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VIRGINIA OIL AND GAS CONSERVATION BOARD

HEARING OF NOVEMBER 21 AND 22, 1990

9:00 A. M.

AT THE UNIVERSITY OF VIRGINIA  
CENTER FOR CONTINUING EDUCATION

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1 November 21, 1990

2 The following came on to be heard before the Virginia Oil  
3 and Gas Conservation Board on November 21, 1990 at the  
4 University of Virginia's Southwest Center for Continuing  
5 Education, Abingdon, Virginia.

6  
7 THE CHAIRMAN: This is the November Gas and Oil Board Hearing  
8 and my name is Benny Wampler. I'm Assistant Director for  
9 Mining for the Department of Mines, Minerals and Energy.  
10 I'll ask our Board members to introduce themselves to you  
11 starting from my extreme left.

12 Introduction of Members:

13 Kevin McGlothlin, Public Member

14 Bill Mason, Public Member

15 Ken Evans, Coal Representative

16 Bill Kelly, Foreign Gas Industry Representative

17 Byron Fulner, State Oil and Gas Inspector

18 Diane Davis, Secretary of Division of Gas and Oil

19 THE CHAIRMAN: First on our agenda today, we had the agenda  
20 published, the Board will receive comments on its  
21 intentions to consider adoption of regulations to  
22 establish requirements addressing field rules, drilling  
23 units and forced pooling to govern administrative matters  
24 such as application fees and filing petitions and to  
25 discuss methods of public participation in developing the

1 regulations. I would offer for the Board's consideration  
2 that we assign the staff of the department to set up a  
3 work committee, to name a work committee on behalf of the  
4 board. Our public participation guideline, which follow  
5 the Administrative Process Act, requires the department  
6 to have a work committee to develop recommendations for  
7 rules and regulations. I would offer to you that we may  
8 want to consider designating the staff of the department  
9 to establish a work committee and to draft rules and  
10 regulations and recommend alternatives to the Board for  
11 it's consideration before final adoption. The emergency  
12 rules and regulations of the board are effective. They  
13 became effective on November the 2nd, 1990, and will  
14 remain in effect for one year from that date or until  
15 permanent regulations by the Board supersede those rules  
16 and regulations. Does the Board wish to take up that  
17 matter at the present time about the staff or do you want  
18 to wait until you hear?

19 MR. MCGLOTHLIN: I move that we wait until we hear the  
20 comments before we establish a work committee.

21 MR. MASON: I second that.

22 THE CHAIRMAN: Motion and second. All in favor?

23 THE BOARD: Aye.

24 THE CHAIRMAN: Okay. The first person that is signed up on  
25 our list to address the board today regarding the Board's

1 rules and regulations is Mr. John Graham of the Virginia  
2 Oil and Gas Association. We would ask you to come up and  
3 you may either stand or sit at the table here.

4 MR. GRAHAM: I always sit when I'm given the chance, Mr.  
5 Chairman. Mr. Chairman, Members of the Board, my name is  
6 John Graham. I'm vice-president of Virginia Oil and Gas  
7 Association and I appreciate this opportunity this  
8 morning to address the Board as you begin the process of  
9 adopting regulations governing field rules, drilling  
10 units, forced pooling and administrative matters before  
11 the Board. Our Association, which counts among it's  
12 members virtually every gas and oil operator in the  
13 Commonwealth, welcomes the opportunity to participate in  
14 this process with the Board. In the more than fifteen  
15 years of existence of our Association, we have, on many  
16 occasions, worked with state regulators and  
17 administrators and with your two predecessor boards in  
18 identifying and resolving problems facing the oil and gas  
19 industry in the Commonwealth. We participated actively  
20 in the year long study by the Oil and Gas Subcommittee of  
21 the Virginia Coal and Energy Commission that led to the  
22 adoption in 1982 of the first conservation statute in  
23 Virginia. We participated in developing regulations  
24 under that act and in the process of amending the act and  
25 amending the regulations over the intervening years. We

1 had extensive input, both legal and technical, into the  
2 development of the March, 1989, Emergency Coal Bed  
3 Methene Order. In 1989, our Association advocated before  
4 the General Assembly the adoption of House Joint  
5 Resolution that commissioned last year's comprehensive  
6 study of the Oil and Gas Laws by the Virginia Coal and  
7 Energy Commission. That study led to the introduction  
8 and the ultimate passage of the 1990 Virginia Gas and Oil  
9 Act that created this board in lieu of the two boards  
10 that existed previously. Our members have participated  
11 fully in four regulatory working groups that the  
12 Department of Mines, Minerals and Energy set up to  
13 consider regulations under Article III of the 1990 act  
14 and we are ready, willing and able to participate in the  
15 process of working on the regulations of this Board under  
16 Article II. Our Association has very active and  
17 functioning legal and technical committees that embrace  
18 all branches of the oil and gas industry -- oil  
19 operators, conventionally natural gas operators, coal bed  
20 methene operators, service companies, pipe line companies  
21 and local distributions companies. It's vitally  
22 important to the gas and oil industry in the Commonwealth  
23 to have input into the regulations of this Board and the  
24 Virginia Oil and Gas Association is the entity best  
25 qualified and situated to give you that input on a broad,

1 comprehensive, industry-wide basis. Over the years, our  
2 Association has developed and maintained an excellent  
3 working relationship, not only with state officials, but  
4 with members of the Virginia Coal Association as well.  
5 Indeed, during the drafting process of the 1990 Gas and  
6 Oil Act, our Association and the Coal Association spent  
7 innumerable hours working through very complex and  
8 difficult technical difficulties. Lately, we've worked  
9 with various environmental groups to balance the sometime  
10 conflicting goals of the act. Our participation in the  
11 development of Board regulations will help assure their  
12 balance and will give this board and your staff the  
13 advantage of our member's many years of experience and  
14 expertise operating in this state and in many other  
15 states both within and far beyond the Appalachian Basin.  
16 The primary statutory purpose of the 1990 Gas and Oil Act  
17 is to foster, encourage and promote the safe and  
18 efficient exploration for development, production,  
19 unitization and conservation of the Commonwealth's  
20 natural gas and oil resources. That is our Association's  
21 primary goal as well. In drafting and implementing  
22 regulations that will encompass both procedural issue  
23 before the Board and substantive requirements in  
24 implementing the conservation provisions of the statute  
25 efficiency must be a foremost consideration. These

1 regulations must encourage the resolution of disputes  
2 between the parties before intervention of the  
3 administrative and judicial mechanism, but regulations  
4 must also provide for a mechanism for speedy  
5 determination of issues if they're not voluntarily  
6 resolved among the parties. The task of developing the  
7 regulations is now under way. The Virginia Oil and Gas  
8 Association pledges its assistance in the public  
9 participation process for this drafting. I thank you  
10 very much for your time.

11 THE CHAIRMAN: Thank you, Mr. Graham. Do you have a copy of  
12 your ---

13 MR. GRAHAM: I do not, Mr. Wampler, but I will provide that  
14 today and very shortly.

15 THE CHAIRMAN: Thank you very much. I would remind everyone  
16 here that the Board's rules will be developed to  
17 implement Article II of the Gas and Oil Act. The next  
18 speaker is Mr. Barney Riley of Dickenson County Citizen's  
19 Committee.

20 MR. RILEY: Mr. Chairman, Members of the Board of the  
21 Virginia Gas and Oil Board, my name is Bernard Riley and  
22 I am President of the Dickenson County Citizen's  
23 Committee. I sadly note that not all of our public  
24 members are here today. And the purpose of our  
25 organization, the Citizen's Committee, is to protect the

1 rights of landowners and prevent abuse of their property  
2 rights by those rushing to exploit energy resources.  
3 Today I would like to speak to the problems we have  
4 encountered with the gas industry concerning situations  
5 that can be impacted by this Board. An operator  
6 intending to drill a gas well in Dickenson County, as  
7 well as Buchanan and Wise counties, need only have  
8 authority over twenty-five percent of the drilling unit  
9 to petition this Board for permission to drill the well.  
10 This Board, then, has the power to approve the drilling  
11 of the well. We think this is unfair to citizens of our  
12 county who still own their gas resources. We feel that  
13 neither this Board nor any other entity in Virginia  
14 should have the ability to dispose of someone's property  
15 without their consent. The well operators have been  
16 benefiting from this arrangement for some time now. They  
17 feel no compulsion to offer a decent price to resource  
18 owners for their property because they know this Board  
19 will authorize forced pooling for the unit and the  
20 operator will eventually get the gas anyway. We would  
21 like this Board -- what we would like this Board to do is  
22 closely review operator activities and assure themselves  
23 of proper conduct. We would like this Board to exercise  
24 it's power to force pool only in those instances when a  
25 resource owner cannot be determined or cannot be located.

1 If gas owners are identified and available, we ask this  
2 Board to direct the gas operators to negotiate a mutually  
3 satisfactory contract with each owner before this Board  
4 allows the development of the resource through forced  
5 pooling. You are an arm of the government of Virginia  
6 and charged with not only encouraging and promoting gas  
7 development, as Mr. Graham says, but with recognizing and  
8 protecting the rights of gas owners. We ask you to  
9 remember those particular owners who don't want to sell  
10 or lease their gas resources. There are many who want to  
11 save those resources for future generations in the likely  
12 event new technologies make them more valuable or  
13 available for their domestic use. This resource is part  
14 of their legacy and we don't want their desires preempted  
15 to satisfy industry's greed. Another subject we have for  
16 this Board's consideration concerns the development of  
17 coal bed methene gas wells. These wells produce a  
18 considerable amount of brine during initial stages of  
19 production. The brine, while exempt from classification  
20 as a hazardous waste, contains many substances that could  
21 cause severe contamination of our lands and waters. At  
22 the present time there is quite a large controversy over  
23 proper disposal of this brine. We would like this Board  
24 to suspend any further action on such wells or drilling  
25 units until the operators present an acceptable and

1 permitted disposal method and site to the Oil and Gas  
2 Inspector. We feel that it is a reasonable request that  
3 the Board consider all facets of oil and gas operations  
4 before -- brought before for decision. The disposal of  
5 brine waste is a critical element, an integral part of  
6 each coal bed methane gas well operation. We thank you  
7 for allowing us to present our comments today. We  
8 realize, from a glance at your agenda, you have much work  
9 to do in these two days and you'd like to be about it.  
10 If I could summarize my comments in one sentence, it  
11 would be please remember landowners in the Virginia gas  
12 fields and their stake in all this gas development  
13 activity. Give us a fair shake. Thank you.

14 THE CHAIRMAN: Thank you, Mr. Riley. Our next speaker is  
15 Randy Albert with Consolidation Coal Company.

16 MR. ALBERT: Mr. Chairman, Members of the Board, my name is  
17 Randy Albert. I'm the project manager of Consolidation  
18 Coal Company's Buchanan Gas Project. We are pleased to  
19 have the opportunity to comment to the Board today on  
20 these very important issues. As you know, Consolidate is  
21 the second largest coal producer in the United States  
22 with substantial operations and coal reserves in the  
23 Commonwealth. One of our major operations in a vast  
24 reserve is contained in the Pocohontas Number 3 seam of  
25 coal in Buchanan County. The Pocohontas Number 3 seam is

1 reported to be the gaseous coal bed in the United States  
2 today. In the Buchanan County area it contains over 600  
3 cubic feet of methene per ton of coal. This methene has  
4 made it a popular target for coal bed methene  
5 development. With proper controls and coordination with  
6 the coal operators, it may be a viable source of  
7 additional energy. However, we must urge that the Board  
8 not lose sight of the real value here. While a ton of  
9 Pocohontas Number 3 coal may contain 600 cubic feet of  
10 methene, that same ton of coal is approximately  
11 equivalent on a BTU basis to 29,000 cubic feet of  
12 methene. Said another way, the energy value of coal is  
13 48.3 times that of the methene contained in the coal.  
14 With this obvious imbalance of values, we would urge that  
15 the Board keep in mind where the real value is and not  
16 allow anything to destroy or impair coal recovery. The  
17 key to protection of the coal seam is coordination  
18 between the coal bed methene operator and the coal owner  
19 operator. It was with this in mind that the Virginia  
20 coal industry fought for and obtained the statutory  
21 requirement for consent of the coal owner before  
22 stimulation of the coal seam being mined. This consent  
23 was required to be contained in any application for a  
24 permit which included stimulation of a coal seam. The  
25 statute did not address the consent requirement for

1 forced pooling applications. We would point out that  
2 there is no value in forced pooling an area without the  
3 consent of the coal owner in that area. Such an exercise  
4 simply ties up areas and may, in fact, prevent future  
5 cooperative development of the coal bed methene. We  
6 would urge that the Board adopt a requirement that any  
7 forced pooling application for coal bed methene also  
8 include consent of the coal owner or owners within the  
9 statutorily required 750 foot radius of the well. Again,  
10 this requirement is not to prevent development of coal  
11 bed methene, but to require cooperation between the coal  
12 bed methene operator and the coal owner. We sincerely  
13 believe this is the only way the coal seam can be  
14 protected for future mining. In the matter of  
15 unitization for coal bed methene development, we would  
16 urge that the Board take into consideration the  
17 uniqueness of coal bed methene development as compared to  
18 conventional natural gas development. Due to the fact  
19 that the gas reservoir in many instances is contained  
20 within the area to be mined, it makes sense that the  
21 boundaries of drilling units may be dictated by the shape  
22 of mine plans. For example, during long wall mining,  
23 trek-angular panels are developed which in many  
24 situations will not fit an arbitrary eighty acre grid.  
25 As part of the mining operation, vertical ventilation

1 holes are required in these panels for liberation of  
2 methene from the mine during the mining operation.  
3 Sometimes these hole may be drilled ahead of mining to  
4 drain methene from the coal seam prior to mining. The  
5 location of these holes and the spacing of these holes  
6 are dictated by mine safety constraints and not some  
7 grid. While these holes are drilled for mine safety, we  
8 must continue to drill these holes if we mine the coal.  
9 There may be some potential to produce pipeline quality  
10 methene from these holes. Therefore, it makes sense that  
11 coal bed methene utilization and spacing requirements  
12 should be flexible to allow for this type of operation.  
13 If the rules are too rigid in these areas, the result  
14 will be the loss of coal bed methene. The methene must  
15 be removed for mining purposes and if rigid rules  
16 preclude production of the methene, the coal operator  
17 will have no alternative but to vent the methene to the  
18 atmosphere. We thank you for the opportunity to comment  
19 on these extremely important matter. It is critical that  
20 you continue to get input from everyone when developing  
21 coal bed methene procedures. This is a new venture in  
22 Virginia and everyone involved is still learning. It  
23 will only be through continued input from all involved  
24 that we protect our long established resources while  
25 possibly developing a new resource. Thank you.

1 THE CHAIRMAN: Thank you.

2 MR. MASON: What's your name again?

3 MR. ALBERT: Randy Albert.

4 MR. MASON: Thank you.

5 THE CHAIRMAN: Thank you, Mr. Albert. The next person that  
6 signed up to address the Board is Richard Counts of the  
7 Appalachian Coal bed Methane Association.

8 MR. COUNTS: Thank you very much, Mr. Chairman, Members of  
9 the Board, I'm Richard Counts, President of the  
10 Appalachian Coal bed Methane Association, formerly the  
11 Virginia Coal bed Methane Association. The Appalachian  
12 Coal bed Methane Association is pleased to have the  
13 opportunity to offer comments to the Virginia Gas and Oil  
14 Board with respect to the promagation of regulations  
15 involving conservation issues. The oil and gas industry  
16 is rapidly evolving from the concept of the single  
17 vertical well-board drill to a primary reservoir to an  
18 industry involved in non-traditional drilling techniques  
19 and methodology. Indicative of this is that by the year  
20 2000 it is projected that 25 percent of all drilling in  
21 the free world will be accomplished by using horizontal  
22 drilling techniques. In addition, coal bed methane  
23 drilling activities account for an increasing percentage  
24 of all wells drilled throughout the United States. In  
25 Virginia, applications to drill coal bed methane wells

1 will outnumber those of conventional wells on a more than  
2 three to one basis from the year 1990. Recognition of  
3 these new drilling technologies and methodologies will  
4 offer increasing challenges to not only the operators  
5 involved, but also the conservation agency charged with  
6 the regulation of the oil and gas industry. These  
7 concerns are particularly challenging in the central and  
8 northern Appalachian Basin as a result of development of  
9 competing mineral estates. It is our opinion that the  
10 Virginia Gas and Oil Act as revised by the Virginia  
11 General Assembly, 1990, constitutes the most progressive  
12 oil and gas conservation scheme in the Appalachian Basin.  
13 Other oil and gas producing states are already looking to  
14 the Virginia Gas and Oil Act as a model based upon the  
15 fact that it was a negotiated compromise, not only  
16 between the oil and gas industry, but also the coal  
17 industry and the other citizen groups representing  
18 surface owner and environmental considerations. We look  
19 forward to participating in this process and appreciate  
20 the opportunity of presenting these remarks before the  
21 Virginia Gas and Oil Board and I'd like to distribute a  
22 copy of this to the Board, if I may, Mr. Chairman.

23 THE CHAIRMAN: Thank you. Any questions, members of the  
24 Board? Our next speaker is Mr. Street.

25 MR. STREET: No comment at this time.

1 THE CHAIRMAN: Okay, thank you. Danny Farmer?

2 MR. FARMER: Farmer. No comment at this time, Mr. Chairman.

3 THE CHAIRMAN: Mr. William Covington?

4 MR. COVINGTON: No comment, sir.

5 THE CHAIRMAN: Ms. Beulah Brown?

6 MS. BROWN: Thank you. Mr. Chairman, ladies and gentlemen,  
7 thank you for the opportunity to come here this morning  
8 and speak and I thank you for bearing with me while I  
9 comment on some personal things before I say some other  
10 things. Sometime around midnight to 6:00 a. m. on the  
11 night of October the 25, 1990, I was robbed here in the  
12 Town of Abingdon. By the way, I live here, but I'm a  
13 landowner in Dickenson County and a mineral rights owner.  
14 It was at three locations on our place. A bolt cutter  
15 was used on a lock and several costly and useful things  
16 were taken. This happened while I slept. Five other  
17 robberies were reported the same night in the Town of  
18 Abingdon. Now the police nor any governing body  
19 sanctioned the taking of our property. No one has the  
20 right to grant permission to take another's property, but  
21 the person to whom the property belongs. Nevertheless,  
22 it seems that a confiscation of property rights has taken  
23 place here. With a company owning some of the gas, there  
24 are many other individuals, such as myself, who own  
25 theirs. It is not the property, either singly or

1 collectively, of the General Assembly. Therefore, I  
2 challenge the legality of confiscation of my property  
3 rights. Our language does not provide a superlative to  
4 describe my objection to this. This is not an invisible  
5 gas you will be making decisions about, but the future  
6 lives of the people. People with families such as  
7 yourself who have suffered enough injustices. Is  
8 robbery, the taking of property, elevated to be a good  
9 act when it takes place in the light instead of the dark  
10 where the victim cannot see the beady little eyes? I  
11 would like to think that anyone required to do a job  
12 would want to give it their best. In this case, we need  
13 to ask best for whom? And is robbery becoming a way of  
14 life for everybody? Some of these that steal property  
15 such as we had, I'm told, sell it just to be able to live  
16 through the next day, but this is not the case of these  
17 companies. To my knowledge, no one is twisting arms to  
18 force anyone to take this gas. It is their own greed.  
19 And, gentlemen, Members of the Board, and the Division of  
20 Gas and Oil, I ask for a repeal of this act and I implore  
21 your support in this. And I thank you.

22 THE CHAIRMAN: Thank you, Ms. Brown. Any questions? Our next  
23 speaker is Grant McGuire.

24 MR. MCGUIRE: No comment.

25 THE CHAIRMAN: Mr. Don Johnson?

1 MR. JOHNSON: Mr. Chairman, Donald R. Johnson's my name. I  
2 practice law in Bristol, Virginia. I represent mineral  
3 owners primarily in Buchanan County, Virginia. I also  
4 represent a coal company that operates in that county as  
5 well as a small oil and gas company. With regard to what  
6 the Board is trying to do here, I will address only what  
7 is on this docket and that is comments with regard to  
8 public comment. I feel that this Board ought to endeavor  
9 to get input from the public with regard to these  
10 regulations, and I feel that the Board ought to, as part  
11 of that, adopt rules and regulations which look to the  
12 purpose of the act with respect to drilling units. As  
13 the Board knows -- I have copies of a letter that I sent  
14 to Mr. Wampler dated September 28, 1990, which I have  
15 here to give to the Board concerning the objections that  
16 I had to the procedural rules for practice in front of  
17 this Board with respect to units that are being pooled.  
18 I feel that what has happened with regard to the way that  
19 these rules were structured, I hope that won't be the  
20 final outcome of the way this Board looks that it's  
21 obligations to the public, not to the oil and gas  
22 industry but to the public, with respect to the  
23 legislation which was passed. The one thing that I think  
24 the Board needs to be looking at very seriously is what  
25 is the object of the Board when someone comes before it

1 asking to establish a pool. Is that object to find out  
2 how to assure that company or operator will get the pool  
3 established or is the object to look in depth at what is  
4 being requested and to be sure that all parties are being  
5 protected and that that operator is acting in a  
6 commercially reasonable fashion. And I think that what  
7 has happened with regard to the volume that has come in  
8 front of this Board is that the Board has adopted, with  
9 regard to the rules that were passed in September, some  
10 very restrictive procedural rules to limit comment, to  
11 limit the ability of anyone who wishes to present  
12 objections or anyone who really wants to find out what  
13 this is about, to limit their ability to come forward and  
14 to make any claim or even cross-examine the witnesses  
15 that are being presented on behalf of the operator. I  
16 think that the object of this act with respect to  
17 operators is that operators must come forward in the  
18 request of a unit, present adequate information to the  
19 Board as well as to others as to their specific objects,  
20 not their objections but their objects, what they're  
21 trying to do, how they're trying to do it, who's going to  
22 get paid, who is not going to get paid, what have they  
23 done in order to get ready to make this application, what  
24 information do they have? And then, with all that  
25 information in front of them give the other persons who

1 have an opportunity to participate in this process a  
2 chance to speak up, not cut them off as this Board has  
3 already done to anybody who isn't smart enough to file  
4 three or four page objections. I hope that I am, but I'm  
5 not sure about everybody else sitting in this room. Not  
6 everybody knows that if they want to protect themselves  
7 they have to stand up and start fighting from day one.  
8 And I have already written a rather lengthy letter on  
9 that subject to Mr. Wampler and I know that the Board  
10 probably has seen that. I hope that the Board will  
11 allow the public to comment on this. I hope that the  
12 Board will allow those who participate in front of this  
13 Board an opportunity to be heard on the specific issues.  
14 And just ask that the Board consider these comments, I  
15 know that you've got a lot of work and I think the lady  
16 who spoke before was talking about what had happened and  
17 she hoped that this thing gets repealed. I doubt that  
18 that happens, but as a result of the way the legislation  
19 was written, it's requiring hearings on all units and I  
20 know that you all understand that now or just about every  
21 unit's going to have a hearing on it. And I know you all  
22 understand that now and it's even more important that we  
23 draft rules and regulations that meet the needs of the  
24 public, protect the resources that we have and give  
25 everyone an equal opportunity to access in front of this

1 Board. Thank you very much.

2 THE CHAIRMAN: Thank you, Mr. Johnson. As this public hearing  
3 continues, this is a public hearing to hear from the  
4 public on recommendations for the Gas and Oil Board to  
5 consider as it drafts rules and regulations to implement  
6 our Article II. Is there anyone else that wishes to  
7 address the Board regarding -- to give us comments at  
8 this time? In order to encourage maximum public  
9 participation in this, the Board will leave open, for  
10 written comments, the record through the next hearing of  
11 the Board which is in December and that will be published  
12 as we publish our announcement for the agenda for the  
13 December hearing -- that we will receive written comments  
14 through the close of the next hearing of the Board.  
15 Following receipt of those written comments, how we  
16 proceed, I guess, is going to be up to the Board. Board  
17 members, I recommended to you earlier an option that you  
18 have. The other option is that you can appoint  
19 representatives yourselves to serve on a work committee  
20 and I suppose direct someone to chair. I offered you the  
21 option that we assign the staff of the Department of  
22 Mines, Minerals and Energy to set up a work group and to  
23 make sure all the parties were represented and convene in  
24 session and come back to the Board with their  
25 recommendations. I would, for all of your information,

1 say to you that following today's public hearing and the  
2 receipt of written comments and however the Board  
3 proceeds on drafting rules and regulations, those draft  
4 rules and regulations will be announced again for public  
5 comment. There will be a sixty day period opportunity  
6 for public hearing before any final adoption. This Board  
7 is empowered to adopt the rules and regulations. So, you  
8 know, that's different than in Articles I and III where  
9 that power to adopt is vested with the director of the  
10 department. What's your pleasure, Board?

11 MR. MCGLOTHLIN: Mr. Chairman, I will pose a motion that we  
12 have a joint committee or a work group with the members  
13 of the Board, as well as the Division of Mines, Minerals  
14 or whosoever you deem qualified to be a part of the  
15 group.

16 MR. MASON: Mr. Chairman, what would you anticipate would be a  
17 good working number of people for such a group, if I may  
18 interpose a question?

19 THE CHAIRMAN: I would think, and not at this point in time  
20 had time to think through that --

21 MR. MASON: I understand that.

22 THE CHAIRMAN: -- I would think the smaller the better in  
23 drafting something like this, ten or less, on a committee  
24 that would represent the maximum interest that would  
25 bring to the table. I think we've had people on the

1 department's work groups for Articles I and III from  
2 which we could consider drawing from, representation  
3 there, that's worked well as an option. I'm not sure Mr.  
4 McGlothlin don't have the attorney here where the -- the  
5 Board certainly has a lot of options. Your motion is to  
6 have a joint -- the Board sitting in as part of that work  
7 group?

8 MR. MCGLOTHLIN: Somebody from this committee or from this  
9 Board chair, that group.

10 THE CHAIRMAN: Okay.

11 MR. MASON: As I understood the rest of it, then, the group  
12 would be composed of members of this Board, members of  
13 the staff of Oil and Gas, and members of the public, is  
14 that --

15 THE CHAIRMAN: He was suggesting that we select a chair, I  
16 think, from this Board --

17 MR. MCGLOTHLIN: Right. A chair from this Board and then --

18 THE CHAIRMAN: -- to work with the staff to assemble a work  
19 group and then make recommendations back to the Board.

20 MR. MCGLOTHLIN: Yes, sir.

21 THE CHAIRMAN: The only down side of that, just so that you  
22 know it, is a possibility that that person that's so  
23 designated as chair may have to abstain later when  
24 they're presenting to the Board. I don't know that.  
25 It's just a question I have because you have to maintain

1       some separation as you participate in a work group versus  
2       adopting rules. I'm not sure until we resolve -- and we  
3       can resolve that, we don't have to resolve it here today.  
4       When the attorney gets here we can ask that question.  
5       But I just wanted to make sure that --

6       MR. MCGLOTHLIN: That's understood.

7       THE CHAIRMAN: -- that we understand that that's a  
8       possibility.

9       MR. MCGLOTHLIN: That is a possibility.

10      THE CHAIRMAN: Okay. With that I have a motion.

11      MR. MCGLOTHLIN: Let me add a little bit more to that, if I  
12      might.

13      THE CHAIRMAN: Sure.

14      MR. MCGLOTHLIN: My motion is possibly a five member panel or  
15      committee. If this is okay with the Board here, one  
16      member from this Board and four to be filled in from the  
17      Division of Oil and Gas and Department of Mines, Minerals  
18      and Energy.

19      MR. KELLY: Mr. Chairman, I'd like to just be sure we don't  
20      restrict ourselves too much with a particular number of  
21      people involved. I think it's more important that you be  
22      certain that all of the interests are represented and go  
23      through a similar process that we went through with the  
24      other regulations which we've done in the past. I'm not  
25      sure -- it may not be in order, but I'm not so certain of

1 the motion and I'd like to make a recommendation that we  
2 might amend the motion to go back to reflect your earlier  
3 recommendations as far as how it might be structured.

4 MR. MCGLOTHLIN: Mr. Chairman, I'll withdraw my original  
5 motion and motion and make a new motion that we have a  
6 work group composed of a member from this Board, one from  
7 the oil and gas industry, one from the coal industry and  
8 a possibility of a member from the public to meet today  
9 and to decide how to build this committee, on who should  
10 be one the committee.

11 THE CHAIRMAN: Okay. We have a motion from Mr. McGlothlin  
12 that we establish a work group consisting of a Board  
13 member, a representative from the gas and oil industry,  
14 coal industry and the public to meet today and decide  
15 the representation on the full work group for the Board's  
16 regulations. Any discussion?

17 MR. KELLY: Are you saying that that group would meet to  
18 choose other representatives, is that what you're saying?

19 MR. MCGLOTHLIN: I think it will give everybody an opportunity  
20 to suggest what this committee -- who is on this  
21 committee -- an equal voice from everybody.

22 MR. MASON: As I understand the motion, what he means is that  
23 this group would meet today, make a recommendation to the  
24 Board in how we formulate the committee to actually draft  
25 the regulations. That they put together a proposal for

1       the Board on how we form the work group to do the  
2       organization other than trying to sort of hammer this out  
3       right here. Is that correct?

4       MR. MCGLOTHLIN: Yes.

5       THE CHAIRMAN: Any further discussion?

6       MR. KELLY: I would just want to be sure that we have the  
7       proper groups represented on that group, however it may  
8       be structured to accomplish that.

9       MR. MCGLOTHLIN: That's what I'm hoping that this work group  
10      will do.

11      MR. FULNER: Mr. Chairman, I would like to remind the Board  
12      that these regulations -- regulation when promulgated is  
13      of state wide application. I would like to make the  
14      Board aware that whatever regulations are promulgated  
15      will have state wide application. It's a much broader  
16      sense than what we presently experience. Just for the  
17      information of the Board.

18      THE CHAIRMAN: More specifically, I assume suggesting that  
19      possibly not everyone that may need to be represented  
20      would be present today and I think that would be  
21      considered here as part of that.

22      MR. FULNER: Yes.

23      THE CHAIRMAN: You're not necessarily suggesting that it would  
24      be people that are present here today.

25      MR. FULNER: Oh, no, sir. I was thinking that maybe today

1           that we could get together and maybe a few people -- one  
2           from the audience and, I'm sure, the coal industries  
3           represented here and the gas industry, if we could get  
4           together and spend five, ten, fifteen minutes and get  
5           this thing done and come back with a proposal to the Oil  
6           Board.

7   MR. EVANS:   By what time?   When do we look at getting the  
8                recommendation from the work group to set up a committee?  
9                Do you envision that today?

10  MR. FULNER:   Today.

11  MR. EVANS:    Today?

12  MR. FULNER:   Yes, sir.

13  MR. EVANS:    Okay.

14  THE CHAIRMAN: Any further discussion?   I have a motion, do I  
15                have a second?

16  MR. EVANS:    Second.

17  THE CHAIRMAN: Motion and a second.   Any further discussion?  
18                All in favor signify by saying yes.

19  THE BOARD:    Yes.

20  THE CHAIRMAN: If you're opposed, say no.   Okay, the motion  
21                carries.   Thank you.   The chair would designate Mr.  
22                McGlothlin to -- that's the way it goes.   No good deed  
23                goes unpunished.

24  MR. MCGLOTHLIN: Thank you, Mr. Wampler.   If it is amendable  
25                to the Board, I could possibly take my small group and

1 find some place and come back with a recommendation while  
2 you still have a forum here.

3 THE CHAIRMAN: That's fine with me if you won't disrupt the  
4 next proceeding. I don't know who will be doing that.  
5 Final opportunity to comment to the Board, make oral  
6 comments before we close the public hearing for the  
7 recommendations, does anyone in the audience wish to  
8 speak? If not, thank you. This hearing is closed. The  
9 next item on the agenda, reading from the agenda, "The  
10 Board, on its own motion, will receive comments and  
11 proposals for the establishment of field rules and  
12 creation of drilling units for conventional wells in  
13 Buchanan County." The Board would like to have you  
14 acknowledge who wishes to make presentations to the  
15 Board regarding field rules for, I believe we said the  
16 Berea sandstone formation. Would you identify by just  
17 raising your hand, those that wish to?

18 MR. FAIN: On behalf of Cabot Gas, we would.

19 THE CHAIRMAN: Okay.

20 MR. JOHNSON: Don R. Johnson.

21 THE CHAIRMAN: Okay.

22 MR. COUNTS: Mr. Counts.

23 THE CHAIRMAN: Okay. Mr. Evans.

24 MR. EVANS: I would like to reserve the right to comment.

25 THE CHAIRMAN: Okay. What we'll do, we'll try to minimize

1 the shuffling if it's acceptable to all parties, is take  
2 an order and allow you to come forward and maybe use this  
3 chair or whatever's convenient, one at a time to address  
4 the Board. Who wishes to go first?

5 MR. FAIN: Mr. Chairman, Cabot Oil and Gas has already filed  
6 an application so, perhaps it would be appropriate to  
7 take the lead on it.

8 THE CHAIRMAN: Okay. Do we have an application before the  
9 Board?

10 MR. FULNER: It's not timely in front of the Board. It's  
11 scheduled for the December meeting because of the date  
12 that it was filed. I think at this time that you could  
13 probably hear -- the Board could probably hear what's  
14 coming up December. There is an application for the  
15 Board scheduled for December for a ruling by the Board,  
16 Mr. Chairman.

17 THE CHAIRMAN: Of course, maybe I'm a little confused, but on  
18 the Board's own motion, we're considering that. So I  
19 don't mind you coming on forward and doing that, but I'm  
20 confused as to why we have a motion doing the same thing  
21 in December.

22 MR. FAIN: Because the application has a different notice  
23 provision than what's acceptable on this form.

24 THE CHAIRMAN: You're saying anyone that petitions the Board,  
25 there's a different notice provision required of that

1       applicant for --

2   MR. FAIN:  Yes, sir, for a ruling by the Board on a  
3       particular field.

4   THE CHAIRMAN:  But where the Board, on its on motion, is  
5       considering field rules, it's not necessary for an  
6       applicant to petition and have a subsequent hearing.  I'm  
7       not asking you to answer that, I was just stating it.

8   MR. FAIN:  As far as that goes the application itself was  
9       filed yesterday.

10  THE CHAIRMAN:  Okay.

11  MR. FAIN:  Is what I'm saying, basically.  The timeliness is  
12       that we have a problem with notice on the timeliness of  
13       it, but I assume that the Board can hear whatever it  
14       wants to on its own motion.

15  THE CHAIRMAN:  Right.  Well, the point I'm getting for  
16       everyone's information here is the Board, on its own  
17       motion, is hearing recommendations for field rules.  I'll  
18       be happy to allow you to go first.  I'm just saying that  
19       if we hear motions for field rules today, there's no  
20       point in having anything on the December hearing because  
21       we're on our own motion, considering those rules, without  
22       having to have a petition to do that.  Okay?

23  MR. FAIN:  Is the Chairman saying that as a result of today's  
24       hearing a field rule quarter will be issued?

25  THE CHAIRMAN:  That's certainly possible if the Board is

1 satisfied that it's prepared to issue a field rule.

2 MR. FAIN: On behalf of Cabot, and in talking with some other  
3 folks with other companies, I'm not sure that was  
4 anticipated today. It was my impression that the Board  
5 wanted to encourage a company to propose an application  
6 and that the Board was not taking evidence today on  
7 porosity limits of our field, proper unit sizes of a  
8 field, other geological data for this field and that it  
9 was soliciting public comment in order to encourage a  
10 company to then go back and file an application. But  
11 maybe we're the only ones that were mistaken in that  
12 belief, but that was my understanding.

13 THE CHAIRMAN: Is there anything specifically that you would  
14 reference to have that understanding?

15 MR. FAIN: No, just conversations with Mr. Lepchitz and what  
16 is listed on the agenda. We're here at the Board's  
17 pleasure and we're prepared to go forward any way the  
18 Board wants, but that's why we filed our own application.  
19 Not to have it heard today, but to get it on the agenda  
20 on the future because that's what we thought the Board  
21 wanted, an application to be filed from an industry  
22 representative.

23 THE CHAIRMAN: Well, we have announced that the Board will  
24 receive comments and proposals for establishment of field  
25 rules and creation of drilling units for conventional

1 wells in Buchanan County. Maybe we'll just go forward  
2 and we'll hear from you, we'll hear the ups and downs of  
3 that and hopefully make a good decision on what to do  
4 next.

5 MR. FAIN: All right, sir. Well, we'll just proceed as best  
6 we can. My name is Hugh Fain. I think I've met everyone  
7 on the Board. I represent Cabot Oil and Gas Corporation.  
8 As Mr. Fulner indicated, we have filed an application for  
9 field rules with the Board. It was not our intention to  
10 have it heard today. We understand there's a thirty day  
11 notice requirement before it can be brought before the  
12 Board, our purpose in filing application was to have it  
13 put on the docket for future hearing, perhaps at the  
14 December 20 hearing. At any rate, I'd like to share with  
15 the Board our ideas for what an appropriate set of field  
16 rules would be for conventional wells in Buchanan  
17 County. The first thing I'd like to address is that the  
18 appropriate formation for the field rules, the size of  
19 the pool and the geographic limits of a proposed pool and  
20 I'd like to --

21 THE CHAIRMAN: Mr. Fain, before you get into that, let me just  
22 make sure that we're not going to have you do that and  
23 then have others recommend that we continue to December.  
24 I think that if we're going to get to that point, then  
25 we'd rather get to that right now and not hear it today.

1       The other people that want to speak to this, are you  
2       prepared to go forward today? The ones that raised your  
3       hands, are you prepared, Mr. Street?

4   MR. STREET: Sir, I haven't seen the application submitted by  
5       Cabot and I feel a little bit inept as to how to respond  
6       to that and I would assume -- you know, we could have  
7       time to view that application and respond to it. So I  
8       guess in answer to your question I'm not sure that I do  
9       feel competent to respond to their application. I did  
10      know that you were going to receive comments and we had  
11      some general comments. I'm not able to respond to a  
12      specific proposal.

13   MR. FAIN: That makes sense to Cabot, too. We think everyone  
14      ought to be on the same page when we talk about this and  
15      I think that a lot of people are developing conventional  
16      gas in this area and would like to have their own reason  
17      comments. We really didn't intend to have this heard  
18      today. We thought we were giving general comments for  
19      what a field rule application should contain. Maybe  
20      there's some other people that would like to --

21   THE CHAIRMAN: Mr. Johnson? I'm just kind of pooling the  
22      folks here to get your thoughts.

23   MR. RILEY: Mr. Wampler, I believe what Mr. Fain said when he  
24      sat down -- or what was said was that he filed this  
25      application yesterday. I just got a copy of it.

1 THE CHAIRMAN: I don't have a copy of it.

2 MR. RILEY: You don't have a copy of it. I think we would be  
3 -- if the Board wants to hear general comments today, I  
4 think that's in order, but if the Board wants to hear  
5 this application today, I think we're all going to be --

6 THE CHAIRMAN: The Board's not going to hear the application  
7 today, I'd make that clear. I was simply trying to  
8 clarify, for the record, that the Board had, on its own  
9 motion, already, without an application, set for hearing  
10 today technical recommendations.

11 MR. RILEY: If this Board wants to go forward and hear  
12 general comments with regard to what ought to be going  
13 on --

14 THE CHAIRMAN: We don't want to hear general comments.

15 MR. RILEY: If the Board wants to entertain Mr. Fain's  
16 proposal, I would certainly think that we should continue  
17 this matter until December and let others file competing  
18 applications, if they so choose, then allow this matter  
19 to go forward.

20 THE CHAIRMAN: Mr. Counts?

21 MR. COUNTS: Well, Mr. Chairman, it's my understanding that  
22 the Board, last month, determined that at this hearing  
23 that the Board, based on its own motion, would receive  
24 comments and proposals for the establishment of field  
25 rules. Now my understanding is that parties were to be

1 present or those that intended to recommend special field  
2 rules, they were going to put on evidence with regard to  
3 what those field rules should be, with regard to what the  
4 aerial extent should be, with regard to what reservoirs  
5 should be covered by the industrial rules, et cetera, and  
6 the application filed by Cabot -- I was confused as a  
7 result of the fact that we already had, on this docket,  
8 on the Board's own motion, a request that we were going  
9 to hear and promulgate special field rules. I don't have  
10 an objection. As OXY has previously indicated, it does  
11 not have a significant amount of -- it has not drilled  
12 any significant number of conventional wells in this area  
13 and really has no objection to it being continued as long  
14 as the parties recognize what the process is intended to  
15 do. And that is at the next hearing that the parties be  
16 prepared and put on their evidence and that these rules  
17 be established. I do have a couple of concerns with  
18 regard to those field rules and I think that the Board  
19 needs to consider that I would like to address -- with  
20 regard to the map that we reviewed last time that  
21 indicated to us that the field rules were necessary, but  
22 I would not be opposed to continuing it to the December  
23 docket.

24 THE CHAIRMAN: Mr. Fain?

25 MR. MCGUIRE: Grant McGuire, National Exploration. We just

1 received copy of the notice recently and we would like it  
2 to be continued so that we can consider it.

3 THE CHAIRMAN: Any other party that I've missed that raised  
4 your hand?

5 MR. RILEY: I'd like to ask Mr. Fulner when the application  
6 would need to be submitted. We're going to have  
7 competing applications being filed in order to be ready  
8 for that docket.

9 MR. MASON: I'm a little confused. As I understand it, we've  
10 really got a biogated process here. In other words, are  
11 we going to go forward on the Board's own motion to adopt  
12 these rules, in which case evidence would be presented  
13 and we would, within the context of our motion, adopt a  
14 set of field rules or are we going to go forward with  
15 this Cabot petition and adopt rules within the context of  
16 that application. It seems to me that --

17 THE CHAIRMAN: The Board, on its own motion at last meeting,  
18 set for the agenda today to hear these. That was  
19 preceding Cabot's application. Cabot's application, I  
20 don't personally think needs to go through the process of  
21 the notice. Everyone has been on notice and certainly  
22 Cabot's application can be received as written comment to  
23 the Board for consideration and we'll receive written  
24 from any other party for next hearing if that's the  
25 Board's decision to continue this for next year.

1 MR. MASON: Okay. Then, if I may, I'd like to make a motion  
2 that this proposal number two, with respect to field  
3 rules and creation of drilling units for conventional  
4 wells in Buchanan, be continued to the December meeting  
5 and further, that any party wishing to address that issue  
6 submit their proposals for those rules and any written  
7 comments, if possible, prior to that meeting and be  
8 prepared at that time to show up and deal with it in  
9 terms of the Board's own motion as opposed to dealing  
10 with it in the context of the Cabot proposal.

11 THE CHAIRMAN: I have a motion. Any second?

12 MR. EVANS: Mr. Chairman, let me ask the question -- is  
13 anybody out there prepared with -- as it pertains to item  
14 number two as it's written, has anybody come before this  
15 Board prepared to speak to those issues as they are  
16 written in that one sentence? If not, then we'll go for  
17 continuance. But if there is someone out there who has  
18 gone to the trouble to prepare something, I'd like to  
19 hear it.

20 MR. CHAIRMAN: Do we have anyone that has prepared --

21 MR. MASON?: I defer to that. I understood that there wasn't  
22 any, that's why I did it. So I think your point's well  
23 made.

24 MR. WATSON: Mr. Chairman, I'm Tom Watson for Island Creek.  
25 I have a question and possibly a comment to that, sir.

1 The question is what will be the status of pending  
2 permits and new applications for conventional wells in  
3 Buchanan County until you have a special field rule? The  
4 question I lay on the table to address your point,  
5 special field rules, as I envision from your notice, that  
6 this Board would lay down guidelines for special field  
7 rules hearings to be brought for specific areas outlining  
8 the rules of evidence, the burden of proof required to be  
9 submitted to this Board for the Board to promulgate  
10 special field rules for a specific area in Buchanan  
11 County. That's what I read in item two down to the point  
12 of do you have structure mounts, ice packs, cross-  
13 sections, some evidence for drainage, some evidence for  
14 well construction. Those are special field rules that  
15 apply to a specific area where you have porosity and  
16 permeability differences and you would act on those  
17 individually based on the applications I appreciated from  
18 the Cabot representative. So you could have a whole  
19 hearing just on what are we going to hear when you have  
20 an application, that's the way I read this, for one  
21 particular county. State wide rules apply, now you're  
22 going to have special rules for a particular reservoir  
23 that should be developed according to the parameters  
24 established from that reservoir.

25 THE CHAIRMAN: Okay, let me try to clarify that. The Board,

1 if you will, imagine the Board apply it to itself. The  
2 Board determined that there's a need to have those rules  
3 based on the confusion that we were hearing at the last  
4 Board meeting. And to answer your question about what  
5 takes place between now and when something is decided,  
6 36120F says, "Unless otherwise provided for by the Board,  
7 after an application for a hearing to establish or modify  
8 drilling units or pool boundaries has been filed, no  
9 additional wells shall be permitted in the pool until the  
10 Board's order establishing or modifying the pool or units  
11 have been entered."

12 MR. WATSON: All right, sir. Thank you.

13 THE CHAIRMAN: So if there's any confusion on that we need to  
14 -- while we're on this subject we need to get it all out  
15 here because that would be the clear understanding. I  
16 want to make sure we're as open as we can be about this  
17 so there's no confusion at the next hearing and what  
18 would take place in the meantime that there would be --  
19 unless the Board considered any alternative, there would  
20 be a stay on any activity until the Board makes a  
21 decision.

22 MR. FAIN: Mr. Wampler, are you saying, then, that there is  
23 effectively a stay in Buchanan County on conventional gas  
24 wells from your interpretation of that?

25 THE CHAIRMAN: Unless the Board provides differently.

1 MR. FAIN: Thank you, sir.

2 MR. MASON: Mr. Wampler, is the Board going to go ahead,  
3 then? It is my understanding if we do continue would we  
4 still be moving forward on the Board's own motion? Is  
5 that what we're now talking about, either go ahead now  
6 or go ahead in December on your own motion?

7 THE CHAIRMAN: Yes. Which has a different notice requirement,  
8 that is if anyone wants to submit comments they can do  
9 so, but we're not obligated to notify all mineral owners,  
10 oil and gas owners, coal owners within the area to be  
11 affected because the Board has done this on it's own  
12 motion.

13 MR. MASON: That was what my motion was that we proceed on --  
14 we could continue this hearing until the December meeting  
15 and at that time we would proceed, on the Board's own  
16 motion, to adopt these field rules.

17 THE CHAIRMAN: Mr. Evans?

18 MR. EVANS: I'll second that motion.

19 THE CHAIRMAN: We have a motion and a second. Do you have a  
20 comment?

21 MR. WILLIAMS: I was going to inquire, Mr. Chairman. I'm Jim  
22 Williams with Cabot Oil and Gas. Do you intend this to  
23 be the entirety of Buchanan County or do you wish to  
24 restrict these rules to a specific pools, specific area?

25 THE CHAIRMAN: I think that the record would show that we

1           talked about the Berea sandstone formation, so anything  
2           in Berea sandstone formation.

3   MR. WILLIAMS: Very well. Secondly, then, will this stay  
4           include everything that's presently in the administrative  
5           process now or things that are already applied for  
6           exempted from the stay?

7   THE CHAIRMAN: It would be, as I would read this and, as I  
8           said, our attorney's not here, it would be a stay on  
9           drilling activity. It wouldn't mean that applications  
10          couldn't go forward and be processed, but there could be  
11          no drilling activity.

12   MR. WILLIAMS: Well, specifically, wells that are already  
13          permitted but not sputted or actively drilling would be  
14          subject to the stay?

15   THE CHAIRMAN: Yes. I mean that's the way I would interpret  
16          that. That's subject to our counsel looking over my  
17          shoulder and clarifying that and he'll be here before the  
18          day's over.

19   MR. WILLIAMS: Thank you.

20   MR. KELLY: Mr. Chairman, I may have missed something  
21          somewhere, too, but I believe that when we came to the  
22          decision to receive comments and to consider the  
23          establishment of field rules that we were certainly  
24          talking about the grid. I'm not so certain, had we not  
25          looked at it in that specific area rather than the entire

1 county. I'm not sure you can --

2 THE CHAIRMAN: The other reference -- I'm jut looking from my  
3 notes and not from the official record and I'm subject to  
4 be corrected, but we did reference Pilgrim's Knob area.

5 MR. KELLY: That was my understanding that we were looking at  
6 an area that did not encompass the entire county because  
7 I believe Berea is somewhat different geologically and  
8 structurally and in other ways that would make it unique  
9 through certain areas of the county.

10 THE CHAIRMAN: And, certainly, the Board has the option to  
11 make any exceptions because it says unless otherwise  
12 provided for by the Board.

13 MR. FAIN: Mr. Chairman, so I can be clear about what we all  
14 should be preparing for the next hearing, would the  
15 Board want to consider formations within one area.  
16 Obviously, the Berea Sand is the most economic and the  
17 largest pool in the area, but there are other oil and gas  
18 formations shallower in the same area. Would the Board  
19 want the field rules to apply to various formations  
20 within the area encompassed by the larger Berea Sands so  
21 that the one set of field rules would apply also to  
22 production out of the Big Line, the Raven Cliff, other  
23 formations within that pool?

24 MR. SCOTT: Mr. Chairman, if I might interrupt just one second  
25 and comment. It appears to me that from the Board's

1 motion on number two, "The Board will receive comments  
2 and proposals for the establishment of field rules and  
3 creations of drilling units for conventional wells in  
4 Buchanan County." There's no limitation there with  
5 regard to whether it be the Berea formation or any other  
6 formation and, in fact, I think it's going to be very  
7 hard for the Board to determine the aerial extent that is  
8 applicable with regard to the stake. And I think that  
9 the reason for that is that all those factors are going  
10 to have to be brought before the Board by way of expert  
11 witness testimony with regard to the aerial extent of the  
12 field, with regard to the formations to be pooled and  
13 those recommendations will have to be justified before  
14 the Board. But right now I'm not sure how the Board  
15 could narrow it to a specific formation or to a specific  
16 area based upon the Board's own motion.

17 THE CHAIRMAN: Okay. I have a motion before me that  
18 recommends the Board continue to the December meeting  
19 item number two on today's agenda and I have a second of  
20 that motion. Any further discussion? Okay. All in  
21 favor signify by saying "yes."

22 THE BOARD: Yes.

23 THE CHAIRMAN: Oppose by saying no. The motion carries.

24 MR. STREET: Mr. Chairman, if I could ask a question. I  
25 assume that if the Board is continuing -- at the last

1 hearing the Board already took the evidence on EH-31 and  
2 EH-36 and scheduled them for a conclusion today and at  
3 the same time the Board indicated it was going to take  
4 comments. We interpreted that, and I assume that's what  
5 the Board means, that is not being included in the stay  
6 and at that time you said additional information, it  
7 should be provided R-1, 2, 3, 4, be provided that  
8 information and I guess I'm asking for a clarification.  
9 I wouldn't have thought the Board would have rescheduled  
10 it and told us to go ahead with this information so that  
11 the pooling order could be issued if you determine that  
12 those should not be considered.

13 MR. SCOTT: Mr. Chairman -- excuse me, Mr. Street.

14 MR. STREET: If I may be permitted to finish. And at that  
15 time we submitted the additional information and we  
16 assumed and certainly hope that the Board will go ahead  
17 and consider those specific two units today in  
18 accordance with your ruling last time.

19 THE CHAIRMAN: The Board has those on the agenda.

20 MR. SCOTT: Mr. Chairman, our comment would be to that that  
21 EH-31 and EH-36, the maps that were depicted at our last  
22 meeting which I have a copy with me today, were the exact  
23 reason why the Board determined on its own motion to  
24 promulgate special field rules. It was determined, based  
25 on reviewing that map, that all the units were

1 irregularly shaped, that the correlative rights of  
2 parties were being violated, there was no uniformity and  
3 there was a need for the Board to review and promulgate  
4 special field rules. In addition, the comments submitted  
5 by Edwards and Harding, only intended to justify that  
6 they were attempted to justify that they were attempting  
7 to work with other parties. It provided no testimony  
8 with regard to what the aerial extent of the reservoir  
9 should be, what the formations that were being spaced  
10 should be, etcetera. EH-31 and 36 were obviously the  
11 direct reason why the Board is on its own motion  
12 considering special field rules and certainly those  
13 should not be allowed to go forth because you've got the  
14 correlative rights of those parties to protect. Thank  
15 you, Mr. Chairman.

16 THE CHAIRMAN: Before we move to Item 3 on the agenda, I'd  
17 just like to make sure that we're all clear on what  
18 we're looking for at the December meeting. Recognizing  
19 that Cabot has filed an application for pooling, that  
20 application not being proffered before this Board today,  
21 that application that Cabot has filed will be considered  
22 by this Board as written comment just as we're now open  
23 for written comment. I would remind all of you that the  
24 Board now has the emergency orders, regulations of the  
25 Board in effect, so we will start getting a little

1 tighter on our procedure. The Board's been trying to be  
2 as lax and accommodating as we can, but now we have  
3 written procedures, if you don't have a copy of those be  
4 sure and get them because that's what we will expect, the  
5 filing to be within the time constraints that's set by  
6 those. We have the Emergency Regulations and Board  
7 Procedural Rules that were also adopted on September the  
8 5th that we'll be following strictly in December's  
9 hearing. So if you don't have those, get them from the  
10 Inspector's Office. We're going to take a ten minute  
11 before we move to Item Number 3 on the agenda. I think  
12 we'll be back at 10:30. That's a little less than ten  
13 minutes.

14 (AFTER A BRIEF RECESS OFF THE RECORD, THE PROCEEDINGS  
15 CONTINUED AS FOLLOWS:)

16 THE CHAIRMAN: This hearing is reconvened. As we get into  
17 more routine business now as we move to Item 3 on the  
18 agenda, I would like to remind you that the Board only  
19 needs information that is essential to it in deciding the  
20 case before it. We, of course, encourage cooperation  
21 from all parties in providing relevant information and  
22 the Board will not rehear and redecide significant  
23 issues that it's already decided in prior cases. And  
24 that's just out for a reminder to all of you and for your  
25 understanding as we go forward. Item 3 on the agenda, "A

1 motion has been made to the Board by OXY, USA, Inc.,  
2 asking that all applicants for forced pooling of coal bed  
3 methane gas units be required to show proof of the right  
4 to stimulate the coal seam which is subject to the  
5 proceedings as prescribed in Section 45.1-361.29.F.2."  
6 Who wishes to address the Board regarding this?  
7 MR. COUNTS: Mr. Street would like to. He stepped out for  
8 just a moment, but he should be back momentarily.  
9 MR. JOHNSON: I would like to, Mr. Wampler.  
10 THE CHAIRMAN: Mr. Johnson.  
11 MR. MCGUIRE: Grant McGuire.  
12 THE CHAIRMAN: Grant McGuire.  
13 THE CHAIRMAN: Okay. All right.  
14 MR. COUNTS: Richard Counts, OXY.  
15 THE CHAIRMAN: Okay. Given the number that wishes to address  
16 the Board, obviously the burden of going forward with a  
17 motion will give Mr. Counts the first opportunity to do  
18 that. If you'd like to step out and get Mr. Street and  
19 let's go ahead and do that. I'll allow you to do that.  
20 MR. MCGLOTHLIN: Mr. Chairman, while we're at a break I will  
21 make a motion from Number 1 on the agenda.  
22 THE CHAIRMAN: Okay. We'll just go ahead and come back to the  
23 item for Mr. McGlothlin. The Chair recognizes Mr.  
24 McGlothlin.  
25 MR. MCGLOTHLIN: Upon discussion with a member of the oil and

Right to  
Stimulate

1 gas industry, a citizen member and the coal industry, I  
2 would like to make a motion that the Gas and Oil Board  
3 appoint a working group to submit a proposed rules and  
4 regulations to the full Board, "field rules, drilling  
5 units and forced pooling, to govern administrative  
6 matters such as application fees and the filing of  
7 petitions, and to discuss methods of public participation  
8 in developing the regulations." And that this Board  
9 would be composed of members that would be appointed by  
10 the Chairman, Mr. Wampler, from the Department of Mines,  
11 Minerals and Energy, to be chaired by a member of the  
12 Gas and Oil Board. And further in this motion I would  
13 ask that the working group -- all meetings would be held  
14 publicly and that public, as well as industry,  
15 participation would be invited at all meetings.

16 THE CHAIRMAN: I'll attempt to restate that motion. That a  
17 working group composed of members appointed by the  
18 Chairman from DMME to be chaired by a member of the Gas  
19 and Oil Board and ask that the working group hold all  
20 meetings public and invite public and industry comments  
21 at all meetings.

