issues of conflicts of uses. There is no question that there is a problem in Buchanan County, Virginia today. That is easily evidence by the fact that Jewell Smokeless has objected to Oxy permits today. It is also evidence that it is not that easily resolved, it has been attempted to be resolved for quite some time. It is a conflict of interest, it is a conflict of issues. Those issues that cannot be resolved, however, are in the appropriate form of Circuit Court. In the event that Cabot believes that these are conservation issues then those issues are properly addressed by the Oil and Gas Conservation Board in the form of either a new filed rule which would attempt to address the conflicting use for them and attempt to address...to twin wells. Also from the standpoint of attempting the modification of the Oakwood Coalbed Gas Field in the event that Cabot would feel that it had standing and that was the appropriate from to do so. Cabot has indicated that in the event that Oxy drills up the Oakwood Coalbed Gas Field on 80 acre spacing that it will preclude Cabot from drilling locations. That is not the case that is speculative only. There have number of oil wells drilled in Virginia that have been built within a 2500' radius that have been drilled and the evidence is clear on that. Also on the standpoint of a coal owner objection with regard to objection of the 2500' rule the Oil and Gas Act does contemplate that and does provide for wells. So what we are proposing today is that Cabot does not have standing, that the jurisdiction is brought before the Board or the Circuit Court. If these rights of Cabot's are not being abridged; furthermore, this is all tremendously speculative. We would request that the application submitted be granted with request that Cabot's objection as to B-28 will be dismissed.

Mr. Fulmer

Mr. Fain

Thank you Mr. Counts.

Mr. Fulmer did you want to take a break so that I could clear up the status of B-28? I think I can do that.

Mr. Fulmer

I will take that just for that one issue and then we will get back on that and I'll convene the hearing.

Off the record.

Mr. Fulmer

Mr. Fain will you clear up B-28 please?

Mr. Fain

We would like to clarify for the record that the lease Cabot has on the C.L. Ritter Tract is not give it the right of an automatic reversion of the acreage underneath the proposed location for B-28 but Cabot has the first right of refusal to obtain that acreage in which it fully intends to do and is in the process of doing. So Cabot will be the owner of that lease right shortly.

Mr. Fulmer

Thank you Mr. Fain. Mr. Counts do you want to object to the coal objection?

Mr. Counts

Just very very briefly Mr. Fulmer. Mr. Brendlinger has articulated Jewell Smokeless' objection with regard to the drilling of the well B-28 and E-28 with respect to the locations as permits were applied for them. Jewell Smokeless does not presently have a mine plan filed with DMLR or Department of Mines. I think it...by Mr. Brendlinger's own admission the mine plan which Mr. Brendlinger has provided us with today may well be changed. A lot of the longwall panels may end up being room and pillared and as Mr. Brendlinger indicated this is only a proposal at this point and time. We would note that Mr. Brendlinger has not offered any alternate well location with regard to B-28 or E-28 that are within the existing unit boundaries by the well. No objection has been stated under 361.11 or 361.12. Mr. Brendlinger is concerned only of the value of the reserve of the coalblock is being deluded as the result of additional wellbores which we would state that the Oil and Gas Act addresses that and doesn't primarily is a reason for the coal owners right to object to wells within 2500'. Accordingly, we would request that the well permit as submitted be granted.

Mr. Fulmer

Thank you Mr. Counts. Bob do you want to make a statement?

Mr. Brendlinger

Well Jewell Smokeless feels that with the amount of holes that are going put down and probably will be additional ones that the impact of the future mineability of the reserve area there is adversely impacted. Like I said in the opening statement we as a company would hope that we could work together and plan something that we all could benefit from our resources.

Mr. Fulmer

Thank you for all parties coming. Once the Division Inspector has reached a decision you will all be notified by certified mail return receipt. Thank you again for coming. This hearing is closed.