22 MR. MCGLOTHLIN: One other, I'd like to amend my motion, a  
23 public member from the Board to chair that committee.

24 THE CHAIRMAN: A public member?

25 MR. MCGLOTHLIN: Yes.

1 THE CHAIRMAN: Okay. All right, you've heard the motion as  
2 amended, do I have a second?  
3 MR. EVANS: I'll second.  
4 THE CHAIRMAN: Motion and a second. Any discussion? All in  
5 favor, signify by saying yes.  
6 THE BOARD: Yes.  
7 THE CHAIRMAN: All opposed say no. Motion carries. Thank  
8 you. Okay. On Item 3, without restating the motion  
9 that's before the Board, we've had a number of parties  
10 that are interested in addressing the Board with this  
11 motion and we're going to ask Mr. Counts to go forward  
12 with the motion and we would also say that as Mr. Counts  
13 and any other parties bring up anything you wish to  
14 discuss, we hope you came fully prepared to discuss this  
15 motion. I don't see any benefit for the Board in having  
16 cross-examinations or anything like that. Just have your  
17 presentation be full and complete and the Board will,  
18 hopefully, have enough information to make it's decision  
19 following full briefings from all of you. We will hear  
20 from anyone who wishes to address the Board on this  
21 matter. Mr. Counts?  
22 MR. COUNTS: Thank you very much, Mr. Chairman and Members of  
23 the Board. I'd like to ask the members of the Board, if  
24 they would, just to take a moment to review the docket  
25 in front of them so as to understand, really, the nature

1 of the request for rule making by the Board and to better  
2 understand the purposes of the requested rule to be  
3 promulgated with regard to the pooling applications  
4 accompanied by the consent to stimulate. The Board has  
5 before it now, starting with Item 6 on the first page on  
6 the docket, Item 6 and Item 7 are competing application  
7 between OXY and Edwards and Harding. Item 8 and 9 are  
8 also competing applications. Items 10 and 11 are  
9 competing applications as well. And then skipping on  
10 over to the next page, at the top of the page, starting,  
11 we've got Items 23, 24, 25, 26, 27, 28, and 29. Also 30,  
12 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42, are  
13 all competing applications.

14 MR. MCGLOTHLIN: Excuse me, Mr. Counts.

15 MR. COUNTS: Yes, sir.

16 MR. MCGLOTHLIN: 23 through 42 competing applications, on my  
17 agenda they all read under one company. Who are they  
18 competing with?

19 MR. COUNTS: That is correct, Mr. McGlothlin. Those were all  
20 filed, initially, by Edwards and Harding and OXY has  
21 filed a motion to join in those applications on each of  
22 those items on the agenda. But we've also filed, along  
23 with all those, a copy of our consent to stimulate the  
24 support of. So we essentially have, to show the  
25 magnitude, looks to be basically three-fourths of the

1 docket is filled today with regard to competing  
2 applications. Even in light of the fact that Section  
3 45.1-361.29 of the Virginia Code requires that the coal  
4 operators consent to stimulate is required in order to  
5 obtain a permit. In other words, without that permit, no  
6 matter how many units you pool, you can't drill. Not  
7 today, not tomorrow or not ever without that permit. Now  
8 as I indicated, OXY has submitted with each of it's  
9 applications a copy of it's consent to stimulate along  
10 with all those that we have a competing motion filed on  
11 and Island Creek Coal Company has denied the consent to  
12 stimulate which was recently requested by Edwards and  
13 Harding Petroleum Company. What we're requesting is that  
14 the Board promulgate a rule which requires that a pooling  
15 applicant submit a consent to stimulate as part of the  
16 pooling application. The problem, obviously, is that an  
17 applicant can be designated as the operator and never be  
18 able to drill. So in each of these, 6 through 11 and 23  
19 through 42, should the Board determine to designate  
20 Edwards and Harding as the operator of those units,  
21 certainly would have an enormous impact not only upon the  
22 Board's case load, but also upon the correlative rights  
23 of all those parties that were involved with those units.  
24 In support of our request, we'd like to state to the  
25 Board that the rule requiring consent to be filed with

1 the application is supported by the following: Number 1,  
2 Central critical to the issue is that the consent to  
3 stimulate and/or is required in order to obtain a permit  
4 which is necessary to drill. Number 2, With regard to  
5 administrative efficiency, the Board should not hear  
6 cases until they're ready to be heard. Here the Board  
7 may hear testimony where the operators can never operate.  
8 When these matters are heard by the Board, the Board  
9 should ensure that they're only heard once. In this  
10 situation a year from now you designate Edwards and  
11 Harding as the operator, a year from now they can't get  
12 the consent to stimulate but come back, do you go ahead  
13 and award this petition to them again as operator. The  
14 docket is already large and the development is just in  
15 it's infancy. The promulgation of this rule will also  
16 prevent economic and physical waste. It is necessary to  
17 protect correlative rights of landowners and property  
18 owners and it's necessary to ensure mine safety. I think  
19 just a few moments of history with regard to the Oil and  
20 Gas Act and the compromise which several people have  
21 already made reference to this morning is in order. The  
22 compromise has been effected as a result primarily of  
23 efforts made between the Coal Association, the Oil and  
24 Gas Association, to be able to work out a compromise  
25 where the state can benefit from the concurrent

1 development of it's natural resources. The single,  
2 fundamental issue, however, which has been of manifest  
3 importance to the Coal Association, the coal operators,  
4 is mine safety. As a result of that and since that the  
5 consent is necessary for the permit, the coal companies  
6 never envisioned that a company would be designated  
7 operators without the consent to stimulate. In fact, at  
8 one point in time in the regulatory process, the consent  
9 to stimulate was placed in the pooling provisions. It  
10 was taken out because it was pointed out that you can't  
11 drill a well without the consent to stimulate, therefore  
12 no one's going to file a pooling application without the  
13 consent to stimulate being a part of it. Now, we've got  
14 the history of this compromise primarily as a result of a  
15 desire to conduct operations and primarily as a result of  
16 concerns with regard to mine safety which brings us to  
17 why include the consent to stimulate in the act? Number  
18 One, potential damage to coal seams, it's a dollars and  
19 cents type of a concern based on coal testimony. Number  
20 Two, a liability to coal owners for the damage. The  
21 coal owner does not want someone that they're not  
22 comfortable with that's competent to be stimulating their  
23 coal source. Number Three, the coal operator can veto  
24 if the coal bed methane operator is not physically  
25 responsible. Number Four, the coal operator can

1 determine, in advance, the experience of the applicant  
2 prior to giving their consent. The General Assembly  
3 intended to leave this discretion to that of the coal  
4 operator. Fundamental to the coal and oil and gas  
5 companies include the provision of the Virginia Gas and  
6 Oil Act including the consent to stimulate a 2500 foot of  
7 rule. Both of those are necessary to ensure mine safety  
8 and to ensure that operations are conducted with the  
9 least amount of impact upon the other estates. So why  
10 was a compromise necessary? Three reasons, protection  
11 of the coal estate, mine safety and the development of  
12 both these estates. Now I'd like for you to turn with  
13 me, if you would, to 45.1-361.29.F which provides that --  
14 this is on Page 28 of your Act, you've got the same copy  
15 that I do. 361.29.F provides that "a permit shall be  
16 required to drill any coal bed methane gas well or to  
17 convert any methane drainage bore hole into a coal bed  
18 methane gas well. In addition to the other requirements  
19 of this section, every permit application for a coal bed  
20 methane well shall include the method that the coal bed  
21 methane gas or oil operator will use to stimulate the  
22 well and a signed consent." Therefore, the designation  
23 of operatorship is worthless to any party who does not  
24 have the consent to stimulate. It doesn't make any sense  
25 for this Board to award to an applicant the right to

1 operate a well or the right to pool a well and operate  
2 it and give them an indefinite or a long period of time  
3 or any period of time within which to conduct operations  
4 when they can't obtain the consent to stimulate. Last  
5 week Edwards and Harding requested a consent to stimulate  
6 from Island Creek Coal Company. As I indicated, that  
7 request was denied. They also requested a statement of  
8 no objection from Island Creek. Island Creek did object.  
9 All these wells that we're looking at today are within  
10 the 2,500 foot rule and thus subject to 361.12 which is  
11 a 2,500 foot rule which says that where a coal operator  
12 objects, the permits shall be refused. Since Island  
13 Creek has denied the consent to stimulate and has  
14 objected to the proposed wells, Edwards and Harding can't  
15 drill even if the Board designates them as operator and  
16 this would apply to any operator whether it's Edwards and  
17 Harding or any applicant, and we're not making this  
18 specific with regard to any particular company. This is  
19 a rule which this Board needs to promulgate. From a  
20 standpoint of administrative efficiency, if we look at  
21 designating any applicant as operator of a unit, we're  
22 going to be faced, you're going to be faced as a Board,  
23 to extending those orders. The reason for that is  
24 because they're going to be coming back to you on a  
25 regular basis saying we have not been able to obtain the

1 consent to stimulate, we're still negotiating for the  
2 consent to stimulate, we think we're going to be able to  
3 get the consent to stimulate, we want you to extend this  
4 order. Secondly, with regard to overlapping  
5 applications, to drill the units before you today two  
6 things have to be accomplished. Number one is you have  
7 to obtain a permit. That permit requires a consent to  
8 stimulate. Secondly, you have to obtain a pooling  
9 application designating you as operator. If you were to  
10 designate any applicant as operator who did not have the  
11 consent to stimulate and another party comes along the  
12 following week and files a permit application who does  
13 have the consent to stimulate, we get a real mess on our  
14 hands. The problem now is we've got one party who's been  
15 designated operator, we've got another party who has the  
16 permit to drill but needs to pool in order to be able to  
17 drill. And at that point in time the Board's going to  
18 have two concurrent applications which is really going to  
19 sterilize and affect that unit. Also, I would like to  
20 have you turn to 361.29.D. 361.29.D provides that all  
21 permits and operations provided for under this Section  
22 shall conform to the rules, regulations and orders of the  
23 Director and the Board. When permit terms or conditions  
24 required or provided for under Article III, we're talking  
25 pooling, of this chapter are in conflict with any

1 provision of a conservation order -- excuse me, let me  
2 restate that again, please. I made an error. When  
3 permit terms or conditions required or provided under  
4 Article III of this Chapter are in conflict with any  
5 provision of a conservation order, i.e. pooling order,  
6 issued pursuant to the provisions of Article II of this  
7 Chapter, permit applications, the terms of the permits  
8 shall control. So if we've got competing applications I  
9 think it's obvious the party, even if you're designated  
10 as operator there is no way that you can drill the well.  
11 Permit controlled. The permit's the last step necessary  
12 in order to be able to drill that well. In addition, it  
13 will result in additional hearings before the Board. I  
14 think I've made that clear. If any applicant was  
15 designated as operator without the consent to stimulate,  
16 in all likelihood would be back before the Board for  
17 another hearing on a new matter with the same issues  
18 because their order will expire and then we'll be back  
19 here and go through this whole process all over again.  
20 Now the Board's primary purpose as a conservation board  
21 is to prevent waste and to protect correlative rights.  
22 Now the designation of any operator as operator of any  
23 applicant who does not have the consent to stimulate  
24 will result in physical waste. As the Board is well  
25 aware, the development of coal bed methane is a

1 relatively new industry with one of the major benefits of  
2 it is it has been determined that in 1982 in Alabama the  
3 Department of Energy, in conjunction with some other  
4 operators, went to great lengths to study whether or not  
5 this coal bed methane being vented out of the mines to  
6 ensure mine safety and to facilitate mining purposes  
7 could be economically recovered. It was determined that  
8 it could be and that's why we have a very viable and  
9 growing coal bed methane industry today. But in the  
10 event that you were to designate an applicant as operator  
11 who did not have the right to drill, did not have a  
12 permit, did not have a consent to stimulate, you'll  
13 potentially result in physical waste of billions of cubic  
14 feet of otherwise recoverable coal bed methane vented  
15 into the atmosphere as a result of sterilizing these  
16 units. People are being deprived of their property  
17 rights, a loss of revenue to the Commonwealth, enormous  
18 economic impact, would also result in economic waste.  
19 Respondents under these pooling orders that the Board is  
20 going to be issued, are going to be required to put up  
21 their funds to participate. If they put up their funds  
22 to participate and the applicant can't drill, how long  
23 are they going to have to put their funds up? Will the  
24 applicant request an extension of the order? Will they  
25 have to put their funds up for a year, two years, three

1 years? Still the applicant can't drill the well.  
2 Secondly, from a standpoint of economic waste, it  
3 effectively sterilizes this unit. The acreage is out of  
4 circulation, it can't be drilled on. Now what about six  
5 months from now or next year with regard to that acreage  
6 or that unit that is essentially sterilized? What  
7 happens if the coal bed methane Section 29 tax credit is  
8 not extended again or, in fact, since that has a very  
9 short life and is basically called an extender and based  
10 with Congress on it's firm budgetary considerations  
11 determines next year, not two years from now, but next  
12 year, that they're not going to extend any of these  
13 extenders. Then along with certain other economic  
14 reasons, lack of a market place, the price of oil goes  
15 down tremendously and the price of gas -- there is no  
16 marketplace for it, you just deprive these parties with a  
17 right to have their unit developed by a party who is  
18 prepared now to develop that unit. As a result,  
19 basically, by designating an applicant as operator who  
20 obviously can't drill, these lands may never be  
21 developed. Another fundamental responsibility for the  
22 Board is the protection of correlative rights and here  
23 we're talking about landowner's rights. And there's  
24 already been a lot of testimony this morning with regard  
25 to the comments requested by the Board with regard to

1 protecting landowner rights. Those parties named as  
2 respondents have the right to expect that the applicant  
3 whom you designate as operator will be able to ensure the  
4 orderly development of their property, whether it's a  
5 large owner in that unit or whether it's the smallest  
6 owner in that unit that owns two acres of mineral rights.  
7 They've got the right to expect that that property can be  
8 developed and both are entitled to protection by the  
9 Board. With regard to mine safety, my experience is that  
10 in all states where coal operations are concurring  
11 concurrent with oil and gas and coal operations, is  
12 evidenced by Consolidate's comments this morning. These  
13 operators aggressively protect their coal seams and their  
14 coal operations. That's nothing new. We're fully aware  
15 of that in Virginia and every other state where you've  
16 got a resource to protect and coal operations are  
17 ongoing. The Virginia General Assembly has made it clear  
18 that no issue is more important than mine safety and the  
19 Virginia Gas and Oil Act is predicated upon these  
20 concepts. As I indicated, the 2,500 foot rule with  
21 consent to stimulate are just a few of the examples of  
22 the legislature's recognition of these concerns. The Act  
23 lends itself to discretion of the coal operators to have  
24 the final authority over mine safety as it should be. To  
25 drill coal bed methane well an operator must have the

1 coal owners, the coal operator's consent to stimulate.  
2 This applicant today doesn't have it, the consent has  
3 been denied to them and as a result of the fact, they  
4 would not be able to operate this well. In closing, by  
5 requesting that the Board promulgate a rule requiring the  
6 consent to stimulate accompany the pooling application,  
7 we're not trying to deny any operator the right to be  
8 heard. They know what it takes to drill a well. That's  
9 not a mystery. It takes a permit to drill a well. They  
10 know the consent of the coal operator is required to  
11 obtain this permit and the General Assembly left that to  
12 the sole discretion of the coal operator. In granting  
13 our request, we would ask that the Board, first, give  
14 substance to what is so obviously intended by the  
15 Virginia General Assembly. Secondly, to prevent economic  
16 and physical waste of the Commonwealth's resources, both  
17 coal and coal bed methane. Third, to safeguard and  
18 ensure the protection and correlative rights of all  
19 landowners underlying in the Commonwealth. And, fourth,  
20 to effect the mandate of the General Assembly Citizen  
21 Groups across the Commonwealth and the coal and oil and  
22 gas associations in insuring mine safety. Last week you  
23 saw a map which was basically full of irregularly shaped  
24 units and graphically demonstrated individuals whose  
25 lands were being drained without compensation,

1 landowners being intentionally left out of units. You've  
2 now determined as a Board that you're going to correct  
3 this matter with regard to your own motion by special  
4 field rules. I would only like to suggest to the Board  
5 that if those same landowners were aware that any  
6 operator would attempt to pool without the consent to  
7 stimulate, they would certainly ask each of you to ensure  
8 that the Board designate as operator of their interest an  
9 operator who has the ability to operate. This goal can  
10 best be realized by requiring that the consent to  
11 stimulate be provided by the applicant along with the  
12 pooling application. Thank you, Mr. Chairman.

13 THE CHAIRMAN: Thank you, Mr. Counts. Any questions for Mr.  
14 Counts by members of the Board?

15 MR. MASON: Yes, sir. Mr. Counts?

16 MR. COUNTS: Yes, sir.

17 MR. MASON: It seems to me that you assumed in your argument  
18 that if a person does not have the consent to stimulate  
19 when they file for the pooling that they'll never get it.  
20 Why is that?

21 MR. COUNTS: Well, Mr. Mason, I think that what the Board  
22 needs to be concerned with is that if an applicant who  
23 doesn't have the consent to stimulate goes ahead and  
24 files a pooling application, these lands will be tied up,  
25 they will be designated as operator for a period of time

1 and the Board nor those respondents will know whether or  
2 not this applicant is ever going to get that consent to  
3 stimulate. In addition, all these parties are going to  
4 have to make an election, first off of not knowing  
5 whether or not that operatorship or that consent to  
6 stimulate will ever come about. Secondly, not even  
7 knowing for sure which operator that they would end up  
8 agreeing to participate with. So while we don't know for  
9 sure that any applicant may never be able to acquire the  
10 consent to stimulate, still it should be in the interest  
11 of protecting the correlative rights of those parties  
12 being pooled that the applicant have the burden of  
13 providing the consent to stimulate along with the pooling  
14 application just like they do along with the permit  
15 application. You know, if these parties -- the  
16 respondents, make an election under the order, they're  
17 going to be required to put their money into an escrow  
18 account, again, without having any idea whether or not  
19 this applicant will ever be able to drill the well. And  
20 as I indicated, with regard to the permit, you've got to  
21 be able to show the consent to stimulate. There's no  
22 reason to issue somebody a permit if they can't get the  
23 consent to stimulate. Again, you tied up that unit. The  
24 same exact logic applies to a pooling application and the  
25 pooling unit.

1 MR. MASON: Isn't what you're saying, though, really a back  
2 door way to designate an operator by a race to get the  
3 consent and to totally do away with this Board's  
4 determination under 361.22? In other words, the process  
5 that this Board would go through to pick an operator  
6 would be totally determined by who got the consent first.

7 MR. COUNTS: Mr. Mason, I would one-hundred percent concur  
8 with you because with regard to this Board making a  
9 determination, with regard to whom should be operator,  
10 the very first consideration this Board should make is do  
11 they have a consent to stimulate? Can they drill?  
12 Without that, all the other questions are meaningless.

13 MR. MASON: But you don't think that all the other  
14 determinations that we should look at in selecting an  
15 operator that that should be the sole criteria?

16 MR. COUNTS: No, sir, I do not and wouldn't suggest that to  
17 the Board for a moment. I think that there are other  
18 criteria and even if an operator had the consent to  
19 stimulate should the Board, for whatever reason,  
20 determine that they weren't entitled to operate that  
21 well, I think that the Board could still make the  
22 decision that they would not be designated as operator.  
23 However, of course, the Board will be in a difficult  
24 situation from the standpoint of if no other party has  
25 the consent to stimulate and they can't obtain that

1 consent to stimulate then I'm not sure exactly how the  
2 Board can safeguard the interest of the parties within  
3 that unit with regard to operatorship. Now the other  
4 thing is, of course, the Board enjoys continuing  
5 jurisdiction with regard to whomever it designates as  
6 operator. Not only with regard to how operations are  
7 conducted, but also with regard to even review of the  
8 drilling costs. The Board has that discretion.

9 MR. MASON: Well, you, in effect, would have us rule if we had  
10 a situation in which an operator came before this Board  
11 who had a consent or who made application and had a  
12 consent and it essentially did not satisfy any of the  
13 other economic requirements or show us that they should  
14 be the operator and someone else who didn't have the  
15 consent and had all those qualifications, we wouldn't  
16 even be able to consider the second person.

17 MR. COUNTS: No, sir. I think that you still have to even in  
18 that particular situation. First off, I think that when  
19 we take a look at the status of operations in Virginia,  
20 there are a number of major landowners, major coal  
21 owners, who basically control the vast majority of coal  
22 underlying the Commonwealth of Virginia. I don't think,  
23 number one, that a built-in safeguard to that is that any  
24 of those operators are going to grant the consent to  
25 stimulate to an operator such as what you suggest.

1       However, if that were to occur, I think that the Board  
2       could still certainly deny that application in the hopes  
3       that something would be worked out later with regard to  
4       other considerations. But the General Assembly has  
5       simply stated that unless you've got the consent to  
6       stimulate, you can't drill.

7       MR. MASON: Thank you.

8       MR. COUNTS: Yes, sir.

9       THE CHAIRMAN: Any other questions? Mr. Counts, I have one.

10       Under 361.21, it's on Page 20, C-3, designate the gas or  
11       oil owner -- this is all pooling orders entered by the  
12       Board pursuant to the provision of this Section, "shall  
13       designate the gas or oil owner who is authorize to drill  
14       and operate the drill provided, however, that except in  
15       the case of coal bed methane gas wells the designated  
16       operators must have the right to conduct operations or  
17       have the written consent of owners for the right to  
18       conduct operations on at least twenty-five percent of the  
19       acreage included in the unit." Do you have any comment  
20       on that?

21       MR. COUNTS: Well, I would certainly agree that the designated  
22       operators must have the right to conduct operations.  
23       Quite frankly, this is a very ambiguous Section of the  
24       Act with regard to the consent on the twenty-five  
25       percent. Although I would agree with you that it's not

1 the primary reading of this, I think the intended reading  
2 of this was that with regard to conventional wells that  
3 any operator would be required to have the consent of at  
4 least twenty-five percent of the affected -- or the  
5 respondents, the interested parties in that unit in order  
6 to be able to operate that unit.

7 THE CHAIRMAN: Any other questions? Okay. If not, you want  
8 to go ahead with your presentation?

9 MR. STREET: If that would be permissible since we are the  
10 applicant in most of those situations that Mr. Counts is  
11 speaking to.

12 THE CHAIRMAN: That's fine.

13 MR. STREET: Thank you. It is not a real difficult argument  
14 that Mr. Counts is making for us all to understand.  
15 What he is trying to get the Board to do is to say that  
16 OXY can drill, is the only one that can drill the wells  
17 on Island Creek's coal. I mean in a fact that's what  
18 he's trying to say. Island Creek has given the consent  
19 to drill wells and OXY says, "We're the only one that has  
20 that consent." Mr. Counts tells you what the intended  
21 legislature is. I would normally be reluctant to tell  
22 you that except I submit Mr. Count has so erroneously  
23 stated what the intended legislature is. Since we're  
24 talking about hearsay and history, I talked to the  
25 legislature. That wasn't their intent at all. The

1 intent was that the coal company could veto the right to  
2 stimulate, not that the coal company could pick the  
3 operator. The Section that has been cited here does not  
4 say that the coal company shall pick the operator. It  
5 only says that -- and I would like to read the entire  
6 Section as opposed to where Mr. Counts left off. You  
7 might want to look at it because it is significant.  
8 44.1-369.22.F.2, 369.22, 361. Let me see if I can --  
9 sorry for the delay here.

10 MR. JOHNSON: I believe that's .29F2.

11 MR. STREET: What page is it on?

12 MR. JOHNSON: Twenty-eight.

13 MR. STREET: The Section there which is generally referred to  
14 as veto rights by the coal operator says, in effect, that  
15 a signed consent must be obtained before you can drill if  
16 the coal owner the his seam within 750 horizontal feet or  
17 100 vertical feet. It doesn't say that that signed  
18 consent shall specify an operator and that's very  
19 significant. The legislature was asked to put that in as  
20 a prerequisite for your pooling application, the  
21 legislature refused. How can this Board? And I'm sure  
22 this Board wouldn't want to come in and legislate  
23 something that the legislatures specifically decided not  
24 to do and there's a good reason. If you agreed to do  
25 what Mr. Counts did, the mischief is obvious. You can

1 no long even control that operator. Because even though  
2 he's doing it wrong, you can't change him out because  
3 he's the only one who's got the consent to stimulate. So  
4 if you read this to say that the coal company can pick  
5 the operator as opposed to the coal company can  
6 determine whether stimulation will be allowed, then you  
7 restrict the Board not only from picking the most  
8 responsible operator but from ever changing the operator.  
9 Because if you changed the operator and tried to bring in  
10 another operator, then if the coal company denied him the  
11 consent to stimulate, he couldn't operate the well and  
12 the well would have to be closed up and all the gas lost.  
13 That's certainly not the intent of the legislature and I  
14 don't think that that's what they said in this Section.  
15 In all of these applications before the Board, Island  
16 Creek has signed a consent to stimulate and that consent  
17 to stimulate says -- you can read the whole thing, but it  
18 says, in effect, "execution of this statement is to  
19 record the fact that the undersigned has no objection to  
20 the Virginia Oil and Gas Inspector issuing a permit for  
21 the well work which includes stimulation as proposed in  
22 the notice and application. So, although I don't think  
23 this statute really allows Island Creek to do that, they  
24 didn't attempt to specify it in there. But there's  
25 another important fact in this Section which I'd like for

1       you all also to look at. "A signed consent is required  
2       unless the underlying contractual rights constitute a  
3       waiver," and that goes down in Subparagraph Number Two.  
4       It says, "the requirement of signed consent contained in  
5       this Section shall in no way be considered to impair,  
6       abridge or affect any contractual rights or objections  
7       arising out of a coal bed methane gas contractor or coal  
8       bed methane gas lease entered into prior to January the  
9       1st, 1990," please read the rest of it, "between the  
10      applicant and any coal operator and any extensions or  
11      renewal thereof," etcetera. In this case Edwards and  
12      Harding, and in many cases, the operator would have the  
13      right, based on it's leases, not necessarily requiring a  
14      consent to be signed. And if you say a written consent  
15      has to be signed then you are abrogating, in most cases,  
16      the contractual rights because most of these leases were  
17      signed prior to January the 1st, 1990. I do not want to  
18      get too carried away on the legal argument unless you  
19      want me to, but the legal arguments are very sound,  
20      they're espoused throughout common law in the various  
21      states dating from as early as -- of course, Mr. Counts  
22      is very familiar and all lawyers are with the Sharrteers  
23      case in Pennsylvania where the Court ruled that a gas  
24      owner had the right to go down through the coal, it was  
25      an implied right, granted by that lease. So you've got

1 two situations here. Number one, once a coal operator  
2 gives a signed consent, that's a waiver. He doesn't  
3 specify the operator. The Board should determine if that  
4 is a responsible operator. Number two, if you were to  
5 require a signed consent in all cases, then that would  
6 never leave for consideration the issue of whether the  
7 lease rights grant that right to stimulate the coal.  
8 There are at least three and possibly four of these  
9 applications where the gas was leased prior to the coal  
10 and in the coal lease it says specifically the coal  
11 operator has to cooperate with the gas company. I mean  
12 you can't find a more -- a clearer waiver than in that  
13 specific case. I understand you all's historical  
14 position that you don't rule generally on interpretation  
15 of leases and contracts and you generally refer that to  
16 the Circuit Court as indicated or evidenced by a case  
17 that I had before the prior Board or the predecessor of  
18 this Board and also by your ruling that I understand you  
19 made in a previous hearing to allow OXY to put down a  
20 well even though all they claim was a designation of  
21 operator by Island Creek and all Island Creek had was a  
22 right to mine the coal. So you're not trying to make  
23 that decision as to ownership and I'm not trying to argue  
24 that you should. What I am submitting is if you don't  
25 allow a person to even be considered for an operator

1 unless he has a written paper saying from the coal  
2 company, "I want X company to do it as opposed to Y  
3 company," then you're not even letting that issue be then  
4 heard before the Circuit Court. What would happen, if  
5 this Board accepts Mr. Count's suggestion, is a monopoly  
6 between Island Creek and OXY which are sister companies.  
7 What would also happen is that OXY can then dictate the  
8 terms of the AFE, of all agreements, they can set  
9 whatever costs they want because there's no other  
10 possible operator out there and we will show you in the  
11 cases today that the operators filed these applications,  
12 Edward and Harding, can do it much cheaper. That Edwards  
13 and Harding has a market for it right now. OXY doesn't.  
14 They testified at the last hearing. Edwards and Harding  
15 has gathering lines. They're going to get the gas out  
16 immediately. I'm not trying to make any accusations, but  
17 I think you certainly should consider this possibility.  
18 OXY has come in and platted out Island Creek's unmined  
19 areas that they want to drill down to, not any areas  
20 where Island Creek is mined, but their unmined areas  
21 because the gas needs to be vented in those areas before  
22 OXY can mine. Prior to this Act going in, it's common  
23 knowledge that Island Creek was paying \$15,000/\$20,000  
24 to put down a well to vent this methane gas. Now  
25 nothing has to be paid. OXY can come in and do it under

1 a forced pooling arrangement and doesn't have to pay that  
2 person. They don't even have surface rights on many of  
3 these tracts. Yet, in the leases that they have  
4 obtained and they can show you a copy of their leases to  
5 get methane gas for the right to drill, they say in it  
6 they don't have to pay to vent methane gas out of a coal  
7 mine. They say that OXY doesn't have to pay and nothing  
8 shall prevent OXY under a coal lease from venting methane  
9 out of a coal mine. So even if Island Creek doesn't have  
10 the right to vent that gas, OXY has got the right under  
11 the leases that they're getting. And then if this Board  
12 gives them the right to put the well down because they're  
13 the only ones that have the right, you don't have any  
14 protection for your gas owners. An operator ought to be  
15 a fiduciary of your gas owners, not a captive of the coal  
16 company. The gas company certainly has to work with the  
17 coal company, but it shouldn't be a basis for a  
18 subterfuge where the coal company can come in and get  
19 it's person to drill the well knowing that, then it will  
20 vent the gas whenever he wants it to regardless of  
21 whether or not it's necessary. I suggest that Mr.  
22 Count's argument is not in accordance with the intent of  
23 the legislature, it's not in accordance with the Act  
24 because the Act just says a signed consent, not a signed  
25 consent specifying anybody. And it's not in accordance

1 with trying to protect the correlative rights or conserve  
2 gas. You've heard testimony before and you'll hear it  
3 again today that Edwards and Harding is ready to put down  
4 the well, has the gathering lines in place, will market  
5 this gas as soon as it can be done. They'll start  
6 immediately. OXY doesn't even plan to put their  
7 gathering lines down, they say, for like in September of  
8 next year. They don't have a pipeline laid and don't  
9 have a contract with a pipeline. So you're at least up  
10 to next year and I suggest to you that you'd be a lot  
11 longer than that and when the coal company comes through  
12 and mines that gas they've got to cut the well. So every  
13 day earlier that a gas company can get that gas out and  
14 sell it, the more protection you have for the owners of  
15 that gas and also the more conservation you give to the  
16 gas because it's so much sooner. So that has to be one  
17 factor, not the only factor. There must be several  
18 factors. Who would be a fiduciary for the gas owners?  
19 Who would get the gas to market the quickest? Who can do  
20 it the cheapest? Who has the most information for you to  
21 consider? For example, OXY can't tell you what they're  
22 going to charge for the gas to go through the gathering  
23 lines because they haven't put the gathering lines in.  
24 They can't tell you what the price they're going to sell  
25 the gas for because they don't have it marketed. They

1 can't tell the other involuntary owners what they're  
2 going to sell the gas for. So it's very difficult for  
3 the other owners of this pool to make a decision as to  
4 whether or not they want to come in and participate. I  
5 am not suggesting that you must choose Edwards and  
6 Harding or that you must choose OXY. I am suggesting  
7 that who has the consent is irrelevant once the consent  
8 is obtained and secondly, I'm suggesting that if a gas  
9 operator applicant has a legal right based on the waiver  
10 theory, that has to be decided -- well, doesn't have to  
11 be -- if you want to decide it, you know, that's fine but  
12 if you don't want to decide it then that should also be  
13 decided by the Circuit Court and this Board should decide  
14 who's the best operator. And finally, and maybe this is  
15 a simplistic statement that the Board already realizes,  
16 sometimes there would be gob wells put down and that  
17 consent' not going to be required. Secondly, how do you  
18 determine between two operators if one has a consent to  
19 one coal seam and one has the consent to another coal  
20 seam? Finally, the fact that you have to have a consent  
21 to stimulate, Island Creek in some places only has the  
22 Pichi 3 and the Pichi 4 seams, they don't have the other  
23 seams. So they're going down and they're only going to  
24 have holes out to the gas from the Pichi 3 and the Pichi  
25 4. All the rest of the seams up above that they don't

1 have any right to. They certainly don't come in here  
2 saying they have the right to stimulate. So do you just  
3 not let anybody go in until they have the right to  
4 stimulate all wells? One final point, the industry is  
5 young, there has been no drilling and production from  
6 wells and methane wells in Buchanan County except the  
7 wells that have supplied houses. There's one well in  
8 Buchanan County, the White Ratcliff well, that was  
9 drilled in about 1968 that was not stimulated. It's been  
10 producing gas for over twenty years and has produced gas  
11 for multiple homes, filling stations. It's produced a  
12 tremendous amount of gas. So even though the coal  
13 company, in some areas for safety reasons, they might say  
14 we don't want anybody to stimulate this coal. I'm not so  
15 sure that as time progresses that companies may not want  
16 to put a well down anyway. It's too soon to tell which  
17 is another reason why this Board shouldn't put down a  
18 blanket rule saying that you must stimulate every well.  
19 At this time I think the gas industry thinks that they  
20 will be wanting to stimulate wells generally. But if the  
21 coal company says no, you can't stimulate it, they  
22 haven't given the right-of-way in prior instruments, it  
23 may be a possibility that it will be put down without  
24 wanting to stimulate it. Certainly ? wells are not going  
25 to be stimulating that seam. The Board has already

1 pointed out that -- you haven't pointed out, but by your  
2 question it's obviously that you perceive the problem  
3 involved. If you say that an operator has to have the  
4 right to consent -- has to have a specific consent to  
5 stimulate, at the same time an operator has to have  
6 twenty-five percent of the owners to sign up and the  
7 operator that has one of these doesn't have the other,  
8 then no gas well is drilled. I submit that the Board, in  
9 conclusion, would be usurping the power of the  
10 legislature if they attempted to pass this rule, would be  
11 passing a rule that would cause considerable mischief if  
12 the operator was ever dispossessed and that the Board  
13 would be putting down a blanket rule that would, in  
14 effect, consummate a monopolistic control by Island Creek  
15 and OXY. Thank you, gentlemen.

16 THE CHAIRMAN: Thank you. Any questions, members of the  
17 Board?

18 MR. MASON: I have one.

19 THE CHAIRMAN: Mr. Mason.

20 MR. MASON: Mr. Street?

21 MR. STREET: Yes, sir.

22 MR. MASON: In regard to your statement, if your client were  
23 to obtain a forced pooling unit in which they did not  
24 have the consent and which under the law required a  
25 consent, assuming ignoring for a moment the issue of

1           whether that was determined by a preexisting contract.  
2           If this Board granted a petition and named them as an  
3           operator, what would you do with that well?  
4   MR. STREET:   And was given a permit for the well?  
5   MR. MASON:    No, just you file for a forced pooling.  
6   MR. STREET:   Of a unit.  
7   MR. MASON:    The consent's required and you don't have it  
8           and we grant your petition to be an operator, what would  
9           your client do with the well at that point?  
10  MR. STREET:   I hate to be so dense, but we're getting an order  
11           now for a unit and now we're asking for -- the next step  
12           is to ask for a permit to drill the well.  
13  MR. MASON:    Well, I understand that, but as I understand --  
14           excuse me.  
15  MR. STREET:   And you're saying after the first step?  
16  MR. MASON:    Yes.  
17  MR. STREET:   After the first step, then once a consent has  
18           been signed --  
19  MR. MASON:    Well, I know, but I'm saying assuming you do not  
20           have the consent.  
21  MR. STREET:   Okay.  Nobody has the consent?  
22  MR. MASON:    Correct.  
23  MR. STREET:   I'm sorry.  No one has the consent.  Then if  
24           there is no right of a waiver, then the company has to  
25           decide and all companies, I think, would have to decide

1           whether they're going to put a well down without  
2           stimulation because I think the coal company unless, you  
3           know, in a legal contest is found to be unconstitutional,  
4           the coal company could then object to the stimulation.  
5           What I'm trying to say, sir, is that a coal company  
6           can't, under this Section, say that one operator can  
7           stimulate and another can't.

8   MR. MASON:   Okay.  My first question was  what happens if that  
9           occurs and you don't have the consent?

10  MR. STREET:   Okay.

11  MR. MASON:   My second question would be if the coal company  
12           took the position that the consent was individual, that  
13           they could grant or extend a consent to individual  
14           operators, you know, what would your client do if that  
15           was their position and you were granted the pooling unit?

16  MR. STREET:   Oh.  Well, we'd go down and we would put the well  
17           up because then we'd have the consent --

18  MR. MASON:   No, I understand that, but that's my point.  What  
19           if the coal company said that the consent was individual  
20           to another operator?

21  MR. STREET:   I assume at that point we would go ahead and  
22           proceed with the drilling.  I assume the coal company  
23           then would have to decide what action they wanted to take  
24           if they disagreed with what this Board had said.  I mean  
25           they could try to --

1 MR. MASON: I'm trying to frame my question within the context  
2 of the permitting involved in this, you know. Would  
3 there not be a determination then on whether a permit was  
4 issuable under those circumstances without the consent?  
5 MR. STREET: This Board would have to make that determination  
6 if I understand you correctly.  
7 MR. MASON: That's right and we'd be right back here again  
8 with the same issue.  
9 MR. STREET: Yes, sir. You'd be here with the issue of  
10 whether you can grant a permit in this situation.  
11 MR. MASON: That's correct. That's what I was trying --  
12 MR. STREET: But each situation might vary, of course, but I  
13 think that you would then be making that decision and it  
14 would be up to the Board, with all the facts of that  
15 specific case, to determine it. Excuse me for being so  
16 vague about my answer.  
17 MR. MASON: That's all right.  
18 THE CHAIRMAN: Any further questions of Mr. Street? Thank  
19 you. Mr. Johnson, you ready?  
20 MR. JOHNSON: Sure. Thank you. First let me say it's very  
21 difficult to follow Mr. Counts and Mr. Street because  
22 they always cover subjects very well and I think you've  
23 gotten a good discussion from them. I'll try to be brief  
24 about this. First thing I want to say is -- and the  
25 Board knows I represent some mineral owners, the

1 legislature that we've been talking about so fondly of  
2 left us out and I only leave it to your all's imagination  
3 why that way. This statute, with regard to stimulation,  
4 uses the kind word "operator" which means that coal  
5 owners have no rights here if their coal has been leased.  
6 I think Mr. Street also pointed out to you that what  
7 Occidental is doing through OXY and Island Creek is  
8 drilling in Virginaries of coal, some of which they may  
9 never intend to mine or have no present intention to  
10 mine, to degas these areas well in advance of what they  
11 want to do. I think with regard to the issue that the  
12 Board has in front of it now is whether or not what I  
13 term "OXY lock" is going to be the name of the game.  
14 And, you know, I probably used that word in front of my  
15 good friends at OXY, but I want to tell you that's what I  
16 believe it is and that's what I believe the intent was  
17 when the legislation was drafted. The bottom line of  
18 that being that the coal companies wanted absolute  
19 control of this stimulation matter and so the issue of  
20 whether or not that stimulation issue should be  
21 controlled. And I think that the interpretation that's  
22 being put on the statute by OXY is to say that this  
23 statute says absolutely no permits can be granted --  
24 absolutely no permits can be granted. They tell you by  
25 virtue of Section 29.F. I differ with that because I

1 feel that all that it says is that nothing can be granted  
2 with respect to any coal seams which the operator  
3 proposes to stimulate. If the operator does not propose  
4 to stimulate the coal seam then the permit can be  
5 granted. You know, I don't think that what's going on  
6 here ought to happen simply because there's some  
7 presumption of stimulation. I also want to point out to  
8 the Board that OXY, USA, Inc. and my good friends  
9 thereof, have not presented to this Board any evidence  
10 that would indicate that a well could not be successful  
11 unless it were stimulated, not one iota of evidence have  
12 they presented to you. Now I realize that there's one  
13 geologist on this Board and that the Inspector is a  
14 geologist and I know that you all may have your own  
15 opinions with regard to that. I know that Mr. Evans is  
16 certainly knowledgeable in the coal industry with respect  
17 to what's going to happen. We don't know what's going to  
18 happen with respect to the coal reserves which may or may  
19 not be damaged by this fracking. We don't know if  
20 they're going to get torn up, we don't know if the  
21 advances that have to be made in the coal mine which are  
22 done on a more or less room and pillar basis, if those  
23 advances are going to cave in and coal's going to be  
24 lost. We don't know any of those things. We know that  
25 the coal owners in the "OXY lock" situation have

1 absolutely no say in this. They do want to see that  
2 their coal's protected and they do want to see that the  
3 methane is safely extracted, but we don't want to see  
4 one oil and gas operator come into the area and say we  
5 control the whole area. Certainly my clients have not  
6 taken that position and I don't expect them ever to. We  
7 don't believe that Section 29.F should control the  
8 situation. We don't believe the Board should adopt a  
9 rule that says if you're Occidental Petroleum, you can  
10 come in and file a pooling order request and if you're  
11 not, too bad. We don't believe that that's the way it  
12 ought to be and we don't believe that these rules are  
13 written that way. I think the legislature made a mistake  
14 by not making any effort to protect coal seams from  
15 damage with respect to the coal owners because they are  
16 permitting only coal operators to control this  
17 stimulation issue. One other point that Mr. Street  
18 brought up is there are multiple seams. I believe that  
19 Occidental or OXY, USA is primarily aiming at the coal  
20 seams below the Tiller formation. There are a number of  
21 seams below the Tiller formation, only one or two of  
22 which have ever been designated as minable coal reserves.  
23 So what is going on is they are trying to stimulate coal  
24 seams that they don't even consider minable at this point  
25 as a part of this operation. And if they have all those

1 seams leased, that's fine. They can go and break up all  
2 the seams that are not minable and no one would probably  
3 ever care about that, but with regard to the seams that  
4 are minable, they also have some say in it. There will  
5 be a lot of varying scenarios as Mr. Street has pointed  
6 out to you. There may be situations where OXY only has  
7 one or two seams under lease and the seams above that may  
8 or may not be leased, the coal owner may or may not be in  
9 a position to consent, may or may not be willing to  
10 consent, so there are a lot of variables here. I don't  
11 think you should look at the fact that one company has  
12 the right to control one or two seams. If they control  
13 all seams, then they'd come here and tell you that and  
14 you should take that into consideration perhaps, but I  
15 don't think that the Board should adopt a rule which says  
16 only a certain coal company and it's sister can come into  
17 this room and make applications before this Board for  
18 pooling orders. I don't think that's the purpose of the  
19 Act. I don't think that the legislature ever intended  
20 that. I don't think that Section 29.F is a total lock,  
21 whether or not it's "OXY lock." I don't believe it's  
22 "OXY lock." But they want you to issue a rule which says  
23 that they have got everybody else shoved out. Sooner or  
24 later we're going to see some other companies, they're  
25 going to put on their own lock. OXY's not the only deep

1 sea coal miner in Southwestern Virginia. But as far as  
2 what is going on right now in the areas that are now  
3 being proposed for development of coal bed methane, we're  
4 now seeing Island Creek's coal and OXY, USA as the  
5 operator coming into this Board and making applications.  
6 And I do appreciate you all listening to what I have to  
7 say. If you have any questions, I'd be glad to answer  
8 them.

9 THE CHAIRMAN: Any questions of Mr. Johnson? Thank you.

10 MR. WATSON: If I could just ask a question?

11 THE CHAIRMAN: I'm sorry, I'm not going to allow any cross-  
12 examination.

13 MR. WATSON: No. No. Of the Board's understanding of what  
14 we're doing because I have been hearing about drilling  
15 unstimulated wells and in an effort to focus this my  
16 understanding is that the Oakwood Field was pooled and  
17 that the rule that we're looking for is pooled on eight  
18 acre units and imbedded in that drilling unit size is an  
19 assumption that all those wells are going to be fracked,  
20 otherwise it won't drain eighty acres. Are we going to  
21 consider today pooling applications for unstimulated  
22 wells and the consent to frack issue as it may or may not  
23 apply to wells that will not be stimulated or are we  
24 limiting our inquiry today to the Oakwood Field which was  
25 spaced on eighty acre units and the only reason it was

1 spaced that way, as I understand it, was because there  
2 was testimony that fracking would drain eight acres.

3 THE CHAIRMAN: Okay. We're not going to respond to that and  
4 we can't allow any further. OXY's had their bite at the  
5 apple. Mr. McGuire?

6 MR. MCGUIRE: Board Members, I'm Grant McGuire and I represent  
7 Ashland Exploration in this matter. Ashland shares the  
8 concerns of Mr. Street and Mr. Johnson and I don't  
9 propose to repeat their arguments. I will say that there  
10 are other provisions in this new act to protect the  
11 interest of the coal owners, specifically, Section 12  
12 concerning distance limitations and the permitting  
13 section which requires consent to stimulate before  
14 issuance of a permit. That's all I'm going to say on the  
15 matter and as I said, again, I will join Mr. Street and  
16 Mr. Johnson and share their concerns. Thank you.

17 THE CHAIRMAN: Thank you. Any questions? Thank you.

18 MR. FAIN: Mr. Fulner, just very briefly, on behalf of Cabot  
19 Oil and Gas, we would support, also, the position of  
20 Edward and Harding and the comments of Mr. Johnson and  
21 Mr. McGuire. Thank you.

22 THE CHAIRMAN: Thank you. Any other parties that -- I believe  
23 I had Mr. Ellis.

24 MR. ELLIS: Just briefly, as I sit here and listen to this  
25 today, Consol listens with both ears because we're both a

1 coal operator and a coal bed methane producer. At this  
2 time we would have to ask the Board, as I stated earlier,  
3 that any coal bed methane producer have the right or have  
4 the consent of the coal owner/operator prior to the Board  
5 granting a forced pooling order. In the comments I gave  
6 earlier you will find that and I think we will stand  
7 behind that at this time.

8 THE CHAIRMAN: Any questions, members of the Board? Thank  
9 you.

10 MR. GREENE: Mr. Chairman, Members of the Board, my name is  
11 Steve Green. I work for Island Creek Coal Company as a  
12 coal bed methane coordinator. Island Creek is in  
13 somewhat of a unique situation of having been in the coal  
14 bed methane business since the mid-sixties by the fact  
15 that we've had to deal with the coal bed methane and it  
16 hasn't always been a pleasant experience. It's been a  
17 problem with our mining and it continues to be a  
18 situation we have to deal with. We have obligations to  
19 our lessors to mine their coal in a prudent and efficient  
20 manner and this obligation mandates that we take great  
21 care with respect to any matter that could impact the  
22 minability of our coal reserves. And we've been very,  
23 very cautious with respect to stimulation of coal seams.  
24 Now the fact that there is a great potential to have  
25 those coal reserves impacted and essentially make those

1 reserves unminable, should a situation like that occur,  
2 the potential for liability for lost coal is there and  
3 it's a situation that causes great concern from Island  
4 Creek's part. Over the past years, we have done  
5 substantial work and research with respect to coal bed  
6 methane. We've learned a great deal through our vertical  
7 ventilation program. In the past three years or so we  
8 have concentrated more on the concept of trying to  
9 recover the coal bed methane and during this period we  
10 worked with Occidental Petroleum who is a sister  
11 corporation to Island Creek Coal Company. As brothers  
12 and sisters are, it hasn't always been a harmonious  
13 relationship. We've learned and we've struggled along  
14 and we have developed some very, very useful information.  
15 During this period we have developed a certain degree of  
16 trust and a certain degree of respect for each other.  
17 And it should be understood that the confidence we have  
18 with respect to Occidental's ability to stimulate the  
19 coal seam while protecting our coal reserves is not a  
20 given. This is something that has been earned. The past  
21 three years have been dedicated primarily to determining,  
22 in Island Creek's mind, that this stimulation of the coal  
23 seam can be done without impacting our coal reserves.  
24 That is foremost in Island Creek's mind. We have to  
25 protect our coal reserves. As we all know, everything

1 doesn't always go as planned. There is always the  
2 potential for situations where a stimulation may go bad  
3 and you end up with a lost coal claim or reserves that  
4 can't be mined. In a situation like that we have  
5 agreements in place that protect Island Creek with  
6 respect to these lost coal claims. We have agreements  
7 that give us absolute control over the location,  
8 stimulation, completion of the coal seams. We have to  
9 maintain the position that we have to have complete  
10 control over the stimulation of the coal seam to protect  
11 these reserves. Now the agreements that we have do  
12 protect us from these lost coal claims, but the agreement  
13 itself is only as good as the abilities of the parties to  
14 back up the potential liabilities of these coal claims or  
15 lost coal claims. And with respect to Island Creek and  
16 OXY, we have recourse through the corporate ladder that  
17 says that Occidental will -- or OXY will abide by the  
18 agreements and that they will be responsible for lost  
19 coal claims. We would not have this corporate recourse  
20 with respect to an outside operator. Furthermore, we are  
21 very, very cautious with respect to outside operators or  
22 unproven operators. As I said before, we spent a  
23 substantial amount of time and energy into developing a  
24 working relationship and assuring ourselves that the  
25 stimulation can progress and can be done safely without

1 impacting our reserves. And we will continue to be very,  
2 very cautious with respect to anybody who wants to  
3 stimulate who does not have a proven tract record with  
4 Island Creek. One thing that we do maintain, as a part  
5 of our agreement with OXY, is that Island Creek has  
6 absolute control over the identification of the coal  
7 horizon. The precise location of the target seams is  
8 very imperative in order to assure a safe and effective  
9 stimulation. There are numerous coal seams above the  
10 Pocohontas Number 3 which is usually a primary target.  
11 These seams vary in height and vary in bottom of seam  
12 elevation from area to area and it's quite difficult to  
13 actually and accurately locate the target seams to be  
14 stimulated. Even our own geologists who have probably  
15 more experience than anybody in the state with respect  
16 deep mining geology of the areas sometimes have a  
17 difficult time actually locating these seams. So, again,  
18 it's paramount that Island Creek have absolute control  
19 with respect to this situation. To give you an example  
20 of what could occur with respect to a stimulation that  
21 could cause poor roof conditions and essentially impact  
22 and area of one of our long wall operations, some of  
23 these stimulations are designed for 750/950 feet which  
24 could essentially impact a section of roof as long as a  
25 1,000 feet long in one of our long wall mining panels.

1 This would essentially mean that 1,000 feet of a long  
2 wall panel could not be mined. That, in itself, amounts  
3 to around 155,000 clean tons of coal lost. In addition  
4 to that, in order to mine the rest of the remaining  
5 panel it would be necessary to develop additional  
6 bleeders, pillar support and start up entry systems which  
7 would essentially mean that those areas could not be long  
8 walled either which amounts to another 100,000 tons of  
9 clean coal per each one of those two areas that would  
10 have to be developed on each side of the 1,000 foot area  
11 that would be lost. So, basically, we're talking in the  
12 neighborhood of 350,000 clean tons of coal lost and a  
13 situation like this is substantial and it's a situation  
14 that we must have control over. I thank you for the  
15 opportunity to comment with respect to this and I would  
16 say again that Island Creek takes the position that the  
17 coal operator must have the absolute right to approve  
18 stimulation of the coal seams in order to protect the  
19 reserves of coal which we mine.

20 THE CHAIRMAN: Any questions, Members of the Board, for Mr.  
21 Green?

22 MR. MCGLOTHLIN: Mr. Greene, would not Island Creek have a  
23 recourse against another operator if the contract were so  
24 designated and signed to the stimulation?

25 MR. GREENE: Well, Mr. McGlothlin, as I pointed out, we are

1 concerned about the ability to abide by those contracts.  
2 If you can imagine the situation that I talked about,  
3 let's say that for example, 350,000 clean tons of coal  
4 are lost because of a bad frack. If we place a value of  
5 \$35 a clean ton on that coal reserve, we're looking at  
6 the neighborhood of \$12,500,000. So with respect to the  
7 financial ability of a company to withstand such a claim,  
8 we have concerns. We're going to look at each individual  
9 company and determine whether or not recourse is there.  
10 In a situation like that, if it were an argument as to  
11 the applicability of the agreement, litigation could drag  
12 it out for years and years if it came in a situation of  
13 question. So I suppose that the agreements were put  
14 together and were signed by all parties that the recourse  
15 would be there. It's just that we must have assurance  
16 that the agreements are enforceable by both parties and  
17 that there is ample resources to actually come through on  
18 one of these agreements or one of the lost coal claims.

19 THE CHAIRMAN: Any other questions? Thank you, Mr. Greene.

20 MR. WATSON: Mr. Chairman, I don't want to try to take a  
21 second bite of the apple, but speaking for Island Creek  
22 just very briefly, I might point out that throughout the  
23 country where coal bed methane is being developed now,  
24 it's the rule rather than the exception that the coal  
25 methane developer is either a sister of the coal mining

1 company or a very close working relationship there for  
2 the reasons Mr. Breeding has stated. That the paramount  
3 concern is the degassification of the coal and advance  
4 of mining, the protection of the coal for mining. Also I  
5 would point out to you, though, not being totally  
6 familiar with the contractual agreements between the  
7 owners, that there appears to be a requirement for any  
8 other coal bed operator to get the approval not only of  
9 the coal owner, but the coal owner's lessee. If that's  
10 the case --

11 THE CHAIRMAN: Would you state your name for the record?

12 MR. WATSON: I'm Tom Watson for Island Creek.

13 THE CHAIRMAN: Okay. I'm going to have to cut you off. I'm  
14 sorry but I can't --

15 MR. WATSON: That's all right.

16 THE CHAIRMAN: I've already agreed not to -- this could get  
17 into where there would be a demand for rebuttal and we're  
18 not going to do that.

19 MR. WATSON: All right, sir. Thank you.

20 THE CHAIRMAN: Would you like to come forward? State your  
21 name, please.

22 MR. COVINGTON: My name is Bill Covington. I represent  
23 Georgia Pacific Corporation. Georgia Pacific owns an  
24 interest in the coal, methane and oil and gas in over  
25 30,000 acres in the subject area. And as the largest

1           single landowner we support OXY's motion. Thank you.

2   THE CHAIRMAN: Any questions of Mr. Covington? Thank you.

3           Does anyone else wishes to address the Board regarding

4           this subject?

5   MR. MASON: Mr. Chairman, excuse me, does the staff have any

6           recommendation on this rule?

7   THE CHAIRMAN: Mr. Fulner, can you answer that?

8   MR. FULNER: The only thing that I can grant you is going back

9           to F.2 and the concerns that I have brought up -- one of

10          the concerns I've heard here about signed consent. It

11          also includes "which may be contained in a lease or other

12          such agreement or instrument of title." So, therefore,

13          it doesn't need to be a signed, yes, I don't object

14          type situation. It can be contained within the lease if

15          that person has that lease and I understand this, or I

16          interpret this, it has to specifically be stated in that

17          lease that they have the right to stimulate.

18   MR. MASON: As I understand what you're telling me, with that

19          in mind, the staff has no real comments, pro or con, on

20          this rule. Is that correct?

21   MR. FULNER: I have no comment, pro or con. The point I'm

22          trying to make is that the granting of the permit is

23          conditioned upon consent of stimulation and the

24          instrument here is what I see in question, whether that

25          instrument is contained within a statement from a co-

1 operator or it's contained with any given lease or  
2 whatever. That's the way I see it. As far as the  
3 application for the permit goes, I interpret it as  
4 strictly you have to have some form of consent from the  
5 co-operator to stimulate the coal seam. I'm not saying  
6 what form it should be in.

7 MR. MASON: Thank you.

8 THE CHAIRMAN: The Board appreciates these simple issues  
9 that's so clear and distinct in the way it should rule.  
10 With that, what's the Board's pleasure on this?

11 MR. MASON: I'd like to make a couple comments if I may.

12 THE CHAIRMAN: Certainly, go ahead.

13 MR. MASON: Mr. Chairman, I think that, you know, my personal  
14 feelings about this after listening to all this testimony  
15 are that this rule doesn't take into consideration a  
16 number of factors that have been raised before this Board  
17 and I don't think that I believe that there shouldn't be  
18 a rule on this subject. I just don't think the rule as  
19 it is presently drafted takes into consideration A, the  
20 second half of 361.29.F.2, that is anything in lease or  
21 on a contract. I think the rule is very broad in the  
22 sense that it doesn't address that as an exception and  
23 requires a written consent. I think it doesn't take  
24 into consideration the impact of multiple seams. I think  
25 that it doesn't, as I understand it, this rule was

1 intended primarily to apply with respect to the Oakwood  
2 Field in Buchanan County. If, in fact, that's what it  
3 is then it should so specify. I think that it's very  
4 broad and very general in it's application and that a  
5 more specific elements dealing with some of the points  
6 that are raised here would make a better rule for  
7 consideration before the Board. Thank you.

8 THE CHAIRMAN: Thank you. Any other comments from members of  
9 the Board? You have before you a motion and you've heard  
10 the recommendations. What's your pleasure?

11 MR. EVANS: Mr. Chairman, is it out of order or would it be  
12 possible for us to go into Executive Session? I need to  
13 ask our counsel --

14 THE CHAIRMAN: If you make that motion, we'll consider that.

15 MR. EVANS: Well, I'd like to make that motion.

16 THE CHAIRMAN: I have a motion that we go into Executive  
17 Session. That Section is 2.1-344 of the Virginia Freedom  
18 of Information Act, specifically Section 7 of that rule,  
19 consultation with legal counsel. We have a motion.

20 MR. MASON: I second it.

21 THE CHAIRMAN: Motion and a second. All in favor signify by  
22 saying yes.

23 THE BOARD: Yes.

24 THE CHAIRMAN: Opposed say no. Motion carries. We're in  
25 Executive Session. Let's reconvene here, so that we

1       don't hold you folks up, at 1:15.

2       ( THE BOARD MEETING RECONVENED, AFTER EXECUTIVE SESSION)

3   THE CHAIRMAN: A motion and second. All in favor, signify by

4       saying aye.

5   THE BOARD: Aye.

6   THE CHAIRMAN: Opposed likewise? Thank you. The Board has

7       before it a consideration and motion by OXY, USA,

8       Incorporated to adopt a rule for forced pooling. What's

9       your pleasure?

10  MR. MASON: Mr. Chairman, after considering all the various

11       comments, suggestions and discussions that we've heard

12       today, I would move that we do -- that this Board does,

13       in fact, adopt a rule, but instead of the rule as

14       proposed by OXY, that we adopt the following rule: It is

15       hereby resolved that as a condition of approval of an

16       application for forced pooling of a coal bed methane well

17       that the applicant demonstrate to the Board that the

18       applicant has the consent of the coal operator or

19       operators as required in Section 45.361-29(F)(2). Thank

20       you.

21  THE CHAIRMAN: Thank you. We have a motion.

22  MR. EVANS: Second.

23  THE CHAIRMAN: We have a motion and a second. Any further

24       discussion? If not, I would ask each member to signify

25       your approval of the motion by saying yes.

1 THE BOARD: Yes.

2 THE CHAIRMAN: Opposed, no. The motion carries. The Item  
3 Number 4 on the agenda is "Establishment of drilling  
4 unit and forced pooling for the EH-31 well, Garden  
5 District, Buchanan County, as requested by Edwards &  
6 Harding Petroleum." This was continued from last  
7 meeting. Who are the parties that are going to address  
8 the Board regarding this well?

9 MR. SWARTZ: I may have some comments.

10 MR. STREET: I may have.

11 THE CHAIRMAN: Any other parties here?

12 MR. FULNER: Mr. Chairman, the application before you on the  
13 EH-31 was amended and it is within your package which is  
14 requesting from the Board grants from statewide spacing.  
15 It should be in your package there if you can --

16 THE CHAIRMAN: Whenever you're ready, Mr. Street.

17 MR. STREET: Mr. Chairman and Members of the Board, I would  
18 like to correct Exhibit A that has been filed. I think  
19 all the evidence was really submitted to the Board at the  
20 last meeting, but our understanding is that OXY has  
21 obtained an additional .0185 percent interest that was  
22 previously listed as being an unleased interest of Mary  
23 Frances Selle, which makes Island Creek now have a total  
24 interest of 0.52 percent, I believe -- slightly under  
25 one-half percent interest in the tract. We have

1 submitted previously, in writing, responses pursuant to,  
2 I guess, the Board's request at the last hearing. The  
3 Board requested us to submit additional evidence to show  
4 that the coal companies would object if the well were  
5 moved. The Board now has that information. Jewel Coal  
6 and Coal Kay seams in that area, they would object to it  
7 being moved. Island Creek filed a letter saying that if  
8 they were moved they would retain the right to object to  
9 any new well location. The Board will remember at the  
10 last time one of the points that we attempted is that in  
11 this area the Board is well aware that the coal is a very  
12 significant, important resource and the wells and the  
13 units have to be located in accordance with the dictates  
14 of the coal operators because they can go down to it or  
15 to endanger the mine. That, along with the  
16 topographical restraints, because you have such few areas  
17 that are not steep wooded areas causes the units not --  
18 you would be unable to do units as you would like to  
19 which is put the well down in the middle and then have  
20 the uniform. As to the protection of the correlative  
21 rights, the units as pointed out in our mailing are  
22 centered as much as possible around the well. It may be  
23 helpful to the Board -- a picture's worth a thousand  
24 words, but also, sometimes my words aren't sufficient to  
25 convey what I want to say anyway. Can you all see this

1 all the way over here? We added a little coloring here,  
2 hopefully so it will be clear. Since we've already  
3 presented all the evidence, I hate to go back through  
4 that all again, but I would appreciate the Board's  
5 direction at any area that you want me to go back through  
6 evidence again. But to explain to the Board what this  
7 is, the yellow is -- now this well is a deep well down  
8 through about 5,000 feet or thereabouts and that gas in  
9 the yellow colored area has been leased by Edwards and  
10 Harding which is the applicant here. The red area is  
11 leased by Cabot, the blue area is leased by Ashland, the  
12 yellow striped area has not been leased in total. The  
13 yellow area is leased by Edwards and Harding to the  
14 extent of -- as shown on the handout there with the  
15 exception of 3.05 percent of the total. Edwards and  
16 Harding also has all of this area leased. Therefore, the  
17 only outstanding interest is about three percent of this  
18 total area in EH-31. Of that, OXY has 0.52 percent and  
19 they're the only one here objecting. A operator's  
20 agreement on EH-31 has been executed by Ashland and by  
21 Cabot which own all of this area. You have a letter  
22 before you from Cabot which points out that they are  
23 going to pool this area here which is GP-5 so that the  
24 lines adjoin EH-31. GP-1 has also been submitted by  
25 Cabot and its lines adjoin 33. GPA-2, Cabot has also

1 submitted to you an agreement with our application  
2 showing that the line to that has been agreed to. Now I  
3 would like to point out, and this is the main reason for  
4 this map, all correlative are being protected. That's  
5 the very point of the parties getting together trying to  
6 determine these boundaries so you don't have little areas  
7 left out which is the way it has happened sometimes in  
8 some areas. And that's the reason that you're talking  
9 about forced pooling or pooling regulations is to ensure  
10 that everybody is covered. Also, I think this is very  
11 noteworthy, the wells are planned to be drilled in close  
12 proximity to the center of these units which is the ideal  
13 way to do it. If you try to change your units, there's  
14 restrictions on the wells and that is the thing we were  
15 trying to point out to you. We're on EH-31 right now.  
16 This is the area we're looking at. The coal companies  
17 want the well drilled right there and if we try to move  
18 the unit boundaries then we don't have them close -- we  
19 don't have them in a proper area around the well. When  
20 we first attempted to get this pool, this line right here  
21 came directly down. Now OXY wanted us to extend it over  
22 a little bit at the first hearing and so we amended it  
23 and put it over there at the request of Occidental,  
24 thinking that that's what they wanted us to do. We  
25 submit to you that that area right there is as good a

1 plan as can be come up with. And I submit that Solomon  
2 and all of his judges couldn't find a plan that would  
3 cover all the area, satisfy way over 99 percent of the  
4 parties as this has, and have the wells in the very  
5 center of the units and not run into problems from either  
6 the coal companies or topographical errors. I submit  
7 that it's a miraculous thing that they've been able to  
8 get that many people to agree and I would request,  
9 respectfully, that the Board issue that drilling unit.

10 THE CHAIRMAN: Anything further?

11 MR. STREET: No, sir.

12 THE CHAIRMAN: Thank you. Any questions from the members of  
13 the Board? Do you wish to --

14 MR. SWARTZ: I basically have two comments, but I think the  
15 more important comment is that it's my understanding that  
16 field rules for the very area that these two wells are  
17 located in -- or this well was located in are under  
18 consideration. It's been adjourned to the December  
19 meeting. It seems to me to not be appropriate to address  
20 this issue at this point and I think that the shape and  
21 size of these units, this particular unit and other ones  
22 on the docket today, are going to be dictated by the  
23 Board's decision in December and that there is currently,  
24 as I understand it, once you take under consideration  
25 the establishment of field rules, there's a moratorium

1 on drilling and, I mean, these wells can't be drilled  
2 until you establish the field rules unless you give some  
3 specific exception. I see no reason to treat a well or  
4 two in the field any differently than you're going to  
5 treat the rest of them in December and I would  
6 respectfully suggest to the Board that you ought to defer  
7 a decision on this until you have a chance to consider  
8 adopting uniform rules for the whole field. The other  
9 comment that I would make, and we spent a lot of time on  
10 this last month and I'm not going to beat it again, but  
11 it would seem to me that one of the things the Board is  
12 going to consider in December is the size and shape of  
13 units. In other words, what's an appropriate size to  
14 drain. I mean it's apparent to me, looking at this  
15 exhibit, that some of these units have variations in  
16 size. I think there has been an effort to keep some of  
17 them close to a given size, but they do vary in size.  
18 They clearly vary in shape. I think we looked at a map  
19 last time where we had circles, we had octagons, we had  
20 polygons, we had other things and I think one of the  
21 things the Board needs to take into consideration is not  
22 whether or not all of these pieces fit together in this  
23 particular area, but what happens as you continue  
24 drilling off of the area that they have an agreement.  
25 And those were, I think, the two important points that I

1       would like to bring to you attention. The wavering and  
2       any more questions I might have.

3   THE CHAIRMAN: Thank you. Any questions?

4   MR. MASON: My perennial question about whether the staff has  
5       any comments on this.

6   THE CHAIRMAN: Mr. Fulner?

7   MR. FULNER: The only comment I have in this point in time  
8       about this particular one is the addendum to the  
9       original application which was requesting of variance to  
10      statewide spacing and that's about the only comment I  
11      have at this point in time. I think the motion by the  
12      Board this morning is another consideration for us to  
13      look at that whether these wells will be included within  
14      that motion or should they be included in that motion? I  
15      have no --

16   MR. MASON: Do you think that permitting or going forward  
17      with this application and approving it will in any way  
18      adversely impact the motion that we had this morning, in  
19      terms of arriving at a field?

20   MR. FULNER: The only concern that I do have on any situation  
21      that comes up to a field order is accommodating the  
22      present location of wells already in existence to the  
23      Board order and at which the point in time the Board  
24      order begins and where does it end.

25   MR. MASON: Mr. Street, are there currently other producing

1 wells in this area that would be impacted by a field  
2 order for this area besides these units?

3 MR. STREET: Is this well drilled right here now?

4 MR. STREET: This well is already drilled, sir.

5 MR. MASON: What I'm trying to get at is we talked in terms of  
6 accommodating a field order -- I mean, are there other  
7 wells that are also affected, so adding these we're  
8 talking about a condition that already exists? That's  
9 what I'm driving at.

10 MR. STREET: It would seem, I hope I'm answering your  
11 question right, that all the parties here are generally  
12 -- the gas companies are working out what they think is  
13 appropriate spacing for these wells and the only  
14 exception, I think, is this small interest of OXY here.  
15 I hope I'm not incorrectly responding to the question,  
16 but granting the pooling arrangement for this one and  
17 this one I don't think would improperly affect any of the  
18 others.

19 MR. MASON: What I'm trying to say, in terms of drawing a  
20 field order, are we going to have to deal with other  
21 wells that are already in existence in this area or will  
22 these be the first ones?

23 MR. STREET: Oh, I'm sorry. This whole area -- I think I do  
24 understand. This whole area of Buchanan County, this  
25 area, has numerous Ashland wells all over it. It has

1       been drilled since the late forties. On this map there  
2       are wells -- if you extended this map there are wells  
3       all over it.

4       MR. MASON: Okay. See my point is, in other words, if it was  
5       just an area that didn't have any wells --

6       MR. STREET: Okay.

7       MR. MASON: -- to put these wells in there would impact the  
8       ability to create --

9       MR. STREET: Yes.

10      MR. MASON: -- where, if they're already existing wells --

11      MR. STREET: I appreciate you point. There are only, and I  
12      don't know percentage wise, but much less than thirty  
13      percent to forty percent of the total area that has not  
14      been drilled in this overall area and so the field rules  
15      are going to have to target specific areas around --

16      MR. MASON: Around already existing --

17      MR. STREET: -- what you've already drilled.

18      MR. MASON: Okay. Thank you.

19      THE CHAIRMAN: Any further questions or comments? We've been  
20      discussing -- and just because the Board has decided to  
21      take these up but, in that effect, EH-31 and EH-36 are  
22      both in the same area?

23      MR. STREET: Yes, sir.

24      THE CHAIRMAN: And those are the only two wells that you have  
25      that are in that area?

1 MR. STREET: Yes, sir.

2 THE CHAIRMAN: Okay. What's your pleasure? Tom is there  
3 permits outstanding on these two locations, EH-31 and  
4 36? Well, I'll just deal with 31 so that we've got a  
5 clean record.

6 MR. FULNER: Well, one of them was.

7 MR. STREET: Thirty-six, there's a well permit.

8 THE CHAIRMAN: But not on 31?

9 MR. FULNER: Not on 31, 31 requires that the Board also rule  
10 on a variance to statewide space.

11 THE CHAIRMAN: We've not missed that.

12 MR. STREET: I just wanted to make sure that everybody knows  
13 that because that's what holding up the permit.

14 THE CHAIRMAN: I see. So you have an application before you?

15 MR. STREET: Right.

16 THE CHAIRMAN: A pending application?

17 MR. STREET: Yes, sir.

18 MR. MCGLOTHLIN: Mr. Chairman?

19 THE CHAIRMAN: Mr. McGlothlin.

20 MR. MCGLOTHLIN: A question to Mr. Fulner. Cabot, in filing  
21 applications for their wells, GP or 85 today?

22 MR. FULNER: I think 85 is involved in it. We've got 81, 84,  
23 86, 87. 85 was withdrawn. They give the problem with 85  
24 and one of them was withdrawn. I don't have 85 listed.

25 MR. MCGLOTHLIN: GP-5, I believe.

1 MR. FULNER: No, it was 82 that was cancelled. GP-5 has  
2 probably already been issued.

3 MR. MCGLOTHLIN: Right, I think it has. Mr. Street referred  
4 to a letter from Cabot saying they were going to drill -

5 MR. STREET: Do you mind if I get in closer because I can't  
6 see that map too well.

7 MR. MCGLOTHLIN: I can't either.

8 MR. STREET: This is GP-5 and that's 82 and that's GP-1. I  
9 believe the letter that you're referring to is talking  
10 about GP-5.

11 MR. MCGLOTHLIN: Yes, sir. I have a GP-85 letter and a GP-82  
12 letter and a GP-81 letter, but nothing to that GP-5.

13 MR. STREET: I think the GP-5 the well has already been -- the  
14 permit has already been issued on that. And what I think  
15 the Board asked for was an indication by Cabot that they  
16 intended to drill the others also in these areas. And  
17 the GP-5 had already been issued. So that well has been  
18 issued, this well has been drilled and the letters are as  
19 of this one, this one, this one and this one. So, in  
20 effect, all of them down here in the red have been  
21 permitted.

22 MR. MCGLOTHLIN: One, two and three?

23 MR. STREET: Yes, sir. That's right and then five has  
24 already been issued. Did I explain the question?

25 MR. MCGLOTHLIN: Let me ask one more. Does the prefix "A"

1           have any significance?

2   MR. STREET: I don't think that it does.

3   MR. MCGLOTHLIN: Is GP-5 and GP-85 the same well?

4   MR. STREET: I think so.

5   MR. MCGLOTHLIN: Okay. Thank you.

6   THE CHAIRMAN: Well, let me do it this way. Does anybody else  
7           want to address the Board regarding this well that has  
8           intro-spected interest? If so, would you come forward  
9           please? Please state your name.

10   MR. COVINGTON: My name is Bill Covington, I represent Georgia  
11           Pacific Corporation. The area shaded red appears to be  
12           Georgia Pacific acreage to the south of it. I'm not sure  
13           all of it is, but it appears most of it is. I have a  
14           problem with coming in with something other than the  
15           field wide unitilization that we talked about earlier  
16           simply because they're not going to mesh together very  
17           well and I'm concerned about leaving gaps between the  
18           different units or having odd-shaped units in one part  
19           and then square or rectangle units in other parts. As I  
20           stated in our last hearing, you also leave open  
21           situations where the acreage allocated to a specific well  
22           doesn't correspond to the drainage pattern of that well  
23           when you have odd-shaped units like this. Georgia  
24           Pacific would prefer that the wells be allowed to be  
25           drilled and the revenue attributable thereto would be

1       escrowed until you can come up with a pattern to share  
2       those revenues. Any questions?

3   THE CHAIRMAN: Questions of the Board? Okay. Thank you. The  
4       Chair is open for a motion.

5   MR. EVANS: Mr. Chairman --

6   THE CHAIRMAN: Oh, I'm sorry. Go ahead, Mr. Evans.

7   MR. EVANS: No, I just make a motion that this application be  
8       allowed to go forward. I don't see any reason not to. I  
9       don't see any reason to delay. We've already got wells  
10      that are in existence in this area. I think that this  
11      particular pattern, for the purpose of this well, since  
12      it is bounded by wells that are already in existence, I  
13      can't see how field rules are going to chance this in any  
14      meaningful pattern other than to really muddy the waters.  
15      If this was our periphery or our peripheral area, I think  
16      that it may be a question and I think the field rules  
17      will address those situations, but in this situation,  
18      since it's a mutually agreed solution for almost all  
19      parties concerned except .52 percent of a three percent  
20      interest in this whole tract, I can't see any reason why  
21      we shouldn't allow this as it is at this time.

22   MR. STREET: Second.

23   THE CHAIRMAN: Have a motion and a second to approve the  
24      pooling application. All in favor signify by saying yes.

25   THE BOARD: Yes.

1 THE CHAIRMAN: Opposed say no. Motion carries. The next item  
2 on the docket is establishment of drilling unit and  
3 forced pooling for the EH-36 well as requested by Edwards  
4 and Harding. I'm sorry, I moved you to the docket and  
5 still had -- I told Tom I wouldn't forget it and I did.  
6 That's why he kept reminding. He knew what we'd do here.  
7 On EH-31 we have the variance from statewide spacing  
8 request which was an amendment and the statement of  
9 relief. The applicant requests the Gas and Oil Board to  
10 allow EH-31 to be drilled closer than 2,640 feet to the  
11 EH-28 well that is also operated by the applicant.

12 MR. MCGLOTHLIN: I thought when we approved it we did that.

13 THE CHAIRMAN: You say you thought the motion, as presented,  
14 approved that as well?

15 MR. MCGLOTHLIN: Well, when we approved the drill and with  
16 their evidence of the site location, I assumed that we  
17 were approving the variance in the spacing at the same  
18 time.

19 THE CHAIRMAN: Is this what you intended, Mr. Evans?

20 MR. EVANS: No, not particularly. I particularly intended  
21 that that particular unit pattern was acceptable. Now  
22 the variance came in late as far as this discussion. I  
23 think we can take that up right now and dispatch it just  
24 as easily as we did the other.

25 MR. MASON: Is it correct that no one else is affected other

1           than your own well? Is that correct?

2   THE CHAIRMAN: Is there any objecting parties to the release

3           on variance from statewide spacing on EH-31?

4   MR. FULNER: It would make my life a lot easier. I can't do

5           anything with a permit until you --

6   MR. MASON: I move we approve it.

7   THE CHAIRMAN: We have a motion for approval of the variance

8           from statewide spacing.

9   MR. EVANS: Second.

10   THE CHAIRMAN: Motion and second. Oh, excuse me.

11   MR. MCGLOTHLIN: Discussion, if you'd ask Mr. Evans to hang on

12           a second on the second. I would ask Mr. Mason to amend

13           that to approval but to relate to the public and the

14           industry that this is on a case by case basis. That we

15           will not approve each and every one of them just because

16           it's requested.

17   MR. MASON: Why don't I restate the motion if I may. Taking

18           into consideration the fact that each of these requests

19           will be viewed with very serious consideration and, in

20           fact, that there's never any inherent right to a

21           variance, I move that we do approve this one because of

22           it's peculiar circumstances and the fact that no one

23           objects and it's next to one of their own wells.

24   THE CHAIRMAN: Motion.

25   MR. EVANS: Second.

1 THE CHAIRMAN: Motion and second. Further discussion? All in  
2 favor of the motion signify by saying yes.

3 THE BOARD: Yes.

4 THE CHAIRMAN: Opposed say no. Motion carries. Before we  
5 leave EH-31 we probably ought to, following our comments  
6 earlier this morning regarding these field rules, address  
7 the fact that this falls under the category unless  
8 otherwise provided for by the Board just so that the  
9 record is clear and that is 45.1-361.20.F. That was  
10 specifically approving the pooling application, not  
11 granting a permit to drill. Okay. The next item on the  
12 agenda is establishment of drilling unit and forced  
13 pooling for the EH-36 well requested by Edwards and  
14 Harding. Mr. Street?

15 MR. STREET: If the Board will permit, I'll be much briefer on  
16 this one. The only difference, I think, in this one is  
17 it's right here and that well permit has already been  
18 issued and there was no request for variance. Other than  
19 that, I don't think there's any difference.

20 MR. SWARTZ: I can be even more brief than I was last time as  
21 well. With regard to EH-36 we are approaching a  
22 perimeter so this is going to have a -- although it  
23 appears to be about a rectangle or about a square, it is  
24 on the perimeter and we are going to have some impact on  
25 the field rules depending on how we space the rest of it.

1 The other thing that I think this illustrates -- let me  
2 back up a little. It's been represented to the Board  
3 that there is some kind of voluntary agreement with  
4 regard to pooling along the lines that have been drawn on  
5 this map. This agreement appears, however, to be only  
6 among the people who have a working interest and is not  
7 an agreement that's been joined in by the royalty  
8 interest owners. And the observation that the gentleman  
9 from Georgia Pacific made was that depending on how you  
10 set up your field, his royalty interest is going to be  
11 directly affected. If your field rules move this square  
12 up and he has acreage up here -- I think the Georgia  
13 Pacific acreage in red -- and he hasn't signed off on  
14 this agreement. Depending on where these field rules  
15 place this unit, his percentage of this unit may  
16 increase, it may decrease. And you need to bear in mind  
17 that the royalty owners, at least I haven't heard any  
18 representation, that the royalty owners whose interests  
19 are directly affected by how you move these units as what  
20 percentage of the unit they have are going to be  
21 affected. And I think this is a perfect example of that  
22 and it's something that you need to take into  
23 consideration.

24 MR. STREET: Gentlemen of the Board, something maybe the  
25 Board's not aware of that I'm advised is true that Cabot,

1       that is the lessee of the GP interest, has the right  
2       under their lease agreement, I understand, to pool. Is  
3       that not true?

4   MR. COVINGTON: They have the right to pool, but also --

5   MR. STREET: That's what I thought. Pardon me?

6   MR. COVINGTON: Georgia Pacific also has the right to contest  
7       any pooling arrangement that Cabot makes, under the terms  
8       of that lease.

9   MR. STREET: If all of the gas companies that have gas in  
10       here, with the assistance of the coal companies, tried to  
11       find places to put wells and then try to draw the line  
12       midway between the two wells, I don't know how you can  
13       drain an area any fairer than that. And that's what the  
14       arrangement attempts to do. Now the only other  
15       arrangement that could be fairer is to try to draw a  
16       circle, but if you draw a circle you're going to leave  
17       some areas out. And since you've got this one, I think  
18       this one's already drilled -- 30's drilled, 33's drilled  
19       -- it's not that this is a bad plan. Don't misunderstand  
20       me, I think it is a good plan, but at this point we're  
21       already restricted. We've got these wells already  
22       permitted or dug. That's all I have to say. Thank you.

23   THE CHAIRMAN: Does anyone else wish to address the Board on  
24       EH-36? Would you come forward, please?

25   MR. COVINGTON: Again, my name is Bill Covington. I represent

1 Georgia Pacific Corporation. What I see being set up  
2 here is if you approve 36, 31, 35, what about 37? The  
3 well is right next to Georgia Pacific acreage, but you're  
4 pulling this acreage over here into the unit while  
5 discarding our acreage to the south which is closer to  
6 the well than this acreage. And the reason you do that  
7 is because you put these units all around it where you  
8 don't have a choice. And that's the problem that I'm  
9 concerned about. Thank you.

10 THE CHAIRMAN: What's your pleasure?

11 MR. MCGLOTHLIN: Again, addressing Mr. Covington's regard to  
12 the pooling and the odd shapes, I would like to remind  
13 Mr. Covington that a lot of these wells were drilled  
14 under previous old laws and rules and regulations and we  
15 are trying -- we understand your concerns and are trying  
16 to modify the field rules where it would be more  
17 applicable for everyone concerned.

18 MR. EVANS: Mr. Chairman?

19 THE CHAIRMAN: Mr. Evans.

20 MR. EVANS: Again, for the purpose of this, EH-31 is pretty  
21 much surrounded. There are wells that is not a  
22 peripheral type situation. EH-36, on the other hand, is  
23 on the periphery and, I think, can be better addressed  
24 with promulgation of field rules since that unit is not  
25 interior.

1     ???: I'm not disputing you, but I just thought the Board  
2     ought to have the additional information. There is a  
3     well just north of EH-36. So that's the problem we're in  
4     that EH-31 has to pit in that way and we've got another  
5     unit that's north of EH-36 and we're trying to fit in  
6     between those two units. It doesn't show on that map.

7     MR. EVANS: Is EH-35 drilled?

8     ?MR. STREET?: 35 has been drilled.

9     ?MR. SWARTZ: See the unit to the north, though, I mean this  
10    is the situation. This square is the proposed well we're  
11    talking about right now and this is the preexisting unit  
12    to the north. I mean this shows you what, you know,  
13    where we're headed here in terms of --

14    MR. MASON: That map is not like the map that's in here.

15    ?MR. STREET: This shows EH-35 as being a circle and yours  
16    does. This one shows it as being a square. This is EH-36  
17    here, a square, this is EH-35.

18    MR. MASON: That's not what this map shows. Now I don't know  
19    which one --

20    ?MR. SWARTZ: These are the maps taken from the maps that are  
21    on file with the state.

22    ?MR. STREET: All you've done there is you've taken the map  
23    with five of the drawings on it that requires all the  
24    area within a 1,250 foot radius of to be shown and that's  
25    all that that is. The unit that was formed for that well

1 is a rectangular unit of approximately 155 acres.

2 MR. MCGLOTHLIN: EH-36 or EH-35?

3 MR. SWARTZ: EH-35.

4 MR. STREET: Eh-35 is a rectangular unit. It is not a circle.

5 MR. SWARTZ: The way it's depicted on the additional evidence,

6 we present it to the Board as correct.

7 ?MR.?: Has everyone, including the royalty owners, signed off

8 on that square or is that part of this deal that you have

9 with the working interest owners?

10 MR. STREET: I don't know whether the Board -- do you want to

11 open it up for question?

12 THE CHAIRMAN: No, I'm not going to permit that. I think

13 we've heard testimony on it before. Ken, did you make a

14 motion?

15 MR. EVANS: Yes, I did. I did make a motion that since this

16 is, in my estimation, still a peripheral well that we

17 wait for the field rules on this.

18 THE CHAIRMAN: Okay. I have a motion that we not approve this

19 until field rules are adopted by the Board.

20 MR. MASON: Tom, do know whether that 35 -- which is, in fact,

21 the pool, the square or the circle?

22 MR. FULNER: Do what?

23 MR. MASON: Do you know whether the actual pool, the royalty

24 pool for 35 is? The circle or the square?

25 MR. FULNER: That's a voluntary unit. I have no --

1 MR. MASON: Okay. I just wondered.  
2 ??: No forced pooling is required on that. All the lessees -  
3 MR. MASON: Okay. I just asked him.  
4 MR. STREET: That's the reason I was trying to explain to the  
5 Board that that's not really a -- we've already had the  
6 north line already fixed.  
7 THE CHAIRMAN: Okay. I have a motion before the Board that  
8 this application be postponed until field rules are  
9 adopted by the Board. Do I have a second?  
10 MR. MCGLOTHLIN: Can we have a little bit more discussion on  
11 it?  
12 THE CHAIRMAN: Well, without a second the motion's going to  
13 die.  
14 MR. MASON: Could I interpose one more question? What's the  
15 status of EH-37?  
16 MR. STREET: EH-37 has not been obtained. It has not been  
17 applied for. Of course, that would be -- that's the one  
18 that Georgia Pacific was commenting on was EH-37.  
19 THE CHAIRMAN: Mr. McGlothlin, are you talking about further  
20 discussion of the motion?  
21 MR. MCGLOTHLIN: No, sir. I'll second the motion.  
22 THE CHAIRMAN: Okay. Have a motion and a second. Any further  
23 discussion?  
24 MR. MCGLOTHLIN: Assuming that this map is north to south,  
25 north up, south down, the easterly line of EH-36 and EH-

1           35, is that a straight line or does that dog leg in there  
2           somehow or --  
3   MR. STREET: I don't have the map in front of me.  
4   MR. SWARTZ: I believe it is a straight line.  
5   MR. MCGLOTHLIN: Could you be a little bit more accurate than  
6           that?  
7   MR. STREET: This was submitted to the Board and an attached  
8           drawing which showed EH-35. It is a square identical to  
9           36 and immediately north is the same -- I can't swear  
10          it's a square, but it's the same size. It appears a  
11          square on the map where the west line goes north south to  
12          both and the east line goes north south through both EH-  
13          36 and EH-35. So they are --  
14   MR. MCGLOTHLIN: On the same bearing anyway.  
15   MR. STREET: Let me just show it to you. From this map, if  
16          the engineer says that it's supposed to be drawn  
17          straight, it would show on the map.  
18   MR. MCGLOTHLIN: Let me ask you this. The east west line  
19          between 35 and 36 is the same distance?  
20   MR. SWARTZ: I believe that's the case. I need to look at  
21          the plat on EH-35 to determine that exactly.  
22   MR. STREET: I guess in answer to your question, is it a  
23          square on top of a square which is what I think you were  
24          asking.  
25   MR. SWARTZ: I would like to file because there's an assertion

1       that my map is wrong. I have a copy of the well location  
2       map for EH-35 that was filed with you all. It has the  
3       percentage interest and it's a circle.

4   THE CHAIRMAN: Well, not right now. I've got a motion before  
5       me to deny the application and I've have a second of that  
6       motion. Do I have any further discussion? We'll  
7       continue this until after the field rules, is that the  
8       way you want to do it, are established?

9   MR. MASON: That's what the motion is.

10   THE CHAIRMAN: Motion and second. All in favor signify by  
11       saying yes.  
12       (THREE YES VOTES?)

13   THE CHAIRMAN: Opposed say no.  
14       (THREE NO VOTES.)

15   THE CHAIRMAN: So the motion carries. The next item on the  
16       docket is the establishment of drilling unit and forced  
17       pooling for the C-24 well, Garden District, as requested  
18       by OXY, USA, Incorporated. This is continued from last  
19       meeting.

20   MR. SWARTZ: Mr. Chairman, Members of the Board, this forced  
21       pooling application in regard to C-24 involves a  
22       contested operatorship. The next item on the docket -- I  
23       take that back. Yes, the next item on the docket is, in  
24       fact, an application by Edwards and Harding with regard  
25       to the very same unit. I feel as if I need to tell you a

1 little bit about the additional testimony I'm going to be  
2 offering today. I suspect that under consideration today  
3 will be the qualifications of OXY as an operator and I  
4 intend, with regard to just this one, to offer some  
5 additional testimony with regard to OXY, USA, that I  
6 believe is relevant to a decision by you all with regard  
7 to the ability, the skill level, the experience the  
8 resources, both financial and people-wise of OXY, USA, to  
9 be an operator of a coal bed methane well in this field.  
10 It's going to take a while. It won't take hours or  
11 anything like that, but it's going to take some  
12 additional time as opposed to what we spent before and I  
13 plan, with your permission, to only do this with regard  
14 to this well. And I'm going to assure you that the  
15 expertise you will hear about from OXY with regard to  
16 this particular unit, I'm not going to repeat this  
17 twenty-three times as work our way through this docket.  
18 I'm just warning you that I'm going to be offering some  
19 additional testimony today and the focus or reason for  
20 that is we're going to have some operator disputes and I  
21 want to give you as much information about OXY as I can  
22 that I think is relevant to operatorship issues. Could  
23 you state your name for us, please.

24 THE CHAIRMAN: You need to be sworn in first, please.

25 CLERK: (Swears witness.)

1  
2 MARTIN E. WIRTH

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

5  
6 DIRECT EXAMINATION

7  
8 BY MR. SWARTZ:

9 Q. Could you state your full name again for the record?

10 A. Martin E. Wirth.

11 Q. And who are you employed by?

12 A. OXY, USA, Inc.

13 Q. And what office of OXY's do you work out of?

14 A. Work out of the Richlands, Virginia, office.

15 Q. And do you have a title?

16 A. Yes, I do.

17 Q. And what is that?

18 A. Coal bed Methane Project Land Manager.

19 Q. How long have you been in the land department for OXY,  
20 USA?

21 A. Over thirteen years.

22 Q. Have you been involved in the OXY coal bed methane  
23 project in Virginia?

24 A. Yes, I have.

25 Q. And how long have you been involved in this project?

- 1 A. Approximately three years, maybe a little more.
- 2 Q. Can you tell us, in a shorthand fashion, what the general  
3 nature of your involvement in that project over the last  
4 three years has been?
- 5 A. Basically, from day one, was the question came about as  
6 to does a oil and gas lease cover the coal bed methane  
7 rights and what rights do we have in Virginia. That  
8 entered me since I was over the Appalachian Basin, east  
9 of the Mississippi, as to reviewing each and every lease  
10 and what lease rights we had under each lease and to  
11 comment as to the special projects groups which was in  
12 charge in the developing the methane project. In this  
13 respect I reviewed each document and came up, with the  
14 assistance of legal counsel, and how to go about the  
15 strategy of acquiring acreage in the area of interest.  
16 And from that day forward I was out acquiring lease hold  
17 interest in the area of interest that OXY was from,  
18 basically, those three years and assisting in any and all  
19 land responsibilities to the project group.
- 20 Q. Whose responsibility, within OXY, is it to look at title  
21 to the real estate in terms of giving notice to people of  
22 these hearings?
- 23 A. That is, again, in a legal department issue with the  
24 assistance of the land department.
- 25 Q. Who has been in charge of the acquisition of acreage for

1 OXY in this field?

2 A. I have.

3 Q. And approximately how many coal bed methane acres, total  
4 acres, have you been able to acquire in the last three  
5 years?

6 A. Basically, we have over 100,000 gross acreage in this  
7 area.

8 Q. And those gross acres are -- tell us the difference  
9 between gross acres and net acres.

10 A. Yes. You might come onto a tract, let's just use a one  
11 acre tract, that is one acre gross, but there may be  
12 seven or five different owners of that one acre. Each  
13 may have an undivided ownership in that acre. I may be  
14 able to lease one-fifth of that one acre. Therefore, I  
15 have one-fifth of one acre under lease so I have one-  
16 fifth net interest, not gross. I don't have the total  
17 gross acreage under lease. That's the difference  
18 between gross and net, the figures you hear before you  
19 today and previously and what we state.

20 Q. With regard to the total acreage that you've been able to  
21 lease, could you give us some approximation as to the  
22 amount of that acreage which would lie over Island Creek  
23 coal leases?

24 A. I think we have one ton. A year or so ago we had  
25 approximately 85 percent of the acreage leased over

1 Island Creek's coal in this area of the Oakwood coal bed  
2 gas bill.

3 Q. Have you offered testimony before, on prior occasions  
4 before this Board?

5 A. Yes, I have.

6 Q. And has this Board accepted your qualifications in those  
7 instances?

8 A. I hope so. Yes, they have.

9 Q. They haven't told you haven't?

10 A. No.

11 Q. Are you familiar with the proposed exploration and  
12 development of the particular unit, that being C-24  
13 that's involved here, with regard to the pooling  
14 application that OXY's made?

15 A. Yes, sir, I am.

16 Q. Are you familiar with the applications?

17 A. Yes, I am.

18 Q. Did you participate in its preparation?

19 A. Yes, I have.

20 Q. Did you participate in or are you familiar with the  
21 question of whether or not notices were sent out to the  
22 respondent?

23 A. Yes, I am.

24 Q. I show you a packet which I believe contains ten copies  
25 and ask you whether or not these -- you just need to look

1 at the first one. These are the notices with regard to  
2 drilling unit C-24?

3 A. Yes, it is.

4 Q. And it shows what parties as being notified?

5 A. It shows a LeRoy G. Crenshaw, III, Dorothy Crenshaw  
6 Crock, Charles Walter Crenshaw and Edwards and Harding  
7 Petroleum Company.

8 Q. And attached to that overview listing, are there mailing  
9 receipts for the notices?

10 A. Yes, there is. Certified.

11 MR. SWARTZ: Mr. Chairman, I believe I have ten copies here.

12 Q. (Mr. Swartz continues.) Marty, I would ask you if OXY,  
13 USA is seeking to force pool the drilling rights in an  
14 approximate eight acre drilling and spacing unit  
15 identified as drilling unit C.4 in the Oakwood coal bed  
16 gas field for all seams below the Tiller seam?

17 A. Yes, sir, we are.

18 Q. Do you own any drilling rights on C-24?

19 A. Yes, we do.

20 Q. And what is the interest of OXY, USA in this unit?

21 A. OXY has leased the coal bed methane rights from  
22 approximately 55.05 percent of the unit. OXY also has  
23 control of a hundred percent of the coal estate under  
24 this unit and OXY, USA has 55.05 percent of the oil and  
25 gas or the methane leased.

1 Q. Do you wish or does OXY recommending to the Board that  
2 any persons previously notified be dismissed today?  
3 A. No, we're not.  
4 Q. Does OXY seek an order pooling all of the respondents  
5 interests or estates to coal bed methane underlying unit  
6 C-24 for development and operation thereof?  
7 A. Yes, we are.  
8 Q. Approximately how many net mineral acres may be owned by  
9 the respondents?  
10 A. Approximately 35.96 mineral acres.  
11 Q. That's a net number?  
12 A. That's a net number.  
13 Q. Does OXY seek to force pool the drilling rights of each  
14 individual notified, if living, and if deceased the  
15 unknown successor or successors to any such deceased  
16 individual?  
17 A. Yes, we do.  
18 Q. Can you tell me whether or not you made any efforts to  
19 determine if the individuals notified were living or  
20 deceased or their whereabouts and, if deceased, were  
21 efforts made to determine the names and addresses and  
22 whereabouts of the successors to any of the deceased  
23 individuals?  
24 A. Yes, OXY has done a due diligent exercise.  
25 Q. Are the addresses, which were set out in Exhibit B of the

1 pooling application, the last known addresses for the  
2 respondents that were notified and was due diligence  
3 exercised to locate each of these persons?

4 A. Yes, to the best of our ability.

5 Q. Before this hearing, did you make efforts or cause  
6 efforts to be made to contact each of these persons and  
7 attempt to work out an agreement regarding the  
8 development of the units involved here where conflicting  
9 claim do not exist?

10 A. Yes. Every party was contacted, largely more than once,  
11 either by phone or in person or by mail and offered to  
12 lease their coal bed methane interest.

13 Q. In general, what efforts have been made and what were the  
14 results of your efforts to contact these people and your  
15 efforts to lease from them?

16 A. Well, as I stated, over the period of the last two/three  
17 years OXY has made efforts or caused to make efforts to  
18 contract virtually all owners that we can discover the  
19 coal bed methane within the Oakwood gas field. During  
20 this time the coal bed methane leases, as I say, has been  
21 acquired from the coal owners and the oil and gas owners  
22 covering approximately 80,000 gross acres.

23 Q. What offer would you make for leases of the coal bed  
24 methane interest?

25 A. OXY offers a \$1 an acre bonus consideration for the ten

1           year primary term and a one-eighth rule interest.

2   Q.   Mr. Wirth, do you have certain recommendations that you

3       would like to make to the Board and that the Board

4       consider your recommendations in any pooling order that

5       might be issued?

6   A.   Yes, we do.

7   Q.   Have you prepared an exhibit, in writing, that summarizes

8       or sets forth the recommendations that you would make to

9       the Board with regard to a pooling order?

10   A.   Yes, I sure have.

11   Q.   And would you just read the title of the exhibit?

12   A.   This is the Exhibit up to Martin E. Wirth's testimony and

13       drilling unit C-24 on the docket number VGOB-95-8.

14   Q.   Mr. Wirth, this exhibit makes how many basic

15       recommendations in number?

16   A.   Basically, they're in outline form. There's terms and

17       the number of it, the OXY recommendation for the orders.

18       I would say there's approximately sixteen different items

19       on that exhibit.

20   Q.   Have you prepared a similar exhibit for each of the OXY

21       pooling petitions that are going to be considered at this

22       hearing or each of the OXY motions?

23   A.   Well, basically, it was a write in of most of the orders

24       and the exhibits are available to the parties should they

25       so request.

1 Q. Mr. Wirth, I would ask you who it is that you believe  
2 should be named as operator under the forced pooling  
3 application?  
4 A. OXY, USA, Inc.  
5 Q. Does OXY, USA, Inc. have on file with the Department of  
6 Mines, Minerals and Energy of the State of Virginia a  
7 blanket bond and proper security?  
8 A. Yes. OXY, USA has a blanket bond with the Department to  
9 cover the cost of plugging and reclamation.  
10 Q. Do you have a unit operating agreement or a joint  
11 operating agreement which will be used to govern the  
12 operations to be conducted for this unit?  
13 A. Yes, we do.  
14 Q. And have we furnished that operating agreement to the  
15 Board before?  
16 A. Yes, we have.  
17 Q. I think we have additional -- you know, another set of  
18 ten copies today, if the Board members want us to file  
19 them. Why don't we go ahead and do that. Let me ask you  
20 while we're looking for the additional copies, we've  
21 discussed some of the terms of the joint operating  
22 agreement before in other hearings.  
23 A. That's correct.  
24 Q. Have you made any changes to the proposed joint operating  
25 agreement from the last hearing that we ought to alert

1 the Board to?

2 A. No, we have not.

3 Q. So, essentially, we're giving them a photo copy of the

4 same agreement we gave the Board last time we were here?

5 A. Yes, sir.

6 Q. Now is this joint operating agreement derived from some

7 standard form?

8 A. Yes, it is. It's a joint operating agreement which is

9 used throughout the industry of the oil and gas business

10 which has been modified to take into account the unique

11 characteristics of coal bed methane.

12 Q. Who prepared this joint operating agreement?

13 THE CHAIRMAN: Can I interrupt you just one second. Any

14 member of the Board wish to see this refiled if it's the

15 same thing we've already had filed? You do? Okay. Go

16 ahead. You can go ahead with the question. I'm sorry.

17 Q. (Mr. Swartz continues.) I'm not sure I got an answer,

18 but who prepared the joint operating agreement?

19 A. OXY, USA, Inc.

20 Q. Who prepared it?

21 A. With assistance, OXY, USA with the legal assistance of

22 the Land Department, yes.

23 Q. Well, did you have any input in it?

24 A. Yes, I did, sir.

25 Q. Do you belong to any organizations for land men or

1 people in the coal bed methane -- interested in coal bed  
2 methane?

3 A. Yes, I do.

4 Q. For example?

5 A. APL, now the Appalachian Coal bed Methane Association,  
6 also International Right-of-Way Association and various  
7 subdivision of the APL and different -- Oklahoma City  
8 Land Men Association and different associations as to  
9 that.

10 Q. I did some searching and I think I found an article that  
11 you wrote, or assisted writing, entitled Coal bed Methane  
12 Joint Operating Agreements. Of course, you wrote it with  
13 a woman. Is this your article?

14 A. Can I stand on the Fifth with the woman bit? Yes, with  
15 assistance with Marla J. Williams, Patty Patton, we wrote  
16 this paper for the Eastern Mineral and Oil Foundation.

17 Q. And was this paper presented recently?

18 A. Yes, it was. In the recent issue of Mineral and Oil  
19 Foundation of Coal bed Methane Institute in Nashville.

20 Q. Now you got credit for this as participating. Could you  
21 give us some idea of your involvement in this?

22 A. Well, basically, there's too many attorneys in here, but  
23 the attorneys do contracts very well but they do not work  
24 with them after they draw them up. So there had to be  
25 input from dealing from the Land Department's point of

1 view as to trying to come up with a contract in a unique  
2 characteristic and coal bed methane. As you're well  
3 aware throughout these hearings the ownership issue is  
4 just one of them that we have to take in coal concerns.  
5 We have to take in ownership issues and we have to take  
6 in the regulatory issues and we had to advise our legal  
7 counsel and come up with an operating agreement which is  
8 fair and equitable we feel to all parties involved taken  
9 into consideration with the Virginia Oil and Gas Act.

10 Q. We'll not permit all the attorneys in the room who didn't  
11 confirm that they don't have to work with contracts after  
12 you draw them up to rebut that statement. I have ten  
13 copies of the article that Mr. Wirth co-authored which  
14 I'm submitting to the Board.

15 THE CHAIRMAN: Mr. Street, did you get a copy of this?

16 MR. SWARTZ: Yes, I happen to have eleven.

17 THE CHAIRMAN: Okay. Thank you.

18 Q. (Mr. Swartz continues.) Mr. Wirth, in your opinion,  
19 would the granting of OXY's application to pool this unit  
20 and to have OXY designated as operator of this unit be in  
21 the best interest of conservation, prevention of waste  
22 and protection of correlative rights?

23 A. Yes, it is.

24 Q. Is it your opinion that the forced pooling order should  
25 indicate or direct that unit operations be governed by

1 the joint operating agreement?

2 A. Yes, I strongly do.

3 Q. The exhibit that we have submitted today to the Board,  
4 the exhibit with regard to your recommendations for  
5 forced pooling, is it indeed your recommendation that the  
6 Board consider each of the 16 items --

7 A. Yes, it is.

8 Q. -- in drafting or entering a pooling order, should it  
9 enter a pooling order, with regard to this unit?

10 A. Yes, I do.

11 Q. And does your written recommendations address addresses,  
12 notification, election rights, time of election, those  
13 sorts of issues that need to be considered?

14 A. Yes, it does.

15 Q. And do your recommendations state your position and OXY's  
16 position in that regard?

17 A. Yes, it does.

18 Q. Mr. Wirth, do you as a land man look independently at  
19 questions of title. And I'm saying "independently,"  
20 independent of your counsel?

21 A. Yes, we do.

22 Q. And one of the things that land men are paid to do and  
23 expected to do is make independent judgments about title.  
24 I mean you may not be able to write a legal opinion, but  
25 one of your jobs is to look at title and come to

1 conclusions and make recommendation to your company,  
2 correct?

3 A. That is correct.

4 Q. Have you, yourself, actually looked at the title with  
5 regard to this unit, C-24?

6 A. The C-24, yes, we have. Prior to any drilling  
7 operations I request a preliminary drilling title  
8 opinion to be performed on the tracts, especially the  
9 tracts we're going to drill on, and plus review the  
10 counsel's decisions and opinions and it may have curative  
11 actions in it which I have to then perform and try to  
12 cure the any and all requirements that are in question  
13 by counsel.

14 Q. Let me draw a line here on this unit. I know that we're  
15 going to get to the fact that you have discussed this  
16 matter with counsel and have requested opinions from  
17 counsel.

18 A. Uh-huh.

19 Q. My question for you is have you independently, on your  
20 own in the course of your employment as a land man for  
21 OXY, you, yourself, actually looked at the title --  
22 looked at some of the underlying documents here.

23 MR. STREET: I don't want to be premature on objection, but  
24 on the other hand, if this gentlemen is being propounded  
25 as an expert, being able to give an opinion of title, I

1 certainly would object to that. I think that's not  
2 appropriate information to be given by the land man here.  
3 Title opinions should be given by an attorney. And I  
4 understand that that's submitted to the Board and I'm  
5 not sure where this is going to, maybe it's not harmful.

6 THE CHAIRMAN: Maybe I can help and ask you to clarify where  
7 you're going with this.

8 MR. SWARTZ: I'm going to ask him, in his opinion, whether or  
9 not he has discovered and consulted with counsel and  
10 counsel agrees with him that there is a potential problem  
11 with the title. I'm not going to ask him to resolve it.

12 MR. STREET: I object to that. If it's his opinion as to a  
13 title problem.

14 THE CHAIRMAN: Is that what you stipulated that it would be  
15 his opinion, that he made an independent opinion that  
16 there is or is not a title problem?

17 MR. SWARTZ: There is a potential title problem, but it would  
18 be his opinion.

19 THE CHAIRMAN: I think, with that clarification, I'll  
20 overrule the objection and let you go ahead and testify  
21 with that clarification.

22 Q. (Mr. Swartz continues.) I'm not sure that we got an  
23 answer to the pending question which was whether or not  
24 you, on your own as an employee, without some attorney  
25 telling you, whether you looked at some of the documents,

1 the leases, the instruments that are in the title for the  
2 purpose of determining whether or not you saw problems  
3 with title or not problems with title. Did you do that  
4 work?

5 A. Based on the information that I was able to uncover by  
6 that information I requested and throughout the  
7 courthouse, yes, I did.

8 Q. In addition to doing your own work and looking at the  
9 documents yourself, can you tell me whether or not you  
10 retained counsel to give you a preliminary legal opinion  
11 with regard to title to this unit?

12 A. Yes, I have.

13 Q. And have you actually reviewed a opinion that you  
14 requested and paid for with regard to title on this unit?

15 A. Yes, sir, I have.

16 Q. Now I'm not asking you to tell me what the title is to  
17 this unit because I'm not sure anybody could answer that  
18 questions, perhaps, but my questions for you is based on  
19 your independent review, as an experienced land man,  
20 based upon hiring a counsel to do a title examination can  
21 you tell the Board whether or not you believe there are  
22 title problems with regard to this unit -- there may be  
23 title problems --

24 MR. STREET: Same objection.

25 THE CHAIRMAN: Objection's noted.

1 Q. (Mr. Swartz continues.) And if so, in what area do there  
2 seem to be title problems?

3 A. Based on the opinions given by an attorney, preliminary  
4 title opinion and my review of such, I find that the  
5 portion of this unit does have a cloud on title and there  
6 is a question why as to the title of that partial of this  
7 unit.

8 Q. What portion have you identified as the potential  
9 problem?

10 A. The LeRoy Crenshaw, et al, tract.

11 Q. And does that problem relate to a lease or to a deed?

12 A. It goes back to the previous deeds in which the chain of  
13 title throughout whomever the lessors and lessees were or  
14 are.

15 Q. In spite of that potential title problem, regardless of  
16 how title might wash, how title questions might be  
17 resolved, have you made an effort to name as  
18 respondents of the people you need to name and bring  
19 before this hearing regardless of how that title issue  
20 might be resolved?

21 A. Best of my knowledge, yes, sir, we have.

22 Q. So you've taken that into consideration, the naming of  
23 people that you have named?

24 A. Yes, sir.

25 Q. What lease, if any, is it that the title problem you've

1 identified or the potential title problem you've  
2 identified relates to?

3 A. It is LeRoy Crenshaw.

4 MR. STREET: I don't want to bother the Board, but to say my  
5 objection. I need to continue objections to this man  
6 testifying as to what the situation on the title is with  
7 no testimony that he's an attorney or has expertise in  
8 examining titles.

9 THE CHAIRMAN: It's so noted as a continuing objection.

10 MR. STREET: It's all right if I have to make it again, it  
11 will just be understood.

12 THE CHAIRMAN: It will be a continuing objection.

13 MR. STREET: Thank you.

14 MR. SWARTZ: Hopefully this is the last question so we won't  
15 have to hear that objection.

16 THE CHAIRMAN: All right.

17 Q. (Mr. Swartz continues.) Do you remember the question?

18 A. No.

19 Q. What lease is it, if any, that you are concerned has a  
20 title problem?

21 A. Part of the unit that the title problem that I discovered  
22 through the help of counsel is the LeRoy Crenshaw, et al,  
23 tract.

24 Q. And who is the lease currently run to?

25 A. Edwards and Harding Petroleum Company.

1 MR. SWARTZ: That's all I have of Mr. Wirth at this point, Mr.  
2 Chairman.  
3 THE CHAIRMAN: Any questions from members of the Board? Maybe  
4 you clarified it, but we have before us an amended  
5 Exhibit B to all of the Board members which identified  
6 two other parties that were not shown on the proof of  
7 notice. Frank A. Randall and Harold Ingersol?  
8 MR. WIRTH: That's correct.  
9 THE CHAIRMAN: Consol and Land Corporation.  
10 MR. WIRTH: That is correct.  
11 THE CHAIRMAN: Do you have those proof of notice?  
12 MR. SWARTZ: We mailed, Mr. Chairman, the notices at the same  
13 time, at least I'm told we mailed the notices at the same  
14 time we mailed the other ones and we do not have the  
15 green cards back from those people which is why I am  
16 unable to file them.  
17 THE CHAIRMAN: Amendment's dated November 16th and received  
18 November 19th by the Division of Gas and Oil. That's  
19 when they amended it here, so I don't know when they  
20 would have noticed them. Do you have anyone here that  
21 could certify that you mailed notice?  
22 MR. WIRTH: Yes.  
23 THE CHAIRMAN: Who can do that?  
24 MS. VENABLE: I prepared the certifications and mailed them  
25 out.

1 THE CHAIRMAN: Would you put her under oath, Diane?

2 CLERK: (Swears witness.)

3  
4 GLEND A VENABLE

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

7  
8 DIRECT EXAMINATION

9  
10 BY MR. SWARTZ:

11 Q. State your full name, please and who you are employed by.

12 A. Glenda Venable. I work as a paralegal for Counts,  
13 McGuinness and Scott.

14 Q. Could you tell us whether or not you participated in the  
15 preparation of an amended schedule?

16 A. I did.

17 Q. And were there names added to that amendment?

18 A. Yes.

19 Q. I will show you an amended Exhibit B with regard to the  
20 well, C-25. Did you also prepare one for C-24?

21 A. Yes.

22 Q. Are the interests in C-24 and C-25 the same, as you  
23 recall?

24 A. This is the exhibit that was prepared for C-24 and C-25.

25 Q. Okay. So the same exhibit was prepared for both units?

1 A. Right.

2 Q. And did you participate in preparing that?

3 A. Yes, I did.

4 Q. Did you actually type it?

5 A. I did not type it. Somebody typed it at my instruction.

6 Q. And can you tell me what, if any, effort was made to  
7 notify the people listed on Exhibit B that you personally  
8 participated in?

9 A. We prepared the green cards for certified mail and they  
10 were delivered to the post office at the time the exhibit  
11 was filed.

12 Q. Can you tell me whether or not green cards were prepared  
13 and packets were mailed to Frank A. Randall and Harold B.  
14 Ingersol, Trustees, and Slockem Land Corporation?

15 A. They were for both of them.

16 Q. And you know that of your own personal knowledge?

17 A. I prepared them.

18 MR. SWARTZ: No further questions.

19 MR. MCGLOTHLIN: Mr. Chairman?

20 THE CHAIRMAN: Mr. McGlothlin.

21

22 CROSS-EXAMINATION

23

24 BY MR. MCGLOTHLIN:

25 Q. Welcome, Ms. Venable. What was the date that they were

1 mailed?

2 A. The date of the letter filing them with the Board.

3 Q. November 16th?

4 A. Right.

5 THE CHAIRMAN: Do you have any questions before we dismiss  
6 this witness?

7

8 CROSS-EXAMINATION

9

10 BY MR. STREET:

11 Q. I just wondered if she personally mailed them or someone  
12 else in your office did it.

13 A. I did not personally deliver them to the post office.  
14 I prepared them.

15 Q. So your testimony is just that you prepared these green  
16 slips and you assume somebody else mailed them, is that  
17 fair to say?

18 A. I know that they were delivered to the post office with  
19 the green cards.

20 Q. Oh, you went to the post office?

21 A. No, somebody went to the post office for me. They left  
22 the office with the packages.

23 Q. Okay. You didn't carry them to the post office?

24 A. No.

25 MR. STREET: All right.

1 THE CHAIRMAN: Any other questions? Thank you. Mr. Wirth,  
2 we'll recall you. Any questions from members of the  
3 Board of Mr. Wirth?  
4

5 CROSS-EXAMINATION  
6

7 BY MR. MASON:

8 Q. Mr. Worth, how many methane coal bed wells has OXY  
9 drilled to date?

10 A. Seventeen, working on eighteen and nineteen as we speak,  
11 I believe.

12 Q. How many of those wells are in Virginia?

13 A. All of them, sir.

14 Q. Okay. How many of them are on-line and producing?

15 A. None of them are on-line and producing yet, sir.

16 Q. Are any of them completed?

17 A. No, sir, our counsel -- we try not to complete them until  
18 we're ready for gas sales to prevent waste.

19 Q. Are they all being completed at the present time or -- I  
20 mean, are you on going to complete them?

21 A. We have a schedule for completion as we drill it.

22 Engineering questions I'll have to defer to the  
23 Engineering Department's counsel, I'm sorry.

24 Q. When do you anticipate the first one to be completed and  
25 on-line?

1 A. Again, if I may refer back to Mr. Vangolen, the  
2 Production Manager, would have a better knowledge to  
3 answer those questions, sir. If you would like to ask  
4 him, I will.

5 Q. Would you?

6 MR. Vangolen: We're still looking at September, '91, for a  
7 first sales date.

8 A. (The witness continues.) September, '91, for a sales  
9 date.

10  
11 EXAMINATION

12  
13 BY THE CHAIRMAN:

14 Q. Mr. Wirth, what coal seams do you intend to produce?

15 A. Again, what we're -- the primary target is the Pokey  
16 Number 3 or Pocohontas Number 3 seam with also Pokey 4  
17 and above Rise and below the Tiller if they show good  
18 potential on drilling logs and our engineers and  
19 geologist say.

20 THE CHAIRMAN: Mr. Street, do you have questions of the  
21 witness?

22 MR. STREET: Yes, I do.

23 MR. MCGLOTHLIN: One question I forgot. The question is to  
24 counsel for OXY. Do you plan on having Mr. Vangolen  
25 testify?

1 MR. SWARTZ: At some length, yes.

2 MR. MCGLOTHLIN: I'll withhold my questions.

3 MR. SWARTZ: If you have any technical questions or seam  
4 section or any of that, he's going to testify on that and  
5 you'll have an opportunity --

6 MR. MASON: Who's going to testify about the AFE?

7 MR. SWARTZ: The DWE. We don't do AFE's until we spend the  
8 money or shortly before we spend the money. The DWE's,  
9 Mr. Vangolen will be testifying to.

10 MR. MASON: Maybe I labelled it incorrectly.

11 MR. SWARTZ: The AFE is an authorization for expenditure which  
12 occurs pretty much contemporaneous with spending the  
13 money. A DWE is the drilling well estimate that we need  
14 to provide you all and they are quite different usually.  
15 The detail on the AFE is -- it's much more detailed and  
16 the prices are current prices and committed. A DWE's an  
17 estimate. But Mr. Vangolen will be testifying in regard  
18 to those.

19 MR. MASON: What do you call it again? A DFE?

20 MR. SWARTZ: AFE.

21 THE CHAIRMAN: DWE.

22 MR. MASON: What does that stand for?

23 MR. SWARTZ: Detailed well estimate.

24 MR. MASON: Thank you.

25 THE CHAIRMAN: Mr. Street.

CROSS-EXAMINATION

BY MR. STREET:

Q. If I understand you correctly, Mr. Wirth, you're not assuring the Board or any of the other owners of this tract that your proposed DWE will be the actual expenditure on the well? You're giving no assurance of that, are you?

A. No. Detailed well estimate -- estimate means that's the estimated costs of the well.

Q. So the AFE may be different, right?

A. The AFE, authorization for expenditure on an internal may be different than the total estimated costs, yes, sir.

Q. So at this point the Board nor the other owners really know what the well is going to cost do we?

A. It's an estimated cost on a detailed well estimated as provided to any and all parties to make an election as to participate, to lease, and all the options that they have with consideration. They do their own independent studies. It's an estimate that we give out.

Q. OXY is not committing itself to stick by this estimate is it?

A. That's an estimate.

Q. Well, is the answer, no, you're not committing yourself? Are you committing yourself to stick by this estimate or

1 not?

2 A. Yes, sir, that's our detailed well estimate.

3 Q. Well, what I'm asking you is when you start to charge the

4 other people, are you committed to sticking with your

5 estimate or are you retaining the right to charge them

6 more than that if it costs you more than that?

7 A. Are you asking during the process of during

8 participation?

9 Q. Right now, if a person decides they're going to

10 participate, can they be assured that the well costs will

11 be what you estimate or are you reserving the right to

12 increase that?

13 A. We reserve the right to increase it or decrease it.

14 Q. Okay. Now, the completion costs -- they sometimes run --

15 how much of the total cost can you end up having in

16 your completion costs?

17 A. I may have to defer -- I am a Project Land Manager and

18 these questions are for a technical engineering type.

19 Q. Okay. So you don't know whether it could be a half, more

20 or less, of the total cost then? You have no idea?

21 A. No, sir.

22 Q. But in your agreement that you say you do know a right

23 much about, that's what you all termed, I think, the JOE,

24 the Joint Operating Agreement.

25 A. JOA, yes, sir.

1 Q. JOA, excuse me. You are requiring all the other owners,  
2 if they want to participate to put up the total amount of  
3 the drilling costs and completion costs right now, aren't  
4 you?  
5 A. Their proportionate share, not the total amount.  
6 Q. So they've got to put up their money now even though  
7 you're not going to spend it for an indefinite time, is  
8 that not true?  
9 A. No, sir, the well may be drilled so the drilling costs  
10 are expended.  
11 Q. Well, how about your production costs? That's an  
12 indefinite, isn't it?  
13 A. Production costs comes after production.  
14 Q. Well, I don't want to be battering swords with you but is  
15 it indefinite? You don't know when you're going to  
16 complete it, do you?  
17 A. I, personally?  
18 Q. Your company? You don't know when you're going to  
19 complete it for sure, do you?  
20 A. Yes. We have an estimate of when we're going to do it.  
21 Q. Would you bind yourself to the Board that you're going to  
22 complete it by next September or would you bind yourself  
23 to do that or could it be in 1992?  
24 A. It could be in 1992.  
25 Q. Or 1993, couldn't it? It's possible.

1 A. Of provision of the oil/gas lease.

2 Q. You don't have any market right now, do you?

3 A. Not necessarily.

4 Q. Do you have a market contract right now?

5 A. OXY, USA, has gas contracts throughout the world.

6 Q. Do you have a market contract to sell this gas, Mr.  
7 Wirth?

8 A. This particular well?

9 Q. You don't have a market contract to sell any of the  
10 methane gas that you're asking for wells to drill, do  
11 you?

12 A. I could say, no. I could say, yes. I'm not trying to  
13 dodge the counsel.

14 MR. STREET: If it please the Board, I would ask that counsel  
15 not supply answers to the witness after the questions are  
16 asked.

17 A. (The witness continues.) Let me clarify, Counsel. OXY,  
18 USA, has of record gas contracts that any well throughout  
19 the domestic United States or worldwide, we can make it  
20 subject to that gas contract.

21 Q. You're telling me that you can sell this gas and you  
22 know what it's going to cost -- what it's going to bring  
23 you then, the gas that you're going to produce from these  
24 methane wells?

25 A. If we wanted to go under certain definite gas contracts,

1       that's contract's a contract and it would stipulate the  
2       price.  
3       Q.   Then why aren't you producing and selling the gas when  
4       you've got well down there?  
5       A.   Because we need to build the gathering system like any  
6       party would.  
7       Q.   Well, now, any party wouldn't have to.   Edwards and  
8       Harding has a gathering system in that area, doesn't it?  
9       A.   Does it have it to that well?  
10      Q.   How long do you think it's going to be before you get a  
11      gathering system?  
12      A.   Sir, it could be September, 1991.  
13      Q.   It could be longer, too, couldn't it?  
14      A.   Could be less.  
15      Q.   And you don't have any contract with any pipeline company  
16      to get your gas out, do you?  
17      A.   Again, we have gas contracts with pipeline companies  
18      throughout the United States.  
19      Q.   Wait a minute now.   This pipeline company -- there's only  
20      one coming in here, isn't it?   Isn't that Columbia Gas  
21      Transmission --  
22      A.   No, sir.  
23      Q.   -- I mean Consolidated Gas Transmission System?  
24      A.   No, sir.  
25      Q.   Well, who are you going to get your gas out with?   You

1 tell me.

2 A. Now, that's marketing information that is confidential  
3 for proprietary interest.

4 Q. You don't have anybody that you can get it out with, do  
5 you? Nobody has assigned capacity from the pipeline for  
6 this methane gas that you have. As a matter of fact,  
7 you've been negotiating with the party to build a new  
8 pipeline in here to take this gas, haven't you? You know  
9 that, don't you?

10 A. Or building a pipeline of our own. It's common  
11 knowledge.

12 Q. Okay. So you're either going to build the pipeline or  
13 you're going to get somebody else to build the pipeline.

14 A. That's correct.

15 Q. That's your plan. And you haven't starting it, have  
16 you?

17 A. The initial phase? Yes, sir, we have.

18 Q. Have you leased all the land you'll need to put that  
19 pipeline in?

20 A. I do not need to lease land for pipelines.

21 Q. For a major pipeline coming in you don't have to acquire  
22 the rights?

23 A. I do not need a lease, no, sir.

24 Q. What do you need?

25 A. I need right-of-ways.

1 Q. Have you acquired the right-of-ways?  
2 A. Not all, sir.  
3 Q. Have you budgeted any amount in your company for building  
4 the pipeline?  
5 A. Yes, sir.  
6 Q. And when does the budget project you're going to be  
7 spending the money for building that pipeline?  
8 A. I guess you need -- if you're going to get into  
9 technical, scientific, you'll need to call Mr. Glenn  
10 Vangolen to the stand to answer your questions better,  
11 Counsel.  
12 Q. If you don't know, I certainly don't want you to tell the  
13 Board, but you turned around and asked him should you  
14 tell me and I assume you had some knowledge.  
15 A. I have knowledge, yes, sir, of the whole project.  
16 Q. Okay. That's what I thought. Then, tell the Board over  
17 what period of time that new pipeline is scheduled to be  
18 built.  
19 A. September, '91, is our scheduled completion date.  
20 Q. You going to complete this pipeline by September of '91?  
21 A. That's an estimate of our schedule completion date.  
22 Q. And how many miles are you going to build that pipeline  
23 over?  
24 A. Just depending on the route we take, sir.  
25 Q. Is this gathering lines now or pipelines?

1 A. Gathering lines and pipelines, yes, sir.

2 Q. No, there's a difference there, now, Mr. Wirth. You put  
3 in gathering lines but you're talking about a major  
4 transmission line leaving this County going outside,  
5 aren't you?

6 A. You're talking a utility gas pipeline?

7 Q. Going out of Buchanan County, isn't that what you plan?

8 A. A utility -- there's a difference between -- a gathering  
9 facility can go all the way across the United States.

10 Q. Mr. Wirth, I'm asking you to explain it to us. Are you  
11 planning to put a transmission pipeline to carry this gas  
12 outside of Buchanan to connect up with another major  
13 pipeline as opposed to a gathering system?

14 A. I'll defer this to Mr. Glenn Vangolen.

15 Q. Just do your best. You can answer this.

16 A. There is two -- you have to have in any company -- any  
17 company has to have a flow line, gathering line, what  
18 you're talking -- from the well head to a sales point, to  
19 another sales point or one sales meter or different sales  
20 meters. A gathering line is different from a pipeline is  
21 what you're saying. If you're talking a pipeline being a  
22 regulated, utility, park, state, commission, whatever it  
23 is pipeline, OXY, USA, is not a utility company if that's  
24 what you're trying --

25 Q. What I'm trying to do is ask you if you plan to build a

1 pipeline which you refer to as a utility pipeline to take  
2 this gas out of Buchanan County. I thought you told me  
3 yes, but if you didn't --

4 A. A gathering line. There's a difference, Counsel.

5 Q. I understand. Now, are you telling me that OXY does not  
6 plan to build a utility pipeline to take this gas outside  
7 of the county?

8 A. I'm trying to tell you that OXY, USA, is not a utility  
9 company. It cannot get such approval with --

10 Q. Well, then, is the answer to my question that OXY is not  
11 planning to build a utility pipeline to carry the gas  
12 outside of Buchanan County?

13 A. We may build a gathering system.

14 Q. I'm talking about a utility pipeline. You know what I'm  
15 talking about. Tell me yes or no, please. Are you going  
16 to build one or not?

17 A. We're building a gathering system throughout --

18 Q. My question is, is OXY, USA, plan to build a pipeline to  
19 take the gas outside of Buchanan County?

20 A. Pipeline? Define pipeline, sir.

21 MR. STREET: If it please the Board, I'd ask the Board to  
22 instruct the witness to answer my question.

23 MR. WIRTH: If it please the Board, a pipeline is a pipeline.  
24 You have a pipeline going to your house to have regular  
25 propane coming from a propane tank.

1 MR. MASON: I think his questions are very straightforward and  
2 I think your attitude is terrible.

3 MR. WIRTH: I'm sorry, I'm not --

4 MR. MASON: I think you ought to answer the man's questions  
5 and sit there and quit playing games about these  
6 questions.

7 MR. WIRTH: If the Board please, a utility pipeline --

8  
9 CROSS-EXAMINATION

10  
11 BY MR. MASON:

12 Q. The man asked you how you're going to take the gas out  
13 of Buchanan County. Can you answer that?

14 A. Via a gathering system to a pipeline, yes, sir.

15 Q. Okay. Where's the pipeline you're going to.

16 A. It can be negotiated at different points.

17 Q. Well, whether it's a pipeline or a gathering line are  
18 you all going to build it or are you going to use  
19 somebody else?

20 A. We are going to build a gathering system for our  
21 projects, sir.

22 Q. Okay. When are you going to do that?

23 A. We have scheduled to complete the gathering facility by  
24 September of 1991.

25 Q. And where is that gathering facility going to go?

1 A. Throughout the Oakwood coal bed gas field.  
2 Q. And stop there?  
3 A. It will branch out and maybe into the Lenore gas field.  
4 Q. So you don't know where it's going?  
5 A. It's an estimate right now of our routing system of the  
6 gathering systems, sir.  
7 Q. So you're telling us that you have no idea where this  
8 gas is going?  
9 A. You negotiate with the utility company --  
10 Q. I know you negotiate. I'm asking you where the gas is  
11 going.  
12 A. We are in negotiations to --  
13 Q. So you don't know?  
14 A. Not at this point where the final end user product  
15 will be going, no, sir.  
16 Q. Do you have any idea how it's going to get there?  
17 A. We are building a gathering system to that point where  
18 we can be flexible to hook it up, sir.  
19 Q. But you know it's going to be done by September of 1991?  
20 A. That's our estimate --  
21 Q. Even though you have no idea where, how or with whom?  
22 That's absurd.  
23 MR. MASON: Thank you.

24  
25

CROSS-EXAMINATION

BY MR. STREET:

Q. (Mr. Street continues.) Have you estimated any cost of this gathering system?

A. Yes, sir.

Q. What is it?

A. I'll defer to Glenn Vangolen, the Project Manager, on technical questions on the Budget.

Q. Do you know what it is?

A. No, sir.

Q. You don't have any idea, then, in this operating agreement how to determine what the charge of transportation of the gas will be, do you?

A. Transportation charges will be included in it, but at this point, no, sir.

Q. So the Board has no way of knowing how much of this investment you're going to charge to the operator, does it?

A. The operator will know.

Q. To the participant I'm talking about. I'm sorry.

A. The participant will be -- it's a negotiable item on all JOA's.

Q. Once you drill the well and put your money in it or any money, you're charging eight percent on your investment,

1 is that true?

2 A. That's correct.

3 Q. And if that investment sits there for a year or two years

4 or something you charge eight percent on your investment

5 during that time to the participating parties, is that

6 true? Or to the royalty owners?

7 A. To the royalty owners?

8 Q. Before you pay the royalty, you deduct your costs which

9 includes eight percent of your investment?

10 A. No, sir, not to the royalty owners.

11 Q. How about to your working interest owners?

12 A. Working, participating -- working interest owners, the

13 overhead of eight percent figures in the joint operating.

14 Q. So if you put the well in too early, it costs them more

15 money because they've got to pay eight percent until such

16 time as you produce and they start getting their money

17 back, don't you?

18 A. The money will probably be placed in the escrow account

19 unless there's a clear cut ownership issue and that won't

20 even be in the escrow under the guidance of it. The

21 funds of the escrow provisions aren't earning interest.

22 Q. But you're charging eight percent on your investment all

23 this time, aren't you?

24 A. On the operating costs, yes, sir.

25 Q. In the operating agreement, you have no drilling date, do

1       you, sir?

2       A.   In the operating agreement the blank -- the exhibit, no,

3       sir.

4       Q.   So you're under no requirement to drill anything, are

5       you?

6       A.   No, sir.  It's an exhibit.  If the joint operating

7       agreement is an exhibit provided toward the Board and

8       there's some blanks left over as a negotiable item

9       between any participating party.

10      Q.   But the point being is that you're not permitting to

11      drill, as far as the Board's concerned, at any specific

12      time, are you?

13      A.   No, sir.

14      Q.   And you have in your rider or in your agreement, Roman

15      Numeral VI-A, that you may delay completion until the gas

16      transmission system has been constructed and made

17      available, is that correct?

18      A.   That's correct.

19      Q.   And for parties that are non-taking parties, you charge

20      an additional two cents, a MMCF, I believe it is, just to

21      pay their money to them, don't you?  For accounting?

22      A.   Accounting procedure of two cents for MCF?

23      Q.   Do you remember that?

24      A.   Yes, sir.

25      Q.   Is that true?

1 A. Yes, sir.

2 Q. When you filed the original application that you filed in  
3 this case did you make any indication at that point that  
4 there was any problem with title?

5 A. At the time of filing application, no, sir. The title  
6 opinion was performed on Big Vein with cursory title  
7 done on the Crenshaw until --

8 Q. And you showed the Crenshaw unit as owning 44.95 percent  
9 at that time, didn't you?

10 A. Yes, sir.

11 Q. And the only time that you attempted to say there was a  
12 cloud on the title is after Edwards and Harding, who has  
13 the lease of that unit, has applied to be an operator?

14 A. No, sir. Well, yes, it is in a way, but I'd just  
15 performed a title opinion on the total unit and got a  
16 title opinion on the total unit.

17 Q. Okay.

18 A. And that's why I filed that then.

19 Q. What's this -- I believe your term was "potential" --  
20 cloud?

21 A. That's correct, sir.

22 Q. What is a potential cloud? And these questions are being  
23 asked based on the Board's ruling to overrule my  
24 objection.

25 A. A potential cloud could be a junior and senior patent

1 throughout the northeast and Appalachian. You also may  
2 have a junior patent run along with a senior patent  
3 coming from the Commonwealth or, as you are well aware,  
4 you can go all the way back to the Crown in the thirteen  
5 original colonies.

6 Q. Did Island Creek lease some coal from Crenshaw on this  
7 tract?

8 A. Island Creek has a coal lease, yes, sir.

9 Q. Now, you don't consider that you've got a cloud on that  
10 title, do you?

11 A. I do. Cursor on the oil and gas.

12 Q. How about on the coal?

13 A. Not on the coal completed yet, sir.

14 Q. Well, how can you have a cloud on Crenshaw's title as to  
15 oil and gas and not have a cloud on the coal which you're  
16 claiming?

17 A. You have severance deeds throughout, as you're well  
18 aware, Counsel, that in the early 1800's and 1700's the  
19 oil and gas was separated from the coal and severed so  
20 you have an ownership of the coal and you have an  
21 ownership of the oil and gas. They may come back  
22 together at a later date to --

23 Q. They didn't come back together in Crenshaw, did they?

24 A. They may come back together --

25 Q. Do you remember on this one?

1 A. As to the coal ownership, I'm not for sure. But the oil  
2 and gas ownership came through a chain of title, two  
3 chains of title, which we're trying to cure at this  
4 time.

5 Q. Do you know what the problem is yourself?

6 A. I don't know specifically, but I think with further  
7 information as you're well aware of Buchanan County, some  
8 of the information was filed in other counties and we  
9 have to go to make a curative effort.

10 Q. So all you're saying is to the Board that without knowing  
11 the particulars of it, that the attorney has indicated to  
12 you somewhere that there may be a potential cloud.

13 A. Exactly. There may be a potential claim is my statement.

14 Q. Okay. You have put this well on C-24 outside the  
15 permissible area as permitted by the field rules and also  
16 permitted by the statute which restricts you to the --  
17 how close you can get to the boundary, haven't you?

18 A. On this plat, yes, sir, it is outside the --

19 Q. And that's because why?

20 A. Topography -- coal arguments that you brought up that  
21 we'd have to go from shallow coal to deep coal,  
22 topography efforts and everything.

23 Q. You say Island Creek owns all the mineral under that.  
24 I'm sure you didn't mean that they own all the mineral.  
25 You may be claiming, subject to potential cloud on title,

1 coal in the Pocohontas 3 and 4 seam, but Jewel Coal and  
2 Coke has coal on this C-24 unit, too, doesn't it?  
3 A. Yes. Jewel Smokeless Coal Corporation has a shallow  
4 above --  
5 Q. Have they objected to your well in that location?  
6 A. As to the permitting --  
7 THE WITNESS: Have we filed a permit on this one?  
8 A. (The witness continues.) We have not filed a permit so  
9 they have not been notified as to an objection.  
10 Q. To your knowledge, has Jewel objected to your putting the  
11 well in that area?  
12 A. They've objected in this total area, yes, sir.  
13 Q. And they say that it's going to interfere with their  
14 mining, don't they?  
15 A. Projected mining.  
16 Q. And have you not notified Jewel, then, of this forced  
17 pooling application?  
18 A. We go to the coal company and notify a potential well  
19 bore be placed in this area and try to work with them,  
20 yes, sir.  
21 Q. You have notified Jewel on this, haven't you?  
22 A. As to the permit?  
23 Q. Of this forced pooling application?  
24 A. We're not pooling Jewel's, no, sir. We're only  
25 developing below the Tiller formation at seams they do

1 not own.

2 Q. Aren't you drilling through their coal seam?

3 A. Yes, we are. But that's a permit.

4 Q. Of course the Board is more familiar with these rules  
5 than I am, but in Section 45.1-361.19, Notice of Hearing,  
6 it says in Subparagraph A, "Any person who applies for a  
7 hearing in front of the Board pursuant to the provisions  
8 of 45.1-361.20, 21 and 22" -- and 21 concerns the pooling  
9 of interest -- it says that, "you shall simultaneously,  
10 with the filing of such application, provide notice by  
11 certified mail, return receipt requested, to each gas or  
12 coal owner or mineral owner having an interest underlying  
13 the tract which is the subject matter of this hearing."

14 Do you not consider Jewel to deserve notice under that?

15 THE CHAIRMAN: Excuse me, just a second. The Board has ruled  
16 on it and I'm not going to let him answer that. That  
17 will come up in the permitting side as we ruled before.

18 MR. STREET: All right. Excuse me.

19 Q. (Mr. Street continues.) Now, if Jewel shows that the  
20 well is coming down through the coal mine as they told  
21 you and going to be a safety problem and would prevent  
22 them from mining in their planned way --

23 A. They did not tell us that, sir.

24 Q. Okay. What did they tell you?

25 A. They said that it might interfere with their mine work --

1 or projected mine work.

2 Q. And they've told you they're going to file an objection  
3 to your well permit application, haven't they?

4 A. Yes, sir.

5 Q. If they do, then the Board here could decide you can't  
6 put a well there because it will interfere with the  
7 mining, you can't drill on this permit even if you're  
8 appointed the operator can you?

9 A. Yes, sir, under the pooling application we may. We  
10 identify a well location here, but we may be able to  
11 work out an agreement with the parties or we may drill on  
12 the Crenshaw tract.

13 Q. You don't have the surface frack from the Crenshaw tract,  
14 do you?

15 A. I have a coal lease from the Crenshaws that gives us the  
16 right to drill.

17 Q. For gas?

18 A. For coal bed methane. They may be a potential owner,  
19 sir.

20 Q. No, let's make sure that we get it clear. That Crenshaw  
21 document did not give OXY or Island Creek -- it didn't  
22 say in there that you've got the right to drill to  
23 produce methane gas for sale or market, did it?

24 A. That's an ownership issue that need to discuss in a  
25 different form, I believe.

1 Q. Well, then, why did you put your well so close to the  
2 boundary line that it violates the regulation, if you had  
3 the right to do it inside -- not within 300 feet of the  
4 boundary?

5 A. As you allowed us, the access road going through is  
6 coming off another road going -- Highway 641. In order  
7 to save topography and economical benefits -- and we  
8 tried to get a location economical, that's where it was  
9 located at that times, sir.

10 Q. Would you agree that the well, as located, will drain the  
11 gas off of the adjacent units probably as much as or more  
12 than it will drain of C-24?

13 A. I will agree to that, yes, sir.

14 MR. STREET: That's all the questions I have of Mr. Wirth.  
15 Thank you for your patience.

16 MR. WIRTH: I would apologize to the Board and try to explain  
17 the definition of the term of a pipeline and gathering  
18 system to us is two different things and I had to clarify  
19 them because of potential things in other negotiations,  
20 Mr. Mason.

21 MR. STREET: Excuse me, sir, I have a couple more other  
22 questions, but I don't know whether he should answer  
23 them or someone else. If the Board would permit I will  
24 ask him and see if he can --

25 THE CHAIRMAN: Go ahead and ask him and he can tell you if --

MR. STREET: All right.

1 Q. (Mr. Street continues.) In the joint operating agreement  
2 the overhead which you are going to charge is left blank,  
3 is it not?  
4 A. Yes, it is.  
5 Q. Do you know what you are going to charge?  
6 A. The overhead rate is approxiamtely -- it's a negotiable  
7 item, but it's usually running around from anywhere 240  
8 to 400 depending upon the well depth and size of the  
9 coal bed methane.  
10 Q. But you're not binding yourself to any amount to charge  
11 at this time, is that correct?  
12 A. No, it's a negotiable item with the participating party.  
13 Q. And you have to rates here. One is a drilling well rate  
14 and one is a producing well rate?  
15 A. That's correct.  
16 Q. And you're leaving both of those blank to where you can  
17 charge anything you decide, right?  
18 A. Not that I decide. It's a negotiable item through the  
19 participating parties.  
20 Q. Well, once you pool it, how can they negotiate? I mean  
21 don't you have a gun to their head?  
22 A. No, they may elect to participate and they can say,  
23 "What is your rates?" If they make that election, you  
24 know, we'll be glad to. There's some items I know it's  
25 confusing, but it's an exhibit --

1 Q. No, sir, it's not confusing, you're making it clear,  
2 really you are.

3 A. -- there's blanks in there that is negotiable items  
4 between any parties.

5 Q. Now the person that's considering participating has two  
6 choices, either he agrees to what you say you're going  
7 to charge or he doesn't participate, right?

8 A. If we can't come to a negotiable item then the Board has  
9 a responsibility to settle the dispute.

10 Q. Are you saying that the Board then can set the drilling  
11 well rate and producing well rate?

12 A. If the parties cannot come to terms.

13 Q. Your rider, Roman Numeral VII-D-4 says that the gas  
14 owners will pay for reasonable steps requested by the  
15 coal owner including venting of the gas. If I understand  
16 that correctly, and you correct me if I'm wrong, if the  
17 coal company decides they want that gas vented then the  
18 gas owners have to pay for the operation of that well to  
19 vent the gas to protect the coal company even though  
20 they're not selling any gas, don't they?

21 A. It's subject, you know, to the regulations of the  
22 government agency that abide that.

23 Q. Whether you vent it or not may be subject to the regulat-  
24 ory agency, but the fact that the gas owners are going to  
25 have to pay for that operation of the well to protect the

1 coal company is not subject to any regulatory authority  
2 is it? You've got it in your agreement saying that.

3 A. Subject to the regulatory bodies. We can't just go out  
4 and vent it any time. Read the whole agreement. If we  
5 sent out an operator to turn that valve to vent it, yes,  
6 all parties share in that cost for that operation.

7 Q. I'm not talking about the decision whether to vent.  
8 You're saying that the regulatory agency has to permit  
9 you to vent, is that correct?

10 A. You have 24 hours you can vent withoutor, by the Chief  
11 Inspector of Mines may order you to that as a safety  
12 precaution.

13 Q. But in this agreement, you say you can vent if the coal  
14 company asks you to vent.

15 A. That's correct.

16 Q. And there's no objection from any regulatory agency to  
17 venting any well up there, is there, in Buchanan County?  
18 What regulatory agency could keep you from venting your  
19 well if the coal company asked you to?

20 A. We're not going to waste the gas just because a coal  
21 company asks us to. They must have good, proper will be  
22 a proven operator on that. Is that what you're --

23 Q. Well, who is to ensure that you're not going to waste the  
24 gas? You have the control and if the coal company asks  
25 you to, you're within your rights to vent it, don't you?

1 A. That's correct.

2 Q. And you are a sister corporation with Island Creek,  
3 aren't you?

4 A. Yes, we are.

5 Q. And they're the person that would ask you to vent the  
6 well, correct?

7 A. With permission under Tom Fulner of the Division of the  
8 Mines. We will have to notify them that we are going to.

9 Q. Does the Division of Mines have to give you permission to  
10 open up one of these wells to vent it?

11 A. Department of DDME we have to report and we have 24 hours  
12 with the regulators that we may vent and then we have to.

13 Q. Do you have to get their permission to vent or do you  
14 just vent and notify them that you're venting? That's  
15 the way it is, isn't it?

16 A. I think we can test without permission for 24 anything  
17 over 24 hours we have to go to the regulatory if we're  
18 doing it over 24.

19 Q. You would agree, of course, I'm sure, that once the  
20 Island Creek and whoever else is mining the coal begins  
21 to mine through it, you will be required to vent the gas  
22 or plug the well, won't you?

23 A. Being a layman here, Gene, and I'm not trying to we will  
24 temporary plug or whatever required for safety purposes  
25 the mine through.

1 Q. Well, if you can't answer it, I can understand this, but  
2 the well goes down into a coal seam is what your plan is,  
3 isn't it?

4 A. The casing stops just below the wells of the Pokey 3 and  
5 then it's open hole completion.

6 Q. Okay. If they're going to mine in that area they're  
7 going to have to terminate that well, aren't they?

8 A. No, temporarily plug it, sir.

9 Q. Okay. Can you open that back up after you've long walled  
10 mined and you've had all the subsidence in the breaking?

11 A. If the casing structure's strong enough and you have a  
12 plug in the bar you can produce from Pokey 4, you can  
13 produce from the upper seams with no gaseous signs.

14 Q. How do you get the plug out?

15 A. Okay. I'll defer to on the technical how you get it out.

16 MR. STREET: Okay. That's all right. That's all the ques-  
17 tions I have.

18 THE CHAIRMAN: Are there any other parties in the audience  
19 that plan to address the Board regarding C-24? If there  
20 are, raise your hand. If not, any questions for this  
21 witness from members of the Board?

22  
23  
24  
25 CROSS-EXAMINATION

1  
2 BY MR. MASON:

3 Q. I have one question, Marty.

4 A. Yes, sir.

5 Q. Is that my understanding or maybe this is a point of law  
6 as much as anything else, but once this pooling order is  
7 entered, is it your position that the pool the owners  
8 agree to all the terms of this Joint Operating Agree-  
9 ment? That's part, you know, outside of the pooling  
10 order that this Operating Agreement that all of it's  
11 terms and conditions are being imposed upon the forced  
12 pool?

13 A. Governed by the Joint Operating Agreement. We're not  
14 asking you to make an absolutely execute, but we would  
15 like for the Board to consider to have some sort of  
16 gathering other than the order some kind of everybody's  
17 on the same terms and everything that this being a part  
18 of the order, yes, sir. Some of the blanks are negotiable  
19 if the party wants to participate and they come to that  
20 it is the blanks are filled in.

21 Q. I understand that. Leave the blanks out of it. What I'm  
22 saying is all the other elements or conditions of this  
23 Joint Operating Agreement are, in your view, once the  
24 forced pooling order is entered become a part of that  
25 order, is that correct? And imposed to all the people

1           that are pooled? Forced pooled?

2       A.    As a gathering, yes, sir.

3       THE CHAIRMAN: Thank you, Mr. Wirth.

4       MR. SWARTZ: Mr. Chairman, we'd like to move a bulletin Board  
5           in here if we could. Mr. Vangolen's going to be testify-  
6           ing next. Could be take a couple minute break to do that  
7           or --

8       THE CHAIRMAN: We'll take a ten minute break.

9       MR. SWARTZ: Thank you.

10           (AFTER A BRIEF PERIOD OFF THE RECORD, THE HEARING  
11       CONTINUED AS FOLLOWS:)

12       THE CHAIRMAN: Come to order, please. We'll continue the  
13           hearing now. I would remind everyone that we've got  
14           about forty more cases to hear and we're going to hear  
15           them.

16       CLERK: (Swears witness.)

17  
18                               GLENN VANGOLEN

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

21  
22                               DIRECT EXAMINATION

23  
24       BY MR. SWARTZ:

25       Q.    State your full name.

1 A. Glenn Vangolen.

2 Q. Mr. Vangolin, who do you work for?

3 A. OXY, USA, Incorporated.

4 Q. And what is your title?

5 A. Coalbed Methane Project Manager.

6 Q. When you say "Project Manager," are you in charge of this

7 project, this coalbed methane project and these wells

8 that we've been talking about from an engineering

9 standpoint?

10 A. I'm in charge of the whole project from inception of the

11 wells through completion, marketing and sale of the gas.

12 Q. And how long have you been involved with this project?

13 A. Over the last three years I've worked intimately with

14 Island Creek. I'm one of the brothers of the brother/-

15 sister relationship that Steve talked about before. I'm

16 calling him the sister, in that case.

17 Q. I'd like to start off discussing, since it has obviously

18 generated some interest here, the question of a gathering

19 system to service the wells which OXY has already drilled

20 and which OXY plans to drill as part of it's program in

21 the Oakwood Field. The gathering system, available

22 pipelines, capacity on the pipelines and your plans or

23 ideas or thoughts with regard to gathering, delivery to a

24 sales point into a pipeline, either an existing pipeline

25 or other arrangements so that you can give the Board your

1 best explanation of the things that are under considera-  
2 tion or the things that have been decided with regard to  
3 getting gas from coalbed methane gas wells in this field  
4 to market. And if you need to move the blackBoard in and  
5 if it would be helpful to show them, generally --

6 A. Yeah, I think pictures will probably describe it. Okay. I'd  
7 like to start out and just kind of draw the project and  
8 talk about where gas is going, how gas moves and just  
9 get everybody informed on gas marketing and what's all  
10 involved here. Let's talk about the Oakwood Gas Fields.  
11 As you know, some of the I'm just going to put these  
12 applications there somewhere in here. We've got other  
13 applications and well drilling here, we've got other ones  
14 here and some over here just for general purposes. What  
15 OXY's currently doing is negotiating for pipelines in the  
16 area. There's three major interstate pipelines. This  
17 one actually goes under the project and then there's one  
18 way down south. Apparently what we're talking about is  
19 this pipeline in the areas, a CNGT pipeline, Consolidated  
20 Natural Gas. This pipeline we've been in discussion with  
21 CNGT, in fact, at one time we had frack application  
22 pending for expansion of that pipeline. It involved a 12  
23 million dollar expansion. OXY was going to contribute  
24 some capital to expand that pipeline to be able to handle  
25 the additional forty million a day. Since then that

1 application has been dissolved and we've been talking  
2 about the CNGT about a number of other things. There's a  
3 problem with this pipeline as it exists. Currently, as  
4 Mike could probably tell you, picks are very limited. In-  
5 ternally, at CNGT, this is described as a bucket of rust  
6 held together with bolts. It has a very low maximum  
7 operating pressure. In order to move the volumes that  
8 we're talking about in gathering in all these wells,  
9 connect them and move them into an interstate market to  
10 get everybody's gas to market, not just the C-24. This  
11 is a much larger development. We have to worry about the  
12 total volume of this gas and we need expansive volume to  
13 handle, you know, anywhere from twenty to fifty million a  
14 day depending who's projections you believe, which  
15 independent engineering study, how many wells. We've got  
16 the extension of a tax credit, carries you on for another  
17 couple years. There's a lot more development that's  
18 going to be happening here, not just OXY, USA. We've got  
19 sisters to the south. You've heard them here this  
20 morning. We've got other people over the project with  
21 oil and gas operations over the area actively developing.  
22 So unless this pipeline right here is upgraded to handle  
23 the capacity which we're currently negotiating, we  
24 wouldn't go to that pipeline. And there's a number of  
25 reasons. Coalbed methane gathering systems and gathering

1 system is a term of art and kind of stumped Marty up  
2 there a little bit. Gathering system to us a non-juris-  
3 dictional pipeline. That's how we envision most of this  
4 over the project. In order to get this into a gathering  
5 system, into a pressure, you know, at CNG when they were  
6 looking at upgrade, this was going to be an intake  
7 pressure of 700 pounds. The gathering systems are  
8 described as the world's biggest vacuum cleaner. You  
9 have got to keep low pressure on the well heads in order  
10 to move coalbed methane gas. You may be able to produce  
11 gas initially and I mean initially for a very short  
12 period of time at a pressure, but you have to get it back  
13 down into a desorption range for coalbed methane for gas  
14 to continue to produce. We have got to keep well head  
15 pressures down below five pounds in order to make that  
16 gas move. So when you're talking about going into  
17 pipelines, you're talking about building major gathering  
18 systems and compression facilities to get into these  
19 pressures. Currently, we need options there. We've also  
20 talked to Columbia. We have many people within OXY  
21 talking to Columbia. We've got a Mid-Con pipeline  
22 subsidiary which is a regulated pipeline. They've been  
23 talking to Columbia. When you say, "Can you move gas on  
24 these fields?" OXY, USA, has capacity on all these  
25 pipelines through contracts, Washington, D.C., New York,

1 you know, all over the upper northeast, Midland, Michi-  
2 gan, Chicago, which is where Mid-Con is based out of.  
3 They're actively working all these markets. If you say,  
4 "Can we get gas to these markets?" The answer is yeah.  
5 If you ask us where the C-24's gas is going to go to, I  
6 can't tell you that. I can tell you that some of that  
7 some of that gas may go to Washington, D.C. Whether it  
8 all goes there, it's hard to tell.

9 MR. MASON: If you're telling me what I think you're telling me  
10 is that OXY's got to build a gathering system and there  
11 are three possibilities to get out of there into a sales  
12 line and you all are negotiating and feel confident  
13 you'll have that done by September of 1991.

14 THE WITNESS: Pipelines move in two seasons, summer and  
15 summer. So either you're there in '91 or you're there in  
16 '92. And we're negotiating hard, we're working hard to  
17 get there by '91.

18 MR. MASON: That's all I wanted to know.

19 A. (The Witness continues.) The other option is Columbia.  
20 Like I said, our Mid-Con subsidiary has tremendous  
21 volumes with Columbia. We've got capacity bought, we've  
22 got markets already dedicated on Columbia that we could  
23 move this gas to, significantly larger volumes than we're  
24 talking about, hundred millions a day pipeline. The  
25 other person we're talking to, East Tennessee. East

1 Tennessee requires us to build a line go south. There's  
2 a number of companies that we've talked to who are  
3 looking at joint ventures to do that, not just OXY, USA.  
4 What we're working and looking at doing is getting in  
5 this East Tennessee line and transport. That's all we  
6 want out of East Tennessee is transport mechanism. We're  
7 negotiating with them, also on purchasing space on that  
8 line and they expect to have a proposal to us in a number  
9 of weeks. There's a problem with this line, but one  
10 reason we all like it, it's got a tough oxygen speck. I  
11 said earlier, we're building the world's biggest vacuum  
12 cleaner. Any time you have vacuum cleaners you're  
13 sucking in air. If you've got a tough oxygen speck and  
14 you can't market it. That's why we don't prefer that  
15 option. We can do it. We can put in oxygen scrubbers  
16 and get that gas to pipeline quality. We don't want to  
17 do that, that's expensive. So these are our strong  
18 negotiations up here and that's the direction we want to  
19 head to. I hope that kind of clears up some of that.

20 Q. Let me ask you a couple of questions about the gathering  
21 system before we move on. You mentioned that a gathering  
22 system to gather coalbed methane gas from a group of  
23 coalbed methane wells, to get it to a gas pipeline, has  
24 to maintain low well head pressures.

25 A. That's correct.

1 Q. Could you tell me why you say that, if there is any data  
2 that you rely on or any work that you've done that you  
3 rely on to offer an opinion to the Board that pressures  
4 in gathering systems that coalbed methane vessels are  
5 hooked to have to remain low?

6 A. It's a number of technical data that drives the desorp-  
7 tion mechanism and I don't want to but there's desorbtion  
8 isotherm that is basically the long term mechanism of  
9 methane production. It's an expense curve, you get very  
10 much pressure with on that coal and the gas doesn't  
11 desorb. What we've experienced in some of the tests wells  
12 we've done for Island Creek, if you have as little as  
13 fifty feet of water on top of a coal seam, your produc-  
14 tion drops in half. That's not very much pressure on  
15 that well. If you build up to thirty pounds or fifty  
16 pounds in that area, your production is dropping in  
17 half. You have got to keep this low and keep the gas  
18 flowing down that line. And this is all based on actual  
19 test data within the Oakwood coalbed gas field.

20 Q. Are there any university studies that would support that  
21 conclusion?

22 A. There's all the desorbtion isotherms were generated by  
23 Penn State. There's also GRI data that has supported  
24 that. Internal studies, Island Creek constantly takes  
25 data for their coal mining operation. Desorbtion

1 numbers, permeability numbers, water saturation numbers,  
2 all this data we're constantly generating and updating  
3 our computer models and estimates of production.

4 Q. Comments that have been made by counsel at this hearing  
5 and other hearings for Edwards and Harding, I'm going to  
6 ask you to assume that it is Edwards and Harding position  
7 that they intend to hook any coalbed methane wells that  
8 they might drill into an existing gathering system that  
9 they have which currently serves as conventional oil and  
10 gas wells. I'm just going to ask you to assume that  
11 that's their plan. And I would ask you whether that is  
12 the type of system you would design for OXY or employ for  
13 OXY and if your answer is yes, tell me why and if it's  
14 no, tell me why not.

15 A. The system that you need to design, like I said, is a  
16 vacuum cleaner system. It is tough to buck line pressure  
17 on a conventional gas well unless Edwards and Harding  
18 plans on putting compressors at every well head and I  
19 haven't seen numbers within their DWE that incorporates a  
20 compressor at the well head. That is not the kind of  
21 system that you would design to gather methane gas.

22 Q. One other questions before we move off of transportation.  
23 Are you familiar with the Joint Operating Agreement that  
24 we've talked about some today?

25 A. Some, yeah.

1 Q. If someone participates in the well under the Joint  
2 Operating Agreement, who sells the gas coming out of that  
3 well?

4 A. Under the operating agreement each party has to take  
5 their gas in kind which means that if you participate  
6 you have to move your gas unless we come to an arrange-  
7 ment between the parties.

8 Q. So, let's assume, some of these wells get drilled and  
9 there are JOAs entered into and people are participating  
10 in the well with OXY, if someone has a fifty percent  
11 interest the JOA would permit them, unless there's some  
12 other agreement that you entered into to find a buyer  
13 and sell their gas.

14 A. That's right. They have the option to move that gas to  
15 their own markets, to their own price, to their own  
16 destination.

17 Q. With regard to participants, the coalbed methane, where  
18 you've got a well and one or more participants taking the  
19 gas the gas in kind under the JOA, there may be three  
20 different prices for the same gas coming out of the same  
21 well?

22 A. That is correct. Each individual has its own option and  
23 its own pricing scenario.

24 Q. Can you tell me whether or not you are, in designing a  
25 gathering system, you anticipate that you will be

1 gathering gas for participants who are selling their own  
2 gas?

3 A. Say it again, Mark.

4 Q. Do you anticipate, in designing a gathering system, to  
5 cover the areas of the coalbed of the Oakwood Field that  
6 you're going to intodo you anticipate that on that  
7 gathering system that OXY is going to build that you  
8 will be transporting gas on your gathering system and  
9 compressing gas on your gathering system that really  
10 belongs to somebody else and that is selling it on their  
11 own?

12 A. Yes, we expect that there will be other parties trans-  
13 porting on our system and we have designed for that  
14 capacity as well as royalty owners moving on our system  
15 which also have atthey can take their gas in kind. Other  
16 participants? Other participants can, in certain areas,  
17 can market their own gas, lay lines on their own gas.

18 MR. MASON: Let me ask you a question if I may. People that  
19 elect not to participate, what happens to their propor-  
20 tion of the gas?

21 THE WITNESS: We would move royalty gas if that's the option  
22 you're talking about.

23 MR. MASON: Well, I mean, do you have an obligation under your  
24 Joint Operating Agreement to market gas for the people  
25 against whom the pool is forced?

1 THE WITNESS: Ask Mr. JOA here.

2 MR. WIRTH: Are you saying if they elect not to participate  
3 they deem the lease, then they are a royalty owner and we  
4 move their gas for them? Yes, we do, sir.

5 MR. MASON: Okay. They don't end up with gas credits?

6 MR. WIRTH: Tax credits?

7 MR. MASON: No.

8 MR. WIRTH: Balance in agreement, is that what you're talking  
9 about?

10 MR. MASON: Right, yes.

11 MR. WIRTH: No, sir.

12 MR. MASON: Okay.

13 MR. WIRTH: We would sell their gas as long they would be our  
14 royalty owner, everybody in that unit who are royalty  
15 owners --

16 MR. MASON: What I'm concerned about is I know the Internal  
17 Revenue Services takes some very adverse view of some of  
18 these balancing agreement deals.

19 MR. WIRTH: That's correct.

20 MR. MASON: You know, it's one thing to force compel these  
21 people in and then turn around from them and have the  
22 obligation to market their own gas. So that would not  
23 occur?

24 MR. WIRTH: No, sir, not unless a participating party may  
25 want --

1 MR. MASON: I understand. I'm not concerned about people  
2 electing --

3 MR. WIRTH: Okay, non-participating --

4 MR. MASON: -- just non-participation.

5 THE WITNESS: All our royalty owners, we would move their gas.

6

7 CROSS-EXAMINATION

8

9 BY MR. MCGLOTHLIN:

10 Q. Mr. Vangolin, did I understand you to say that every  
11 participant gets payment in kind?

12 A. Gas in kind.

13 Q. Gas in kind. So if John Doe elects to participate on a  
14 50/50 basis with OXY then he gets 50 percent of the gas,  
15 300 cubic foot a day?

16 A. Correct. Well, less the royalty if you're paying that in  
17 kind.

18 Q. Okay. And then it is up to that person to market his  
19 share of the 300 cubic foot of gas?

20 MR. WIRTH: Should they elect to take it in kind, yes, sir.

21 MR. MCGLOTHLIN: That's my question. Can they take a cash  
22 payment?

23 MR. WIRTH: We can move the gas for them under our prices.

24 THE WITNESS: If we have markets dedicated, we can move it for  
25 them.

1 MR. MCGLOTHLIN: Would that price be comparable to what  
2 you're receiving or are you going to take a percentage  
3 off the top for handling it?

4 THE WITNESS: I believe that's that two percent.

5 MR. WIRTH: The two cents.

6 THE WITNESS: The two cents per MCF, that's the gas marketing  
7 handling charge.

8  
9 CROSS-EXAMINATION

10  
11 BY MR. MASON:

12 Q. A minute ago you were talking about that on a, you know,  
13 you indicated that you all would market the gas for  
14 anybody that was a royalty owner or deemed a royalty  
15 owner. What about a carry?

16 A. A carry, that essentially would be our gas until we  
17 reached the penalty point, the 200 or 300 percent and  
18 then it would, basically, flip into a working interest  
19 type mode where it's just the same as a participant.

20 Q. So, in effect, they would be responsible for marketing  
21 their own gas?

22 A. After the flip.

23 Q. Yeah, basically after you are paid back your portion --

24 A. Correct.

25 Q. -- of the drilling and completion costs then they would

1           then be responsible for marketing their own gas.  
2   A.    Correct.  
3   Q.    What happens if they are unable to do that?  
4   A.    We could enter into agreements to market and sell gas for  
5           them.  
6   Q.    But you have no compulsion to do that?  
7   A.    Two cents an em.  
8   Q.    Well, I understand you could be paid, but, you know, it  
9           wasn't so long ago when people were breaking these take  
10          or pay contracts all over the country --  
11   A.    That's right.  
12   Q.    -- and you couldn't give gas away.  
13   A.    If market conditions are that we can't move gas our-  
14          selves, obviously, we're not going to get into a situa-  
15          tion where we have more gas to move.  
16   Q.    So there is a potential there that a person could be  
17          forced into one of these pools and wind up not having  
18          their gas sold.  
19   A.    Yes.  
20   MR. MASON: Thank you.

21  
22                               REDIRECT EXAMINATION  
23

24   BY MR. SWARTZ:

25   Q.    What I'd like to do next is spend a little bit of time on

1 the development of the field and the data in the plans  
2 for the field and what you've done to date. Let me  
3 preface this. Before the tax credits were extended by  
4 Congress recently, how many wells did you all plan to  
5 drill in the Oakwood Coal Field?

6 A. We had about 150 that we wanted to do. Obviously, we ran  
7 into some problems and things were very curtailed and  
8 we're on a tough schedule so it was a good break for us.

9 Q. Can you tell me, as Project Director, whether or not the  
10 extension of the tax credits, in your view, is going to  
11 cause you to recommend and try to drill more than the  
12 initial projected number of wells?

13 A. I believe about that. We'll try to get as much drilled  
14 in this area as possible provided the capacity of the  
15 pipeline exists. We're not going to go out and punch  
16 wells if we can't move gas in the line for two or three  
17 or four years.

18 Q. You've indicated wells spaced around in different areas  
19 rather than on a uniform basis in the field. Can you  
20 tell me whether or not your development plans, without  
21 giving specific on where all these spots are, essentially  
22 do have sort of a random appearance as if they're  
23 centered at certain areas as opposed to spread all over  
24 in a uniform fashion.

25 A. Obviously, what we try to do is concentrate in areas

1 where we can put in these little gathering systems on a  
2 project basis and make all the wells economic, produce  
3 gas into a block. This allows for us to centralize  
4 compress facilities, centralize the work that needs to be  
5 done in those areas. Now those areas are also, there's  
6 some science that's gone into that. Those are the areas  
7 where we think the coal is thickest. Those are areas  
8 that are currently projected to be five years outside of  
9 Iron Creek's mine plan to allow the wells to get some  
10 economic benefit to protect ourselves and whoever may  
11 want to participate before they're ran through.

12 Q. Let me ask you some questions about --

13 A. Let me stress that again, it was a minimum of five years.

14 Q. Let me ask you some questions about the data that you  
15 have gathered over the last three years and I don't  
16 want, a full-blown explanation, but I'd like you to  
17 convey some idea to the Board the data that you have  
18 accumulate and considered in decided in A, to drill a  
19 fairly large number of wells and where to drill them.-  
20 What's the data base or the data you've developed to  
21 allow you to makes those kinds of decisions?

22 A. You want pictures?

23 Q. Whatever's quickest.

24 A. Let me start off and just kind of before Island Creek  
25 went out and developed this area, there's way over 200

1 core holes that give full lithology description of this  
2 area. They're spread out over the whole Oakwood Field. As  
3 part of our testimony for the Oakwood Methane Gas Field,  
4 we presented some of those locations and some of the maps  
5 involved for development of this field. I realize some  
6 of you weren't there so if you have any questions just,  
7 you know, chime in there. These core holes have full  
8 descriptions from surface listing every coal seam whether  
9 it's clean or dirty, how many feet, how many is and from  
10 this what we've done is estimated what are completeable  
11 horizons and developed isopacks and structure maps and  
12 that's what's gone into this science. We combined all  
13 these thicknesses, put them into a total composite and  
14 spotted the wells that have the thickest total composite  
15 of coal. In other words, the best prospects, you know, the  
16 thickest pays.

17 MR. EVANS: That's all seams?

18 THE WITNESS: All seams, below the Tiller.

19 Q. (Mr. Swartz continues.) In addition to core holes, have  
20 you had access to some FFH holes?

21 A. The others, right now I don't know what number Island  
22 Creek's on, but I know they're getting towards pushing  
23 300 VVHs in the area that have almost of those since  
24 1980, '82, have logs associated with them and those  
25 descriptions were also incorporated. As well as the well

1 mine structures, we've had satellite studies done,  
2 studies done that shows principal areas of stress. It  
3 shows surface geology direction. Some of this information  
4 allows us to create frack direction. There's a number  
5 of industry studies available, GRI's worked heavily in  
6 the Appalachian Basin. One of their central Appalachian  
7 Basin studies outline this potential which is one of the  
8 studies we went to to see what the development and the  
9 potential might be out here. There's USBM work that  
10 Island Creek is continuing to do as well has done in the  
11 past for years and years on desorbition work, rock  
12 properties. Back in the '70's there was an OXY Research  
13 Corp which has since been dissolved. They did quite of  
14 an expansive study on long hole drainage well boars, some  
15 of the effects of drainage there which were also used to  
16 kind of help us give an indication of what an infinite  
17 conductivity fracture might look like. There was a mini-  
18 frack program that was done back in the 70's through OXY  
19 research that also gave us some indications of per-  
20 meability and rock properties for the area.

21 Q. Most of the data that you told us about is focused on the  
22 total thickness of coal in any given location and you've  
23 taken that information, I gather, from the core holes and  
24 the VVH data that you have. Have you mapped that in any  
25 way?

1 A. Oh, yeah, we've incorporated all that data into a  
2 computer mapping system and we've got an isopack for  
3 every seam out in this area. We can tell you where  
4 you're based on the mapping, how thick we expect coal  
5 seams to be in certain areas and it shows some of the  
6 discontinuities of some of the seams, how they come and  
7 go, grow, shrink, not so much in the 3 seam, it's kind  
8 of a blanketed seam throughout the area. It varies in  
9 thickness from spot to spot and in quality from spot to  
10 spot, but each of the coal seams we've got mapped in  
11 this area.

12  
13 RECROSS EXAMINATION

14  
15 BY MR. MASON:

16 Q. If I may interpose a question. This is sort of display-  
17 ing my lack of knowledge in that sense, but what depth is  
18 this Tiller?

19 A. Tiller is basically at drainage.

20 Q. I still don't --

21 A. If you can go to the bottom of the river and stand there,  
22 that's drainage. So anything below that is what Island  
23 Creek owns.

24 Q. But in this open field, I mean, what is it vary a great  
25 deal from one place to the other?

1 A. It varies because of the topography. The Pocohontas  
2 Number 3, which is basically at zero ground elevation,  
3 and from that the depth of it is anywhere from 1400 feet  
4 to 2600 feet.

5 Q. Okay. That's what I was trying to determine is what  
6 depth. Is most of these wells going to be in that range?

7 A. Yeah, it's in that range. I don't think we've got  
8 anything over 2700 feet and I believe our shallowest is  
9 somewhere around 1400 feet.

10 Q. What are the variances on the thickness of the seam  
11 through there?

12 A. There's an area over here where you start getting a split  
13 line of the Pocohontas Number 3 which is bad for mining,  
14 but still allows us as a coalbed methane developer to go  
15 in there and produce that. So what you may see there is  
16 if this is your well boar you may have a split seam here  
17 and a split seam here by Number 3. Both of them --the  
18 top one may be three feet, the bottom may be two feet,  
19 but that's five foot of coal still. So when you say how  
20 thick does it vary over there, you know, you may go from  
21 two feet all the way to seven feet on a continuous --

22 Q. I see. Well, I was just curious, you know. So you're  
23 talking two to seven feet.

24  
25 CROSS-EXAMINATION

1  
2 BY THE CHAIRMAN:

3 Q. What seams are located within 100 feet vertically and 750  
4 feet horizontally in the area of this well?

5 A. Of the Number 3 seam or of all the seams expected to  
6 be --

7 Q. C-24.

8 A. C-24. Based on what we can tell does anybody have any  
9 questions before I --

10 MR. STREET: Before you erase that, please, I will be wanting  
11 to ask you questions on that. How can we do it?

12 THE WITNESS: How about I just do the corner here?

13 MR. STREET: Okay, I don't want to cause a big problem.

14 A. (The witness continues.) As we talk here, you know, what  
15 we're looking at are seams that are 1-1/2 foot or  
16 greater within a ten foot interval, but they can be  
17 completable. That's kind of where we've determined  
18 economics internally on where we can and can't do a frack  
19 job. So the C-24 you're looking at an area in here where  
20 the Pokey 6 is about six feet, but as we've come up the  
21 well Board I'm taking this off a nearby core hole, so  
22 leave me some latitude there. We've got a Pokey 9 seam  
23 that's about 2-1/2 feet and then there's a War Creek  
24 seam in here that's somewhere in the neighborhood of -- I  
25 think the core hole is -- Tom, I think you've got this in

1 the application, you can probably verify it a little  
2 closer. So a composite on that well Board, 11.4 feet is  
3 what we'd anticipate completed. This is the Number 9,  
4 this is the Number 3 seam and this is the War Creek. Now  
5 what seams are above and below that? I believe there's a  
6 small development, it's less than a foot of some of the  
7 lower horse pens. There's a core hole on that permit  
8 application that I don't have here, but there's probably  
9 a Pokey 7 within this area, in this part of the field  
10 that may lie within 100 feet of the Number 9.

11 Q. What about the Pokey 4?

12 A. There's a pretty poor development at the Pokey 4 when you  
13 look at our overall field. I'm probably telling you more  
14 than you should know, but you've got me on the black  
15 Board. We've got a tremendous core development that kind  
16 of trends like this. Overlying on that, you know, you  
17 see that Pokey 3 is pretty well blanketed through the  
18 whole area. We've got a five development that kind of  
19 lays over like that on top of each other. Up in this  
20 area of the field, you start getting a pretty good War  
21 Creek development. You start pulling down in this field,  
22 down like this, you start getting some pretty good 9  
23 development. And those upper seams are not continuous  
24 like the Number 3 seam so they come and go and that's why  
25 when we do an estimate we estimate three jobs and a well

1 Board. Now after we drill that well, we get a log, we'll  
2 have it in hand, you know, we may come up with this  
3 number 9 seam as only instead of the 2-1/2 we estimated  
4 it's only, you know, .75 or something. You can't really  
5 justify putting \$30,000/\$40,000 in a frack job by the  
6 time you get all the associated costs to complete that  
7 seam.

8 Q. Thank you, Mr. Vangolen, for the complete history of the  
9 Oakwood Coalbed Methane scene. Now, in respect to C-24,  
10 does the Pokey 4 lie within 100 foot of your vertical  
11 distance?

12 A. Kevin, I can tell you in a second. We estimate  
13 a Number 4 in that area of about four feet.

14 Q. Distance from --

15 A. Distance from the top of the 3?

16 Q. -- yeah.

17 A. Is about 75 feet away.

18 Q. Thank you.

19 A. Sure.

20 Q. Do you have coal owner consent in those areas that lie  
21 within 100 foot vertically to 750 foot horizontally?

22 A. We've got consent from Island Creek and Island Creek's  
23 lease is encompassed from the Tiller and below so, yes,  
24 we do, Mr. Wampler.  
25

REDIRECT EXAMINATION

BY MR. SWARTZ:

Q. Is it your understanding that we filed that consent with the Board?

A. Yes.

Q. And it's on file somewhere and you all have it?

A. It's somewhere on file.

Q. Moving from coal thicknesses, can you tell me whether or not, in addition to the isopacks that you have done that show you coal seam thicknesses in excess of 1-1/2 foot throughout the Oakwood Field, what information, if any, have you developed with regard to the gas content of those coal seams?

A. As part of Island Creek's coring program, it's continual program, we're constantly adding to that data base. I think they've had about 15 wells or so that record again just recently. Dennis LouEllen, who some of you have met through the hearing, constantly drops these samples in a desorbition container and measures gas content throughout the whole area. There's USVM that's just done some work where they've -- I believe that was another fifteen desorbition canisters that that work will probably become public pretty soon.

Q. Does the gas content of the various seams vary from

1 location to location or is it generally uniform through-  
2 out the Oakwood Field?

3 A. No, it varies. Just in the Number 3 seam, we don't know  
4 whether it's a variation of testing information or we're  
5 in the process of mapping some of these gas contents, but  
6 what we've noticed is that gas content can range anywhere  
7 from 250 standard cubic feet per ton to 750 standard  
8 cubic feet per ton so there's quite a large range. The  
9 majority of the data falls in the 400 to 600 range.

10 Q. In locating a well, can you tell me whether or not the  
11 data that you've accumulated with regard to gas content,  
12 with regard to coal seam thicknesses, whether or not  
13 there is also consideration given. I'm not going to  
14 spend a lot of time on this, but whether or not there is  
15 also consideration given to economic models in terms of  
16 whether or not the coal you predict will be found by a  
17 given well bore and the gas content of that coal will  
18 result in a well that's economic, that's going to produce  
19 gas at a potential profit as opposed to a loss?

20 A. You bet. Internally we did a study about three years  
21 ago, initiated this project. We also had independent  
22 consultants do a full blown study on this area. ICF  
23 Resources which is well known as the industry leader for  
24 geologic consulting in coalbed methane has performed  
25 independent evaluation of our data and the data that they

1 have available through similar GRI studies that they've  
2 performed. And all this work has been compiled into a  
3 model that basically accounts for the gas content in each  
4 seam and a thickness for each seam and we incorporated  
5 that into an overall economic model.

6 Q. In terms of your -- of OXY's project, because there have  
7 been some discussions at previous hearings with regard to  
8 information about given wells as to perhaps enable  
9 somebody to make a judgment of the well, my question is  
10 with regard to OXY's economic model and economic deci-  
11 sions and the way you look at this project, have you  
12 been looking at individual wells from a corporate  
13 standpoint or have you been looking at a group of wells?

14 A. We always look at a group of wells. What we do is  
15 develop -- what we've done here is develop wells on a  
16 well by well basis, back it into an average well,  
17 incorporate that into a model and then try to put that  
18 together and determine economic. Now what was the first  
19 part of the question?

20 Q. Okay. You answered it, believe it or not. With regard  
21 to that, let me ask you this. When you look at a group  
22 of wells, whether it's 100 wells or 150 wells or 200  
23 wells, and you've got your average well that you've just  
24 told us you try to predict, can you tell me whether or  
25 not OXY., in making a decision with regard to whether or

1 not this project makes economic sense, has assumed that a  
2 certain number or percentage of the wells you drill are  
3 not going to be economic?

4 A. You bet. Anytime we do economics in a project, we take  
5 the basket and then we risk it. We know that some of  
6 these are not going to be good wells, we know that some  
7 of them are going to be great. You're going to have a  
8 range of wells. There's a lot of things that can happen,  
9 you know. Frack jobs can mess up, things like that that  
10 can make certain wells uneconomic. And we use industry  
11 percentages. We use OXY, USA's percentage on success  
12 ratios. You know, you can estimate and I believe for most  
13 of our economics we estimate that 25 out of 100 wells are  
14 not going to be economic. And this is kind of an  
15 internal way that we go about it and we evaluate a  
16 project. You drill 200 wells, there's 50 of them there  
17 that may not be economic and that's an internal risk  
18 factor that's, you know, what we look at as the develop-  
19 ment success ratio and that's how we carry out the  
20 economics.

21 Q. Let me ask a couple more questions. Have you been  
22 involved in test work with regard to testing fracking in  
23 the Oakwood Field and other tests?

24 A. We did some frack work for Island Creek and their BBH  
25 Program. We fracked three wells. We just recently

1 fracked another well for them and we've done a lot of  
2 modeling work off those wells. One well, in particular,  
3 we did a mine through for Island Creek's purposes to  
4 assure them that these frack jobs were not going to hurt  
5 their roof rock. We used some florescent paint in the  
6 sand, they mined through it, we all stood up, looked up  
7 at the well boar, mapped the direction, mapped the width  
8 of the frack. They told me I had to go down if they had  
9 to go down, so I did and we backed all that into the  
10 model and put that into what we predicted and then  
11 compared it with what we got and we're constantly adding  
12 and refining that model.

13 Q. You say you put florescent, what did you do? The sand or  
14 whatever's in the crack was colored somehow?

15 A. Yeah, we put pretty pink florescent paint on the sand,  
16 brought down black lights in the mine and you could trace  
17 the direction of the frack.

18 Q. And as you mined into the frack, you could see where it  
19 was as you were mining through it?

20 A. You could see the pretty pink color on the ground.

21 Q. Can you tell me whether or not you personally are aware  
22 of a concern that labor has had with regard to safety  
23 considerations with regard to mine throughways after  
24 fracking and anything that you've been involved in to try  
25 to ally those concerns or satisfy those concerns?

1 A. Yeah, there's a number of concerns and, without getting  
2 into the labor issues very strongly, this is a major  
3 concern for Island Creek. These are union mines so one  
4 has to be very careful of what you can do and what you  
5 can't do, both underground and surface. That's why it  
6 was very important to Island Creek that OXY, USA, operate  
7 at the surface to avoid some of those very sensitive  
8 relationships.

9 Q. Can you tell me who designed or how the frack was  
10 designed that OXY proposes to use on these walls?

11 A. It's all done internally. We've got a ream of PhDs that  
12 love to sit up and model this stuff and think about it  
13 and manipulate the computer to try to match what we've  
14 done both in production and whatever.

15 Q. Who's going to do the frack for you?

16 A. Well, we'll contract out the frack like most companies.  
17 We use a Hal Burton, we'd use a Dowel well, but what we  
18 would do is give them the design specifications, one of  
19 our people will be in the truck controlling the frack.  
20 We have limitations imposed on us on what we can and  
21 can't do when we're in that truck. Steve alluded to some  
22 agreements that are in place with Island Creek and it's  
23 tough for us to deviate. We've got strict guidelines in  
24 order to prevent loss of coal claims or try to prevent  
25 loss of coal claims and protect the rock.

1 Q. Does Hal Burton and other companies that you might  
2 contract with to do the frack, do they have off the shelf  
3 fracks that you can just buy? They have a product and  
4 they will sell you a frack that they designed?  
5 A. They'll sell you anything you want them to.  
6 Q. I guess my question is, though, if you came to them and  
7 said "I don't know how to do this, but do you have some  
8 choices? Can I choose a type of frack?" Do they have  
9 some?  
10 A. You bet. You can go to them and say, "Here's my expected  
11 coal, here's my expected depth, design me a frack."  
12 Q. And you are not buying an off the shelf frack?  
13 A. No.  
14 Q. You are specking your frack and they're using the one  
15 that you've developed?  
16 A. That is correct.  
17 Q. The last thing I want to cover with you in terms of  
18 operatorship issues before we get to the DDE and hopefully  
19 finish, is we got into at the last hearing some  
20 sharing of information questions and disclosing information  
21 issues with other gas and oil operators. I've got a  
22 couple questions in this respect. I take it, from time  
23 to time, OXY is in a unit that has been pooled or there's  
24 a voluntary pooling afoot or a forced pooling afoot and  
25 OXY's in a position where you're not the operator and you

1 have to make a decision on whether or not to participate.  
2 I mean, is that something that happens?

3 A. Oh, yeah. We've got a number of wells throughout the  
4 United States where people where we are not operators  
5 that we just participate.

6 Q. Some of which you can force pool then, I imagine?

7 A. Yes.

8 Q. And some of which you've consented to were voluntary?

9 A. Forced to make elections and some where we've entered  
10 into agreements to participate.

11 Q. Can you describe the process that OXY follows to evaluate  
12 whether or not OXY wants to make a decision to par-  
13 ticipate when you're not the operator? Not in tremendous  
14 detail, but if there is a procedure that you follow, what  
15 would that be?

16 A. First thing we would do is go to our geologist and say,  
17 "Hey, does this look good?" He would say yes or no. If  
18 it's a yes, we might decide at that point to do a little  
19 engineering work on it to find out what some of the  
20 parameters are, do some computer modeling, whatever it  
21 takes, use off-set production, you know, whatever it is  
22 to make a good decision. And that would be done in-  
23 dependently, by ourselves with out own engineers, our  
24 own geologists, our own evaluation people, our own  
25 economic people and we basically put that into a model

1       that reflects OXY, USA's economics. Every company has a  
2       different set of criteria, different hurdle rates for  
3       investments. You know, if we show that the economic  
4       return of that well is only ten percent, we've got other  
5       places to put our money.

6       Q.   In instances where OXY has been asked in the past to  
7       participate or to make an election to participate in a  
8       forced pooling situation, can you tell me whether or not  
9       the person who is seeking to force pool and the person  
10      who's trying to get an election or a decision from you on  
11      whether or not you want to participate, generally comes  
12      to you and shares all their information with you?

13     A.   Usually all we get is the location of the well, we get  
14      some costs of the well, what they anticipate, a DWE.  
15      Then we send it off and tell our guys to go look at it. We  
16      do our own geologic work and make our own decision. We  
17      wouldn't rely on investing our money on somebody else's  
18      information.

19     Q.   Even if they would give it?

20     A.   Even if they would give it to you.

21     Q.   One last issue before the DWE questions. We talked some  
22      over the course of these hearings about waste water  
23      disposal. What are OXY's plans with regard to dealing  
24      with waste water from these wells in the Oakwood Field?

25     A.   We're looking in salt water disposal conventional wells,

1 Class II disposal wells. As you've heard one of the  
2 surface owners attest to you today that those are non-  
3 hazardous waste wells. We've visited with the EPA and  
4 have looked into areas that may be receptive to disposal.  
5 One of the options that really looks like the hotter  
6 topic right now is evaporation. There's a tremendous  
7 amount of off off-peck gas being vented -- vented into  
8 the air and just liberated.

9 Q. What's off-peck gas?

10 A. Non-pipeline quality, 96 percent or less methane type  
11 thing, something that an interstate transportation  
12 company would not buy. We kind of like that option. We  
13 take some of this off-spec gas, evaporate the salt water  
14 and thee appears to be a pretty good market for this  
15 salt. We currently having a bunch of lab tests being  
16 done on the salt to even see if we can give a cost break  
17 to some of the local municipalities for road salt, but  
18 that's one of the options that really is looking more and  
19 more viable.

20 Q. Initially when this well or this pooling application was  
21 filed a good while ago, do you recall that?

22 A. Yeah.

23 Q. And there was a DWE filed with this some months ago. Was  
24 it August or early September? Have you since gone back  
25 and done an updated DWE?

1 A. You bet. Thanks to Saddam Hussein some of the field  
2 prices have risen. Some of our pipe prices have actually  
3 gone down.  
4 Q. Let me ask the question.  
5 A. Oh, okay.  
6 Q. What's happened since August that would cause you to redo  
7 this?  
8 A. Funny you should ask. Some of the pipe prices have  
9 actually gone down. Fuel prices have gone up fifty  
10 percent for a lot of the joint contracts, so you can see  
11 some changes in the drilling contract work.  
12 Q. If you could just summarize the changes, up or down,  
13 since the filing of the original DWE for the Board so  
14 they don't have to compare.  
15 A. Okay.  
16 THE CHAIRMAN: Excuse me. Do you have a copy of this?  
17 MR. SWARTZ: We have this, but we've never received a copy of  
18 the original DWE.  
19 THE WITNESS: Well, it was filed with the Board a good while  
20 ago.  
21 MR. SWARTZ: I've got an extra one I guess you can have.  
22 THE CHAIRMAN: Okay, go ahead.  
23 A. (The Witness continues.) Let's see, just on surface  
24 casing it looks like the old price we had about \$11.20 a  
25 foot. Current purchasing prices are somewhere around \$11

1 a foot area.

2 MR. STREET: Excuse me, Mr. Vangolen. Give us, since I don't  
3 have my old copy, kind of give us some comparative  
4 figures there. I mean multiply them out for me.

5 THE WITNESS: Okay. Surface casing is 4,480 was the old. New  
6 one is 4,440. The other change, let's see, production  
7 casing was 9,242. New one is 8,070. Some of the tubing  
8 was 5,115, currently 3,477. Suck rods were 1,305, new  
9 ones 1,361. Some of the revision upward was the drilling  
10 contract work was 27,300, it's now 33,560.

11 Q. (Mr. Swartz continues.) Why has that gone up in your  
12 judgment, the drilling?

13 A. The majority of that is the reflection of Saddam Hussein

14 Q. Is there more demand for the rigs, is that --

15 A. No, in fact, there are a number of rigs becoming avail-  
16 able. Coalbed methane operators around the country have  
17 slowed down. Alabama, you know, has cut in half their  
18 rig utilization and --

19 Q. To the fuel costs probably?

20 A. Fuel costs, that's what it is. Current diesel, you know,  
21 somewhere in the neighborhood of \$1.25. Oil's somewhere  
22 around eighty something.

23 MR. MCGLOTHLIN: \$6,000 for --

24 THE WITNESS: No. \$1.25 a gallon, isn't it?

25 MR. MCGLOTHLIN: No, he's talking about \$6,000 difference in

1 fuel.

2 THE WITNESS: Kevin, I just take the bids and we use the low

3 one.

4 MR. MCGLOTHLIN: Might have to suggest you get all this

5 methane is to go ahead and sit your rigs up to turn off

6 of it.

7 Q. (Mr. Swartz continues.) If you could compare the total

8 of the original DDW, the bottom line totals on the pre-

9 completion total and total estimate of the old to the

10 new, so we you have that in the record?

11 A. The pre-completion total on the new is 103,615. The old

12 one was 108,377. Total estimate for the new was 221,246.

13 Total estimate for the old was 228,497.

14 Q. Does this DWE, this new one, does it represent a reason-

15 able estimate of the reasonable anticipated wealth cost

16 for the proposed initial unit well under your plan of

17 development for Unit C-24?

18 A. These were just updated to reflect the current cost work

19 we're now incurring.

20 THE CHAIRMAN: Board members have questions on DWE?

21 MR. MASON: Yes.

22 MR. SWARTZ: I'm through.

23 THE CHAIRMAN: Okay. Go ahead, Mr. Mason.

24 MR. MASON: Yeah, I was going to ask a couple questions.

25

RECROSS-EXAMINATION

BY MR. MASON:

Q. Looking at your DWE, coming down the column to the left there's pre-completion intangible 16,995. Then you come over to the right it says 38,486. What I don't understand is, is this column total the 38,486 or is the 16,995 included in it?

A. The total column is the 38,486 and that pre-completion number is the number, basically, to just drill the well before we do any stimulation or production work.

Q. Wait a minute, the pre-completion tangible is how much?

A. Pre-completion tangible is 16,955.

Q. And that's included in the 38.466?

A. Correct.

Q. What is that?

A. The 16,955? That's the amount of money that we would spend to just drill the well.

Q. What's the contract drilling for?

A. Well, okay. Let me back up. Pre-completion, the concept of pre-completion, is how much you spend just to drill the well. Okay. The pre-completion tangible is sum of that conducting casing, surface casing, production casing, well head and that should be about it.

Q. Well, these are already over here in this other column

1           aren't they?

2   A.    Yeah, they are.

3   Q.    And they're in this one again?

4   A.    They're included in the 38,486.

5   Q.    I understand that, but what is in the 16,955?

6   A.    I think I just read that to you. For the 4, 445 the

7           8,070.

8   Q.    So you mean the total of this column down to where the

9           zero is is 16,995?

10  A.    No. The total column down to where that zero is is

11           38,486. The 16,955 is the amount of money we would spend

12           before we included the pump, the line and pipe fitting,

13           the stock tanks, the separator, which is a deferred

14           expenditure when we complete the well.

15  Q.    Your telling me that if I add this column of figures, the

16           longer column down to the number which is 1,361, that

17           total is 16,955?

18  A.    And then you add labor and transportation, pre-comple-

19           tion, pump.

20  Q.    I am thoroughly confused.

21  MR FULNER: Maybe I can draw some light on this. What I'm

22           understanding here is dry hole costs versus completed

23           costs. And what he's calling pre-completion tangible is

24           dry hole costs. In other words, that's just to drill the

25           bore hole and if it's not productive, it can be plugged

1 at that point in time and none of the other expenditures  
2 will be conducted. So that's a dry hole cost.

3 Q. (Mr. Mason continues.) Okay, if that's the case, then,  
4 if you add this column of figures on the right hand side,  
5 disregard the 16,955 it should add to 38,486.

6 MR. FULNER: It does, basically.

7 MR. MASON: Does it? I mean I don't know. I'm just trying to  
8 understand the accounting.

9 THE WITNESS: Yeah, I understand that. I think it does, Bill.  
10 Let me add it up.

11 MR. MCGLOTHLIN: Mr. Mason has been a tax attorney, but their  
12 accounting is not --

13 MR. MASON: I teach accounting, but I have trouble with this.  
14 They don't let me add the same numbers twice.

15 A. (The witness continues.) Yeah, it adds up.

16 Q. So you're saying that these two numbers on the left hand  
17 side are both already included in the column on the  
18 right hand side?

19 A. Correct.

20 Q. And that they're just summations of --

21 A. They're summations of different categories that are pre-  
22 completion --

23 Q. Actually, if you added the two of those together, this  
24 103,000 would be your dry hold costs? Is that what  
25 you're telling us?

1 A. Correct.

2 Q. Okay. Thank you.

3 MR. MASON: Thank you, Tom. I was having major league trouble  
4 with that.

5 THE CHAIRMAN: Any other questions on DWE? I have a question  
6 on the statement of no objection. The statement of no  
7 objection that we have in our document dealing with CBM,  
8 C-24, I can't tell from that you have -- I couldn't look  
9 at this and concur that you have consent to stimulate all  
10 of those seams of coal that you identify. Does Island  
11 Creek have the lease on all the coal seams for C-24 in  
12 the Crenshaw below the Tiller formation? I'll just point  
13 out that there's nothing here in -- this consent that  
14 would tell us that that I can, unless you could amplify  
15 for us.

16 THE WITNESS: I got one for the C-25 made, but let me see if  
17 this is the same language here. "The applicant well  
18 operator for the purpose of stimulation of the coal seam  
19 or seams which the undersigned operates concerning the --  
20 well on the track"

21 THE CHAIRMAN: Same thing.

22 THE WITNESS: Okay. Operates is what Island Creek has under  
23 lease.

24 MR. MASON: But in your question, how would you know that  
25 they have all three of these seams under lease?

1 THE CHAIRMAN: Yeah, that's what I'm trying to sort out is  
2 how we -- see, we ought to be in a position to be able to  
3 concur with whatever you represent to the Board and I  
4 can't tell. I mean I don't know how the Board can tell  
5 what we're dealing with here.

6 MR. MASON: Or the permitting agency, how would they know?

7 THE CHAIRMAN: Right. Of course, that's --

8 MR. MASON: I understand that, but, I mean, you know --

9 THE CHAIRMAN: And the other question is a question of whether  
10 or not Howard Epperly is, in fact, authorized to provide  
11 this consent. Tom, do you have anything in addition in  
12 the file whether or not authorizing Mr. Epperly to okay.

13 THE WITNESS: If I could respond to one of the two questions  
14 you asked. Conferring, I think the only thing that we  
15 could provide you with that's in writing that would be a  
16 simple way to answer your question how do we know which  
17 seams they have the right to operate --

18 THE CHAIRMAN: Right.

19 THE WITNESS: -- would be enforcement of the lease, because I  
20 assume the lease describe the seam or seams that they're  
21 leasing.

22 MR. SWARTZ: If there's anything you request, I can give a  
23 letter telling what seams Island Creek has on it's lease.

24 THE CHAIRMAN: Let's just have a general discussion here for  
25 a second, given the hour.

1 (AFTER A BRIEF DISCUSSION OFF THE RECORD, THE HEARING  
2 CONTINUED AS FOLLOWS:)

3 THE CHAIRMAN: Did you conclude your questions of Mr. Van-  
4 golen?

5 MR. SWARTZ: Yes, I did.

6 THE CHAIRMAN: I thought you did. Okay. The Chair will  
7 entertain a motion to adjourn and would recommend that we  
8 reconvene at 8:30 in the morning.

9 THE Board: So move.

10 THE CHAIRMAN: Have a motion and a second. All in favor  
11 signify by saying yes.

12 THE Board: Yes.

13 THE CHAIRMAN: Opposed no. Thank you.

14  
15 (End of proceedings for November  
16 20, 1990.)  
17  
18  
19  
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21  
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25

November 21, 1990

This matter came on to be heard on this the 21st day of November, 1990, before the Gas and Oil Board, at the University of Virginia Center, Abingdon, Virginia.

THE CHAIRMAN: We'll reconvene the hearing. Hearing's on well C-24. It's a forced pooling request by OXY, USA, Incorporated and we have heard from witness Glenn Vangolin and we're ready for Mr. Street to cross-examine.

MR. STREET: Mr. Chairman, let me ask you a questions since you made that comment there. The Board may recall that I think it was in September -- the months sometimes get confused this first came up for hearing. At that time there was also an application in the same unit by Edwards and Harding, which is the next one, EH-38.

THE CHAIRMAN: Yes, sir.

MR. STREET: And you all continued so you'd hear them together and I guess we should have asked in the beginning. I assume that this is sort of together and they're going first. Is that the way you're doing it?

THE CHAIRMAN: Well, I will now make sure that we're clear on that that we will take these together. We did agree to do that EH-38 well.

MR. STREET: Well, I assumed that and --

THE CHAIRMAN: I should have put that --

1 MR. SWARTZ: My assumption was that we were handling one  
2 case. The reason I say that is that if I felt that we  
3 were handling both at the same time, I plan to move to  
4 dismiss their pooling application at the point's it's  
5 under consideration. And my assumption was that we were  
6 proceeding with ours and we were going to finish ours. I  
7 had no objection to this procedure, but it was my  
8 understanding yesterday that I was proceeding on was that  
9 we were considering ours first, we would probably defer a  
10 decision until we heard theirs. If we're actually going  
11 to consider their competing application, I have a  
12 motion. He's got a right to cross-examine Glenn on my  
13 application and I'm perfectly willing to proceed on that  
14 basis, but at the point in time that we get to their  
15 application, I'm going to have a motion.

16 THE CHAIRMAN: That's fine. I don't think that changes  
17 anything, but I did yesterday, only open for C-24, but  
18 Mr. Street is correct, we did agree to it and continuing  
19 to take these together and since there's no disagreement  
20 that will move forward in that regard.

21  
22 GLENN VANGOLEN

23 a witness who, after having been previously sworn, was  
24 examined and testified as follows:  
25

CROSS-EXAMINATION

1  
2  
3 BY MR. STREET:

4 Q. Mr. Vangolen, you mentioned yesterday, I will not attempt  
5 to try to rephrase you because it's been too long since  
6 you made the comment, but you were talking about the  
7 safety of the mine. Of course, the Pokey Number 3 is  
8 what Island Creek is mining in Buchanan County. Is that  
9 correct?

10 A. That's correct.

11 THE CHAIRMAN: Just me just remind the witness that you're  
12 still under oath.

13 THE WITNESS: Yes, sir.

14 Q. (Mr. Street continues.) And the plan of OXY in your  
15 application as is the plan of Edwards and Harding is to  
16 go down and put the well down to the Pokey Number 3  
17 seam, is that correct?

18 A. Yes, drill through the Pocohontas Number 3 seam, right.

19 Q. And bleed the methane gas out of that area, is that  
20 correct?

21 A. By area do you mean just the Number 3 seam?

22 Q. No, I mean that area on up above that, too. Right?

23 A. Yes, right.

24 Q. But you're planning on draining gas out of the Pokey  
25 Number 3 seam?

1 A. As well as other seams, yes.

2 Q. And Pokey Number 3 seam is historically been considered  
3 being a gaseous seam and that's one of the reasons that  
4 everyone's in here wanting to drill for methane. Is that  
5 true?

6 A. Yes, it's considered one of the gassier seams.

7 Q. And, historically, that has provided a significant  
8 problem for Island Creek as Island Creek mentioned here,  
9 a representative mentioned for them here yesterday. Is  
10 that correct?

11 A. Yes, the gas problems are a potential problem for them.

12 Q. And even had some gas explosions there, have they not,  
13 and had to shut down some mines?

14 A. I have no knowledge of that, Gene.

15 Q. Okay. There's no doubt about it that the more gas you  
16 can get out of that seam the better off Island Creek's  
17 mine will be, is that true?

18 A. That's true.

19 Q. And, therefore, if there is an incentive from the safety  
20 point of view and from Island Creek's interest also to  
21 bleed as much gas off of that seam as you can, is that  
22 true?

23 A. That's true.

24 Q. And it will protect the men if you bleed more of the gas  
25 off the seam?

1 A. That's true.

2 Q. Would it also be fair to say that the longer that well  
3 can drain gas before the mining begins, the more gas will  
4 be drained off? I mean it's obvious, right?

5 A. No, it's not that obvious, but there's a number of other  
6 factors to consider. The gob process liberates quite a  
7 bit of gas.

8 Q. Are you telling me that if you have a well in there for  
9 five years and you have one in there for three years,  
10 that the well in there for five years won't drain off  
11 more gas than the one in there for three years in the  
12 same area with the same stimulation process?

13 A. I'm saying there's an equal chance that those wells could  
14 drain the same amount of gas.

15 Q. You put a well down there and you leave it three years  
16 and it drains off X amount of gas, right?

17 A. Yes, sir.

18 Q. Then you leave it another two year, what are you saying?  
19 It won't drain off anymore gas?

20 A. I'm saying that after the gob process, there would be  
21 more gas liberated after three years after gobbing than  
22 there would be after five years of --

23 Q. Now you're talking about after gobbing, you're talking  
24 about the mining's already gone through, right?

25 A. Correct.

1 Q. I'm talking about before the mining gets there.

2 A. Oh, before the mining gets there, there will be more gas  
3 drained in five years than there will be three years.

4 Q. Right. So the longer you have the well in there produc-  
5 ing the better off it is for the mining that's coming  
6 toward that area, correct?

7 A. Correct.

8 Q. Therefore, it would promote safety to get the gas out of  
9 there and get it marketed quicker, wouldn't it?

10 A. Provided it was done in a safe manner, yes.

11 Q. Provided it was done in a safe manner, how many wells has  
12 OXY stimulated in Buchanan County?

13 A. We've contracted for Island Creek to stimulate four  
14 wells.

15 Q. And what do you mean by "contracted for Island Creek to  
16 stimulate four wells?"

17 A. We were designated as an operator to fracture four wells  
18 in a test program.

19 Q. Now, when you say you contracted for Island Creek, did  
20 you do the fracturing or did Island Creek do the fractur-  
21 ing?

22 A. We did the fracturing.

23 Q. Okay. Four wells, were these ben holes?

24 A. Yes.

25 Q. Did you do those under the methane gas legislation that's

1           been enacted recently?

2   A.   They were permitted as BBH's.

3   Q.   Okay. Now when you fractured those seams, when did that

4       occur?

5   A.   Let's see, three of the wells were done about two and a

6       half years ago.

7   Q.   And the fourth one?

8   A.   It was just done a week and a half ago. Actually,

9       there's five, we did one yesterday.

10  Q.   How long has those wells been in place?

11  A.   Which ones, Mr. Street?

12  Q.   Any of them.

13  A.   The first three were drilled and stimulated in a concur-

14       rent operation. I'm not sure when Island Creek drilled

15       the well last week that we stimulated.

16  Q.   Did you use the same fracturing process for all five

17       wells?

18  A.   No, we didn't.

19  Q.   Have you improved your process?

20  A.   We're still refining our process.

21  Q.   Okay. Now who is working on refining your process?

22  A.   The main person involved we've got a production department

23       in Oklahoma City that specializes in frack design.

24  Q.   Who's the main person?

25  A.   The main person is Dr. Wilton Wilson.

1 Q. And does he work for OXY?

2 A. He works for OXY, USA, and he has testified in front of

3 the previous Board in the spacing application.

4 Q. Will he be testifying here today?

5 A. No, he won't.

6 Q. The frack procedure that you all have developed, are you

7 satisfied that it is going to safely protect the roof and

8 the floor for mining purposes?

9 A. Yes, we are.

10 Q. As far as you know, is Island Creek satisfied with that

11 fracking process that you've developed?

12 A. Island Creek has complete control of the fracking process

13 and to my knowledge they don't have any problem with

14 approving what we've done.

15 Q. What do you mean by complete control? What do they do as

16 far as control?

17 A. We have to provide them with complete operational

18 procedures, computer runs, fracture treatments and they

19 have to sign off on those.

20 Q. Now when you fracture a seam of coal, would you tell us

21 what you do?

22 A. From where to where?

23 Q. Well, when you tell the contractor you'll fracture the

24 seam, what does he go do?

25 A. He rigs up his trucks and gets ready to pump the job that

1 we've specified for him.

2 Q. And what does he do when he pumps the job? I don't  
3 really understand it and some of these folks may not  
4 understand.

5 A. He's in communication with all his pump trucks, blenders,  
6 sand trucks. You have guys on the tanks that measure  
7 fluid during the job. We monitor rates, volume, sand  
8 concentrations, bottom hole pressures, treating pres-  
9 sures. During the job we obtain data on closure pres-  
10 sures and also plot multi-plots as we do the job to see  
11 if we're heading toward screen up.

12 Q. What do you put down in the hole, sand and water?

13 A. Sand and water and nitrogen.

14 Q. What are you using?

15 A. We're using a combination of jobs.

16 THE CHAIRMAN: Excuse me just a second, just to question the  
17 relevance of where we're going with the fracking proced-  
18 ure and all that to this case.

19 MR. STREET: I'll be happy to tell you. I think that it's  
20 very relevant. If they've developed a process and Island  
21 Creek has approved the process and the process is being  
22 done by I believe they said Hal Burton, is that correct?

23 A. (The witness continues.) That is one of the treating  
24 companies, yes.

25 Q. And the other treating company is?

1 A. DS.

2 Q. Who?

3 A. D.S.

4 Q. And the process then can be determined and procedures  
5 can be given to Island Creek and approved, then another  
6 operator can tell Hal Burton to do the same process. It  
7 is not something that is peculiarly done by OXY. It can  
8 be done by anybody because Hal Burton is the one doing  
9 the processing and Island Creek's controlling it so they  
10 can control it by this Board's order with anyone else.  
11 That's the point of the question. If the Board doesn't  
12 want me to go further, I'll be happy to move on.

13 MR. SWARTZ: Mr. Chairman, this would be interesting if they  
14 could obtain a consent. If another operator had a  
15 consent and if there was some question whether or not the  
16 fact that they had a consent they could competently frack  
17 or not frack, this testimony would be of interest. But  
18 absent a consent, it has nothing to do with anything.

19 MR. STREET: Well, that's the legal argument that we've had  
20 before is that we had the consent.

21 THE CHAIRMAN: Continue.

22 Q. (Mr. Street continues.) Mr. Vangolen, other than these  
23 five wells, has OXY stimulated any other coal seam for  
24 methane gas anywhere else?

25 A. In Buchanan County --

1 Q. Or Virginia?

2 A. Not in Virginia, no.

3 Q. Have you in West Virginia?

4 A. No, not coal seams.

5 Q. Kentucky?

6 A. No.

7 Q. Are you now producing anywhere in the Appalachian Basin,  
8 as a matter of fact, OXY?

9 A. In effect, we just sold all of our interest to another  
10 operator for all the Appalachian Basin.

11 Q. Where were those interests? In West Virginia?

12 A. Yeah, West Virginia and Kentucky, Pennsylvania, Maryland.

13 Q. Well, we're getting off, but we'll go ahead and go into  
14 those. Now you gave yesterday a lot of projections based  
15 on computer read outs, I believe you said, and informa-  
16 tion that your folks had obtained and were thinking about  
17 and had projected what this recovery would be and you had  
18 an analysis that you were going to produce I believe you  
19 said from 20 million to 50 million thousand cubic feet  
20 per day, was that correct?

21 A. That was correct.

22 Q. That's a big variation from 20 to 50 million. Is that as  
23 close as you can be?

24 A. What I referenced that to, Gene, was the capacity of the  
25 pipeline. Now there is a lot of variation in that

1       because there's a number of operators interested in  
2       participating in that pipeline.

3       Q.   How much gas do you plan on producing? That's what I was  
4       trying to understand and maybe I got it wrong. If you've  
5       done all this projection, how much gas are you planning  
6       on producing out of this field?

7       A.   It would depend on the number of wells and, you know,  
8       we're looking at 20 to 30 million.

9       Q.   20 to 30 million a day?

10      A.   Correct.

11      Q.   Would you agree that regardless of all of the PhD.s that  
12      you have trying to figure out what Mother Nature's going  
13      to do, that you really don't know until you get down and  
14      test your wells?

15      A.   You mean production?

16      Q.   You don't know what the production's going to be until  
17      you actually test the well and produce from them for a  
18      period of time, do you?

19      A.   We've used the knowledge on the first three wells to make  
20      those predictions.

21      Q.   Have you produced in those first three wells?

22      A.   We've vented, simulating pipeline conditions and monitor-  
23      ing gas.

24      Q.   Okay. The West Virginia job that you just sold, that  
25      West Virginia job, you also did a very careful analysis

1 on and it didn't work out as you planned, did it?

2 A. I have no knowledge of the West Virginia job.

3 Q. You don't know that it was a bomb and that you lost a

4 heck of a lot of money on it?

5 A. I know we spent a lot of money, I know we sold the

6 project and one can draw his own conclusions.

7 Q. Isn't it general knowledge in the industry that that was

8 a big loser because it didn't turn out as you expected?

9 A. Mr. Street, we sold that area for 100 million dollars and

10 I don't call that a loser.

11 Q. You're denying that that's the general knowledge in the

12 industry that you all had a big loser?

13 A. I have no knowledge of that.

14 Q. Okay. Let me ask you on the pipeline up here. You

15 indicate that you had contracts on this. What is this,

16 Columbia?

17 A. Yes, we have contracts on Columbia.

18 Q. Do you have any contracts on that line to put any gas

19 from this proposed methane gas exploration system in

20 Buchanan County?

21 A. We have contracts on that line that this gas can be

22 dedicated to.

23 Q. Okay. Well, what are you using towere is the gas going

24 on thosein other words, are those contracts being filled

25 right now by the gas?

1 A. They are coming from somewhere in the United States,  
2 yes.

3 Q. You're bringing gas from somewhere in the United States  
4 and then you're not putting it through this line out of  
5 Buchanan County?

6 A. We're putting it into a Columbia line that takes it to  
7 our end user?

8 Q. But the Columbia line that comes into Buchanan County is  
9 the one I'm talking about. Can you put gas over that  
10 starting right at Buchanan County?

11 A. Yes, you can.

12 Q. That still has capacity?

13 A. That still has capacity.

14 Q. You're sure of that?

15 A. Yes.

16 Q. How much capacity does it have?

17 A. I don't know how much that -- it's proprietary.

18 Q. Do you have an assigned right from them or a letter from  
19 the saying that you can hook up any of these wells into  
20 that line?

21 A. Columbia is currently, right now, doing a complete  
22 engineering study of that line and other lines just over  
23 into the West Virginia area.

24 Q. My question was right now do you have a --

25 A. I don't have a signed letter from them telling what the

1 capacity is.

2 Q. And that's necessary before you can put any gas in their

3 line, isn't it? You've got to identify the well and

4 they've got to agree to take that well into that line,

5 don't they?

6 A. No, that's not correct. We don't have to identify the

7 well. We have to identify a connection point.

8 Q. Okay. And you haven't done that and you don't have their

9 consent?

10 A. We've identified connection points and their

11 currently --

12 Q. Do you have their consent?

13 A. Consent to what, Gene?

14 Q. To put the gas in the line from the well --

15 A. We have consent to move gas on Columbia.

16 Q. That's not my question. If you put the well in that

17 you're asking for, the right to put it in do, you have

18 the right from Columbia to hook up that well tomorrow and

19 put gas through that line right there?

20 A. We do not have a written contact with them right now.

21 Q. I'm not asking about --

22 A. Is a contract a consent? Then I guess we don't.

23 Q. Out of the -- you called it is this Consolidated National

24 Gas transmission line?

25 A. Uh-huh.

1 Q. Do you have any authorization from that line to run any  
2 gas through?  
3 A. No, we don't.  
4 Q. And your plan, I believe you indicated, was to construct  
5 an interstate pipe line or a pipe line or a transmission  
6 line to take the gas from this area to twenty to fifty  
7 million MCF. Am I using the right terminology, MCF?  
8 A. MM.  
9 Q. MMCF?  
10 A. Yeah.  
11 Q. Per day?  
12 A. Uh-huh.  
13 Q. That is your plan, is that true?  
14 A. We plan on building a gathering line, but not a transmis-  
15 sion line.  
16 Q. Okay. But you said that you were going to have a that you  
17 needed a transmission line to get that amount of gas  
18 out, didn't you?  
19 A. No, we need a gathering line to get that amount of gas  
20 out to Interstate Pipeline Company.  
21 Q. Okay. Were's Interstate Pipeline Company's line?  
22 A. I've drawn those three lines right there. Those are  
23 Interstate Pipeline Company's.  
24 Q. And are you telling me you can get twenty to fifty  
25 million over one of these three lines?

1 A. Yes.

2 Q. How much is the capacity in this line, the Columbia  
3 line?

4 A. I think that's proprietary as I said a minute ago.

5 Q. How much is the capacity on this line, do you know?

6 A. I know and those discussion are on going, Gene, and  
7 that's considered marketing sensitivity.

8 Q. Then I'm completely confused about your testimony  
9 yesterday. If you can get this gas out of one of these  
10 three pipelines, why have you been negotiating to get  
11 another interstate pipeline in there?

12 A. I'm not negotiating to get another interstate pipeline,  
13 I'm negotiating --

14 Q. You said yesterday that you had been --

15 MR. SWARTZ: Let him finish his answer.

16 A. (The witness continues.) I'm negotiating to get to an  
17 interstate pipeline, on one of those three interstate  
18 pipelines.

19 Q. But yesterday didn't you indicate and did your associate  
20 not indicate that you had had an understanding with  
21 another company to put in a -- I think it was Columbia, a  
22 interstate pipeline and that fell through or that that  
23 terminated?

24 A. CNGT, we had an application pending with them. That  
25 application fell through after the sell of the Ap-

1 palachian project.

2 Q. That application was to put in another interstate  
3 pipeline, correct?

4 A. It was to upgrade that current existing line.

5 Q. And why did you need to upgrade that line?

6 A. Because that line right there can not handle any more  
7 gas.

8 Q. You just said three minutes ago that it had more capaci-  
9 ty. Now does it or does it not?

10 A. Gene --

11 Q. It doesn't have any more capacity, does it? It's full.

12 A. That existing line is full, yes.

13 Q. Okay. So you can't send out any more gas over that  
14 line. You can't send twenty to thirty million.

15 A. Not that particular --

16 Q. And that line right --

17 A. -- bucket of rust.

18 Q. And that line right there has got a waiting list of a  
19 year or more, doesn't it?

20 A. That's not true.

21 Q. When's the last time you sent any gas over that line?

22 A. We're currently not hooked up to that Conaway line.

23 Q. You've never sent any gas over that line, have you?

24 A. Yes, we have.

25 Q. When?

1 A. Our Columbia properties have sent gas over that line.  
2 Q. Your Columbia properties, who's operating that?  
3 A. In Kentucky which were sold in that Appalachian project.  
4 Q. Did you bring gas to Buchanan County and then put it  
5 across that line? Is that the way it happened or did you  
6 tie into the line up at another point?  
7 A. Up at another point.  
8 Q. Okay. Have you ever sent any gas over that line from  
9 Buchanan County?  
10 A. No, we haven't. We have?  
11 MR. WIRTH: Yes, we have.  
12 A. (The witness continues.) Oh, the Georgia Pacific --  
13 MR. WIRTH: We had properties and sold.  
14 A. (The witness continues.) That's right. We had a Virginia  
15 permit, a pipeline permit, that sent gas over that line  
16 from one well, the Georgia Pacific geyon in Buchanan  
17 County, Virginia.  
18 Q. And how long ago was that?  
19 A. I have no knowledge. That was part of the Appalachian  
20 sale, too.  
21 Q. Okay. So other than that you have not sent any gas over  
22 that line and you have not made an application that has  
23 been approved to send gas over that line?  
24 A. Correct.  
25 Q. And the same is true for the one down at the bottom, is

1           that true? You haven't sent any gas over that line and  
2           you haven't applied and have an application approved for  
3           the rights to send gas over that line?  
4    A.    That is correct.  
5    Q.    I believe you've talked with Columbia for over two years,  
6           haven't you?  
7    A.    No, that's not correct.  
8    Q.    I'm sorry. I thought you said that yesterday. You  
9           didn't?  
10   A.    No.  
11   Q.    I wrote it down wrong, I guess. How long have you talked  
12           with Columbia?  
13   A.    We've been talking with Columbia for that last six  
14           months. Let me rephrase that. We talk to Columbia daily  
15           as a company, but about this particular segment of line  
16           from Conaway Station has been the last six months.  
17   Q.    You indicated yesterday, I think I wrote this down  
18           correctly, if you can't get the capacity in the pipeline  
19           you won't drill the wells. You said that yesterday. Did  
20           you mean it?  
21   A.    That was in reference to the number of wells. I said if  
22           there's only capacity for 125 wells, we'll drill a 125  
23           wells and then continue the development as a steady  
24           development from that point forward. If there's not  
25           enough capacity for more than 125 wells there's no use

1 drilling 200 wells.

2 Q. Then is it not true, and we've been through this now for  
3 five minutes, that you don't have the capacity in there  
4 right now to handle the project that you plan in total do  
5 you?

6 A. Mr. Street, we're currently drilling wells and we plan  
7 to have the capacity.

8 Q. I'm talking about right now. The lines, interstate  
9 pipelines, are not in there now for you to handle  
10 capacity you --

11 A. That is correct. I've already testified --

12 Q. -- plan.

13 A. -- that there's no interstate pipeline for us to hook up  
14 to right now.

15 Q. Well, I don't mean to argue with you, but just earlier  
16 you testified there was the capacity when I was asking  
17 you if you didn't have to build another interstate  
18 pipeline. Now let's get it clear. There is not suffi-  
19 cient capacity there to take care of the gas that you  
20 plan to produce, is there?

21 A. There's a little mis-communication here. There is and  
22 will be capacity available on those lines. There  
23 currently is not capacity available on those lines. OXY  
24 is negotiating for that, for which pipeline we will  
25 connect to for that capacity.

1 Q. But you're going to have to increase the size of those  
2 pipelines to get capacity?  
3 A. That is correct.  
4 Q. Okay. So, the lines in there right now do not have the  
5 capacity to take out the gas you plan to send out, does  
6 it, do they?  
7 A. East Tennessee has the capacity, Columbia will have  
8 capacity.  
9 Q. I'm talking about today, Mr. Vangolen. Do you have the  
10 capacity on the lines into Buchanan County right now in  
11 addition to the gas that their taking out to transport  
12 out the gas?  
13 A. No, not in Buchanan County, no.  
14 Q. Therefore, in order to develop your project you're going  
15 to have to either get one of those companies to enlarge  
16 it's line or put another line in there, aren't you?  
17 A. That's correct.  
18 Q. At this time you haven't been able to negotiate an  
19 arrangement with one of those companies to agree to do  
20 that, have you?  
21 A. We could have an agreement signed right now, but because  
22 there's three options available, Mr. Street, OXY is  
23 looking for the best option.  
24 Q. Do you have an agreement with them now?  
25 A. Like I've testified, no, we don't.

1 Q. Okay. You then don't know at what time either one of  
2 those other companies, that you have no control over, is  
3 going to enlarge their pipeline, do you?  
4 A. You never have control of a pipeline company.  
5 Q. And in order to enlarge their pipeline, is that pipeline  
6 underground?  
7 A. Their pipelines?  
8 Q. Uh-huh.  
9 A. I believe so.  
10 Q. How are they going to enlarge the lines? Do they have to  
11 take the line, put another one down?  
12 A. They'll have to loop it.  
13 Q. And do they have to get a certificate of need or some  
14 similar certificate from the regulatory agency to do  
15 that?  
16 A. Probably.  
17 Q. And then they have to construct it after that, don't  
18 they?  
19 A. Not necessarily, the interstate pipeline companies who  
20 are willing to take the risk, and some of them are, can  
21 build a line and file for certification later.  
22 Q. You think either one of them will do that?  
23 A. I think it's very possible. I think that a person could  
24 also build the line for them and then have them apply for  
25 certification.

1 Q. How much does it cost to build a pipeline interstate per  
2 mile? Do you have any idea?

3 A. Interstate, I have no idea. Entrust-state, you know,  
4 we're budgeted thirty million dollars next year.

5 Q. After your gathering system?

6 A. And connection point.

7 Q. Okay. If you add on there the cost of another interstate  
8 pipeline or enlarging one of those your talking about  
9 millions of dollars more, aren't you?

10 A. Yes, sir.

11 Q. When do you plan to drill the well that you're asking for  
12 permission for on this C-24?

13 A. I don'twithin the next several months.

14 Q. Well, I mean is it going to be four or five months or  
15 less than that? Is it going to be next spring before you  
16 start, are you going to start during the winter?

17 A. We'll try to work it into our drilling schedule as  
18 quickly as possible.

19 Q. Are you trying to drill all of these wells as quickly as  
20 possible to get them done?

21 A. No, sir. We're utilizing two rigs right now and main-  
22 taining that schedule with two rigs.

23 Q. And how many wells can you drill per week with two rigs  
24 or per month?

25 A. Depending on the rig. We've got one rig that's drilling

1 a well every three and a half days. We've got one rig  
2 that's drilling one every seven days.

3 Q. And you're going to continue at that rate to drill as  
4 many as you can right on through the winter, is that  
5 correct?

6 A. That is correct.

7 Q. Are you going to fracture the coal seams in any of these  
8 wells that you're drilling at this time?

9 A. No. We're currently looking at deferring as much capital  
10 expenditure until the pipeline is in the area.

11 Q. That could be conceivably two or three years, couldn't  
12 it?

13 A. Could be six months, Mr. Street.

14 Q. Could it be two to three years?

15 A. Could be. Could be two years, not three.

16 Q. Okay. So all of that time the correlative owners if they  
17 want to participate are going to have to be paying you  
18 interest on your investment, aren't they?

19 A. I don't believe they pay OXY. I believe they pay the  
20 escrow account.

21 Q. In your agreement I believe it says it will pay you eight  
22 percent on your investment, but if you don't know about  
23 that --

24 A. I don't know about that.

25 Q. -- I think that's testified to yesterday. Why would you

1 go in and drill all these wells if you can't sell the  
2 gas?

3 A. It's anticipated that we will sell the gas, Mr. Street.

4 Q. And if you can't sell it, then the wells are sitting  
5 there and the gas is not sold and mining continues to  
6 come closer, don't it?

7 A. On some of the wells, yes.

8 Q. And you're not planning on producing any of that gas  
9 based on what you just said, I mean I'm making sure that  
10 I understand you, until you get your capacity on these  
11 pipelines increase or a new pipeline in there, are you?

12 A. We can't produce the wells until we get that capacity.

13 Q. As a matter of fact, in the West Virginia project you  
14 were talking about you all never did complete the wells  
15 that you got permission to complete all of them, did you?

16 A. No, that's incorrect.

17 Q. You completed all those wells?

18 A. No, not all of them, but you said none of them, that's  
19 not correct.

20 Q. No, I didn't say none of them. I said you did not  
21 complete all of the wells that you got permission to  
22 drill, did you?

23 A. I guess. I have no knowledge of how many were incomplete  
24 and how many were completed before the sale.

25 Q. But you know that there were several that were not

1 drilled that you had permission to drill, don't you?

2 A. They were not drilled that we had permission to drill.

3 Permission from permission from who?

4 Q. You had well drilling permits and you didn't complete the

5 wells, is that true?

6 A. I have no knowledge of that.

7 Q. You said you had agreements in place with Island Creek.

8 Have you filed copies of those agreements with the board?

9 I don't have them.

10 A. The only one I believe we filed with the Board is

11 designation of operator.

12 Q. You have any other agreements written agreements with

13 Island Creek?

14 A. Yes, we do.

15 Q. Have you filed those with the Board?

16 A. No, sir.

17 Q. Could we have a look at a copy of that, please?

18 A. I don't believe I have them. I believe their proprie-

19 tary.

20 MR. SWARTZ: I not sure that we would provide those. I

21 mean, you can tell them what subject they cover but --

22 Q. (Mr. Street continues.) Are these agreements concerning

23 the well that you're asking for permission to drill

24 here?

25 A. Just one well? It covers the whole Oakwood gas field.

1 Q. And are there certain provision in that agreement saying  
2 what you agree with Island Creek that OXY will do in  
3 reference to these wells?  
4 A. Yes, sir.  
5 Q. How can a potential participating party make any decision  
6 about whether to participate if you have secret agree-  
7 ments with Island Creek and you're not going to disclose  
8 them?  
9 A. The agreements that we have are mainly control frack and  
10 setting up pipe and some operational aspects.  
11 Q. How about the venting? Does it have something in there  
12 about venting?  
13 A. Venting is under the leases.  
14 Q. Do you not have anything in agreement about venting?  
15 A. No, it carries just in the leases and the leases are  
16 public record in Buchanan Court House.  
17 Q. How does the Board know what kind of commit you've made  
18 to Island Creek unless you show them the secret agree-  
19 ment?  
20 MR. SWARTZ: I guess the Board can ask --  
21 THE CHAIRMAN: Excuse me, Mr. Swartz, if you'll direct to the  
22 chair.  
23 MR. SWARTZ: We would, obviously, if the Board orders us to  
24 produce information we then need to cross, make a  
25 decision as to whether or not we want to produce under a

1 protective order and the message that I would convey of  
2 the Board here with regard to the frack agreements is if  
3 you are indeed interested and you tell us you are we  
4 would consider producing them under a protective agree-  
5 ment or protective order. I think Mr. Vangolen -- I  
6 will certainly allow him to describe in general terms the  
7 subject that they address, but other absent of protective  
8 order, we would be reluctant to produce the fracks.

9 THE CHAIRMAN: Well, at the present time Mr. Street's the  
10 one's that's doing the discovery on the agreements and  
11 he'll have to deal with that. The Board's not asked that  
12 question at this point in time.

13 Q. (Mr. Street continues.) Are there provisions in the  
14 agreement other than fracking control?

15 A. Yes, sir. There's provision on locations, provisions of  
16 where we can set pipe and where we can't, at what setting  
17 depth. There's provisions about what information will be  
18 given to Island Creek.

19 Q. How many agreements are we talking about?

20 A. I don't remember. How many agreements do we have Patty,  
21 do you know?

22 PATTY: One.

23 A. (The witness continues.) One major one.

24 Q. Are there some minor ones?

25 A. I don't know. I don't think so, no.

1 Q. And how many pages in that major agreement?

2 A. I don't have any idea four pages.

3 Q. Four pages?

4 A. Uh-huh.

5 Q. Would you reveal those terms to a party that wants to

6 participate with you so that he can determine what

7 control Island Creek will have over OXY in reference to

8 this well?

9 A. I'd have to defer that to counsel. I don't know that.

10 THE WITNESS: Would we disclose the terms of the agreement to

11 a participating party?

12 PATTY: The terms are basically as I've described and I've

13 think we've just disclosed them.

14 A. (The witness continues.) The terms are basically as I

15 have described then and I think we've just disclosed

16 them.

17 Q. Well, my question is would you be willing be let a party

18 that wants to participate review that agreement to make

19 sure that there's not some hidden meanings in there, not

20 some terms in there that you have overlooked and to see

21 what it actually says as opposed to your summary of it?

22 A. Sure.

23 Q. Okay. You have the right to assign your position, I

24 believe under your JOA, is that correct? In other words

25 you can sell your rights to someone else under your JOA?

1 A. Yes.

2 Q. Now, if a situation occurred like it occurred in West  
3 Virginiawell let's forget about West Virginia. If a  
4 situation occurs where your pipeline capacity or due to  
5 investments you decide you want you unload this after  
6 you've drilled all these wells, is it your position that  
7 this Board can not appoint another operator who can come  
8 in and complete these wells, make them produce and frack  
9 the seams?

10 THE CHAIRMAN: Mr. Street, I think, you know that may be more  
11 a question directly for the Board.

12 A. (The witness continues.) Yeah, I can't answer what the  
13 Board would or wouldn't do. If the Board says that --

14 THE CHAIRMAN: The way you asked that, maybe rephrase your  
15 question.

16 Q. (Mr. Street continues.) My question is, is your position  
17 that if you sell your interest to XYZ company that they  
18 would not have the right to frack the well pursuant to  
19 the consent that Island Creek has given and that Island  
20 Creek would have to give another consent before any  
21 operator could be, who is appointed by this Board, could  
22 come in and frack that well and put the well into  
23 production?

24 A. I can't speak for Island Creek what they would and  
25 wouldn't want.

1 Q. I'm saying if you're trying to sell it, what is your  
2 position going to be, OXY? You're selling it and the  
3 purchaser --

4 A. Our position is going to be whatever the terms of the  
5 negotiating contract between us and the other party are.

6 Q. What I'm asking you is, do you think that you have the  
7 right to transfer that interest in an asset need?

8 MR. SWARTZ: I'm going to object to this. I don't think that  
9 his opinion as to whether or not a transfer of designa-  
10 tion of operator should, which is given by this Board,  
11 can be transfer without this Board intervening. I just  
12 don't see where we're headed here. I mean, that's a  
13 question for the Board. That's not a questions for Mr.  
14 Vangolen.

15 THE CHAIRMAN: We'll sustain the objection.

16 MR. STREET: For the record, my position that OXY is saying  
17 that that designation only applies to OXY and that  
18 another operator at this time can't benefit from it.

19 MR. LEPCHITZ: You mean the consent of the designation.

20 MR. STREET: The consent, I'm sorry. The consent. And that  
21 another operator can therefore not use that to frack. I  
22 was asking OXYI mean, that's the position they've taken.  
23 I'm asking them and I just putting it on the record.  
24 What is there position as to if they transfer their  
25 interest, which they have the right to do, and the Board

1           said I can't ask the question.

2   MR. SWARTZ: He's changed his question. The question dealt

3           with designation of operatorship that I objected to.

4   MR. STREET: I'm sorry.

5   THE CHAIRMAN: I sustained the objection. Certainly, if he

6           wants to, anytime I sustain a object on a specific

7           question it doesn't stop you from asking other questions.

8   MR. STREET: Okay.

9   Q. (Mr. Street continues.) The consent to frack has been

10          given by Island Creek on this unit, is that correct?

11   A. That's correct.

12   Q. OXY has taken the position that only OXY can frack, is

13          that correct?

14   A. Under the consent I mean just read it.

15   Q. Okay.

16   A. OXY has taken the position that it's obtained a consent

17          from Island Creek and I don't know what Island Creek's

18          position is.

19   Q. I'm not asking about Island Creek. I'm asking about

20          OXY. Now, what is OXY's position about if you sell all

21          your interest in this gas field and transfer it after

22          you've drilled these wells and haven't put them into

23          production, can OXY transfer the right to frack to it's

24          (inaudible) What's OXY's position?

25   THE CHAIRMAN: Excuse me a second. I think where the transfer

1 of an agreement like is something that would be in  
2 accordance and beyond what we want to get into at this  
3 point.

4 Q. (Mr. Street continues.) You said yesterday that you're  
5 success ratio I believe you said, was about twenty-five  
6 out of a hundred wells, is that correct?

7 A. No.

8 Q. Okay. What did you say?

9 A. Seventy-five out of a hundred nation-wide.

10 Q. How about in the Appalachian basin? Do you know what  
11 it's been there?

12 A. I don't know what the number is there, no.

13 Q. Will you allow in this unit Edwards and Harding for  
14 examplenot for example but specifically, on your applica-  
15 tion, if you would like to look at it your welcome to do  
16 so, you have submitted to the Board a well location map  
17 that indicates that Edwards and Harding has 44 plus  
18 percent of the gas. 44. 95% You indicated yesterday,  
19 and I think this was in response to questions by the  
20 Board, that you would allow other gas lessees to take  
21 their gas in kind, is that true?

22 A. Yeah. That's part of the JOA, yes.

23 Q. Would you allow Edwards and Harding to take 44. 95% of  
24 the gas from this well if they are a voluntary par-  
25 ticipating party?

1 MR. SWARTZ: I'm going to object. We don't know what people  
2 are going to be able to take because we don't know who  
3 owns what. And this whole line of inquiry is pointless.  
4 I mean, whether or not they have a potential interest as  
5 a claimant in the unit we agree to that, but we don't  
6 know what anybody's interest is going to be.

7 MR. MASON: Do they do division orders here on production?

8 THE CHAIRMAN: If you ask a question with the assumption  
9 that the ownership is resolved and that they have 44%.

10 MR. STREET: That's what I'm trying to find out. First is if  
11 he's saying that the ownership is there a question about  
12 that. That's what I wanted him to answer me.

13 A. (The witness continues.) I believe that's why we're  
14 here.

15 Q. I think we're here over who's going to be the operating  
16 party.

17 A. We're also here that we're pooling.

18 Q. Are you saying that you don't agree or don't know yet  
19 what Edwards and Harding interest is?

20 A. That is correct.

21 Q. And your going to be asking the Board to escrow all of  
22 their interest and all other interest, is that correct?

23 A. If Edwards and Harding decides to participate, yes, they  
24 will be asked to escrow funds.

25 Q. Okay. If they decide to participate you're going to

1           require them to put up their money right now, aren't  
2           you? That's what your agreement says.

3   A.    I'd defer that. I believe we have a person testifying  
4           about the escrow.

5   Q.    Okay. That was testified to yesterday I believe that all  
6           the money would have to be put up now for the construc-  
7           tion and that's what I'm talking about.

8   A.    Well, there's a election time --

9   THE CHAIRMAN: Sorry, Mr. Swartz.

10   MR. SWARTZ: I'm objecting. There was an exhibit tendered.  
11           The terms of that exhibit with regard to recommendations  
12           are not consistent with Mr. Street. I think that's  
13           exhibit speaks for itself on that issue.

14   THE CHAIRMAN: Sustained.

15   Q.    (Mr. Street continues.) When does a participating party  
16           have to put up the construction money?

17   A.    I'm going to defer that to the --

18   MR. MASON: Part of that depends on what the order of this  
19           Board says, does it not?

20   A.    (The witness continues.) Yeah, it depends on what the  
21           Board determines here.

22   MR. MASON: I think that's more in the question of what we  
23           do than what they do.

24   MR. STREET: That's what I'm trying to get to. I'm trying to  
25           get to the fact that their present proposal requires that

1 construction money be put up and then I'm going to ask  
2 the Board not to go along with that. I'm just want to  
3 make sure that's what their present proposal was.  
4 MR. MASON: They have submitted in their proposal that  
5 there's a what, a ten day period I think --  
6 A. (The witness continues.) Right.  
7 MR. MASON: And what your saying is as I understand that's  
8 their proposal.  
9 Q. (Mr. Street continues.) That's your proposal, right?  
10 A. Correct.  
11 Q. Okay. That's what I'm asking.  
12 A. Okay.  
13 Q. Yet the title your saying is in dispute, you all are  
14 alleging it's in dispute and no money can go to a  
15 participating party until that dispute is settled is what  
16 you all's position is? That's what you want to happen,  
17 right?  
18 MR. SWARTZ: I'm going to object to this. What we want to  
19 happen with regard to funds is irrelevant. We have a  
20 statue. The reason we're escrowing is it should be  
21 apparent to every one we don't know what's going to  
22 happen with all these law suits and all these completing  
23 claims and the statutory mechanism is an escrow mechan-  
24 ism. I'm objecting to this. I mean this is not what we  
25 want --

1 MR. STREET: Gentlemen, this is Island Creek that's rising  
2 this claim, nobody else. This is Island Creek and what  
3 I'm trying to point out with my cross-examination is that  
4 this is a smoke screen to keep any participating party  
5 from being involved and I think I should be allowed to  
6 proceed along this line.

7 THE CHAIRMAN: I think here again, I think the Boards order  
8 would the terms of the order is going to make those kinds  
9 of decisions as to the dispute of ownership is recognized  
10 in the statute when you have and there's a dictate of how  
11 you go with that. So I think our order would address  
12 that.

13 MR. STREET: Sir, am I not even allow to penetrate and cross-  
14 examine as to why they think there is a dispute of  
15 ownership? I mean, their the only ones in here saying  
16 and the only bases of their claim there is a dispute of  
17 ownership was a man who had no idea what the cloud on the  
18 title was, who was not a lawyer said, "I think there's a  
19 potential cloud on the title. "Now, unless they've got  
20 something more than that, I'd like to find out why they  
21 think in this case there should be escrow funds.

22 MR. SWARTZ: If I might address one more comment. There's a  
23 big difference between whether of not Edwards and Harding  
24 title onto their lease, it has a cloud on it and who owns  
25 the coalbed methane gas here? And we don't know who owns

1 the coalbed methane gas, that's why the statute requires a  
2 escrow and that's what we're addressing.

3 MR. STREET: That's what I'm trying to find out.

4 THE CHAIRMAN: I understand and I think that that is a issue  
5 that is ultimately going to have to be decided in the  
6 Court and not before the Board.

7 MR. STREET: I'm not disputing that. I'm trying to find out  
8 if that's the bases for the contest or if it was what the  
9 man testified yesterday. If he's saying that the bases  
10 for the dispute in the claim is their contention that  
11 Island Creek may own the methane, that's all I'm trying  
12 to find out and I haven't heard that yet. Is that the  
13 bases?

14 MR. SWARTZ: What dispute? This is an objection. What  
15 dispute? I don't understand that question. I don't know  
16 how anybody could answer it.

17 MR. STREET: Well, let me ask the question and if I can just  
18 be permitted to ask a couple of questions I think I can  
19 get to it a lot quicker here.

20 Q. (Mr. Street continues.) Is your contention that there  
21 is a question about ownership and your contention that  
22 funds should be escrowed based on what you precede to be  
23 Island Creek's claim to the methane gas?

24 A. This petition here is based on a number of things, but  
25 one is Island Creek's potential claim to methane.

1 Q. What I'm trying to find out and I think the Board's  
2 entitled to know it is, what are the conflicts of title  
3 that you're telling the Board you want them to consider  
4 in this order? One is the claim by Island Creek, you  
5 say, to the gas based on it's coal lease. Are there any  
6 other conflicts of title that you say is the basis for  
7 asking that funds be escrow?

8 MR. SWARTZ: We're not asking the Board to do anything with  
9 title here other than assess whether or not we have  
10 notified all the respondents we need to. I mean, there's  
11 no title issue before the Board.

12 THE CHAIRMAN: I sustain the objection.

13 MR. STREET: If it please the Board, where do they give any  
14 evidence, you know, unless I can get out here, of what  
15 the dispute is that the Board should escrow funds on and  
16 if the Board don't want me to proceed further I  
17 definitely won't.

18 THE CHAIRMAN: Mr. Street, I think the statute presumes that  
19 there's a dispute when you have a or potential for  
20 dispute when you have a forced pooling request.

21 MR. STREET: So you're telling me then that in all force  
22 pooling request there should be escrow. Is that what I'm  
23 hearing?

24 THE CHAIRMAN: No.

25 MR. STREET: Wouldn't there have to be some evidence as to

1           there being some conflict in ownership before escrow  
2           would be appropriate?

3   MR. MASON:   Wasn't there testimony yesterday by Marty that  
4           there was some question about this Crenshawthat diluted  
5           title to the Crenshaw, is that what you're referring to?

6   MR. STREET:   I don't know whether they're relying on that,  
7           sir, and I think they're relying also on maybe some coal  
8           ownership now, I'm hearing and that's what I'm trying to  
9           find out.

10   MR. MASON:   There seems to be two issues here.   One related  
11           to just the coalbed methane and one related to some  
12           potential cloud on the actually derivative title of the  
13           lease.   I think that maybe we would do better if we would  
14           focus on which one of those things we're talking about.

15   MR.   STREET:   Well, I'm trying to find out if there's  
16           anything else.

17   MR. SWARTZ:   Mr. Chairman, if I may respond.   It appears to  
18           me we're in a legal issue and if I could just briefly  
19           we're not concerned about title defects or title failure  
20           other than to point out that there may be a title problem  
21           and we have notified people in accordance with that  
22           asrespondents.   So, there's no title issue that we're  
23           asking you all to resolve in the sense of a failure of  
24           title or chain of title problem.   We are assuming there  
25           are competing claims of ownership to the coalbed methane

1 and we have notified the potential claimants and there's  
2 a list of six sets of folks who are potential claimants,  
3 as we read the statute, to the coalbed methane and that's  
4 the problem here. That's why the funds need to be  
5 escrowed in our judgement. I mean that's --

6 THE CHAIRMAN: I would have to agree with that and that's what  
7 I was referring to, the statute --

8 MR. SWARTZ: Okay.

9 THE CHAIRMAN: -- you know, for this kind of situation has a  
10 method of dealing with that for the Board.

11 MR. STREET: I understand that, Mr. Chairman. It's suppose  
12 to be escrowed. I was just trying to understand because  
13 I haven't heard any testimony other than that one single  
14 comment yesterday about a potential cloud on title and  
15 now I hear there's two problems and I assume there's no  
16 other. That was all I was asking.

17 MR. MASON: One of those problems is sort of generic of what  
18 we're doing here. The other problem, as I understand it  
19 is, is that a part of their application process. They  
20 are to assert to this Board that all title owners and  
21 potential title owners have been notified of these  
22 proceedings and in course to satisfy in their requirement  
23 they have given notice to this additional set of poten-  
24 tial title holders as a part of the notification process.  
25 As I understand it that's the extent of the testimony. I

1 don't know. The Board may have other --

2 MR. STREET: And I guess what I was exploring of course, this  
3 is first sort of laying the ground rules here, is if  
4 that's all the Board's going to require someone just to  
5 say that there may be a potential title dispute out there  
6 and if that's --

7 THE CHAIRMAN: I think that's all the statute requires.

8 MR. STREET: Okay. If that's all you require then I will go  
9 on.

10 MR. MASON: I think it's also important to understand though,  
11 that this potential diluted title problems relate, as I  
12 understand it, only to the notice requirements. We're  
13 not going to judiciate it in any way who has any right to  
14 these interest in that regard. All we're concerned  
15 about is that parties involved have some knowledge of a  
16 potential claimant. They have a duty to notify those  
17 people of these proceedings.

18 MR. STREET: Maybe it would be helpful here and clear the air  
19 if I explain to the Board where I'm going to here because  
20 I think we've got two different understanding. I'm not  
21 trying to get the Board to make a decision on title. I'm  
22 not trying to get you to analyze the title.

23 MR. MASON: Okay.

24 MR. STREET: What I was trying to get it before the Board is  
25 the point that a prospective volunteer that wants to

1 participate in this well, until the title is determined  
2 and trying to find out what the title problem is general-  
3 ly, can't make that determination to lay the ground work  
4 then for suggesting to the Board that in your order you  
5 put that in the order. That that title has to be  
6 determined before the man is forced to make his decision  
7 as to whether be a participating owner. That's where I'm  
8 going to and I was trying to make sure the Board had  
9 enough information to be able to make a decision.

10 THE CHAIRMAN: Right. I think the Board in any order that has  
11 where there's any identified problem, and there is here,  
12 would address that in the order.

13 MR. STREET: Okay.

14 THE CHAIRMAN: Thank you.

15 MR. SWARTZ: Mr. Chairman, the statute contemplates that  
16 people who elect to participate escrow funds. This  
17 isn't something that we came up with. Now the Board --

18 THE CHAIRMAN: I think we just acknowledged that.

19 MR. SWARTZ: Okay.

20 Q. (Mr. Street continues.) Is it OXY's position here that  
21 if the other possible participating parties and OXY  
22 failed to negotiate a agreed conclusion as to all the  
23 terms of the joint operating agreement, then that would  
24 be brought back and determined by the Board? Is that  
25 your all's position?

1 A. I think any potential problem with a joint operating  
2 agreement or any problems between operators would be  
3 brought before the Board.

4 Q. Then would OXY have any objection to an order by the  
5 Board saying that the potential participating party would  
6 have a certain number of days after the Board determines  
7 the joint operating agreement terms if they're in  
8 dispute?

9 THE CHAIRMAN: Excuse me, Mr. Street. Unless the Board has  
10 brought before it a joint operating agreement to make a  
11 decision on it, the Board is not incorporating any joint  
12 operating agreements in any of it's decisions. If that  
13 helps clarify your understanding. We don't plan to  
14 incorporate in any decision of this Board unless we  
15 explicitly decide to that, any joint operating agreement.

16 MR. STREET: That's exactly what I'm trying to get into, Mr.  
17 Chairman, because if the Board then is not going to have  
18 any control over the joint operating agreement, then I  
19 would argue more strongly on that as to whether it's fair  
20 or not.

21 THE CHAIRMAN: The only control the Board would have if there  
22 was a dispute over anything in that that came before the  
23 Board in a manner of appeal on a decision that the  
24 Board's made.

25 MR. STREET: So, then the Board's position is that if the

1 Board picks an operator then the joint operating agree-  
2 ment that they submit to the Board is the one that's  
3 going to be binding.

4 THE CHAIRMAN: No, we don't even deal with joint operating  
5 agreement.

6 MR. MASON: We're leaving that to the party --

7 MR. STREET: That's the point, but if the parties can't  
8 negotiate it then where does the parties left?

9 THE CHAIRMAN: Back to the Board, specifically on that joint  
10 operating agreement.

11 MR. MASON: They can come back to the Board if they can't  
12 reach an voluntary agreement --

13 THE CHAIRMAN: Then the Board would rule on that.

14 THE CHAIRMAN: Then the Board would rule on that, but it  
15 doesn't plan in any order to incorporate in that order an  
16 in body in that order that joint operating agreement.

17 MR. STREET: All right, sir. And if they can't, I wanted to  
18 discuss here the fact that the Board could then make in  
19 their order that until such time that that joint operat-  
20 ing agreement is concluded by negotiation or otherwise  
21 that the potential participating party wouldn't have to  
22 make his decision. He's not cut off by some artificial  
23 time limits based on this order going in and then he's  
24 got twenty days. Because, that in effect, takes away any  
25 negotiation on that joint operator.

1 THE CHAIRMAN: You're speaking specifically to the election  
2 times?  
3 MR. STREET: Yes, sir.  
4 THE CHAIRMAN: I think the election times would run. The  
5 party then could come back and petition the Board if the  
6 joint operating agreement is of dispute.  
7 MR. STREET: Well, if the election time's running, before he  
8 can come back to the Board he no longer has an election  
9 time.  
10 THE CHAIRMAN: If you get the appeal in during your time.  
11 MR. MASON: I think, Mr. Chairmen, in response to your  
12 question that the Board could certainly do that in terms  
13 in setting that election time, you know, within certain  
14 latitudes, but it's still incumbent upon us to make a  
15 decision whether --  
16 THE CHAIRMAN: Right.  
17 MR. MASON: -- we do that or not.  
18 MR. STREET: I understand and that's what I'm suggesting that  
19 the Board consider that  
20 MR. MASON: And I think your point, I mean I understand your  
21 point.  
22 THE CHAIRMAN: We'll take that under advisement.  
23 MR. MASON: And we'll certainly take that into consideration.  
24 MR. STREET: And I was really asking him if he had any  
25 objection to doing it that way.

1 MR. SWARTZ: I object to that. I mean, you all can do  
2 whatever you decide you want to do regardless of what  
3 plan tells.

4 THE CHAIRMAN: I think that will be a decision we'll make.

5 MR. STREET: It will be a decision. I'm trying to see if we  
6 can stipulate to any of this stuff or not by this witness  
7 and maybe I shouldn't be asking that question. If you  
8 prefer I not, I'll go ahead to something else.

9 MR. MASON: Let me just suggest in my opinion that any thing  
10 as to stipulation or consents related to what this order  
11 would seem to me to be a matter better taken up between  
12 counsel than trying to get that from a witness.

13 Q. (Mr. Street continues.) In your proposed well location  
14 map, your map violates the statute of which says it should  
15 not be within 300 feet of the border, does it not?

16 A. Yes, it does. I believe I already testified to that  
17 yesterday.

18 Q. You indicated yesterday, I believe, that one of the  
19 reasons that the Board should appoint OXY as the operat-  
20 ing -- as the operator in part was because Island Creek  
21 had a claim or would look to OXY for reimbursement if  
22 there was any foul up on the frack job. Is that true?

23 A. That's correct.

24 Q. OXY USA and Island Creek Coal Company are what, sister  
25 corporations?

1 A. Sister companies, yes.

2 Q. They're owned by?

3 A. Occidental Petroleum.

4 Q. Okay. If Occidental Petroleum owns both of these

5 corporations, if OXY U. S. A. flaws up and costs

6 Island Creek Coal and Island Creek loses money then

7 Island Creek can come back against OXY USA you're

8 saying, is that correct?

9 A. That's correct.

10 Q. But the net effect is that the parent organization which

11 is the one it really impacts doesn't get any recovery,

12 does it? Because what Island Creek loses OXY USA pays to

13 Island Creek and there's no net gain, is there?

14 A. I don't believe that's true because the net effect is

15 that we would be paying somebody for damages.

16 Q. Do you mind if I erase this?

17 A. No, go ahead.

18 Q. If OXY Petroleum owns both OXY USA and Island Creek and

19 Island Creek loses a dollar and then it recovers that

20 dollar from OXY USA you take theit gains a dollar from

21 OXY USA and OXY USA loses the dollar, right?

22 A. Uh-huh.

23 Q. These two cancel out and you still have a net loss of the

24 one dollar, don't you?

25 A. We sure do.

1 Q. And that's what OXY Petroleum loses, don't it?

2 A. That's correct.

3 Q. So there's no advantage. As a matter of fact, there's a

4 disadvantage from the liability point of view to OXY

5 Petroleum with OXY USA in there drilling, isn't there, if

6 you have a loss?

7 A. But the guy who's covered is where that dollar's going

8 to, the royalty owner, Georgia Pacific, the Lavissa.

9 Q. But the dollar is coming from Island Creek, right, so

10 this dollar right here you say goes to royalty owner?

11 A. Well, not the whole dollar.

12 Q. Well, so it's easy to understand.

13 A. Fifty cents would go to the attorneys.

14 MR. MASON: I think to ask this witness whether a dollar taken

15 from one company and given to another and what economic

16 impact that is on a parent is a complex financial

17 question that would probably defy an entire team of

18 accounts and further more, I really don't understand the

19 point.

20 MR. STREET: The point is that share holders of OXY Petroleum

21 own OXY Petroleum which owns both of these companies and

22 it's like the left pocket and the right pocket and if you

23 take money, you lose it out of the right pocket and you

24 take it out of the left pocket and put it in the right

25 pocket, you still have the same net effect, don't you?

1 A. (The witness continues. )No, I don't think so.

2 MR. MASON: Do you submit that's true?

3 MR. STREET: I certainly do, sir. If you have one company  
4 that has two subsidiaries and one subsidiaries paid money  
5 over to the other one then the parent company doesn't  
6 have any net gain or lose.

7 A. (The witness continues.) Well, you've got Joe Rothe in  
8 your back pocket still grabbing.

9 MR. STREET: That's all the question I have.

10 THE CHAIRMAN: Any questions from the members of the Board?

11 MR. MASON: I was curious about one question.

12

13 CROSS-EXAMINATION

14 BY MR. MASON:

15 Q. To your knowledge, other then those three pipelines that  
16 we talked about, are there any other plans that you can  
17 disclose today for any other pipeline construction in  
18 this area at the present time?

19 A. Bill, I know rumors of other companies --

20 Q. Okay. But I'm talking about something that you firmly  
21 know about.

22 A. No.

23 Q. Second question, you know, there was a lot of talk about  
24 capacity in these lines --

25 A. Uh-huh.

1 Q. -- is it possible that the capacity of any of the  
2 existing lines could be raised by raising the pressure in  
3 the line and installing compression units?  
4 A. There's a potential that Conaway of Columbia with  
5 additional compressant can get some capacity on that  
6 line. That is defiantly the case in East Tennessee that  
7 there is capacity available and just requires additional  
8 compression.  
9 Q. All right. My point being that capacity of pipeline is  
10 not always just a function of the size of line in  
11 place --  
12 A. No.  
13 Q. -- but the pressure in that line and the matter in which  
14 that was handled also effects the volume of gas that can  
15 be transported, is that correct?  
16 A. That's correct.  
17 Q. Thank you.  
18 MR. MASON: No other questions.  
19 THE CHAIRMAN: Thank you, Mr. Vangolin.  
20 MR. SWARTZ: I'd would like to keep Mr. Vangolin here. You  
21 asked us several questions with regard to lease data in  
22 terms of seams yesterday and we have copies of leases  
23 which are of record it turns out as opposed to being  
24 forced to come forward with a memorandum of the seams at  
25 issue and I'd like to tender those copies to the Board.

1 We also have obtained, which I'd like to file this one,  
2 an affidavit from Kenneth Price, who is the vice-  
3 president general manager of the Virginia division of  
4 Island Creek Coal Company which addresses the questions  
5 which was raised with regard to whether or not Mr.  
6 Epperly has authority to do certain things. And another  
7 document which was filed with the Board prior to these  
8 hearings which I'm not sure I alluded to as the November  
9 16th letter that Island Creek wrote to Mr. Edwards  
10 responding to Edwards and Harding's request for either an  
11 agreement not to object to a well permit and a consent to  
12 frack which specifically says quote, "Please be advised  
13 of Island Creek Coal Company as operator of the coals  
14 seams below the Tiller formation objects to an issuance  
15 of a well permit for the above reference wells and does  
16 not consent to the stimulation by Edwards and Harding. I  
17 think you already have that in the record, but I didn't  
18 spend any time on that yesterday. I want you to be aware  
19 of those as long as we're going through these documents  
20 and I think we have ten. We need to give Mr. Street a  
21 copy.

22 THE CHAIRMAN: Diane, are you keeping these marks in order of  
23 Exhibits?

24 CLERK: Yes, sir.

25 THE CHAIRMAN: Board receives these two exhibits from OXY.

1 MR. SWARTZ: Thank you.

2 (Well location map tendered to the Board as  
3 Exhibit A. )

4 (Affidavit of Kenneth Epperly tendered to the  
5 Board as Exhibit B. )

6 MR. SWARTZ: The last thing that I would like to address  
7 before the Board and I suppose I could call a witness,  
8 but I would just like to make a brief statement with your  
9 permission with regard to our position on the escrow  
10 issue. We have been receiving some of the Board's orders  
11 which have been entered on the forced poolings of the  
12 Board has considered in September and October and upon  
13 reviewing a batch of those orders last week or ten days  
14 ago when we received, it became clear to us and we were  
15 no anticipating, OXY was not anticipating this, that the  
16 Board's position in it's orders is that you were ordering  
17 the establishment of individual escrow accounts and I  
18 mean, the order says that. We're not confused. We know  
19 that's what you're ordering. We would request, with  
20 regard to this pooling application and future pooling  
21 applications, the reason we didn't address it previously  
22 is we never expected that kind of an order, that we be  
23 allowed to establish an escrow account and commingle  
24 funds. In part, our bases for that request is we are  
25 about to embark on negotiations with one or more national

1 banking associations in the state of Virginia that have  
2 trust departments and we are going to try and negotiate a  
3 trust agreement with a major bank in Virginia to the  
4 extent that we are allowed to commingle funds in one  
5 agreement. We are going to save we assume we are going to  
6 have a much stronger bargaining position with regard to  
7 trust administration and there's going to be less money  
8 taken off the top of the trust company. I'm not just  
9 asking you to take our word for it, but when we have an  
10 agreement with a trust department in regards to the kinds  
11 of investment that we will allow them to make and with  
12 the regard to the administrative fees, we will then  
13 present that to the Board so that you know what we're  
14 planning on doing. In addition, our assumption is that  
15 we could get into this this morning, but we are develop-  
16 ing an accounting procedure for reporting practice  
17 because we have to report periodical to the Board with  
18 regard to the escrow accounts and it is our plan to  
19 authorize OXY personnel as opposed to trust department  
20 personnel to do the reporting or comply with the report-  
21 ing requirements and file those periodic reports and un-  
22 commingle the commingle funds. We think it is going to  
23 be cost effective for all the people involved. We think  
24 that the likelihood that we can find a bank trust  
25 department that is going to be capable of dealing with

1 the allocations issues is unlikely and we feel more  
2 comfortable that we can do it cheaper and get a better  
3 quality product out of people who are use to dealing with  
4 bizarre interest or potential interest in units for  
5 allocations purposes. And I would ask that withregard to  
6 this pooling application and the others today that an  
7 alternative to ordering us to establish an individual  
8 account for that unit would be to either do that, tell us  
9 in your order to either establish an individual account  
10 or submit sufficient paper work so you can consider in  
11 actuality our request to be allowed to commingle funds.  
12 I would suggest to you that something you might think  
13 about is that attorneys are allowed to commingle their  
14 clients funds and their trust accounts and I will admit  
15 that attorneys get sued for problems with those, but at  
16 law that is a mechanism that attorneys are allowed to do  
17 and essentially what we are saying is we would like to  
18 commingle funds for cost reason. I mean, some of this  
19 money's going to come off the top for the trust depart-  
20 ment for cost reasons and we would like an opportunity to  
21 come forward with a trust indenture agreement and an  
22 accounting procedure to show you and rather thanwe would  
23 like that alternative stated in your order if you could.  
24 The last comment I might indicate is Senate Bill 381  
25 specifically had a provision allowing a co-mingle.

1 Obviously, at the new most recent version of that act  
2 that we have, it just doesn't address the issue. It  
3 doesn't say you can co-mingle. It doesn't say you have  
4 to establish a separate accounts, at least as I read it.  
5 So I would ask you to consider that request with regard  
6 to any order you might issue with regards to this terms  
7 of escrow.

8 MR. MASON: Let me make sure we understand your request.

9 Your request is specifically that any order on escrow  
10 would require you to establish individual accounts or  
11 provide you an alternative which you would provide to the  
12 Board supporting documentation that that alternative  
13 would be as effective as the individual accounts?

14 MR. SWARTZ: We'd like an alternative. If we don't come back  
15 before the Board with a specific proposal that we can't .

16 MR. MASON: We'll take that under advisement.

17 MR. MCGUIRE: That issue affects more than Edwards and  
18 Harding and I would appreciate it if other applicants and  
19 other people who are objecting would have notice of this,  
20 perhaps bring it up at the next hearing. I think it  
21 affects more then just Edwards and Harding and the people  
22 in this room.

23 THE CHAIRMAN: Excuse me. Let me ask you to come forward and  
24 state your name. I just want to get it on record.

25 MR. MCGUIRE: My name is Grant McGuire and I'm attorney for

1 Ashland Exploration and we we've had a number of orders  
2 issued already that effect us, that call for individual  
3 escrow accounts and the only thing I'm asking it that  
4 people be given notice of this. It just so happens that  
5 I was in the room right now, but I think there are a lot  
6 of other people who would be affected by this issue, who  
7 may or may not want to speak to the issue.

8 THE CHAIRMAN: So your requesting the Board rather than deal  
9 with this as an OXY individual request, that the Board  
10 treat this as a motion or as a request to the Board that  
11 they consider this for it's pooling orders and discuss  
12 that at an announced meeting?

13 MR. MCGUIRE: I do.

14 MR. SWARTZ: This may shock you, but I'm incline to agree  
15 with him for the following reason. If I can convince  
16 you all to let us co-mingle funds and convince you that  
17 we have a program in place that makes some sense, we are  
18 then going to go back and ask that all the previous  
19 pooling orders be modified to permit us to co-mingle  
20 funds. So it would allow me to have one hearing, allow  
21 you all to have one hearing on that and I think it's  
22 probably not a bad idea to do it once and then I won't  
23 have to go back and redo it for all the prior orders you  
24 all have entered.

25 MR. MASON: There also the potential that someone could

1 request the Board to develop, based on proposals, a rule  
2 related to escrow accounts that would govern this  
3 generally.

4 MR. FULNER: Mr. Chairman, I'd like to make it perfectly  
5 clear that escrow accounts you are talking about is an  
6 issue upon claimants of non-interest. I mean in others  
7 words these are interest which have no title background,  
8 I assume.

9 MR. SWARTZ: Correct.

10 MR. FULNER: Now, I don't want to get that mixed up with the  
11 escrow accounts that the Board has to set up on interest  
12 which is forced pooled. That's a different story.

13 MR. SWARTZ: I'm not addressing title.

14 MR. FULNER: Well, what I'm saying is there's two different  
15 escrow accounts in law.

16 MR. SWARTZ: I'm addressing I understand.

17 MR. FULNER: Okay. I want to make it perfectly clear we're  
18 talking about --

19 MR. SWARTZ: I understand.

20 MR. FULNER: -- one escrow account and specify that escrow  
21 account.

22 MR. MASON: One escrow account is for contested claims and  
23 one of them relates to the participation drilling, isn't  
24 that correct?

25 MR. FULNER: Yes, that's absolutely correct. You don't want

1 to co-mingle the two. They have two different funds.

2 MR. MASON: Well, I understand that.

3 THE CHAIRMAN: So for the record, which one of you folks are  
4 requesting that we consider it to hearing?

5 MR. SWARTZ: I think you're actually asking me you're telling  
6 me that there are three problems. Let me repeat to you  
7 what I am hearing. I'm assuming we are dealing with  
8 under that act that escrow of working interest money and  
9 royalty money and we need to deal with that because we  
10 don't know who that money belongs to. We are also before  
11 the Board, however, dealing with the escrow of funds  
12 advanced by people who elect to participate because the  
13 operator comes up with the cash and the electing party's  
14 funds get escrow until the outcome, at least as I under-  
15 stand it, of any court litigations regarding ownership.  
16 So my assumption is that this co-mingle escrow account  
17 would have and I mean we've got an example, would have in  
18 it working interest revenue that you don't know who to  
19 pay it to because you don't know if the person who  
20 elected to participate is actually going to have that  
21 interest and it's royalty interest money and you're going  
22 to have money that was paid in to elect a participate.  
23 And all three of those kinds of moneys are going to be in  
24 the escrow account in co-mingle.

25 THE CHAIRMAN: Let me just cut it off here and say we'll

1        schedule 361-22 which covers any escrow at all for the  
2        next the hearing.

3        MR. MCGLOTHLIN: I'm just saying I was thinking we was  
4        getting off the order here.

5        THE CHAIRMAN: I'm in agreement. We just solved that one.

6        MR. MASON: I have one question to ask.

7        THE CHAIRMAN: Okay, we'll take five. I'm sorry.

8        MR. MASON: Oh, I just want to ask a question on this af-  
9        fidavitthe affidavit about designation of Mr. Howard  
10       Epperly. I noticed in Number 3 it says that any request  
11       to stimulate and/or a statement of no objection be  
12       directed and then in 4 it says that Mr. Epperly is  
13       authorized on behave of Island Creek to consent to the  
14       stimulation, does not address his authorization to sign a  
15       no objection. Is that intended to be that way?

16       MR. SWARTZ: It was intend to be the way it is because we  
17       didn't anticipate the question. No, his authority is not  
18       limited if that's what you're saying and we could have,  
19       as I understand it, gone on to state that he's also  
20       authorized to raised to 2500 foot objection and other  
21       objections. But the issue that was put to us as we  
22       understood it yesterday was, does he have authority to  
23       sign a consent of frack.

24       MR. MASON: Okay. But you've document, this consent to a  
25       stimulation and statement of no objection, addresses

1       both of those issues in number 3 and in number 4 says  
2       that he's authorized to consent to the stimulations.  
3   MR. SWARTZ:   Right.  
4   MR. MASON:   It does not address that he's authorized to sign  
5       a statement of no objection.  
6   MR. SWARTZ:   I guess my answer is my understanding is that he  
7       is authorized to do that even though this affidavit  
8       doesn't say that and if necessary correct and if neces-  
9       sary we can do some more faxing.  
10   MR. MASON:   I just want that understood for the record that  
11       this authorization is intended to extend to both ele-  
12       ments.  
13   MR. SWARTZ:   That's right.  
14   THE CHAIRMAN:   Okay. We'll take a five minute break.  
15       (AFTER A BRIEF RECESS OFF THE RECORD, THE HEARING  
16       CONTINUED AS FOLLOWS:   )  
17   THE CHAIRMAN:   You finished with your witness?  
18   MR. SWARTZ:   I'm finished and I would request that the Board  
19       consider approving OXY's pooling application with regard  
20       to unit C-24.  
21   THE CHAIRMAN:   Thank you. Are you ready to go forward with  
22       your application on EH-38?  
23   MR. SWARTZ:   Before that happens I would like to be heard  
24       briefly. I would be my motion to move to dismiss every  
25       word that's in Harding's application with regard to unit

1 C-24 unless they can demonstrate to the Board that they  
2 have a consent to frack.

3 THE CHAIRMAN: Okay. We'll take that under advisement. Mr.  
4 Street. While there's a pause in the action here I would  
5 tell you that staff has had some complaints about use of  
6 phones and what have you. If you will, try to use the  
7 pay phones where possible and if you're using any other  
8 phone please get permission from the office because it's  
9 not our facility. Understand that and we need to make  
10 sure you get authorization. Thank you. We're ready when  
11 you are, Mr. Street.

12 CLERK: (Swears witness. )

13  
14 MICHAEL L. EDWARDS

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

17  
18 DIRECT EXAMINATION

19  
20 BY MR. STREET:

21 Q. Please, state your name and position.

22 A. Michael L. Edwards. I'm president of Edwards and  
23 Harding Petroleum Company.

24 Q. Tell the Board, please, of your educational and profes-  
25 sional background briefly, giving a summary.

1 MR. STREET: Has all the Board heard this? I'm not going to  
2 go into it in detail, but some of the members of the may  
3 not have heard you back there. \_\_\_\_\_  
4 THE CHAIRMAN: I think you can stipulate we have excepted his  
5 background before.  
6 THE WITNESS: I previously testified for the Board.  
7 MR. MASON: Excuse me, Mr. Chairman. I don't know whether  
8 it matters, but for the purpose of recording this will  
9 the mike over here pick there?  
10 THE CHAIRMAN: That's not our mike.  
11 MR. MASON: Okay. I'm sorry.  
12 THE CHAIRMAN: That's someone else's worry.  
13 MR. MASON: I just know when they were testifying over there  
14 was one and then --  
15 THE CHAIRMAN: I understand. We have ours over here.  
16 MR. MASON: Okay. Fine.  
17 Q. (Mr. Street continues.) You've testified before as an  
18 expert geologist before this Board, is that correct?  
19 A. I've testified as an expert witness before the Board, yes  
20 that's correct.  
21 Q. Do you join in the application and petition and have you  
22 filed on behave of your company an application to pool  
23 the same area which has been labeled C-24 by Occidental  
24 and is labeled EH-38 by Edwards and Harding?  
25 A. Yes, sir, that's correct.

1 Q. You request the Board to establish this as a zoning unit  
2 and force pool it?  
3 A. Yes, we do.  
4 Q. Do you have any disagreement with Occidental I'm trying to  
5 abbreviate this instead of going back though all the  
6 items again, as to the ownership interest of Edwards and  
7 Harding? What is your interest?  
8 A. There is a survey, what appears to be a survey discrepan-  
9 cy here. Our survey shows that our interest in that unit  
10 would be 47.9% rather than the approximately 44% that  
11 Occidental has shown.  
12 Q. Have you notified all of the potential owners in this  
13 pool and have you filed copies of the mailing receipts  
14 with the Board previously?  
15 A. Yes, sir, we have.  
16 Q. The size of the unit has already been testified to. Did  
17 you make legitimate efforts and use all normal precau-  
18 tions in order to determine and locate the parties?  
19 A. Yes, sir.  
20 Q. Have you attempted to contact and reach an agreement with  
21 the parties?  
22 A. Yes, that is correct.  
23 Q. Do you want to dismiss any parties in this application  
24 respondents?  
25 A. No, I don't believe so at this time.

1 Q. Is Edwards and Harding requesting this Board to appoint  
2 it as the operator in this unit?

3 A. Yes, sir, we are.

4 Q. Do you have a letter from a gas pipeline company authori-  
5 zing you to transport this gas from this well until  
6 you're appointed as operator?

7 A. Yes, sir. We would be marketing this gas under an  
8 existing gas purchase contract that we have with Hope Gas  
9 Inc. Transportation has been approved by C & G Transmis-  
10 sion.

11 Q. The transmission company that has approved transmission  
12 for the gas will obtain copies of those letters for the  
13 Board shortly. The transmission company that has agreed  
14 to transmit your gas. What is normal procedure for  
15 getting an agreement to transmit gas through an inter-  
16 state pipeline.

17 A. With the mar\ket in question here, which is C & G  
18 Transmission, and I'd like to add that we currently have  
19 approximately one million cubic feet per day of gas  
20 flowing though this line, the general procedure is first  
21 to negotiate a gas purchase contract. Second, to drill  
22 and complete most of the wells and at that time a  
23 completion report and title documents are submitted to  
24 the gas purchaser and then shortly thereafter a turn in  
25 notice is sent from the gas company to us. We coordinate

1 efforts with the pipeline company to turn the well on.

2 Q. Do you have some knowledge of the capacity of the three

3 pipelines in this area, in Buchanan County?

4 A. Yes, sir. We've also had detailed discussions with all

5 three of the parties that have previously been referred

6 to and as I've mentioned we have reached an agreement

7 with Consolidate Natural Gas for not only this well, but

8 all the wells that we have on the docket here today.

9 Q. And I'd like to submit as an exhibit to the Board, a

10 letter from CNG Company authorizing transmission of the

11 gas through their line. Without this authorization a

12 producing company cannot transport across a interstate

13 pipeline, is that correct?

14 A. Yes, sir, that's correct.

15 Q. Now, since you are aware of the capacity of those lines,

16 tell us whether or not the three lines in Buchanan County

17 could handle the capacity that OXY's talking about of

18 twenty million MMF plus.

19 A. I don't belabor the point. I think the OXY people have

20 already said that those consolidate line, which we're

21 selling into, can not handle that. The East Tennessee

22 line, which they referred to, could handle that, but all

23 of our discussion with East Tennessee have not been

24 fruitful, plus that's an extremely long pipeline that

25 would need to be built to East Tennessee. As regards

1 Columbia, all of our discussion with the TECO, which is  
2 Columbia's transmission subsidiary, has indicated that  
3 there's virtually no capacity on that system. As a  
4 matter of fact, Columbia's own exploration production  
5 subsidiary is unable to obtain significant additional  
6 transportation on that line themselves.

7 Q. The Board asked the question of whether or not the  
8 pressure could be stepped up on the two lines to the  
9 north to accommodate additional gas.

10 A. Up to a certain point. Additional throughput can be  
11 obtained by increasing pressure, but at some point there  
12 is a limiting factor there.

13 Q. Based on your discussions and your knowledge of the gas  
14 industry, is it possible to transfer the gas that is  
15 being talked about by stepping up the pressure or in any  
16 other way without building additional interstate line or  
17 enlarging the lines in there?

18 A. Which gas are you talking about?

19 Q. Twenty to twenty million plus that OXY's talking about  
20 producing.

21 A. Additional capacity would need to be constructed for that  
22 kind of volume.

23 Q. You said that a long line would have to be constructed to  
24 East Tennessee. Could you tell us about how many miles  
25 of interstate line would have to be constructed even if

1       you could tie in to that?

2       A.   In excess of twenty miles, depending on where the  
3           central compressor station was going to be located, over  
4           exactly rugged terrain.

5       Q.   You filed with the Board -- well, before I ask that, if I  
6           understand, you have transportation for this gas? You  
7           have a contract for this gas? How long would it take you  
8           to be in production if the Board appoints you as operator  
9           on this unit?

10      A.   Our average turn around time for this market is ap-  
11         proximately 120 to 130 days from spud date.

12      Q.   From --

13      A.   From the date that drilling begins.

14      Q.   Does that mean that you'll be selling gas in approximate-  
15         ly that amount of time?

16      A.   That would be the turn around time from when we begin  
17         drilling the well.

18      Q.   And turn around time means when you start selling the  
19         gas?

20      A.   Yes, that's correct.

21      Q.   You have filed with the Board a joint operating agree-  
22         ment, you've also reviewed the joint operating agreement  
23         filed by OXY and you've already qualified as an expert  
24         before the Board, are the terms of the joint operating  
25         agreement filed by OXY normal and usual in what you

1 generally find in trade and are they reasonable?

2 A. I don't believe them to be.

3 Q. You've testified before this Board, I believe, last month  
4 as to why the terms were not reasonable and I don't want  
5 you to go into detail, but some of the members were not  
6 here last month. So if you would go through some of them  
7 quickly, why is the joint operating agreement not  
8 reasonable?

9 MR. SWARTZ: Excuse me. We don't have a chairman, but I have  
10 never received a copy of your JOA for anything other than  
11 a conventional gas well. Is there on file with the Board  
12 a JOA for coalbed methane wells and if so I'd like a copy  
13 of it.

14 MR. STREET: This is a copy of Edwards and Harding.

15 Q. (Mr. Street continues.) What would you consider to be  
16 unreasonable about the OXY JOA?

17 A. In summary the most objectionable items that I find in our  
18 agreement are first, there's no specific rate for  
19 transportation of the non operating parties gas --

20 MR. SWARTZ: Excuse me. I realize we don't have a chairman,  
21 but I think the chairman's ruling earlier on JOA issues  
22 is he was telegraphing the Board's punch that they are  
23 not going to order any party to agree to any JOA. If the  
24 parties can't reach some kind of agreement they come back  
25 to the Board. So I'm not sure we need to spend any time

1 on one JOA as opposed to another until there's a failure  
2 to agree and that would be an objection that I have.

3 MR. EVANS: And I'll sustained that objection.

4 MR. STREET: I would submit to that Board then, just for the  
5 record, that the fact that the JOA is unreasonable is a  
6 consideration for the Board in determining what is an  
7 appropriate operator if they propose an unreasonable  
8 JOA okay, with that?

9 MR. EVANS: So noted.

10 MR. STREET: Noted. May I have just a moment, please?

11 MR. EVANS: Yes, sir.

12 Q. (Mr. Street continues.) How many other wells does E.  
13 H. Petroleum Company operate in Virginia?

14 A. We drill twenty-one wells in the Commonwealth to date  
15 including seventeen wells this year, the same number as  
16 OXY.

17 MR. STREET: That's all the questions I have.

18  
19 CROSS-EXAMINATION

20  
21 BY MR. SWARTZ:

22 Q. Mr. Edwards, I'd like to just hand you a form which is  
23 entitled consent to stimulate a statement of no objection  
24 to a well permit. Do you have that in front of you?

25 A. Yes, sir, I do.

1 Q. And it regards EH-38, which is very well what you've been  
2 testifying with regard to?

3 A. That's correct.

4 Q. Is this in fact a form, a consent form, for consent of  
5 stimulation form and statement of no objection that you  
6 or someone at your company prepared and sent to Island  
7 Creek?

8 A. Yes, sir, that it that case.

9 Q. And Island Creek has refused to sign that, have they not?

10 A. Yes, that is correct.

11 Q. And in fact Island Creek wrote back to you and said with  
12 regard to this well and others that they were in fact  
13 notifying that they were going to object to a well  
14 permit, correct?

15 A. Yes, sir.

16 Q. And that they were not going to give you consent to  
17 stimulate, is that a fact?

18 A. We received such a letter on Monday, yes, sir.

19 MR. SWARTZ: Just a minute, Mr. Chairman.

20 Q. (Mr. Swartz continues.) Is it your understanding that  
21 the objection which Island Creek has raised or tele-  
22 graphed that they're going to object to a well permit is  
23 based on the 2500 foot statutory objection that they  
24 have?

25 A. I'm not sure that I know the basis of their objection.

1 Q. Are you finished with your answer?  
2 A. Yes.  
3 Q. Okay. Do you have a conventual oil and gas or a gather-  
4 ing system in place that is now gathering and transmitt-  
5 ing gas from conventional oil and gas wells?  
6 A. Yes, sir, that's correct.  
7 Q. Okay. What is the line pressure of that conventional  
8 gathering system that you have?  
9 A. It currently varies from two to three hundred pounds per  
10 square inches.  
11 Q. And that gathering system has to overcome what pressure  
12 to get into the interstate pipeline?  
13 A. Line pressure at GNG is in the high 180's, low 200's.  
14 Q. What would be your estimate with regard to the lowest  
15 pressure that you would encounter within your current gas  
16 gathering system? Would it be on the order of two-  
17 hundred pounds?  
18 A. Yes, that's correct.  
19 Q. Can you tell me whether or not you plan to put a com-  
20 pressor in at each coalbed methane well head that you  
21 intend to utilize to produce the coalbed methane wells?  
22 A. I prefer to have our engineer respond to that question.  
23 Q. Do you acknowledge that unless you do something in the  
24 way of compressors or some other method to lower line  
25 pressuring in your conventional gas gathering system, the

1 line pressure that you currently have in that system will  
2 have a very negative impact on a coalbed methane produc-  
3 tion?

4 A. A compressor would certainly need to be installed and I'd  
5 like to add that two other operators in the immediate  
6 area have compression facilities installed on that same  
7 line and we do not anticipate any problem in being able  
8 to compress coalbed methane gas well production.

9 Q. Would you agree, though, that some significant modifica-  
10 tions would need to be made to your current gas gathering  
11 system to utilize it to produce and transport or to  
12 gather and transport coalbed methane?

13 A. Compression will need to be installed. Compression will  
14 probably need to be installed at some point for our  
15 conventional wells as well.

16 Q. But it wouldn't have to be installed at the well head,  
17 would it?

18 A. There's different ways to obtain a desired result. You  
19 can either compress centrally or you can compress at the  
20 individual well head. I believe that your client has  
21 also testified to that same effect.

22 Q. Would you agree that whatever it is that you decide to do  
23 with regard to compression, is going to increase the cost  
24 of operating your current gas gathering system?

25 A. Possibly. We are currently installing a second line in

1 our gathering system. We will have the capability to  
2 have two separate system in that area, but it's possible.

3 Q. Would you agree that whatever number your charging or you  
4 feel your cost is per MCF currently for gathering is not  
5 a number that should be used with regard to coalbed  
6 methane production because there will be more capitol and  
7 more cost associated with over coming the problem of well  
8 head pressure on coalbed methane?

9 A. We would anticipate that there would be an additional  
10 charge required for compression, yes.

11 Q. Would you agree that from the well plate, with regard to  
12 EH-38, that EH-38 is less than 2500 feet away from two of  
13 your other wells?

14 A. Yes, that's true.

15 Q. Okay. So if Island Creek's objection or if Island  
16 Creek's objection turned out to be a 2500 foot objection,  
17 would you agree that it was wellthat it could be well  
18 raised here?

19 A. It could be.

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

21  
22  
23 REDIRECT EXAMINATION

24  
25 BY MR. STREET:

1 Q. And just as OXY, if that well can not be put in that  
2 location you can move it to another location on the unit,  
3 is that true?  
4 A. I would assume so.  
5 Q. So there's no difference.  
6 A. The field rules for the Oakwood field allow for wells  
7 within 2500 feet of each other. I believe OXY plans to  
8 drill many if not most of the wells within 2500 feet.  
9 Q. Did you have discussion with Island Creek about stimulat-  
10 ing their coal seams over the last several months or some  
11 period of time?  
12 A. Yes, sir.  
13 Q. Were these discussions friendly?  
14 A. Yes, sir.  
15 Q. Did you offer and are you still willing to abide by  
16 Island Creek's stimulation requirement?  
17 A. Most certainly.  
18 Q. And did you tell them that?  
19 A. Yes, we did.  
20 Q. And at time did you have any indication from Island  
21 Creek's representative as to whether or not they thought  
22 you could do the job properly, stimulate?  
23 A. They didn't commit one way or the other. One of their  
24 representatives made the comment that the benefits to  
25 Island Creek of degassification were so great that they

1 far exceeded whatever possible damage might be caused by  
2 simulation.

3 Q. But you understand that if P. C. had appointed the  
4 operator that they will stimulate the well in accordance  
5 with Island Creek's requirements, is that true?

6 A. Yes, sir, and we would even be prepared to allow them to  
7 actually stimulate the well if they so desired.

8 Q. Have you prepared for the Board an estimate of operating  
9 expenses and fixed charges that you can stick by for this  
10 well?

11 A. Yes, sir, we --

12 Q. That you can abide by?

13 MR. SWARTZ: I'm going to object to this is beyond the scope  
14 of direct. I mean, it's like we're starting all over  
15 again.

16 THE CHAIRMAN: I'll sustained. I apologized I was out, but we  
17 had a witness put on information and if you concluded  
18 that information then we had cross-examination. I won't  
19 precluded you from anything, but if you have new informa-  
20 tion, different information that came up as a result of  
21 this, then we need to get that out. But let's please  
22 don't have redirect and then a question and redirect and  
23 back and forth.

24 MR. STREET: I certainly hope that I'm not trying to do that.  
25 This is in response to the cross-examination when asked

1           what the cost would be of compression.  
2   THE CHAIRMAN:   Okay.  
3   MR. STREET:   That's all.  
4   THE CHAIRMAN:   Thank you, sir.   Do you have another witness?  
5   MR. STREET:   Yes, I have some more witnesses.  
6   MR. SWARTZ:    I have one question.   Do you understand --  
7   THE CHAIRMAN:   Excuse me, Mr.   Swartz.  
8   MR. SWARTZ:    He asked him about the 2500 foot objection on  
9                redirect and in response to a question I had asked on  
10               cross-examination.  
11   THE CHAIRMAN:   Let me just say this.   The Board doesn't have a  
12                permit application and location of the well and I think  
13                that's suffice to hopefully to deal with that issue  
14                without any further questioning.   2500 foot is not an  
15                issue here.  
16   MR. SWARTZ:    The problem is he called it a field rule or a  
17                state wide rule and--  
18   THE CHAIRMAN:   It really doesn't matter what he called it.  
19   MR. SWARTZ:    -- it's not.  
20   THE CHAIRMAN:   Okay.  
21   MR. SWARTZ:    All right.  
22   MR. MASON:    Sir.  
23   THE CHAIRMAN:   Mr. Mason.  
24   MR. MASON:    I just wanted to ask Mr. Edwards a couple of  
25                questions.

CROSS-EXAMINATION

BY MR. MASON:

Q. This letter of October 26, 1990 from Hope Gas?

A. Yes, sir.

Q. It says in the second sentence that Gas Control stipulates, first of all, who is Gas Control?

A. That's the gas there's a lot of technical jargon on there. Gas Control is CNG Transmission's Gas Control Department in Clarksburg.

Q. I see.

A. By the way this is the standard form letter that we receive for all of our wells in the course of the hook up process.

Q. It stipulates that pressure must be regulated at 325 pounds. What does that mean?

A. That means that they do not want our delivery pressure to exceed 325 pounds on their line.

Q. Okay. This is approved by attorney and behind chart code, U-223. What does that mean?

A. Essentially, each meter that's on a CNG Transmission system has it's own chart code assigned to it.

Q. So it relates to a location where the gas would be delivered?

A. Essentially, yes, sir. That's correct.

1 Q. Okay. Then it says also no wells will be turned in the  
2 line until a contractor's schedule has been signed.

3 A. The practice with Hope Gas is that each well is added to  
4 an existing contract as a separate schedule. As we add  
5 it is our practice is to have all of our wells under a  
6 single master contract and then the terms and conditions  
7 of the sales from a particular well are cover by an  
8 individual schedule.

9 Q. So there is a contract that would have to be signed by  
10 you and Hope Gas prior to you being able to turn gas into  
11 their line?

12 A. Or a schedule. The contract has already been signed.  
13 What we typically do is to add a schedule of which  
14 specifies the wells.

15 Q. In the deliberant quantities that they will take?

16 A. Typically, it does not address quantities.

17 Q. But this schedule has to be agreed to between you and  
18 them prior to you turning gas into their line?

19 A. Yes, and that's a routine matter.

20 Q. But that's still an additional condition that would have  
21 to be met, is that correct?

22 A. Yes, that's true.

23 Q. Okay. What is that meter message?

24 A. That's an internal document that's issued by CNG Trans-  
25 mission in Clarksbury, West Virginia to it's district

1 office in Pineville, West Virginia and it's called a  
2 "Form 2444". That's their internal name for it. There's  
3 a lot of technical gas contract details here. I'm more  
4 then happy to go into if you want.

5 Q. I mean, I just want to know what a meter message is.

6 A. Generally, what we do on the CNG system when you drill a  
7 well and complete it, you submit a completion report to  
8 CNG. At that time they internally process the document  
9 and then issue what they call a meter message, which is a  
10 message from their central office in Clarksburg to their  
11 field office, in this case it would be in Pineville, West  
12 Virginia, authorizing the district superintendent to turn  
13 the additional wells in.

14 Q. Basically, then that's sort of their internal way of  
15 directing their field personnel to set a meter for that  
16 well?

17 A. Well, either to set a meter or to allow an additional  
18 well to be turn in behind an existing meter.

19 Q. I see.

20 A. Our intent would be to turn this in behind an existing  
21 meter.

22 Q. What would happen if that didn't occur?

23 A. You wouldn't turn the well on.

24 Q. If you didn't get this schedule or contract signed, what  
25 would happen?

1 A. You wouldn't turn the well on.  
2 Q. So you could not deliver the gas to them even though you  
3 have this letter if those things occur, those are  
4 contingents?  
5 A. Yes, sir. If we were not able to agree with them on  
6 terms and conditions and that would be the main impedi-  
7 ment.  
8 Q. I see. Have you arrived at a price with them on this?  
9 A. Yes, as I said, we currently have a million cubic feet  
10 per dig from ten wells going into that line.  
11 Q. I see. I'm just curious, but what are the items you've  
12 been negotiating with or to be determined, would not be  
13 the price that's already been established?  
14 A. Price and term are the generally items that are negotiat-  
15 ed.  
16 Q. I see. When you mean term, you mean quantities?  
17 A. No. The laying code for the contract.  
18 Q. I see. Thank you.  
19 MR. STREET: Thank you, Mr. Chairman.  
20 MR. EVANS: Mr. Chairman, I have a few questions.  
21 THE CHAIRMAN: Yes, Mr. Evans.

22  
23 CROSS-EXAMINATION  
24

25 BY MR. EVANS:

1 Q. Mr. Edwards, do you intend to stimulate this well?  
2 A. That would depend partly on what the natural productivity  
3 of the coal seams were. That would certainly be a  
4 possibility.  
5 Q. So you don't know whether you would stimulate this well  
6 or not?  
7 A. I can't say categorically that we would or wouldn't. I'd  
8 say it's probably more likely the not that you would want  
9 to.  
10 MR. EVANS: Thank you.  
11 THE CHAIRMAN: Mr. Mason.  
12 MR. MASON: I'd like to follow up with that, if I may.

13  
14 RECROSS-EXAMINATION  
15

16 BY MR. MASON:

17 Q. Is it not your opinion that the maximize production in  
18 this well would require stimulation?  
19 A. Generally, stimulation in general results in gas produc-  
20 tion being received sooner. Whether or not you would  
21 produce more gas over the life of the well by stimulating  
22 it or by not stimulating is a subject of some debate, but  
23 you would certainly have a higher initial production  
24 rate.  
25 Q. If you were elect to siding, if someone else was operat-

1 ing this well and they were the operator and you were  
2 trying to decide to participate or not, would you be  
3 interested in whether they were going to stimulate it or  
4 not at prior to making that decision?

5 A. No, sir.

6 Q. Would you whether they stimulated or not, if you knew  
7 they weren't going to stimulate, how would that effect  
8 your decision?

9 A. It would effect your decision.

10 Q. Let me ask you this. Based on what you know today, would  
11 you elect to participate if you knew they weren't going  
12 to stimulate this well?

13 A. Again, that would depend on the natural productivity of  
14 the well when you drilled it. One consequence of  
15 producing a well naturally, which I would need to point  
16 out, is that that would result in the well being con-  
17 siderably less expensive than if you simulated it.

18 Q. Okay.

19 MR. MASON: Thank you.

20  
21 CROSS-EXAMINATION

22  
23 BY THE CHAIRMAN:

24 Q. Mr. Edwards, given Island Creek's Coal Company's objec-  
25 tion to the well work permit, do you believe you would

1 have the ability to drill the well?

2 A. That would be something that would have to be negotiated  
3 with Island Creek and we've told the personnel that  
4 anything that we did would be with their approval.

5 THE CHAIRMAN: Any other questions members of the Board?

6 Thank you. Mr. Street.

7 CLERK: (Swears witness.)

8  
9 FRANK A. MEREMDINA

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

12  
13 DIRECT EXAMINATION

14  
15 BY MR. STREET:

16 Q. State your name and place of employment, please.

17 A. I'm Frank Meremdina and I'm an engineering manager for  
18 Edwards and Harding Petroleum.

19 Q. Mr. Meremdina, you've also testified before this Board as  
20 an expert petroleum engineer, have you not?

21 A. Yes, I have.

22 Q. How many wells, if any, have you been connected with that  
23 have been drilled down for methane production in Vir-  
24 ginia?

25 A. I've participated in fifty-one wells and of those fifty-

1           one, thirty-one were producing wells.

2   Q.    Can you give us a idea of what percentage that is of all

3           producing methane wells in the state of Virginia?

4   A.    All commercial production lines that I'm aware of.

5   Q.    So you've been involved in with all commercial production

6           that you're aware of in Virginia?

7   A.    That's correct.

8   Q.    The question was already asked, but I'm going to ask it

9           of you also. Would you be in charge of the stimulation

10          of the coal seams if any is done in any well?

11   A.    I would, but it would be in corporation with the coal

12          company.

13   Q.    If you do stimulation of a coal seam, who does it? Does

14          Edwards and Harding do it or does a subcontractor do it?

15

16   A.    A contractor such as Hal Burton or Dowell Slumberjack

17          would perform the services that is dictated to them by

18          Edwards and Harding and the coal company.

19   Q.    What subcontractors would you use, Edwards and Harding

20          I'm talking about? The two you just named?

21   A.    Yes, sir.

22   Q.    Then is there any difference in the fracking process if

23          it's dictated by Island Creek whether Edwards and Harding

24          does it or whether OXY does it or whether Ashland does

25          it?

1 MR. SWARTZ: I object to the foundation.  
2 THE CHAIRMAN: I'm sorry, I didn't hear you.  
3 MR. SWARTZ: I would object to foundation. He has to have  
4 some knowledge to answer that question, to make that com-  
5 parison.  
6 THE CHAIRMAN: Overruled. Go ahead, please.  
7 Q. (Mr. Street continues.) The question was, if one of  
8 these two contractors does the fracking process and they  
9 do it in accordance with Island Creek's direction, does  
10 it make any difference who the operator is, whether it be  
11 Edwards and Harding or OXY or anybody else?  
12 A. No, it does not.  
13 Q. Have you prepared or has your company prepared an AFE  
14 for submission on this drilling unit?  
15 A. Yes, they have.  
16 THE CHAIRMAN: Let the record show that the Board received  
17 their document labeled BGOB 1010-18.  
18 Q. (Mr. Street continues.) On the AFE that you've submitted  
19 the total completed well cost is \$159,905. 00, is that  
20 correct?  
21 A. That is correct.  
22 Q. The DWE, which is a expenditure estimate by OXY they're  
23 anticipating the cost of \$221,246. 00, is that correct?  
24 A. That's correct.  
25 Q. Does the difference in that cost have to do with the

1 experience factor?

2 A. Yes, it does. One, the DWE that OXY's submitted does not  
3 state the size of pipe, the completion technique to be  
4 used. So, in turn, you will see different numbers. The  
5 total numbers as to our AFE verses AFE or their DWE.

6 Q. Can Edwards and Harding drill the well more efficiently,  
7 more economically than OXY?

8 A. In comparing the numbers, yes.

9 Q. Do you intend to compress the pressure of the methane  
10 gas coming out of the well?

11 A. Yes, we do.

12 Q. And you agree that that is necessary and you've made  
13 provisions for it, is that correct?

14 A. That is correct.

15 Q. And I believe your gathering line is already in the  
16 process of being updated, is that correct?

17 A. That is correct.

18 Q. In your experience and is there anyone in the state of  
19 Virginia with more experience in drilling coalbed methane  
20 than you, Mr. Meremdina?

21 A. Not that I'm aware of.

22 Q. In your opinion, would Edwards and Harding be the better  
23 operator for this pool, the force pooling unit than OXY?

24 A. Yes.

25 MR. STREET: That's all the questions I have.

1  
2 CROSS-EXAMINATION  
3

4 BY MR. SWARTZ:

5 Q. I think that you indicated you participated in drilling  
6 fifty-one coalbed methane wells?

7 A. No, sir. I've participated in the process of preparing  
8 fifty-one wells. Thirty-one, I said, was drilled at that  
9 time I left Equatable Resources.

10 Q. Okay. So while you were there, thirty-one of those wells  
11 got drilled, correct?

12 A. Yes, sir.

13 Q. How many of those thirty-one wells went into production?

14 A. Of those twenty-eight were in production and three were  
15 being tested to the atmosphere against back pressure.

16 Q. So in theory all thirty-one of those were going to  
17 produce it sounds like.

18 A. That's correct.

19 Q. Of those thirty-one wells that were drilled and apparent-  
20 ly completed and either produced or nearing production,  
21 how many of those wells were fracked those coalbed methane  
22 wells?

23 A. All thirty-one, no, I'm sorry, I take that back. Thirty  
24 out of thirty-one.

25 Q. Okay. And was there an intention to frack the thirty-

1 first after you left?

2 A. There was an intention to test the natural production on  
3 the coal and if it did not meet economic criteria then it  
4 would be stimulated.

5 Q. Had you previously tested every one of the other thirty  
6 to see whether they were economic without stimulation?  
7 Was that the procedure you use?

8 A. No, sir.

9 Q. This was a new drill then, what you're telling me?

10 A. That's right.

11 Q. Okay. Thirty of the thirty-one wells you participated in  
12 drilling that went into production or were about to go  
13 into production, thirty of those were stimulated.

14 A. That's correct.

15 Q. Were multiple seams stimulate in most of those wells?

16 A. Yes, sir.

17 Q. Were there some instances where you fracked as many as  
18 three seams?

19 A. That is correct.

20 Q. Were there ever instances where you fracked more than  
21 three seams?

22 A. Yes, there was.

23 Q. And I assumed sometimes it wasn't worth fracking more  
24 than one or two?

25 A. That's correct.

1 Q. With regard to C-24, would you anticipate that you'll be  
2 producing from three seams?

3 A. To the best of my knowledge.

4 Q. And that goes into the economics, I mean, going into the  
5 deal whether or not to drill the well, right?

6 A. Based off of my experience of a Pocohontas 3, which is  
7 equivalent as the Pocohontas 6 in Dickenson County, it  
8 can carry itself completely by itself without stimulating  
9 any other seams above it, which would be in term the  
10 other two that you're speaking of, the Pocohontas 9 and  
11 the War Creek.

12 Q. Okay. Let me ask you this. Are you telling me that with  
13 regard to C-24 your recommendation, Edwards and Harding  
14 would be to only stimulate the number 3 seam?

15 A. No, sir, not until I had got a chance to evaluate the  
16 well log just like Mr. Vangolin had mentioned.

17 Q. So what you're saying is that, if on evaluation of the  
18 well log, once you had an opportunity to evaluate the  
19 well log you might well recommend three fracks on C-24  
20 depending on what coal was showing in the three seams  
21 that were targeted?

22 A. That's possible.

23 THE CHAIRMAN: Excuse me, Mr. Swartz. Just a clarification  
24 for the record. You're referencing C-24 and we're  
25 discussing EH-38. Agreed that we combined these.

1 MR. SWARTZ: I'm talking about the unit rather than the well.  
2 THE CHAIRMAN: I understand. Just for the record. Go ahead.  
3 Q. (Mr. Swartz continues.) Your AFE, Authority for Expendi-  
4 tures, shows one zone frack, which I assume is one  
5 simulation, right?  
6 A. One stimulation.  
7 Q. At \$25,000?  
8 A. That's correct.  
9 Q. If you were to stimulate three seams we'd add another  
10 \$50,000?  
11 A. That is incorrect.  
12 Q. How much would we add?  
13 A. You could possibly do all three seams for \$25,000. It  
14 depends on the job size.  
15 Q. Can I assume that it's also possible that you could spend  
16 \$50,000 or more thousand to do another two?  
17 A. You could, but you'd have to certainly look at your  
18 economics at that point.  
19 Q. What does this \$25,000 mean, opposite one zone frack?  
20 A. You can stimulate three seams at the same time with  
21 limited entry fracking and that one price would cover  
22 all.  
23 Q. Okay. Can I assume that that frack would not frack as  
24 far or would not be expected to frack as far as the  
25 situation where you attempted to frack each seam indepen-

1           dently?

2   A.   That's something we cannot see down home. I cannot

3       accurately answer that and probably nobody else can

4       accurately answer that due to the limited technology

5       behind coal fracking.

6   Q.   Would you agree that at least on the surface it appears

7       that there is an approximately \$50,000 difference between

8       your frack estimate and OXY's frack estimate. Actually,

9       it's \$54,000.

10   A.   Sir, based off of my experience, you can spend a lot of

11       money fracking, but I've also found out that several coal

12       seams do not need the big frack job that possibly you all

13       are anticipating.

14   Q.   Are you finished?

15   A.   Yes, sir.

16   Q.   Okay. Would you agree, though, that this being simple

17       mined about this, you're proposing to \$25,000 on fracking

18       and OXY's proposing to spend \$79,000?

19   A.   That's correct.

20   Q.   And if we were to back \$54,000 out of OXY's estimate,

21       your well completion cost would be a lot closer, wouldn't

22       they?

23   A.   Yes, that's correct.

24   Q.   I mean, a lot of the difference is the \$54,000 in frack,

25       is it not?

1 A. Yes, it is.

2 Q. Okay. Do you understand that the force pooling applica-  
3 tion that you're testifying with regard to today is to  
4 pool the interest in an eighty acre unit in the Oakwood  
5 field?

6 A. Yes, sir.

7 Q. Do you understand that if you didn't frackI mean, if you  
8 came here and said that we're not going to frack at all,  
9 we're sure we're not going to frack, that you would not  
10 be able to pool in the Oakwood field?

11 A. I don't understand the question.

12 Q. Let me ask it a different way. Do you know whether or  
13 not the Oakwood field was created with eight acre units  
14 on the assumption that every well would be fracked?

15 A. No, I did not have that assumption.

16 Q. Okay. Would you agree that a fracked well would drain a  
17 larger area in generalas a general principal than an  
18 unfracked well?

19 A. Not necessarily in a coal, no.

20 Q. Okay. Do you know whether or not the application that  
21 Edwards and Harding has on file here is for an eight acre  
22 unit or some other site?

23 A. Yes, sir.

24 Q. What is it for?

25 A. It's for an eighty acre unit.

1 Q. Okay. And in your view, that eighty acre unit would be  
2 appropriate whether you fracked the well or didn't frack  
3 the well, is that what I'm hearing from you?  
4 A. It depends on the evaluation of the log after drilling.  
5 Q. So it might not be appropriate?  
6 A. One might not be appropriate.  
7 MR. STREET: I object. The Board has set these units.  
8 Q. (Mr. Swartz continues.) Are you planning to have  
9 compressors at the well head of the coalbed methane gas  
10 wells?  
11 A. We're currently thinking of central compression, but that  
12 option does exist.  
13 Q. And if it turned out that you were going to have compres-  
14 sors at the well heads, that would be a added on to your  
15 AFE, wouldn't it?  
16 MR. STREET: I object to the hypothetical. If he says he's  
17 going to do central compression.  
18 MR. SWARTZ: I don't think that's what he said.  
19 MR. STREET: Okay.  
20 MR. SWARTZ: I think that's what he said he'd like to do, but  
21 he might not be able  
22 THE CHAIRMAN: I'll overrule and let him go ahead and finish.  
23 Q. (Mr. Swartz continues.) Would you agree that if it came  
24 down to the fact that you were installing compressors at  
25 the individual coalbed methane well heads that that would

1 be a cost that should factored into and shown on the AFE?

2 A. No, sir.

3 Q. So you wouldn't allocate it that way?

4 A. No, sir.

5 Q. Okay.

6 MR. EVANS: Mr. Chairman, may I ask some questions?

7 THE CHAIRMAN: Yes, sir.

8  
9 CROSS-EXAMINATION

10  
11 BY MR. EVANS:

12 Q. Mr. Meremdina, I understand your statement that a well  
13 either stimulated or unstimulated over an infinite period  
14 of time should theoretically drain the same amount of  
15 gas. I want to ask you, will a fracked well liberate  
16 that gas faster than an unfracked well?

17 A. It depends about the --

18 Q. In general.

19 A. In general, it depends on the amount of natural flow you  
20 have.

21 Q. In general, if that's the case if it depends on the  
22 natural amount of flow over all, why then do people frack  
23 wells? If they don't have to why do they do it? It's an  
24 added expense.

25 A. Because it's not apparently an economic well at that

1 point.

2 Q. Okay. So, in general, a frack well will liberate gas

3 faster then an unfracked well?

4 A. Not in all cases, sir.

5 Q. I said in general.

6 A. Yes, in general.

7 Q. Thank you.

8 A. If we're dealing with pipe.

9 Q. That's all. I'm not trying to stick you on the spot.

10 A. I understand.

11 Q. I'm asking the question to say that I know that over a

12 period of time theoretically all the gas will come out

13 whether it's though a two inch hole, a six inch hole,

14 unfracked, fracked or whatever else. All I wanted to

15 know was will a fracked well generally liberate gas

16 faster and the answer is, yes.

17 A. Yes.

18 MR. EVANS: Thank you.

19 THE CHAIRMAN: Does counsel have any more questions.

20 MR. SWARTZ: I think I'm finished.

21 THE CHAIRMAN: He just asked a question. Mr. Street, hasn't

22 finished.

23 MR. MCGLOTHLIN: Oh, I just asked a question. Oh, okay.

24 THE CHAIRMAN: He just asked a question while he's discussing

25 the issue.

1 MR. MCGLOTHLIN: I'll hold mine.

2  
3 REDIRECT EXAMINATION

4  
5 BY MR. STREET:

6 Q. If I understood you correctly that OXY might spend that  
7 much money on fracking, but you're saying that it's not  
8 necessary in your opinion, is that true?

9 A. Based off of my experience.

10 Q. And you feel, in your opinion, you could do the job  
11 necessary for fracking if that's required for \$25,000, is  
12 that correct?

13 A. That's correct.

14 MR. STREET: That's all the questions I have.

15 MR. MCGLOTHLIN: Mr. Chairman.

16 THE CHAIRMAN: Mr. McGlothlin.

17  
18  
19  
20 CROSS-EXAMINATION

21  
22 BY MR. MCGLOTHLIN:

23 Q. Mr. Meremdina, this AFE was prepared by you?

24 A. Yes, it was.

25 Q. And my understanding that EH-38 if Edwards and Harding

1 can drill this well will not be stimulated if consent is  
2 not signed by Island Creek?

3 MR. STREET: The Board may take that position, but our position  
4 is that there is a consent in effect.

5 Q. (Mr. McGlothlin continues.) For sake of argument, no  
6 stimulation is going to be done, right?

7 A. Stimulation probably will be performed if the coal  
8 company request.

9 Q. If Island Creek does not want you to stimulate then  
10 Edwards and Harding will not stimulate?

11 A. We'll do whatever the coal company tells us.

12 Q. Okay. And an AFE is what your company is expecting to --  
13 this is what the cost of the well is, no ifs, ands or  
14 buts, it's not an estimation. This is what it's going to  
15 cost Edwards and Harding's --

16 A. It's an estimation, sir.

17 Q. It is?

18 A. Yes, it is.

19 Q. If you don't stimulate then, I don't understand why you  
20 have your \$25,000 price on here to begin with.

21 A. I did not say we would not stimulate, sir. The question  
22 came up, would we or wouldn't we based off an consent  
23 question.

24 Q. Okay. I've got one other question. The companies who do  
25 stimulation subcontracts who do stimulation fracking

1 work, what were their names again?

2 A. Hal Burton Services and Dowell Slumberjack.

3 Q. How many times have Edwards and Harding used these  
4 companies, either/or to frack any of their wells in  
5 Virginia?

6 A. In all.

7 Q. In all of them?

8 A. All the wells, deep horizons.

9 Q. Okay. Thank you.

10 MR. EVANS: Mr. Chairman, I have one other question.

11 THE CHAIRMAN: Mr. Evans.

12  
13 RECROSS-EXAMINATION

14  
15 BY MR. EVANS:

16 Q. Just to clarify, on this you say, up at the top to test  
17 total buck 1670 to test the Poca 3?

18 A. Yes, I did.

19 Q. And that I take it that this estimate, which we're  
20 talking about, one zone frack and the Poca 3, that we're  
21 not talking about, any other coal seam except the Poca 3?

22  
23 A. Not necessarily, sir.

24 Q. Okay. That's all I wanted to know. So this is to test  
25 to all seams to --

1 A. That's to test is the depth, deepest zone of interest  
2 which would be the Pocohontas 3.

3 Q. Okay. And everything above?

4 A. Yes.

5 Q. Okay.

6 MR. MASON: Mr. Chairman, may I speak.

7 THE CHAIRMAN: Mr. Mason.

8

9 CROSS-EXAMINATION

10

11 BY MR. MASON:

12 Q. Sir, let me ask you this. You've done a fair I would  
13 assume a fair amount of analysis and consideration of  
14 this proposed well as far as the best way to drill it and  
15 the best way to produce this well, is that correct?

16 A. Yes, sir.

17 Q. Let me ask you this. In your past professional judgement  
18 as a drilling engineer and based on the need to recover  
19 and produce this well in the most expeditious fashion,  
20 should this well be stimulated based on what you know at  
21 this point?

22 A. Yes, sir.

23 Q. Isn't it true that there are other reasons besides just  
24 the gas production to actually frack one of these coalbed  
25 methane wells, specifically water?

1 A. Would you repeat that please? I'm sorry.

2 Q. Isn't there another consideration in to whether or not to  
3 do this fracturing technique and that is specifically the  
4 problem of water in this coal and that in order to drain  
5 the water out of the coal and allow maximum gas produc-  
6 tion that you need to be able to pump the water out and  
7 you have to fracture to get the drainage you need?

8 A. That is a benefit, yes, sir.

9 Q. Okay. But isn't that also an additional consideration?

10 A. It is an consideration, but in my experience the coals in  
11 the Appalachian Basin are relatively dry as compared to  
12 everyone else's experience in Alabama and the San Juan  
13 Basin.

14 Q. I see. So you don't think that water would be a problem.  
15 That wouldn't be a consideration in whether it's stimu-  
16 lated or not or fracked or not?

17 A. No, sir, because I've seen coals producing in excess of  
18 300 MCF natural.

19 MR. MASON: Thank you.

20  
21 CROSS-EXAMINATION

22  
23 BY THE CHAIRMAN: \_

24 Q. Mr. Meremdina, are you aware or familiar with Island  
25 Creek's stimulation requirements?

1 A. In detail, no, sir.

2 THE CHAIRMAN: Any other questions members of the Board?

3 Thank you.

4 CLERK: (Swears witness.)

5

6 RICHARD S. HARDING

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

9

10 DIRECT EXAMINATION

11

12 BY MR. STREET:

13 Q. State your full name, please.

14 A. My name is Richard S. Harding, Jr. I'm vice-president  
15 of Edwards and Harding Petroleum.

16 Q. What is your specialty, Mr. Harding?

17 A. I'm a geologist, geophysics.

18 Q. How long have you been practicing?

19 A. I've been in the oil and gas industry since 1981.

20 Q. Have you testified also before this Board and been  
21 qualified as an expert witness?

22 A. Yes, I have.

23 Q. Without further ado, you have listened to testimony here  
24 for the last, I guess, almost day now. You've heard the  
25 plan of drilling several wells a month with production

1 anticipated at some future date, indefinite. Would you  
2 comment on whether or not that is an appropriate plan for  
3 gas expiration and drilling?

4 A. In my opinion, sir, it is extremely imprudent to continue  
5 drilling wells without any knowledge of the results of  
6 that drilling. By that, I mean without any testing of  
7 the productive capacity of the well, also without having  
8 any concrete plans for marketing the gas.

9 Q. Is the problem with not having concrete plans for  
10 marketing the gas, can you not market it at will?

11 A. Absolutely not. It's a complex process as has already  
12 been testified here and delay in ringing the wells on  
13 production has an extremely severe adverse impact on the  
14 economics of the wells.

15 Q. Tell us about that, please. How's it severely affect the  
16 economics?

17 A. Basically, by when you take into account the time value  
18 of money, delaying the onset of production will sig-  
19 nificantly reduce the internal rate of return that you  
20 receive on your investment.

21 Q. Is the market out there, would you consider it a strong  
22 gas market in as far as sales are concerned where you can  
23 easily market gas or would it be considered a weak gas  
24 market?

25 A. I would have consider it a weak gas market and a market

1 which requires extreme diligence in securing a gas  
2 contract. And in my opinion, we do not see that dil-  
3 igence on the part of OXY, USA in their proposed program,  
4 in the program they are now executing.

5 Q. The Board asked some questions about the letter of  
6 transmission that Edwards and Harding has received. Is  
7 thereand the letter says there has to be additional sets  
8 taken, two or three steps as pointed out by the Board.  
9 Based on Edwards and Harding past experiences, is there  
10 any questions that those subsequent steps will follow  
11 though as you bring the well on line?

12 A. Based on our experience, we've been able to get our wells  
13 hooked up and get selling gas within what we consider to  
14 be an economically reasonable period of time.

15 Q. Okay. To my question then, are you telling me that it's  
16 a mere routine formality to do the rest of the things  
17 required in that letter?

18 A. Yes.

19 Q. You indicated that you felt it was imprudent for OXY to  
20 continue drilling wells like this without testing.  
21 They've testified they have drilled five wells, two of  
22 them within the last week and a half, but three they  
23 drilled prior to that and stimulated and have tested  
24 their vent wells. Would that give sufficient knowledge  
25 upon which prudent operative drill a bunch of wells, if

1           you could produce immediately and sell immediately?

2   A.    I don't believe so. I believe it's necessary to prefer-  
3           ably have actual production experience with the wells so  
4           that a correlation can be made between the logs, which  
5           are running the wells when the well reaches total depth  
6           and the actual production. That's the only way you can  
7           make the economic decision at casing point as to whether  
8           to go ahead and complete the well.

9   MR. STREET: That's all the questions I have.

10   MR. EVANS: Mr. Chairman.

11   THE CHAIRMAN: Mr. Evans.

12   MR. EVANS: I have some questions.

13  
14                               CROSS-EXAMINATION

15  
16   BY MR. EVANS:

17   Q.    I'm at a loss here. Earlier we had that there is no  
18           capacity left on pipelines. I'm I wrong in that?

19   A.    I would say there is some capacity. What we're saying is  
20           that there is, at present, there is not enough capacity  
21           to accommodate volumes of gas that OXY USA is proposing  
22           to produce.

23   Q.    Okay. But there is, and I'm asking this, there is  
24           some --

25   A.    There is capacity or we would not have been granted

1 transportation on CNG lines.

2 Q. And that's my question. You know, if there was no  
3 capacity left and you're planning to put X number of  
4 cubic feet though it, that means somebody else's gas  
5 doesn't go and that's all I'm trying to make sure is that  
6 we're not talking robbing Peter to pay Paul here. Okay?

7 A. Yes, sir, that is correct.

8 MR. STREET: I don't want to misrepresent things to the  
9 Board. What we were saying was that E&H has tied up  
10 this capacity, but where our position was that the  
11 pipelines in place will not take 20 million capacity  
12 that's proposed by OXY.

13 THE CHAIRMAN: Thank you.

14 MR. STREET: That was what we were trying to --

15 THE CHAIRMAN: Mr. Swartz, you may cross-examine.

16  
17 CROSS-EXAMINATION  
18

19 BY MR. SWARTZ:

20 Q. As I count it you have, Edwards and Harding, has twenty-  
21 three applications, pooling applications, before the  
22 Board at this hearing. Am I right?

23 A. Yes, sir.

24 Q. About the same number would you agree that OXY has before  
25 the Board at these hearings?

1 A. I do not know.

2 Q. Almost as many or you just don't know one way or the  
3 other?

4 A. I actually do not know how many applications OXY has in  
5 transport at this time.

6 Q. You think it's imprudent for you to proceed with twenty-  
7 three wells without a testing program that you finish one  
8 and then maybe move to the next?

9 A. I do not think that it is imprudent to proceed with the  
10 permitting process on twenty-three wells which is quite a  
11 different matter from drilling the wells and leaving them  
12 uncompleted for an undetermined amount of time, sir.

13 Q. Did you understand the testimony of witnesses for OXY to  
14 be that after the well was drilled there was no testing  
15 or data whatsoever developed? Is that what you're  
16 telling the Board the witnesses testified to or that's  
17 your understanding?

18 A. Not that no data were obtained. I assume that logs were  
19 run in the wells. My assumption is that the wells, the  
20 majority of them if not all, have not been stimulated so  
21 that there are no post stimulation test on the well.

22 Q. Let me put it to you this way. If a well is drilled and  
23 you have an electric log and you know the seams that are  
24 present in well boar and their relative thicknesses,  
25 okay. At that point in time you probably have enough

1 data to decide whether or not you want to frack.

2 A. You would certainly like to have more information than

3 just the thicknesses. What you would like to have would

4 be production information from similar wells with similar

5 coal thicknesses, so that you could make an educated

6 guess at the potential productivity of that well.

7 Q. Are you saying that OXY doesn't have that kind of data?

8 A. They can't have that kind of data unless they put some of

9 these wells in production.

10 Q. Were you here when Mr. -- maybe you missed some of this,

11 but can you tell me whether or not you were here when Mr.

12 Vangolin was testifying about the information that they

13 had, that Island Creek had shared with them with regard

14 to methane content in various seams at various locations?

15 A. Yes, sir.

16 Q. Okay. Would that be relevant to production?

17 A. It's relevant, but it's not conclusive.

18 Q. Okay. It's rare to find anything that's conclusive until

19 the well starts producing?

20 A. You can do better than port hole information.

21 Q. Okay. Could you tell me, in your opinion, whether or not

22 it would be imprudent for an operator to proceed to drill

23 a coalbed methane well in what I call drilling unit C-24

24 without having a consent to frack in advance of spending

25 the money and in advance of drilling the well?

1 A. Yes, sir, I would.  
2 Q. It would be imprudent?  
3 A. Yes, sir, I believe it would.  
4 MR. SWARTZ: That's all I have.  
5 MR. MASON: Mr. Chairman.  
6 THE CHAIRMAN: Mr. Mason.  
7

8 CROSS-EXAMINATION  
9

10 BY MR. MASON:

11 Q. Sir, is it your opinion and we've heard a lot of evidence  
12 about this, to do think there's sufficient interstate  
13 pipeline facilities in this area to fully develop this  
14 open fields?  
15 A. No, significant addition to the pipeline intra-pressure  
16 would have to be made.  
17 Q. So to develop this open field as we understand it is  
18 limited, there's going to have to be additional pipeline  
19 capacity bought to this area, is that correct?  
20 A. Yes, sir.  
21 Q. Is it a matter of which, you know, who drills what wells  
22 in what order at some point if this fields developed,  
23 this problem's got to be overcome?  
24 A. Yes, sir.  
25 Q. Okay. Isn't it not true that based on the history of

1 this type of problem in the past that there's kind of a  
2 chicken and egg problem between whether you drill the  
3 wells first or whether you try to get somebody to come in  
4 to build the additional capacity first, that one person  
5 or the other has to take the initiative to create either  
6 the egg of the gas that's there or the transmission  
7 capacity to take it out and that's been historically a  
8 major problem in gas field development everywhere?

9 A. I'd say in general that is true.

10 Q. Okay. Now, based on that and the fact that we are  
11 charged with what we perceive to be our duty to concern  
12 and develop energy resources in this area, you know, do  
13 you think it's imprudent that these wells be drilled even  
14 though the present capacity does not exist to transport  
15 all the gas in this field, but that it is imprudent to  
16 try to do this, go ahead and go this with the idea that  
17 that's what it's going to take to bring the pipeline  
18 capacity into this area to bring all these energy  
19 resources on line?

20 A. I think that without the additional of some capacity that  
21 yes, it's probably not a good idea to go out and drill a  
22 lot more wells.

23 Q. So once the pipeline capacity in place is notis used up,  
24 what we got now, then in your opinion this field develop-  
25 ment here should stop until somebody builds a new

1 pipeline?

2 A. I think there is room for some development to go forward,  
3 but probably not a whole lot. I'd say a fairly limited  
4 number of wells.

5 Q. But what I'm trying to get at is this concept of how can  
6 we develop this field? You know, we're very interested  
7 in what your company's doing, we're interested in what  
8 their company's doing, but we also have a charge to the  
9 state of Virginia to bring about the best conservation  
10 and development of energy resources. And obviously,  
11 based on what we've heard about it there is a problem of  
12 transmission capacity in this field and the question is  
13 what is it going to take to bring that on line and I  
14 realize that looking at individual owners of wells, but  
15 if you step back and take a larger view, isn't it reason-  
16 able to say that it is prudent to drill these wells so  
17 that this pipeline capacity will have a dependable  
18 supply of gas and can be built?

19 A. I think there are ways of phasing the pipeline develop-  
20 ment so that you haven't committed an unnecessary amount  
21 of money to drilling wells before you have a better idea  
22 what the total size of the projects going to be.

23 Q. Okay. Thank you.

24 THE CHAIRMAN: Any other questions members of the Board?

25 Thank you Mr. Harding.

1 MR. STREET: Mr. Phenuka, please.

2 CLERK: (Swears witness.)

3  
4 RICHARD PHENUKA

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

7  
8 DIRECT EXAMINATION

9  
10 BY MR. STREET:

11 Q. Please state your name and place of employment for the  
12 record, please.

13 A. My name is Richard Phenuka. I'm employed by Ashland  
14 Exploration.

15 Q. Mr. Phenuka, tell us about your professional credentials  
16 and educational background, please.

17 A. I've had twelve year's continuous employment as an  
18 engineer in the natural gas business. I'm a graduate  
19 engineer from the University of Tennessee with a degree  
20 in civil engineering.

21 Q. Have you had experience of transporting gas though  
22 pipelines in this area in South West Virginia?

23 A. Yes, sir. Ashland Exploration in this general area has  
24 about fifty gas wells all of which go into consolidated  
25 natural gas pipeline, which has been previously referred

1 to here.

2 Q. Are you familiar with the capacity of the pipelines in  
3 this area and the normal arrangements for securing the  
4 right to send gas through those pipelines?

5 A. Yes, in a general sense the capacity of MCF I don't know  
6 about, but in general, yes. And I am aware of the  
7 arrangements that are necessary to get gas transported on  
8 those lines.

9 Q. Have you been here yesterday and today and heard the  
10 testimony about the plan of OXY for transporting gas out  
11 of this field?

12 A. I have.

13 Q. The map, I erased this morning, but it showed two  
14 pipelines, one in the left corner, one in the right  
15 corner, one in the bottom corner. Now, OXY's testimony  
16 was that they could get a considerably amount of gas  
17 through those lines and at one point they said that they  
18 could tap onto it immediately. Tell us whether or not  
19 that's possible or what the situation is. Just give us a  
20 survey of what the situation is.

21 A. In a general sense they're from three pipelines. One, I  
22 think was described in OXY's testimony as a rust held  
23 together by a bucket of bolts or some such thing which is  
24 consolidated gas transmission 2177 line that comes south  
25 from our Oscar Nelson Station in Wyoming County, West

1 Virginia. Ashland moves about six or seven million a day  
2 total on that line. I don't know it's and I think that is  
3 probably a significant portion of the majority of the gas  
4 moved on it. There's a considerable restraint now,  
5 volumes that are on there now, we've had volumes, Edwards  
6 and Harding has had volumes with that line over the last  
7 couple of years and we're experiencing higher line  
8 pressures and that line is, if for all intensive pro-  
9 poses, full. I noticed in that meter message that was  
10 read in testimony they prohibited Edwards and Harding  
11 from introducing gas more than three-hundred and some  
12 pounds to it. They've stated that they have a two-  
13 hundred and fifty pounds maximum log operating pressure  
14 on that line and it's running near that now. There may  
15 be passage, but a hundred thousand, five hundred thou-  
16 sand, a million a day perhaps of more gas in that line  
17 ,but nothing to the order magnitude that's what's being  
18 contemplated by OXY without obvious upgrades. In the  
19 case of the line that they refer to it the Columbia line  
20 that's refer to it in Conaway, West Virginia, I'm not  
21 knowledgeable of the exact capacity that the distance  
22 charge line from the Conaway station, but I do know that  
23 Ashland waited for over a year to get transportation on  
24 that line for 200 MCF a day.

25 Q. That was the line, was it not, that was in the upper left

1 hand corner of this Board that was drawn in, correct?

2 A. I presumed that's what they refer to --

3 Q. I'm sorry. You waited a year to get how much?

4 A. 200 MCF transportation.

5 Q. All right.

6 A. And the reason given stated by Columbia was there's lack  
7 of capacity on the line. I'm less knowledgeable of the  
8 East Tennessee line as to it's capacity. It is remote  
9 from this area.

10 Q. It's testified to at least twenty to forty miles away, is  
11 that fair to say or is it more than that?

12 A. I don't question that at all. I don't know the exact  
13 distance. I think what the point that has been raised  
14 here by the Board and has been discussed here at some  
15 length, how can the gas be moved out of this area and I  
16 think OXY's addressed that question. I think there's  
17 testimony that they have budgeted thirty million dollars  
18 for pipeline expansion. That may well be and they may  
19 contend to spend thirty million dollars on pipelines. I  
20 think what everyone needs to any operator would have to  
21 consider is, what does that do to the economics of the  
22 well. I think that OXY testified to, at various times,  
23 one-hundred and fifty wells. They've got a drilling well  
24 estimate in the neighborhood of two hundred and some  
25 thousand dollars and they've said they're going to spend,

1 in effect, two hundred and some thousand dollars for a  
2 well to get the gas out not to mention the operating cost  
3 of that, that's there capitol budget I assume. So I  
4 think one's that's going to participate in one of these  
5 wells proposed by OXY you'd have to think very carefully  
6 about the economics of not only their drilling well  
7 estimate, but who's going to bear the cost of that, who's  
8 going to bear that thirty million dollars, and how in  
9 turn is that thirty thousand dollars a well going to be  
10 paid for. In any case all these plans, obviously, must  
11 be long range. There were some allusions to plans that  
12 they had to construct a pipeline. It's one thing to  
13 elude to a plan and it's another thing to have to get the  
14 consent to build the pipe line and to take right-a-ways  
15 and construct it. We're looking at a long, expensive  
16 process, certainly years. I don't know all the details  
17 of it, but it took a year and a half or so to get  
18 authorization confirmed and to do all the other. Even if  
19 you started the other necessary activities concurrent with  
20 getting that approval, you're still a minimum of two  
21 years and who know how much longer it might be than that.

22 The chicken and egg question posed by the Board earlier,  
23 probably fairly well answered in testimony that these  
24 things have to be done incremental. Understanding has to  
25 be gain of how much gas is really going to be produced

1 out of this field before anyone would be prudent to  
2 commit kind of money we're talking about, thirty million  
3 dollars to construct the necessary pipeline and move the  
4 gas. I think it's going to have to be an incremental  
5 process or bad investments are going to be made.

6 Q. You're with Ashland Oil and Exploration, is that  
7 correct?

8 A. Ashland Exploration Incorporate is the name of the  
9 company I work for.

10 Q. Okay. Has your company had any experience as a volunteer  
11 participant or otherwise with Edwards and Harding  
12 Petroleum Company?

13 A. We have.

14 Q. Would you tell us, please, based on your experience with  
15 them what kind of operator they are?

16 A. Edwards and Harding have demonstrated an ability to drill  
17 and complete and sale the gas from the wells. We have no  
18 complaints whatever with their performance in that  
19 respect. They seem to be a prudent, confident operator.

20 Q. How many ventures have you been involved with Edwards and  
21 Harding though the years?

22 A. A number, I don't know, a half a dozen or more. I don't  
23 have an exact well count. We have been participating  
24 with them in Burea tests in this same general area and  
25 we're pleased with our business relationship with Edwards

1 and Harding.

2 Q. You mentioned FERC before, who is FERC?

3 A. That's the Federal Energy Regulator Commission and they  
4 have jurisdiction over the interstate pipelines. They  
5 regulate in a sense of utility regulations.

6 Q. Are you saying you can't build or increase pipeline  
7 without getting a permit from them?

8 A. That's correct, to my knowledge.

9 Q. Is it realistic to anticipate that OXY could have the  
10 one-hundred and twenty wells, or how ever many they're  
11 estimating, hooked up and producing by September of 1990  
12 based on their requirements?

13 A. I think I've testified that --

14 MR. SWARTZ: Well, 1990 is impossible.

15 MR. STREET: I mean '91.

16 A. (The witness continues. ) I think '91 is what they  
17 asserted. Everybody has agreed here, OXY included,  
18 there's no pipeline capacity of that volume of gas out  
19 of this area. I've testified that I can't conceive of it  
20 less than a year and a half or two years and I would  
21 expect it to be longer than that to have an significate  
22 pipeline laid out in the area. It would be incredible  
23 feet. I don't think it's a reasonable assumption that  
24 that will happen.

25 MR. STREET: That's all the questions I have.

1 THE CHAIRMAN: Cross-examine.

2  
3 CROSS-EXAMINATION  
4

5 BY MR. SWARTZ:

6 Q. Maybe I misunderstood your testimony, but are you saying  
7 that the CNGT line, which is the same as the Hope Gas  
8 line, is initially full now?

9 A. That is what I testified to.

10 Q. Okay. Of what value is the letter that we have from Hope  
11 Corp Gas authorizing Edwards and Harding to pump, I  
12 don't know or hook up ten or fifteen additional wells if  
13 it's your impression that that line is already at  
14 capacity?

15 MR. STREET: I object.

16 A. (The witness continues.) I'll be glad to answer the  
17 question.

18 MR. STREET: Go ahead.

19 A. (The witness continues.) I think, if you'll recall, if  
20 you were listening while I was testifying, I think I've  
21 already testified there was capacity for one hundred, one  
22 thousand, a half a million, maybe even as much as a  
23 million in the line. What we're talking about here, the  
24 matter at hand really, is this one particular well.  
25 There is certainly capacity in that line for this well.

1 Is there capacity for ten wells? Perhaps. Is there  
2 capacity for a hundred wells? No.

3 Q. Can we apply the same analysis then to OXY and shouldn't  
4 we limit the question as to whether or not there's  
5 capacity in one of these transmission lines to let OXY  
6 produce C-24?

7 A. Well, no. It does not at all apply to the same logic does  
8 not apply to OXY because OXY's testified that there  
9 intention here is to build a separate gathering system  
10 and to wait until they had a hundred wells or more ready  
11 to produce before they even started completed them and to  
12 put on the market fifteen, twenty, thirty million a day  
13 all at once. That is the plan that's been outlined here  
14 in testimony the last two days as I understand it.

15 Q. Is there a capacity in the CNGT Hope line to handle the  
16 twenty-three wells that are proposed by Edwards and  
17 Harding in your opinion?

18 A. No.

19 Q. Have they told you that they are in contact with, they  
20 meaning Edwards and Harding, in contact with Columbia or  
21 East Tennessee or to try and obtain additional capacity  
22 from them?

23 A. Pardon me? Have they discussed their plans with me as to  
24 Columbia and East Tennessee?

25 Q. Right.

1 A. They have not discussed their plans with me.

2 Q. Would you agree that the more wells an operator has,  
3 whether it's OXY or somebody else, that are drilled and  
4 the more capitol they have invested in a field, the more  
5 highly motivated they are to make arrangements to gather  
6 their gas, compress it and get it to a sales point?

7 MR. STREET: I object to that question.

8 A. (The witness continues.) I'd be proud to answer it.

9 Q. Excuse me?

10 A. I'd be please to answer the question he objected to.

11 THE CHAIRMAN: Overruled. I'm going let you answer the  
12 question.

13 A. (The witness continues.) Not at all. As I understand  
14 from testimony that Edwards and Harding is going to be  
15 highly motivated. They're a small operator, not par-  
16 ticularly well capitalized, they are highly motivated to  
17 get their gas to the sales point and I fully expect them  
18 to do so post haste.

19 Q. Wouldn't you apply the say analysis to OXY? Wouldn't you  
20 say that they would be highly motivated to get their gas  
21 to market?

22 A. Well, if you're asking me are you asking me what to  
23 testify to OXY's motivations?

24 Q. Well, you just testified to Edwards and Harding --

25 A. Well, I'd be glad to speculate. I represent or I'm

1 employed by a company that is in business with Edwards  
2 and Harding. I'm familiar with Edwards and Harding's  
3 motivation.

4 Q. Let me ask you this. If a company indicates that they  
5 have potential, in their budget, whether or not they're  
6 going to spend it next year, but in their budget they  
7 have set aside thirty million dollars to deal with  
8 transportation. Would that suggest to you that that  
9 company is highly motivated to get the gas to market if  
10 they're prepared to budget that sum of money?

11 A. I'm not sure that I can draw an interpretive as their  
12 motivation.

13 Q. Okay. You talked about the thirty million dollars that  
14 OXY had it testified that they had in their budget with  
15 regard to transportation. Is it your assumption that the  
16 ownership or the ability to use the system created by  
17 spending that thirty million dollars will not be shared  
18 with some other operator or other company or other group  
19 of companies and will be born solely by OXY or have you  
20 made an assumption in either regard?

21 A. I have made an assumption on that subject, that if OXY is  
22 going to spend thirty million dollars on a gathering and  
23 transportation system to get the gas out of here, that  
24 that cost will be born by the relative interest owners  
25 and the wells that it services.

1 Q. Okay. So you're assuming that the --  
2 A. And that matter is needless to say, undetermined.  
3 Q. So your assumption is the use of the gathering system  
4 and/or pipeline or the cost of that system would not be  
5 born by anyone other than OXY?  
6 A. No.  
7 Q. But the capacity would not be sold to someone else for  
8 example, part of the capacity?  
9 A. Actually, what I think is going to happen or if you want  
10 to know what I think is going to happen OXY doesn't  
11 intend to bear any of the cost.  
12 Q. So it's gone?  
13 A. No, I think OXY intends to lay it off on the people that  
14 they forced pooled.  
15 Q. So your belief is that OXY is going to allocate back in  
16 gathering and compression and transportation thirty  
17 million dollars to the people that have been forced  
18 pooled?  
19 A. Or anyone else they can find, yeah.  
20 Q. Could you tell me the basis for that opinion?  
21 A. The basis for that opinion probably comes from the  
22 discussions we've had here about the operating agreements  
23 and so forth, well cost estimate and so forth that make  
24 mecause me to question them. If you want to get into  
25 motivation, the question of motivation of Occidental

1       Petroleum in this whole proceeding.

2   Q.   So it's your understanding of OXY's testimony that they

3       have, in effect, testified during the course of this

4       hearing that they plan on passing that thirty million

5       dollar cost back to these coalbed methane wells in full?

6   A.   There's been no testimony to that effect. You asked me

7       what my opinion was and I there's been no factual tes-

8       timony to that today.

9   Q.   In your opinion --

10   A.   You asked for my opinion, I gave it to you.

11   Q.   Okay. In your opinion that regard is based solely on

12       OXY's testimony in this hearing?

13   A.   That's correct. And the documents that's been presented.

14   Q.   Is it your understanding from listening to the OXY

15       testimony that part of the thirty million dollars would

16       be spent on something that is a jurisdictional pipeline

17       subject to FREC regulations?

18   A.   Will you repeat the question for me, please?

19   Q.   Is it your understanding based on the OXY testimony

20       you've heard that part of the thirty million dollars will

21       be spent on a jurisdictional pipeline, either to upgrade

22       or to create one?

23   A.   I should hope so.

24   Q.   Okay.

25   A.   I assume that they're not going to spend thirty million

1 dollars on a gathering system within the field.

2 Q. Are you aware of the fact that jurisdictional pipelines  
3 and the rates that can be charged for transporting gas on  
4 jurisdictional pipelines is control by FREC?

5 A. I understand that.

6 Q. And that the (inaudible) jurisdictional pipeline or any  
7 participates in a jurisdictional pipeline could charge  
8 are specifically regulated by FREC --

9 A. Uh-huh.

10 Q. -- to transport gas on that system.

11 A. That's correct. I don't know that for a fact, but that  
12 would be my general understanding I would guess.

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

14  
15 CROSS-EXAMINATION

16  
17 BY THE CHAIRMAN:

18 Q. Mr. Phenuka, if in fact the lines are capacity the way  
19 it's been testified to the Board and then we would assume  
20 any operator of the field would have to expand the FREC  
21 lines, if you will, the transportation lines. Would not  
22 Edwards and Harding be faced with the same additional  
23 costs as any other operator?

24 A. If the kind of gas lines that's been represented by OXY  
25 or be moved out of this field those lines would have to

1 be expanded. There's no doubt about it. I mean, we're  
2 talking about to the order of ten times the amount of gas  
3 that's currently going through the lines. There's just  
4 not --

5 Q. Okay.

6 THE CHAIRMAN: Any other questions?

7 MR. MCGLOTHLIN: Mr. Chairman.

8 THE CHAIRMAN: Mr. McGlothlin.

9  
10 CROSS-EXAMINATION

11  
12 BY MR. MCGLOTHLIN:

13 Q. Mr. Phenuka, bear with me, please. I'm an old country  
14 boy.

15 A. Ask.

16 Q. Could you explain to me the difference between conven-  
17 tional gas and coalbed methane gas?

18 A. No, I cannot explain that to you.

19 Q. Is there a difference?

20 A. It's somatic difference.

21 Q. Would a existing pipeline, Columbia or Hope Gas or  
22 Tennessee, have they been designed to handle coalbed  
23 methane gas?

24 A. Let me maybe expand a little before answering your  
25 question. What's being discussed here and has been

1 discussed in my presence for the last two days of these  
2 hearings is coalbed methane. What we're really talking  
3 about is the gas in the coal seam, natural gas in the  
4 coal seams of which the major constituent is methane as  
5 is the major constituent of all the gas produced in  
6 Buchanan County. It is also true that when these  
7 coalbed wells are drilled in near or near active mining  
8 or in communication with active mining or when they've  
9 been mined though etc. , then you have impurities that  
10 get into the gas, mainly air. So interstate pipelines  
11 will not take gas that's got air in it, hydrogen or  
12 oxygen. Their's is certainly not designed to carry  
13 oxygen in gas which makes it corrosive and an explosive  
14 and they have no interest in any gas like that and I  
15 think that's been testified to already.

16 Q. Can I say something?

17 A. Otherwise the gas, if you come up with pure product,  
18 which is referred to as coalbed methane, is not different  
19 from gas from gas from the Burea, for example, in any  
20 material way. So then the lines would move the gases  
21 without

22 Q. No problem?

23 A. No problem, so long as it's not contaminated.

24 Q. No added expenses on the drillingwho ever's drilling  
25 Edwards and Harding, OXY, Ashland, Cabot drills these

1 wells. Will they have to buy a piece of equipment to  
2 purify, to dry the gas in any way before it goes into the  
3 line?

4 A. So long as there's no air in it. There's going to be  
5 moist content in it, but the gas from the Burea, for  
6 example, is delivered directly into the line as it comes  
7 from the ground and that in essence is true of coalbed  
8 methane. You might get in a dispute within as to the  
9 water content, in which case you'd have to install  
10 dehydration and that's the cost of the business.

11 Q. Start out moist. What's the moisture content of the  
12 Burea seam as opposed to the --

13 A. I can't answer that question directly what the precise  
14 moist content of those are. I guess, in the neighborhood  
15 of between thirty and fifty pounds per main cubic feet  
16 generally.

17 Q. From the coalbed methane, want would your assumption on  
18 moisture be?

19 A. It could be anywhere from that level up to depending on a  
20 number of factors, maybe as high as a one-hundred and  
21 twenty to one-hundred and thirty.

22 Q. There could be a significate difference?

23 A. There is and there could be a difference, but not a  
24 significate difference. Let me put it to you that way.

25 Q. You're going from fifteen to one-hundred and twenty?

1 A. At some point, if someone starts introducing a lot of wet  
2 gas. I don't know if the coalbed methane would have that  
3 kind of water content, then the pipeline company will  
4 require you to install dehydration which is a standard  
5 cost of doing business that will run you from, you know,  
6 a nickel, a dime, a thousand. It's not a major --  
7 Q. But without these dehydration units it is conceivable  
8 that none of these pipelines would be able to accept  
9 coalbed methane gas?  
10 A. The answer to your questions is, yes, but let me explain  
11 it to you.  
12 Q. No, that's fine.  
13 MR. MCGLOTHLIN: Thank you.  
14 THE CHAIRMAN: Any other questions members of the Board.  
15 Thank you.  
16 MR. STREET: May I ask another question. I never did ask  
17 anything on cross. You all took over. All right? I  
18 just wasn't given the opportunity.  
19 THE CHAIRMAN: You have the right. He's your witness.  
20 MR. STREET: Your not allowing me to reply when they raise  
21 new material.  
22 THE CHAIRMAN: What new material?  
23 MR. STREET: The new material that I thought was asked. I  
24 mean, I submit it's new material. That there's no difference  
25 between EHPC and OXY on the transmission line because EHPC is

1 going to have to transport gas also and there's no capacity  
2 and I was just going to point out with him on that map.

3 THE CHAIRMAN: Go ahead and do that.

4 MR. STREET: All right.

5  
6 REDIRECT EXAMINATION

7  
8 BY MR. STREET:

9 Q. On this map, sir, the whole map is the field of methane  
10 gas. Now you're not saying or I didn't understand you to  
11 be saying on direct that there's not some capacity that  
12 could take some additional gas from some methane well.  
13 You didn't say that, did you?

14 A. On examination and cross-examination I said that it's my  
15 belief that there is limited additional capacity on that  
16 pipeline and I even went through numbers both times twice  
17 already. When you're talking about capacity to the order  
18 or a hundred thousand a day or a million cubic feet a  
19 day, you can probably get additional capacity. When your  
20 talking about ten's of millions a day, it's out of the  
21 question on the existing facility.

22 Q. Okay.

23 THE CHAIRMAN: Any other witnesses?

24 MR. STREET: That concludes our evidence.

25 THE CHAIRMAN: I'm going to allow each of you five minutes to

1 summarize your case and the Board will continues to take  
2 under advisement your motions to dismiss which you may  
3 mention in your summary, but understand we're going to  
4 take all that up at one time.

5 MR. SWARTZ: I'm not sure I need five minutes.

6 THE CHAIRMAN: I was setting up an outer limit. If you take  
7 less, that's fine.

8 MR. SWARTZ: (Gives Closing Argument on behalf of OXY, USA)

9 MR. STREET: (Gives Closing Argument on behalf of Edwards and  
10 Harding)

11 THE CHAIRMAN: What's the Board's pleasure?

12 MR. MCGLOTHLIN: I make a motion that we adjourn for lunch  
13 and reconvene at 1: 15?

14 THE CHAIRMAN: We'll adjourn for lunch and reconvene at 1:  
15 15.

16 (AFTER A LUNCHEON RECESS, THE HEARING RECONVENES AND  
17 CONTINUED AS FOLLOWS:)

18 THE CHAIRMAN: We'll call the session back to order. What's  
19 the Board's pleasure. We've heard all the briefings from  
20 both parties in this case C-34 and EH-38. C-24, I'm  
21 sorry, and EH-38.

22 MR. MCGLOTHLIN: I move that we go into executive session to  
23 confer with counsel.

24 THE CHAIRMAN: I've got a motion to go into execution session.  
25 That would be under Section 2. 1-344, Item 7, consult with

1 legal counsel. Motion seconded. Any discussion? If not, all  
2 in favor signify by saying, yes.  
3 THE Board: Yes.  
4 THE CHAIRMAN: Opposed say, no. We're in executive session.  
5 (HEARING ADJOURNED AND WENT INTO EXECUTIVE SESSION.)  
6 THE CHAIRMAN: Entertain to come out of executive session.  
7 Motion and a second. I would ask each member by role  
8 call to affirm that all we discussed with legal counsel  
9 the issue C-24 and EH-38 as we referred to today.  
10 All in favor of coming out of executive session, signify  
11 by saying, yes.  
12 THE Board: Yes.  
13 THE CHAIRMAN: Opposed, say no. Thank you. The Board has  
14 heard the arguments on the force pooling application for  
15 C-24 and EH-38, what's your pleasure?  
16 MR. MASON: Mr. Chairman.  
17 THE CHAIRMAN: Mr. Mason.  
18 MR. MASON: I have three motions I'd like to make. I move  
19 that the Board grant OXY USA Inc's motion to dismiss the  
20 E.&H. petition on EH-38 on the basis of failure to  
21 demonstrate to the Board that Edwards and Harding has  
22 consent to stimulate the well by the coal operator. I  
23 further move that we grant the petition of OXY USA, Inc,  
24 for force pooling for C-24 and I further move that we  
25 granted the motion to include in the order on the escrow

1       that's been discussed, that the order will included as an  
2       alternative any later adoptive escrow policies of the  
3       Board. I would welcome the seconding of those motions  
4       individual or collectively.

5       THE CHAIRMAN: Do I have a second on the motion as read?

6       MR. EVANS: Second.

7       THE CHAIRMAN: Have a motion and a second. Any questions? If  
8       there are no questions, please signify your adoption of  
9       the motion by those in favor say, yes.

10      THE Board: Yes.

11      MR. CHAIRMAN: Let's do that role call.

12      THE Board: (All agreed.)

13      THE CHAIRMAN: Thank you. The motion carries. For the other  
14      cases that we may have here that may materially have the  
15      same material issue, what's the pleasure of counsel, Mr.  
16      Street?

17      MR. STREET: I would suggest in view of this that there are  
18      three additional cases coming up here on Number 8 on the  
19      agenda, number 9, 10, 11 and if other counsel is ready  
20      and willing, I don't know why they wouldn't be, I'd be  
21      happy to stipulate that the evidence would be the same on  
22      those cases as it was on the first one and just submit  
23      our leases to show the ownership. And then, on the later  
24      cases, instead of going through each one of them and  
25      putting in the leases, I just picked out one that would

1 properly represent it so that we'd have all issues in  
2 case my client attempts to appeal and we'd be happy to  
3 either withdraw those or dismiss those, either way you  
4 want us to do it. And I think that way we'd get two  
5 cases. Of course, these first ones it would be three or  
6 four, but they're all under the Crenshaw lease and then  
7 the later battery, we only have one case if client  
8 decides to appeal it. That's my suggestion.

9 MR. SWARTZ: I have a suggestion as well and it's very  
10 similar to what Gene has just suggested, but he has one  
11 wrinkle that I wasn't anticipating on. I need to talk to  
12 my client just for one minute to see

13 THE CHAIRMAN: Okay.

14 MR. SWARTZ: -- if I can do something different.

15 THE CHAIRMAN: I'll tell you what. We'll just recess here for  
16 about ten minutes if you need to.

17 MR. SWARTZ: It won't take that long. Well, it might be  
18 helpful.

19 THE CHAIRMAN: You all can come to some agreement and then  
20 we'll try to do whatever will come of that.

21 (AFTER A BRIEF RECESS OFF THE RECORD, THE HEARING  
22 RECONVENES AND CONTINUED AS FOLLOWS:)

23 THE CHAIRMAN: Mr. Swartz.

24 MR. SWARTZ: Mr. Street and I and our clients have conferred  
25 and have reached an agreement which I am going to try to

1 express and then, Mr. Street, if I screw anything up, can  
2 straighten me out and we can work through it. We have  
3 agreed, OXY and Edwards and Harding, to withdraw our  
4 pooling applications, which are docket numbers 8, 9, 10,  
5 and 11. Those we have agree to make disappear from your  
6 docket, as withdrawn, assuming that's all right with the  
7 Board?

8 THE CHAIRMAN: I understand.

9 MR. SWARTZ: I don't know if the Board already knows or not,  
10 but late last week we had told you that we have been  
11 negotiating with Jewel with regard of trying to reach an  
12 agreement with them previously and these twelve through  
13 twenty were adjourned to allow us to reach an agreement  
14 with them. We have reached an agreement with Jewel  
15 Smokeless. The agreement essentially pertains to working  
16 with them to obtain acceptable locations and we're  
17 basically starting from scratch on well permits with  
18 Jewel. Twelve through twenty are appeals of inspectors  
19 decisions with regard to well permits. We are withdraw-  
20 ing those well permits on twelve through twenty which  
21 will result in the dismissal of the appeals with regard  
22 to those well permits. So items twelve through twenty  
23 are disappearing from your docket as well. You will  
24 notice that Item 13, which was an appeal related to a  
25 drilling permit for C-25, which was one of the pooling

1 application which was our pooling application docket  
2 entry 8. So they sort of track, at least the rest of  
3 them don't track, but twelve through twenty are off your  
4 docket. It really doesn't have anything to do with Gene,  
5 and Rick just handing me a letter. We have advised the  
6 Board by a FAX on November 19, that we were going to do  
7 that and a copy of that letter was discussed. I'm sure  
8 we copied Mr. Johnson because I know we talked to him  
9 about this, but in any event, those are gone.

10 THE CHAIRMAN: Excuse me. Is Cabot effected by this or in  
11 occurrence with this?

12 MR. SWARTZ: Well you decided the Cabot issue on number  
13 20 --

14 THE CHAIRMAN: Uh-huh.

15 MR. SWARTZ: -- last time and I don't think Cabot is on any  
16 of the others, is that correct? So the one that Cabot  
17 was involved in, you've already decided.

18 THE CHAIRMAN: Okay.

19 MR. SWARTZ: Then we need to skip to number 23.

20 THE CHAIRMAN: All right.

21 MR. SWARTZ: What Edwards and Harding and OXY have agree with  
22 regard to items we have agreed that Edwards and Harding in  
23 regard to docket numbers 23 through 29, will withdraw it's  
24 pooling applications because we have not surveyed this  
25 property. We don't have title. There's no way that we

1 could proceed with our motions with regard to those  
2 applications, also the tax credits have been extended, as  
3 I'm sure you're all aware. Hence, we will agree to  
4 withdraw our motions with regard to those Items 23  
5 through 29 and they will disappear from your docket.

6 THE CHAIRMAN: Okay.

7 MR. SWARTZ: With regard to Item 30, Edwards and Harding and  
8 OXY have agree to stipulate that the evidence that would  
9 be offer with regard to Item 30 would be virtually  
10 identical because there's going to be one exception,  
11 virtually identical to what you heard this morning with  
12 regard to six and seven. And that you could proceed to  
13 decide docket number 30 based on what you've heard with  
14 regard to six and seven with the addition of a couple of  
15 things which we'll get to when you call that case. And  
16 we've agreed what those documents are going to be and  
17 we'll address that with you all.

18 THE CHAIRMAN: Okay.

19 MR. SWARTZ: We have also agree with regard to dockets  
20 numbers 31 through 42?

21 MR. STREET: Correct.

22 MR. SWARTZ: That Edwards and Harding will withdraw their  
23 pooling application. OXY will withdraw the motions that  
24 it's filed with regard to those pooling applications and  
25 hence, 31 though 42 will disappear from your docket.

1           Have I recited our agreement?

2   MR. STREET:   You did it.

3   MR. SWARTZ:   Okay.

4   THE CHAIRMAN: Any problems with that, members of the Board?

5           Is any one else present affected by any of this that

6           wishes to address the Board?

7   MR. MCGUIRE: Ashland is affected and we have no opposition

8           to they're affected on a number of Edwards and Harding

9           applications and have no opposition to the withdrawal.

10   THE CHAIRMAN: Okay. Anyone else? Any problems, members of

11           the Board? What we're discussing is Item number 20.

12           Because Cabot is not here, I don't think. Is anyone here

13           from Cabot? I don't see them. I'm just asking for the

14           record. We're concerned if you withdraw 20 that --

15   MR. MASON: Mr. Chairman, can I make a point here. The

16           decision on Cabot was made on these appeals.

17   THE CHAIRMAN: I understand that. Now, the question is if we

18           withdraw, does the decision and everything else disappear

19           as well and are they in agreement with that?

20   MR. SWARTZ: I understand. I mean, we can't do that in front

21           of you all, but I'm telling you that we are going to

22           withdraw our well work permit applications on twelve

23           through twenty. What we're asking you to do here today

24           is towe're telling you that Jewel is dismissing their

25           appeals.

1 THE CHAIRMAN: We'll just continue 20 just so --  
2 MR. SWARTZ: Because Jewel is definitely agreeable to this.  
3 THE CHAIRMAN: We'll continue.  
4 MR. FULNER: I have a problem with continuing. Cabot was  
5 here yesterday and if they're not here today to protect  
6 their own interest I don't see that --  
7 MR. LEPCHITZ: We entered a order as to Cabot --  
8 MR. FULNER: Oh, did we.  
9 MR. MCGLOTHLIN: That's order is signed and endorsed. If  
10 they withdraw the well work permit, we may effecting  
11 Cabot's rights to appeal as to that particular site.  
12 THE CHAIRMAN: That's what we've been discussing. If we  
13 continue, then they can be on notice and simply withdraw  
14 it next time and for the record if that's okay?  
15 MR. SWARTZ: I think that makes sense.  
16 MR. MASON: I would so move that we do that, that number 20  
17 would be continued to that next docket.  
18 MR. MCGLOTHLIN: I second it.  
19 THE CHAIRMAN: Okay. And that motion also accept these  
20 others?  
21 MR. MASON: Yeah.  
22 MR. MCGLOTHLIN: Yeah.  
23 THE CHAIRMAN: We have a motion and second. Any further  
24 discussion? If not, please signify your agreement with  
25 the motion by saying, yes.

1 THE Board: Yes.

2 THE CHAIRMAN: Opposed say, no. Okay. 21 is the docket item.

3 MR. COUNTS: Mr. Chairman, if it please the Board, we're  
4 ready to continue with Item 21 on the docket, Docket  
5 VGOB-1010-30 with forced pooling for well X-9. I'd like  
6 to call Mr. Wirth.

7 CLERK: (Swears witness.)  
8  
9

10 MARTIN WIRTH

11 a witness who, after having been previously sworn, was  
12 examined and testified as follows:  
13

14 DIRECT EXAMINATION  
15

16 BY MR. COUNTS:

17 Q. Mr. Wirth, are you familiar with the proposed explora-  
18 tion development unit X-9?

19 A. Yes, sir, I am.

20 Q. Are you familiar with the application of this matter?

21 A. Yes, I am.

22 Q. Mr. Wirth, has the Board previously been provided with a  
23 copy of the drilling well expenditure and the consent to  
24 stimulate in this matter?

25 A. Yes, they were.

1 MR. COUNTS: Mr. Chairman, I'd like to submit to the Board  
2 copies, as requested by the Board, of Island Creek's  
3 leases with regard to the seams which they provided a  
4 consent to simulate.

5 THE CHAIRMAN: The record will show that the Board has  
6 accepted these as an exhibit.

7 (Leases tendered to the Board as  
8 Exhibit 1. )

9 MR. COUNTS: Mr. Chairman, I'd also like to submit at this  
10 time copies of the notification for pooling at the  
11 hearing.

12 (Proof of notification rendered to the Board as  
13 Exhibit 2. )

14 Q. (Mr. Counts continues. )Mr. Wirth, is OXY seeking the  
15 forced pooling and the drilling rights for eight acres as  
16 along this spacing unit identified as drilling unit X-9  
17 in the Oakwood coalbed gas field for all four seams below  
18 the Tiller?

19 A. Yes, we are.

20 Q. Does OXY own drilling rights in CBMI-X-9?

21 A. Yes, we do.

22 Q. What is OXY's interest?

23 A. OXY has leased a coalbed of methane from 93. 67% of the  
24 unit. OXY has leased 100% of the coal estate under the  
25 unit and OXY has also obtained 94. 85% of the oil and

1 gas and/or methane rights in the unit.

2 Q. Thank you, Mr. Wirth. Does OXY wish to dismiss any of

3 the respondents notified on this application?

4 A. Yes, we'd like to dismiss all respondents except for the

5 Mary Lester airs, devisees, successors and assigns and

6 the James Watkins airs.

7 Q. What specifically then are the interest of OXY seeking

8 the force pool of this unit?

9 A. Approximately, any interest in the coalbed methane lying

10 within the unit owned by James Watkins airs, Mary Lester

11 airs, devisees, successors or assigns and Agnes Watkins,

12 Annie Watkins, Robert Watkins, Samuel Watkins or there

13 airs devisees, successors or assigns.

14 THE CHAIRMAN: I'm sorry. I don't find any of those on the

15 document that we have. So I'm having trouble --

16 MR. MASON: Could you go through your list Mr. Thompson?

17 MR. THOMPSON: Sure. There was an amended exhibit B provided.

18 THE CHAIRMAN: Do we have it? Does the Board have it?

19 MR. COUNTS: It's been provided previously, Mr. Chairman.

20 THE CHAIRMAN: No, we don't have it.

21 MR. MASON: Is this one that was continued from an earlier?

22 MR. COUNTS: Yes, sir.

23 THE CHAIRMAN: If you will, we have a copy up here. If you'll

24 read through them and they can verify for us, if that's

25 okay with the Board, that we check them off. Tom, do you

1           have that?

2   MR. FULNER:   Yes, I've got --

3   THE CHAIRMAN:   Don't worry about the copies for the Board,  
4                   just worry about tracking what their saying and let the  
5                   Board know if everything matches.

6   MR. COUNTS:   Mr. Wirth, if you'll go ahead an go through that  
7                   with the Board.

8   A.   (The witness continues. )If it assist I'll go though the  
9           list from top to bottom.   The owners, you see initial  
10          owner and trackman 38, We do not wish to dismiss Mary  
11          Lester airs, devisees, successors or assigns.   We shall  
12          dismiss Eva Singleton, Aldrey Boyd Perkins, Clayton King,  
13          Ed Boyd.   Track number 38-A as shown on Exhibit B, again,  
14          we do not wish to dismiss Mary Lester, airs, devisees,  
15          successors and assigns.   We do wish to dismiss Eva  
16          Singleton, Aldrey Boyd Perkins, Clayton King Perkins.   On  
17          the big X track number 13, also known as track number 7,  
18          we do not wish to dismiss any of those parties.

19   MR. FULNER:   Thank you, Mr. Counts.

20   THE CHAIRMAN:   Thank you.

21   Q.   (Mr. Counts continues.)   Mr. Wirth, does OXY seek an  
22          award of pooling all respondents interest or estates that  
23          the bulk of methane underlying unit X-9 for development  
24          operation thereof?

25   A.   Yes, we do.

1 Q. And approximately, how many acres may be owned by these  
2 respondents?  
3 A. Approximately, how many gross mineral acres?  
4 Q. Yes, sir.  
5 A. It's approximately 33. 61 gross mineral acres.  
6 Q. Does OXY seek to force pool the drilling rights of each  
7 individual, notify the living, and if deceased, the  
8 unknown successor or successors to any such deceased  
9 individual?  
10 A. Yes, we do.  
11 Q. Mr. Wirth, was effects made to determine if the in-  
12 dividuals notified were living or deceased or they're  
13 whereabouts and if deceased were effects made to  
14 determine the names and addresses of the parties?  
15 A. Yes, they were.  
16 Q. And are the addresses and names set out in Exhibit B to  
17 the application the last known addresses for the respon-  
18 dents notified and was, in your opinion, exercised to  
19 locate each of these respondents.  
20 A. Yes, it was.  
21 Q. And prior to this hearing were efforts made or cause to  
22 be made to contact each of these persons and attempt to  
23 work out an agreement regrading development of units  
24 involved here where conflicting claimants do not exist.  
25 A. Yes, they were. Every party was located and was con-

1       tacted more than once and as we see from the dismissals,  
2       we were able to obtain leases except for the Mary Lester,  
3       who we have discovered has deceased and the heirship is  
4       in problems in their estates and also the Watkins airs.  
5       It is unknown in Buchanan County at this point in time  
6       where the airs are located.

7       Q.   Thank you, sir. Mr. Wirth, has OXY prepared an exhibit  
8       which sets forth lease terms that it would propose as  
9       well as this recommendation concerning provisions to be  
10      included in the pooling order?

11     A.   Yes, it has.

12     Q.   And would you read the title of that, please, sir?

13     A.   This is again Exhibit to Martin Wirth's testimony,  
14      drilling unit X-9, Docket number VGOB-1010-30.

15     MR. COUNTS: Mr. Chairmen, I'd like to present this to the  
16      Board, please.

17     THE CHAIRMAN: It will be Exhibit 3.

18               (Document to Martin Wirth's testimony rendered  
19               to the Board as Exhibit 3. )

20     Q.   (Mr. Counts continues.) Mr. Wirth, are the same terms to  
21      which you previously testified earlier today with regard  
22      to drilling unit C-24?

23     A.   It was previously discussed in our previous forced  
24      pooling hearing, yes, they were. I don't think it was  
25      earlier this morning.

1 Q. Thank you. It's been a long day. I apologized. When I  
2 said that I kind of felt like something was wrong there,  
3 but I wasn't quite sure. Mr. Wirth, you previously  
4 provided a copy of a joint operating agreement to the  
5 Board with regard to which to govern operations, correct?  
6 Which you opposed to help parties agree to govern  
7 operations?

8 A. Yes, sir.

9 Q. And has the Board previously been provided with a copy of  
10 this agreement?

11 A. Yes, they have.

12 Q. Mr. Wirth, in your opinion will the granting of the  
13 application be in the best interest of conservation  
14 professional ways and the protection of correlative  
15 rights?

16 A. Yes, it is.

17 MR. COUNTS: Mr. Chairman, I'm finished with this witness if  
18 the Board has any questions of Mr. With.

19 THE CHAIRMAN: Any questions, members of the Board? Your  
20 dismissed. Let me ask --

21 MR. COUNTS: Mr Chairman --

22 THE CHAIRMAN: Excuse me. Is there any other party in the  
23 room that wants to address the Board regarding this well?  
24 Go ahead, Mr. Counts. The record will show there was no  
25 one else.

1 MR. COUNTS: Mr. Chairman, the next item on the docket, DWE?  
2 I'm sorry. I thought we'd already submitted that. You're  
3 right.

4 THE CHAIRMAN: We weren't going to let you move any way, Mr.  
5 Counts.

6 MR. COUNTS: Thank you. I would like to call now Mr. Glen  
7 VanGolen.

8 THE CHAIRMAN: I'll have to go to the next docket number  
9 anyway when you finish.

10

11

GLEN VANGOLEN

12

13

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

14

15

DIRECT EXAMINATION

16

17

BY MR. COUNTS:

18

19

Q. Mr. VanGolen, have you previously provided a copy of the  
DWE to the Board for it's review?

20

A. Yes, I have.

21

22

Q. And are you familiar with those well cost and was that  
DWE prepared under your direction?

23

A. Yes, it was.

24

25

THE CHAIRMAN: Excuse me, Mr. Counts. Just a reminder that  
you're still under oath.

1 THE WITNESS: Yes, sir.

2 Q. (Mr. Counts continues.) Mr. VanGolen, in your opinion  
3 does this DWE represent a reasonable well cost for the  
4 proposed initial unit well under OXY's plan of develop-  
5 ment?

6 A. Yes, it does.

7 MR. COUNTS: Mr. Chairman, your witness.

8 THE CHAIRMAN: Any other questions, members of the Board?

9 MR. MCGLOTHLIN: Mr. Chairman.

10 THE CHAIRMAN: Mr. McGlothlin.

11 MR. MASON: I just have one question, actually two questions.

12

13 CROSS-EXAMINATION

14

15 BY MR. MASON:

16 Q. I assume the makeup of these additional numbers are the  
17 same as they were for the one we had yesterday?

18 A. Yes, they are.

19 Q. They seem to be in the same format. Also, does the frack  
20 cost in here include fracking three seams?

21 A. Yes, sir.

22 Q. Thank you.

23 THE CHAIRMAN: Mr. Counts, in the information that the Board  
24 has, we have the consent to stimulate. You want to  
25 introduce that.

1 MR. COUNTS: Consent to stimulate as well as the DWE. DWE  
2 were previously provided to the Board.  
3 THE CHAIRMAN: Previously?  
4 MR. COUNTS: Yes, sir.  
5 THE CHAIRMAN: This morning?  
6 MR. COUNTS: No, sir. It's probably some two weeks ago.  
7 THE CHAIRMAN: I just assume you want to make that an Exhibit?  
8 MR. COUNTS: We can make it as an Exhibit. I would like to  
9 introduce it as Exhibit 4, I believe that would be  
10 correct, Mr. Chairman.  
11 THE CHAIRMAN: Is this different from what we have?  
12 MR. MASON: No, this is DWE. He's talking about consent.  
13 THE CHAIRMAN: I'm sorry. I wanted to make it part of the  
14 record.  
15 MR. MCGLOTHLIN: Mr. Chairman.  
16 THE CHAIRMAN: Mr. McGlothlin.  
17 MR. MCGLOTHLIN: I think Mr. Counts has not been able to  
18 present himself to the Board all this morning and he's a  
19 little excited.  
20 MR. COUNTS: Little rusty, Mr. McGlothlin. Thank you, sir.  
21 THE CHAIRMAN: He's excited.  
22 MR. COUNTS: I appreciate the Board's indulgence.  
23 MR. MASON: Mr. Chairman, I just wanted to ask, with respect  
24 to this consent to stimulation, you have provided the  
25 Board earlier a copy of the statement by the vice-

1 president, general manager of the division of the  
2 Virginia division of OXY with respect of authorization in  
3 the representations made to the Board in this regard this  
4 morning also apply to this consent?

5 MR. COUNTS: Yes, sir, that's correct and I believe this  
6 morning we indicated that we would have that corrected.  
7 We do that corrected and I'm prepared to present that to  
8 the Board at this time.

9 MR. MASON: Thank you.

10 THE CHAIRMAN: Any other questions? Thank you. Any other  
11 evidence, Mr. Counts?

12 MR. COUNTS: No, sir, Mr. Chairman.

13 THE CHAIRMAN: Okay. The Board has before it a request for  
14 establishment of drilling unit forced pooling for here I  
15 go now.

16 MR. MCGLOTHLIN: Mr. Chairman, I wish to be recognized.

17 THE CHAIRMAN: Go ahead.

18 MR. MCGLOTHLIN: This might be trivial, but on the sworn  
19 affidavit of Mr. Price, I'm assuming that the notary is  
20 a notary of Virginia? It's kind of hard to tell.

21 MR. COUNTS: Yes.

22 MR. VANGOLEN: We will be happy to provide a original of  
23 that.

24 MR. COUNTS: She is a notary public.

25 MR. VANGOLEN: She is a notary of Virginia.

1 THE CHAIRMAN: Thanks, Mr. McGlothlin. You've heard the  
2 evidence on the request by OXY USA to establish a  
3 drilling unit forced pooling for the well X-9. What's  
4 your pleasure? Do we have a motion?  
5 MR. MASON: I move the that the OXY be granted the petition.  
6 THE CHAIRMAN: Second?  
7 MR. HARRIS: Second.  
8 THE CHAIRMAN: I have a motion and a second. Any questions?  
9 If no questions, all in favor --  
10 MR. COUNTS: Mr. Chairman, I'd like to also enter into the  
11 record with regard to this request that the escrow  
12 provisions previously requested before I believe in a  
13 motion by the Board be incorporated into this proceeding.  
14 MR. MANSON: Mr. Chairman, I think what Mr. Counts is request-  
15 ing the Board is reference to the third part of the  
16 motion I made in reference to C-24.  
17 THE CHAIRMAN: Okay.  
18 MR. MANSON: And if appropriate I'll would go ahead and move  
19 that the Board include in the order on the escrow that  
20 the order will include as a alternative any adoptive  
21 escrow policy of the Board.  
22 THE CHAIRMAN: We can do that or we can just stipulate that  
23 our orders will do that all together.  
24 MR. MASON: Okay.  
25 THE CHAIRMAN: If that's acceptable?

1 MR. MASON: Whatever the chair prefers is fine.

2 THE CHAIRMAN: We'll just stipulate that, that we will agree  
3 to that. We have a motion and a second. All of favor of  
4 motion signify by saying, yes.

5 THE Board: Yes.

6 THE CHAIRMAN: All opposed say, no. Motion carries. Next  
7 item on the agenda is number 22 on the docket, establish-  
8 ment of drilling unit and forced pooling for T-5 well by  
9 OXY USA, Docket number BGOB-1010-34. Mr Counts.

10 MR. COUNTS: Thank you very much, Mr. Chairman. I'm happy to  
11 report to the Board that we have managed to reach an  
12 agreement with all parties with regard to the pooling of  
13 interest on the T-5 and would request to the Board that  
14 we be allowed to withdraw our application in this matter.

15 THE CHAIRMAN: Any objections? Any one else in the room that  
16 wishes to address the Board or have any problems with the  
17 withdrawal of well T-5? We agree to do that. Now we're  
18 at number 30. Are you ready, Mr. Street?

19 MR. STREET: Yes.

20 THE CHAIRMAN: Are you ready to go to number 30 on the docket?  
21 Are you ready, Mr. Swartz?

22 MR. SWARTZ: Yes, sir.

23 THE CHAIRMAN: I call the Board's attention to docket number  
24 30, establishment of drilling unit forced pooling for EH-  
25 71 well, Buchanan County as requested by Edwards and

1 Harding Petroleum, Docket Number VGOB-1120-50. Mr.  
2 Street.

3 MR. STREET: Counsel for OXY U. S. A. and myself, counsel  
4 for Edwards and Harding, have stipulated how to proceed  
5 on this case and I'll attempt to convey the stipulates  
6 and the Board supplement it and correct so that we'll be  
7 sure we'll have it correct. We would stipulate that in  
8 all essential facts except for ownership, and a couple of  
9 other facts that we will tell the Board here, that the  
10 evidence in this case would be the same as the evidence  
11 in the case heard by the Board this morning, docket  
12 numbers VGOB-95-8 and VGOB-1010-18, that's in reference  
13 to the C-24 well application and establishment of forced  
14 pooling unit by OXY USA and the application for est-  
15 ablishment of drilling unit and forced pooling for EH-38  
16 well by Edwards and Harding. The ownership, of course,  
17 is listed in the application that is different. There's  
18 one other actual difference, that is that this well will  
19 not penetrate the Poco 3 seam and will not stimulate the  
20 Poco 3 seam, but may stimulate other seams of coal on the  
21 track which are leased by Island Creek. So the same  
22 situation applies. Counsel for OXY USA and I agree that  
23 insofar as the legal issue, the Board considered in the  
24 case that I previously referred to VGOB-1010-18 and VGOB-  
25 95-8 is essentially the same and we assume that the Board

1 will render the same decision with the exception of, in  
2 this case, I think dismissal would be the only thing  
3 rendered because once you dismiss our application there's  
4 no -- is that true?

5 MR. SWARTZ: We're not prepared to go forward on our motion  
6 at this point.

7 MR. STREET: Right.

8 MR. SWARTZ: So, it would be --

9 MR. STREET: Could be an operator so, all I think would be  
10 before you is whether or not our application in the form  
11 that it's in, with the evidence previously given to you,  
12 would be sufficient and we are including here in by  
13 reference all evidence given in those previous identified  
14 docket numbers, except as otherwise noted. Mr. Swartz,  
15 do you have some corrections?

16 MR. SWARTZ: I agree with what you've said and I just have a  
17 couple of little bits and pieces that --

18 MR. STREET: Okay.

19 MR. SWARTZ: -- that I think are somewhat different. There  
20 is a different DWE that OXY has submitted with regard to  
21 this well and you all have it, I believe. I would also  
22 point out that there is a consent to frack that was filed  
23 with the Board, that you all should have, specifically  
24 with regard to this particular well. Where in the same  
25 form that you've seen before with regard to the other one

1 but, where in Island Creek consented to frack consistent  
2 with the well permit that OXY had tendered to them with  
3 regard to this unit. So that item I think you need to  
4 know you have that in record. I would incorporate by  
5 reference Mr. Epperly's corrected affidavit because he's  
6 the same gentleman that signed the consent in this  
7 instance. Also, I would point out to the Board that this  
8 is not a document which OXY is responsible for as  
9 generated, but you have received a letter dated November  
10 9, 1990 from an attorney Frederick Harman which addresses  
11 a title issue. I'm not sure it's relevant to your  
12 decision, but you need to know that that's in your file  
13 and that is a slight difference. And the leases that  
14 we've agreed that Mr. Street will be giving you, this  
15 letter relates to those leases, I guess. The same  
16 Carlson lease that would be EH-72 is EH-71. I can see  
17 why he didn't put it behind 71 because the attorney who  
18 wrote this to you didn't give you that reference.

19 THE CHAIRMAN: It's under item 31 and it's the very last page,  
20 I'm sorry, next to the last page.

21 MR. FULNER: Mr. Chairman. In regard to EH-71, we do not  
22 have or it was not submitted on 71 we do have the motion  
23 from OXY, but we do not have a DWE from OXY.

24 THE CHAIRMAN: That's not in our document either. If you're  
25 withdrawing it, I don't know if we need it do we?

1 MR. STREET: That's true.

2 MR. FULNER: I was just making the record straight because

3 you said we do have it and we don't have it.

4 MR. SWARTZ: But the consent to frack I would like to before

5 you, I would like to incorporate by reference Mr.

6 Epperly's affidavit and I would also like to incorporate

7 by reference the letter which Island Creek wrote to

8 Edwards and Harding which referenced all of the wells in

9 issue today and included this particular EH-71 well in

10 it's refusal to agree to a well permit issuance and it's

11 refusal to give consent to frack. I think that should be

12 before you so the record is consistent with the other

13 one. And I think those are the only additional items and

14 I think I need to specifically agree that it has been

15 represented to me and it's been stipulated and I've

16 agreed to the stipulation, that although the well plate

17 map shows the location in relation to the Poky 3 seam

18 stipulated for the purpose of making your decision that

19 there will be no production from the number 3 seam and

20 that there will be no question of fracking in that seam

21 or anything, so that's not something you need to con-

22 sider.

23 MR. STREET: But it may be possible to frack other seams that

24 are owned by OXY, I mean Island Creek, above that. We

25 have the title documents here and I apologize, we have so

1 many that when the Board made that ruling yesterday, we  
2 couldn't make copies of all of these. Counsel has kindly  
3 agree to let me supply these lease copies to them later  
4 and if the Board would like, I'd be happy to supply ten  
5 copies to you also if you'd like to have that. I don't  
6 know whether you need it for this purpose or not.

7 CLERK: Excuse me. Are these exhibits?

8 MR. STREET: These are exhibits in addition to all other  
9 exhibits that were filed in the previous two cases that  
10 were incorporated here in by--

11 THE CHAIRMAN: They're incorporating all the other information  
12 by reference in discuss.

13 MR. MASON: These relate, do they not, Mr. Chairman, to the  
14 ownership of the coal under this particular well?

15 THE CHAIRMAN: You want to tell us a little bit about what  
16 you're doing?

17 MR. STREET: These title documents show the source of title  
18 for Edwards and Harding and also the coal lease to Island  
19 Creek.

20 THE CHAIRMAN: I think we would need the copies on those if  
21 you'll submit those later. Any other information?

22 MR. SWARTZ: What we're asking you to do, at least what I'm  
23 asking you to do, is to dismiss your pooling application  
24 and if that happens then I will withdraw my motions. Is  
25 that what we're submitting to them? And, of course,

1           you're asking for approval for your pooling application.  
2  
3   MR. STREET:   (Nods head in affirmative response.)  
4   THE CHAIRMAN:   Okay.   Is the Board ready to make a motion?  
5   MR. MASON:   Mr. Chairman, I move that we grant OXY's motion  
6           to dismiss the E.   & H.   petition on EH-71, on the basis  
7           of the failure to demonstrate to the Board that E.   & H.  
8           has the consent to stimulate of the co-operator.  
9   THE CHAIRMAN:   We have a motion.   Do I have a second?  
10   MR. EVANS:   Second.  
11   THE CHAIRMAN:   Motion and second.   Any further discussion?  
12           We'll go role call.   Diane, I'll just ask you to I did  
13           that earlier and didn't call out the names, just call the  
14           names and those in favor of the motion signify by saying,  
15           yes.  
16   THE Board:   (All agreed.)  
17   MR. MASON:   Mr. Chairman, I would also move the Board accept  
18           the motion of OXY to withdraw it's motion with respect of  
19           this well.  
20   THE CHAIRMAN:   Okay.   Do you also second that?  
21   MR. EVANS:   Yes.  
22   THE CHAIRMAN:   All in favor signify by saying, yes.  
23   THE Board:   Yes.  
24   THE CHAIRMAN:   Opposed, say no.   The motion carries unanimous-  
25           ly.   The next item on the agenda is on the docket number

1       43. Are you ready, Mr. Counts? Are you going to do this  
2       one?

3       MR. COUNTS: Yes, sir, Mr. Chairman. With regard to 43 and  
4       44 and 47, OXY has determined that we have inadvertently  
5       left some parties off that should have been notified. We  
6       became aware of that problem and we have filed an amended  
7       application and have notified those parties and we  
8       request that with the regard to specifically regarding  
9       items 43, 44, 47 that those items on the docket be  
10      continued until the December hearing.

11      THE CHAIRMAN: Any questions members of the Board? Give your  
12      numbers again.

13      MR. COUNTS: Items number 43,44,47.

14      THE CHAIRMAN: Any other questions?

15      MR. MCGUIRE: Ashland has no objection to the continuance.

16      THE CHAIRMAN: Are there any other parties in the room that  
17      want to address the Board on items 43, 44,47? Ashland  
18      has noted to have no objections to that continuance. If  
19      there no other parties that identify themselves to the  
20      Board it will be continued, docket number 43, 44, and 47  
21      to the next meeting. Now go to 45.

22      MR. MCGUIRE: Mr. Chairman, if we could have a ten minute  
23      break and I could talk to counsel I think we speed the  
24      last three items up.

25      THE CHAIRMAN: Anything we can do to speed it up. You may

1 have ten minutes.

2 (AFTER A BRIEF RECESS OFF THE RECORD, THE HEARING  
3 CONTINUED AS FOLLOWS.)

4 THE CHAIRMAN: Item number 45 on today's agenda the establish-  
5 ment of drilling unit forced pooling for the C-36 well,  
6 Buchanan County as requested by OXY USA, Incorporated, docket  
7 number VGOB-1120-65. Mr. Counts.

8 MR. SWARTZ: I believe that counsel has reached an agreement  
9 that partially disposes of the matters that would take  
10 some significant time and what I think our agreement  
11 is -- I'll try to do this if counsel wants to straighten  
12 me out. This agreement involves docket numbers 35, 47,  
13 and 48.

14 MR. MCGUIRE: I believe it's 45, 46, 48.

15 MR. SWARTZ: I'm sorry. 45, 46, and 48.

16 MR. MCGUIRE: Right.

17 MR. SWARTZ: Okay. First of all we've agreed, I believe,  
18 that these three matters can be consolidated because, as  
19 you will learn when Mr. Wirth testifies and you look at  
20 the documents when I file the ownership issues, are  
21 essentially the same items. There will be separate DWES  
22 and so forth, but I think we can move relatively quickly  
23 through the three. There are objects that have been  
24 filed by Ashland and Rogers and the agreement provides,  
25 as I understand it, that we will stipulate that evidence

1 was presented to the Board at the last hearing with  
2 regard to the Rogers and Ashland objections that that  
3 evidence can be assume or will be incorporated into this  
4 record with regard to these matters, that the reason for  
5 the stipulation is that Ashland, Rogers and OXY an-  
6 ticipate that the Board will make the same ruling it  
7 made a month ago based on that evidence and we are  
8 submitting it, submitting these motions for your decision  
9 to create a record to accommodate Ashland and Rogers,  
10 should they elect to appeal these items, I would assume.  
11 If I've stated this correctly, we would then submit it  
12 for resolution, the motions for resolution based on that  
13 stipulation. Mr. Wirth and Mr. Counts will proceed to do  
14 the testimony that's required to pool and that's how I  
15 believe we've agreed to proceed, if it's acceptable to  
16 the Board.

17 MR. MCGUIRE: Let me make a few comments. And that was what  
18 we agreed to. We believe all the major issues were  
19 decided back in October and we don't need to belabor  
20 those issues.

21 THE CHAIRMAN: Excuse me just a second. Would you just please  
22 say for the record who you are.

23 MR. MCGUIRE: I'm Grant McGuire for Ashland Exploration. My  
24 counsel with me is Don Johnson, who represent the Rogers  
25 interest.

1 THE CHAIRMAN: Thank you. I just wanted to get that on  
2 record.

3 MR. MCGUIRE: We believe that all the major issues were  
4 decided at the October hearing and let me just for

5 the record refer to those items. They were docket number  
6 VGOB-26-13, which involves unit C-38, docket number VGOB-  
7 1010-35, which was unit E-34, docket number 1010-39,  
8 which was unit E-36 and docket number 1010-40, which was  
9 unit D-36. We do want to incorporate our objections on  
10 the testimony and the evidence put in at the last hearing  
11 in October by reference. We reserve the right to ask any  
12 questions about the evidence that will be submitted  
13 today, but I can say that I don't precede much examina-  
14 tion on those items because we have gone over the DWES  
15 which I presume to be similar in the October hearings.

16 MR. LEPCHITZ: Mr. McGuire, clear up things for the Board,  
17 you're making reference to the determination that OXY is  
18 a claimant withstanding to force pool disputed coalbed  
19 methane, is that correct?

20 MR. MCGUIRE: That's correct. We contest to the standing  
21 issue and I believe there were a lot of other issues  
22 raised either by pleading or orally which involved  
23 constitutionally and spacing and the issues were result  
24 in OXY's favor at the October hearings and we believe the  
25 Board would reach an identical decision at this hearing.

1 MR. JOHNSON: I want to make a statement on the record with  
2 regard to the Board's order. We went into an extensive  
3 examination and cross-examination with regard to the  
4 operating agreement that was submit by OXY USA, Inc. I  
5 would understand it to be that the operating agreement,  
6 which is being proposed for these units, would be the  
7 same operating agreement. Also, I want to point out to  
8 the Board that I am not certain as to whether or not the  
9 order which was entered in these various hearings, which  
10 on the previous units, whether or not that order was  
11 consistent with the Board's wishes with regard to the  
12 operating agreement and what Mr. Kelly said and the  
13 motion that Mr. Kelly made at the end of that hearing in  
14 October. I do not have a transcript and would simply  
15 want to bring to the Board's attention that the first  
16 paragraph on page 15 of the orders issued pursuant to the  
17 October hearing is the only paragraph dealing with the  
18 subject of the operating agreement. I just want to call  
19 that to the Board's attention, that I am uncertain as to  
20 whether or not that order for the pooling request  
21 complies with what the Board said and I think perhaps the  
22 transcript will bear that out, maybe I'm wrong. Maybe  
23 this is what the Board wants. I just wanted to point  
24 that out for the Board's consideration, not only with  
25 regard to what they have done but what they will do in

1 the future as per the operating agreement objections  
2 which have been raised in the prior proceedings in which  
3 we intend to incorporate in to these proceedings. We  
4 certainly want to state on the record that we would not  
5 waive any objections which we filed before the Board in  
6 the prior proceedings nor would we want to waive any of  
7 those objections which are the same objections raised in  
8 the prior proceedings by pleading and any matter which  
9 weren't covered specifically. We want --in the prior  
10 transcripts we would want to have incorporated on the  
11 pleading in those proceedings incorporated or any  
12 findings which may have been made by the Board with  
13 respect to those pleading incorporated in what we do by  
14 stipulation.

15 THE CHAIRMAN: Was there anything specific to that? You know,  
16 you raised the question of whether or not the Board's  
17 order and I understand you said without the transcripts  
18 and all that, but is there anything specific that you  
19 thought it should have said or --

20 MR. JOHNSON: It was my understanding that the motion Mr.  
21 Kelly made was to the effect that the operating agreement  
22 was not approved by the Board as such.

23 THE CHAIRMAN: Or disapproved.

24 MR. JOHNSON: Or disapproved. And that the parties would  
25 have to come in with a new operating agreement. This

1 talks about just filling in blanks and who know what  
2 else, but it's pretty vague. I don't want to accuse the  
3 Board of being vague, but it's pretty vague.

4 THE CHAIRMAN: Okay. I would just say today that it is not  
5 the intent of the Board to approve nor to disapprove a  
6 joint operating agreement. We have clearly decided that  
7 among ourselves in previous discussions, that it's  
8 clearly our intent and our decision not to approve or  
9 disapprove any joint operating agreement that was present  
10 to us as part of those last hearings nor this hearing  
11 today.

12 MR. SWARTZ: That was our understanding, OXY's understanding,  
13 and it was also our understanding that if and when we had  
14 written operating agreements and reached agreements with  
15 our participates that you wanted up to file the contracts  
16 with you.

17 THE CHAIRMAN: I think there's a dispute of those then you  
18 have the option of coming before the Board with the joint  
19 operating agreements.

20 MR. JOHNSON: I think it's good to clear this up on the  
21 record.

22 THE CHAIRMAN: Sure, that's fine. That is any further  
23 discussion of the Board, I encourage, but that is clearly  
24 what we discussed, I believe from everyone of us and  
25 that's the same understanding that we all have.

1 MR. MCGUIRE: I think it would be helpful to incorporate that  
2 in the future order to make it clear.

3 MR. JOHNSON: I guess when a party gets an order and you say,  
4 "Is that what they really meant when they made this  
5 ruling," and all that we had was Mr. Kelly's motion and  
6 perhaps I misunderstood it. We don't have a transcript  
7 of it.

8 THE CHAIRMAN: If that clarifies it, we're happy to do that.  
9 Any other questions about what we've been ask to do here  
10 today before we precede? Okay. Do you want to proceed  
11 Mr. Counts?

12 MR. COUNTS: Thank you, Mr. Chairman. If it please the  
13 Board, the remaining items on the docket are items  
14 number 45, 46 nd 48. The ownership interest the parties  
15 are the same in those units and if it's acceptable to the  
16 Board we'd like to consolidate those into one hearing.  
17 And it's my understanding that counsel for Rogers or  
18 counsel for Ashland have no objection to doing that.

19 THE CHAIRMAN: Have no objection to doing that?

20 MR. COUNTS: That's correct.

21 THE CHAIRMAN: That's what we've just accepted.

22 MR. MCGUIRE: That's correct.

23 THE CHAIRMAN: We accept that.

24 MR. COUNTS: Okay. Thank you, sir. I would like to call  
25 again, Mr. Wirth.

1  
2 MARTIN WIRTH

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

5  
6 DIRECT EXAMINATION

7  
8 BY MR. COUNTS:

9 Q. Mr. Wirth, are you familiar with OXY proposed explora-  
10 tion and development of unit C-36, D-34 and E-35?

11 A. Yes, I am.

12 Q. And are you also familiar with the application in this  
13 matter?

14 A. Yes.

15 Q. Is OXY USA seeking the forced pooling and the drilling  
16 rights on approximate eighty acre drilling spacing unit  
17 identified as C-36, D-34, and E-35 in the Oakwood Coalbed  
18 Gas Field for all coal seams below the Tiller?

19 A. Yes, we are.

20 MR. COUNTS: Mr. Chairman, the Board has previously been  
21 provided with copies of the consent to stimulate as well  
22 as the DWE. I believe the Board has that in a packet  
23 before it. I've also asked the Board if it would be  
24 acceptable to incorporate the Epperly affidavit pre-  
25 viously provided to the Board with regard to this

1 application.

2 THE CHAIRMAN: Any objection?

3 MR. MCGUIRE: I'd like to see the affidavit.

4 MR. JOHNSON: I have not seen the affidavit.

5 MR. COUNTS: Okay.

6 THE CHAIRMAN: The Board has had that provided earlier and had  
7 testimony about it, certainly we'll take a minute for you  
8 to get that.

9 MR. JOHNSON: I appreciate it, sir.

10 MR. COUNTS: Mr. Chairman, while they're doing that if I  
11 could also present to the Board copies of the notice of  
12 hearing and notice of pooling on all three of these  
13 units.

14 THE CHAIRMAN: These would be Exhibit 1 for each of these  
15 three wells?

16 MR. COUNTS: That's correct.

17 (Proof of notice of hearing rendered to the  
18 Board as Exhibit 1. )

19 MR. COUNTS: Mr. Chairman, I'd like to present to the Board a  
20 copy of the lease from Island Creek with regard to coal  
21 seams being covered in connection with the consent to  
22 stimulate and ask it be marked as Exhibit 2. There are  
23 three plats attached to cover, but the same lease is with  
24 all three units.

25 THE CHAIRMAN: Does counsel have a copy of this?

1 MR. MCGUIRE: Yes, sir.

2 THE CHAIRMAN: We will accept that as Exhibit 2 and 3 for each  
3 well, each of the three wells, C-36, D-34, E-35. We're  
4 also accepting and incorporating into it the DWEs for  
5 each of those as well as the consent to stimulate.

6 (Lease rendered to the Board as Exhibit 2. )

7 (Lease rendered to the Board as Exhibit 3. )

8 MR. MCGLOTHLIN: Mr. Chairman,

9 THE CHAIRMAN: Mr. McGlothlin.

10 MR. MCGLOTHLIN: In regard to Exhibit 2, well location map,  
11 these maps have not been certified.

12 MR. WIRTH: As for permitting, it does need to be, but as to  
13 pooling it does not.

14 THE CHAIRMAN: If we were considering inspector decision,  
15 appeal of inspector decision or anything like that, it  
16 would have to be certified. Mr. Johnson, just from  
17 Board's perceptive, if you were not here when we asked  
18 questions about Mr. Epperly I don't know if that's what  
19 you're looking at or not, but just to tell you that the  
20 Board asked questions to be provided assurance that Mr.  
21 Epperly had the authority to authorize the consent to  
22 stimulate and the objections of any drilling activity.  
23 And we also asked for clarification on the consent to  
24 stimulate as it had been previously provided. That was  
25 modified and represent to the Board.

1 MR. JOHNSON: I was really looking at the question that Mr.  
2 McGlothlin raised concerning certification.  
3 THE CHAIRMAN: Did you have a chance to look at the documents?  
4 Any questions about the exhibits? No objections to the  
5 exhibits?  
6 MR. JOHNSON: No objection to regard to what they represent.  
7 THE CHAIRMAN: Okay. Go ahead, Mr. Counts.  
8 MR. COUNTS: Thank you, Mr. Chairman.  
9 Q. (Mr. Counts continues.) Mr. Wirth, are you familiar with  
10 the ownership of drilling rights involved in these  
11 units?  
12 A. Yes, I am.  
13 Q. And does OXY own drilling rights in these units?  
14 A. Yes, we do.  
15 Q. And what is OXY's interest?  
16 A. OXY is designated operator for Island Creek coal company  
17 which by virtue it's coal lease may control the coalbed  
18 methane from the owners of 100% of the unit.  
19 Q. And does OXY wish to dismiss any of the respondents  
20 notified of this application?  
21 A. No, it does not.  
22 Q. Okay. What specifically are the interest of OXY as  
23 seeking the forced pooling, Mr. Wirth?  
24 A. Any interest in the coalbed methane lying within the unit  
25 and owned by Lon B. Rogers, Bradshaw Trust upon Rogers

1 the second trustee, Lon B. Rogers and Ashland Explora-  
2 tion, Inc.

3 Q. Thank you, Mr. Wirth. Approximately, how many net coal  
4 areas are owned by the potential claimants in the  
5 proposed unit?

6 A. 80. 00 mineral areas. Ashland Incorporated has conven-  
7 tional oil and gas lease covering that amount.

8 Q. Who is that oil and gas lease from, Mr. Wirth?

9 A. Ashland Exploration, Inc. , from Lon and Fawn Rogers,  
10 trustees.

11 Q. Mr. Wirth, does OXY seek and order pooling all interest  
12 or estates in coalbed methane gas drilling unit for the  
13 development and operation thereof?

14 A. Yes, it does.

15 Q. And does OXY seek the forced pool, the drilling rights of  
16 each individual notified if living and if deceased, the  
17 unknown successor or successors to any such deceased  
18 individual?

19 A. Yes, it does.

20 Q. Mr. Wirth, were efforts made to determine if any of  
21 these individuals were living or deceased and if so, with  
22 regard to their whereabouts?

23 A. Yes, it was.

24 Q. And are the addresses set out in Exhibit B to the  
25 application the last known addresses for the respondents?

1 A. Yes, it is.

2 Q. Prior to this hearing where efforts made, quality made  
3 to work out these agreements with these parties?

4 A. Yes, it was. Every party was located, contacted or  
5 offered a lease of the coalbed methane or assign such.

6 Q. Mr. Wirth, has OXY prepared an exhibit that set forth  
7 terms that would it propose as well as this recommenda-  
8 tions concerning provisions to be included in the pooling  
9 order?

10 A. Yes, it has.

11 Q. Are these the same terms that you previously testified to  
12 with regard to unit C-24, which we heard yesterday?

13 A. Yes, it is.

14 MR. COUNTS: I would like to provide those to the Board.

15 THE CHAIRMAN: The record will show that the Board is accept-  
16 ing an exhibit to Martin Wirth's testimony for D-34, E-35  
17 and C-36.

18 (Documents rendered to the Board as Exhibit 4.)

19 Q. (Mr. Counts continues.) Mr. Wirth, has the Board  
20 previously been provided with a copy of this joint  
21 operating agreement that you attempted to negotiate with  
22 party of the respondents?

23 A. Yes, it has.

24 Q. Mr. Wirth, in your opinion, the granting of this applica-  
25 tion would be in the best interest of conservation

1 prevention of waste and protection of correlative  
2 rights?

3 A. Yes.

4 MR. COUNTS: I have no further questions of this witness.

5 THE CHAIRMAN: Cross-examination. And when you do cross-  
6 examine again, just to clear for the record, please  
7 identified which one you when you're doing the cross-  
8 examination.

9  
10 CROSS-EXAMINATION

11  
12 BY MR. MCGUIRE:

13 Q. Grant McGuire from Ashland Exploration. Mr. Wirth, in  
14 your summary of testimony, which was submitted to the  
15 Board, I see that you have asked the Board to have the  
16 election to participate to be within fifteen days from  
17 the date of the order. I just wanted to advise the Board  
18 that under the Board's current procedure the orders are  
19 often signed and it may be two weeks until they are  
20 recorded and available in Buchanan County courthouse and  
21 I would request the Board, if OXY has no objection, to  
22 say that the effective date of any orders are the date  
23 they are filed for proposes of appeal and for the  
24 proposes --

25 THE CHAIRMAN: The Board's done that anyway. I mean, he's

1 produced as an exhibit, but that's what the Board has  
2 done.

3 MR. MCGUIRE: Okay.

4 THE CHAIRMAN: So I'll stipulate that for the record. We're  
5 looking on a problem over there and will hopefully have  
6 that corrected soon.

7 MR. COUNTS: I have no further cross-examination. It appears  
8 to me this summary that we've been over before.

9 THE CHAIRMAN: Okay.

10 MR. JOHNSON: I need to ask a few questions.

11  
12 CROSS-EXAMINATION

13  
14 BY MR. JOHNSON:

15 Q. Donald R. Johnson, attorney for Lon B. Rogers and  
16 wife and Lon B. Rogers Bradshaw Trust, Lon Rogers the  
17 second trustees. With regard to the operating agreement  
18 that you have asked the Board to adopt, that is the same  
19 operating agreement that you filed with the Board which  
20 was applicable to the hearings that we had in September  
21 of 1990, is that correct?

22 A. That's correct, Mr. Johnson.

23 Q. You've not filed any different operating agreement with  
24 the Board, it's the same one?

25 A. That's correct.

1 Q. With respect to the ownership interest of the Rogers in  
2 this tract, you and I prior to this hearing had some  
3 conversation with regard to some differences in the  
4 various tracts owned by Rogers as per your title examina-  
5 tions, is that correct?  
6 A. That's correct, sir.  
7 Q. And I believe with regard to two or three of the proposed  
8 wells or units that were going to be heard today that  
9 your company withdrew those units because you found other  
10 persons that needed to be notified, is that correct?  
11 A. We asked for continuance on those, yes, sir.  
12 Q. And that's because you found additional owners of the oil  
13 and gas, is that correct?  
14 A. Discovered different names than the Lon Rogers trustee.  
15 It named out the specified all the parties in these  
16 trusteeships, therefore I had to renotification.  
17 Q. And your title examinations indicate that these addition-  
18 al parties, which you had added to these other pooling  
19 applications, that they are not applicable to the three  
20 wells that we're talking about today. Is that your  
21 company's conclusion?  
22 A. Based on the title information received under title  
23 options on subject tracts we have before you the informa-  
24 tion that we show is correct based on all records that  
25 the entitled opinion has checked and verified.

1 Q. Would be your company's conclusion then based upon those  
2 title abstracts that the Lon B. Rogers, Bradshaw Trust  
3 or trust which has the name Lon Rogers as the second  
4 trustee, is the owner of all the interest of the oil and  
5 gas, is that correct?  
6 A. Under these?  
7 Q. Yes, sir.  
8 A. The parties as stipulated in Exhibit B?  
9 Q. The parties in Exhibit B, yes, sir.  
10 A. Yes, sir. That is what we have discovered in our title  
11 opinions.  
12 Q. Is your company continuing to proceed with regard to  
13 these applications under the instrument style documenta-  
14 tion of operator/limited power of attorney? Is that the  
15 document that you are proceeding under which document has  
16 been previously discussed in the hearings held in October  
17 of 1990?  
18 A. Yes, based on the same evidence, that's correct.  
19 Q. It's the same document?  
20 A. Yes, sir.  
21 Q. Is the only coal lessee that you have obtained a consent  
22 from Island Creek Coal Company?  
23 A. Yes, Island Creek, below the Tiller is our operational  
24 plans or if we may stimulate, yes.  
25 Q. Does your company have the intention at this time to

1 stimulate any seams above the Tiller seam or to extract  
2 any coalbed methane from any coal seams lying above the  
3 Tiller seam?

4 A. No, sir, we do not.

5 Q. Okay. It's my understanding that Island Creek Coal  
6 Company gives you these rights, the designation of  
7 operators/limited power of attorney as well as the  
8 consent to stimulate pursuant to it's coal lease. Is  
9 that correct?

10 A. That is correct.

11 MR. MCQUIRE: I have no further questions.

12 THE CHAIRMAN: Any questions by members of the Board?

13 MR. HARRIS: I just have one about the green cards. I notice  
14 here that in the notification their green cards are  
15 turned, but not signed.

16 THE CHAIRMAN: You want to go ahead and ask that to counsel.

17 MR. HARRIS: I don't know if you all have control over that,  
18 but I know the postal service --

19 MR. COUNTS: It's notification with regard to return receipts  
20 of difficult processes. A lot of times we'll send those  
21 out and they'll come back to us two or three times. We  
22 keep sending them out, but often times they were signed  
23 for or received and sometimes they don't come back at  
24 all. On a lot of these applications we may have 75  
25 respondents that is basically unknown or missing mineral

1 owners, whatever. That's often a problem that we have.  
2 MR. HARRIS: But is it not the postal service duty to deliver-  
3 ing the person the mail unit or whatever?  
4 MR. COUNTS: I would normally be, yes, sir.  
5 MR. COUNTS: Mr. Chairman, we've provided a copy of the DWE  
6 to the Board and Mr. Johnson and Mr. McGuire also have  
7 copies of the DWE. If there are any questions with regard  
8 to the DWES on these units, I'd be happy to call Mr.  
9 Vangolin to testify.  
10 MR. MCGUIRE: Mr. Chairman of the Board, I believe we've been  
11 over this the last time. We see these DWES as being  
12 substantially the same and we don't have any questions.  
13 We incorporate our examination of the witness from last  
14 time.  
15 THE CHAIRMAN: The record will show that's Mr. McGuire from  
16 Ashland. I don't mean to keep pounding --  
17 MR. MCGUIRE: And I identify myself as Grant McGuire from  
18 Ashland Exploration just for the tape recording.  
19 THE CHAIRMAN: Thank you.  
20 MR. JOHNSON: We would like for OXY to stipulate that the  
21 testimony rendered with regard to the DWES in the prior  
22 testimony in October would be the same as the testimony  
23 with regard to these varying only to the extent that the  
24 number amounts may be somewhat different.  
25 MR. SWARTZ: In substances, it would be the same, but in

1 particular it might a little different.

2 MR. JOHNSON: That's what I said. The dollar amounts might  
3 be different.

4 MR. SWARTZ: Well, the categories --

5 THE CHAIRMAN: Excuse me, excuse me gentlemen. This is Mr.  
6 Johnson that just asked for that stipulation.

7 MR. JOHNSON: Yes.

8 MR. SWARTZ: Ron Swartz. But the problem is that we have  
9 revised the form slightly since October to accommodate  
10 some request that the Board ordered me that there's a  
11 miscellaneous category. It might look a little dif-  
12 ferent, the numbers clearly are going to be different,  
13 but in substances it ought to be the same and I'm  
14 perfectly willing to incorporate.

15 MR. JOHNSON: We'll take it based upon stipulation that's  
16 represent by Mr. Swartz.

17 THE CHAIRMAN: Any further questions? Do you have any further  
18 witnesses?

19 MR. COUNTS: No, sir, Mr. Chairman.

20 THE CHAIRMAN: Any questions of the Board? Okay. We've heard  
21 the testimony regarding wells, C-36, D-34, and E-35. Do  
22 we have a motion?

23 MR. EVANS: Mr. Chairman,

24 THE CHAIRMAN: Mr. Evans.

25 MR. EVANS: I move that this Board affirm it's prior decisions

1 with regard to wells, C-36, D-34, and E-35, that OXY U.  
2 A is the claimant within the needs of section 45. 1-361.  
3 22 and that this Board approves OXY's request to force  
4 pool conflicting interest in these units. I also move  
5 that this Board neither approve nor disapprove opposed  
6 JOA, Joint Operating Agreement, however, the Board  
7 encourages the parties to resolve potential concerned  
8 about how these units are to be operated. If a conflict  
9 or disagreement arises the parties are free to petition  
10 the Board for dispute resolution.

11 THE CHAIRMAN: You've heard the motion. Do I have a second?

12 MR. KELLY: Second.

13 THE CHAIRMAN: Motion and second. Any further discussion?

14 No further discussion. Please indicate your agreement by  
15 saying, yes.

16 THE Board: Yes.

17 THE CHAIRMAN: Opposed say, no. The motion carries unanimous-  
18 ly. Thank you. That clears today's agenda. The  
19 December meeting is schedule for the 18th, Tuesday the  
20 18th of December and Wednesday the 19th of December,  
21 depending the number of items on the agenda. I would ask  
22 Mr. Fulner if you could kindly update us on what we can  
23 anticipate. We continued item number 20 and I'd also  
24 clarify that if there's any other of those items that  
25 were withdrawn that may have involved prior order Cabot,

1 we would just stipulated that we would just also intend  
2 to continue that and that we could subsequently withdraw  
3 if there's no objection. Just so we don't have an order  
4 withdrawn that the parties are not aware of.

5 MR. FULNER: Mr. Chairman, for the agenda for December, which  
6 will be in front of the Board, at the wishes of the  
7 Board, we have the following for the docket numbers or  
8 the following. We have field rule establishment for  
9 Buchanan County which is continued from today's agenda.  
10 We have the escrow in issues. We have the continuance of  
11 VGOB-9611. We have the continuance of VGOB-1010.

12 THE CHAIRMAN: If you'll just tell the item number, too so I  
13 can --

14 MR. FULNER: 1010-20.

15 THE CHAIRMAN: Item numberdocket number on the agenda.

16 MR. FULNER: The first docket number, the first item number  
17 would to field rule establishment.

18 THE CHAIRMAN: Uh-huh. I'm with you there. I meant for any  
19 of the particular case, well cases.

20 MR. FULNER: The second one being the escrowing in issue.

21 THE CHAIRMAN: Okay.

22 MR. FULNER: The third item will be VGOB-9611 which was Item  
23 5 on this agenda. I assume that the Board will want to  
24 consider the fourth item on the December agenda to be  
25 VGOB-1010-20 to VGOB-1010-28 in regards to the field

1       decision of the Cabots.

2   THE CHAIRMAN: I'm sorry. I'm stopped at escrow because I  
3       can't confirm that we continued the item 5, did we? EH-  
4       36? I'm just trying to follow. You're going by VGOB  
5       numbers is the number you're going by. Pick up from  
6       there and go forward.

7   MR. FULNER: Now, Item 4 of the December agenda will be the  
8       consideration of items 12 through 20 on the current  
9       agenda, as to Cabot's appeal.

10   MR. JOHNSON: Mr. Wampler, I don't want to interrupt what's  
11       going on but --

12   THE CHAIRMAN: That's okay.

13   MR. JOHNSON: If I could have some explanation as to what's  
14       going on with the Cabot appeal on that item.

15   THE CHAIRMAN: I'll be happy to fill you in. OXY, USA  
16       proposed to withdraw the application. The Board has  
17       ruled, we didn't have in front of us which one's of  
18       these, it may be all of them, it may be one or two. We  
19       were sure on twenty, but we were not on what have you,  
20       and we didn't want to have something withdrawn where we  
21       had issued an order on appeal and wipe that order out and  
22       parties have left and think that there would be no  
23       problem. So by continuing it with Cabots here and  
24       concur where ever they had a issued by the Board dealing  
25       with item 12 through 20 at next time if there's not

1 objection, it can just be withdrawn.

2 MR. JOHNSON: So the Board is not formality withdrawing those  
3 and is pending to wait and see --

4 THE CHAIRMAN: The Board accepted the withdraw pending, but  
5 continue these, pending any problem that Cabot may raise.

6 MR. JOHNSON: Okay. I certainly appreciate that. I wasn't  
7 here. I apologize.

8 THE CHAIRMAN: Go ahead, Mr. Fulner.

9 MR. FULNER: The next item on the December agenda will be the  
10 hearing of the continuance cases which is the present  
11 items 43, 44, item 47. In addition to application four  
12 pooling applications have been submitted to the Board.  
13 One is a Edwards and Harding, the other is an erect  
14 petition, forced pooling, I'm sorry. I'm under the  
15 understanding that the petition filed by Cabot earlier  
16 will be taken as comments by the Board on their field  
17 rule.

18 THE CHAIRMAN: That's submitted. That's correct.

19 MR. FULNER: I just wanted to make that clarification.

20 THE CHAIRMAN: Then we would dispose to do whatever refund or  
21 whatever you need to do.

22 MR. FULNER: That would be the items from the December  
23 agenda.

24 THE CHAIRMAN: Okay. And I would remind all parties that's  
25 part of that and we certainly want staff to enforce this

1           that anything present in December will go by the adopted  
2           and effective rules of the Boards and the procedural  
3           rules for that period of time.

4   MR. MCGLOTHLIN:   Mr. Chairman.

5   THE CHAIRMAN:   Mr. McGlothlin.

6   MR. MCGLOTHLIN:   Would you like approval from the last  
7           meeting the order. Did we do that or --

8   THE CHAIRMAN:   They're filed.

9   CLERK:   When you didn't call back --

10   MR. MCGLOTHLIN:   Nobody call me.

11   CLERK:   You got a memo.

12   MR. MCGLOTHLIN:   Pardon?

13   CLERK:   You had a memo.

14   THE CHAIRMAN:   I'm sorry. They did get filed. They were  
15           filed this past Monday.

16   MR. MCGLOTHLIN:   I would request that follow up from staff be  
17           more accurate, that all members are phoned.

18   THE CHAIRMAN:   You're asking for a phone call, follow up?  
19           We'll certainly try to ensure that --

20   MR. MCGLOTHLIN:   Okay. It could be my fault. I apologize.

21   THE CHAIRMAN:   We'll try to make sure that we have that  
22           communication there. Thank you, Mr. McGlothlin.

23           Anything further, members of the Board? If not, this  
24           hearing is adjourned. Thank you very much and Happy  
25           Thanksgiving.

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(End of proceedings for  
November 21, 1990. )

1  
2 CERTIFICATE  
3

4 COMMONWEALTH OF VIRGINIA

5 COUNTY OF WASHINGTON  
6

7 I, June J. Parks, Notary Public in and for the Common-  
8 wealth of Virginia, at Large, do hereby certify that the  
9 foregoing is a true transcript of the proceedings had in the  
10 matters before the Virginia Oil and Gas Conservation Board in  
11 Abingdon, Virginia, on November 21, 1990; that all of said  
12 proceedings were recorded electronically and have been reduced  
13 to writing by me from said electronic recordings, and that to  
14 the best of my knowledge and ability, said transcript ac-  
15 curately reflects the proceedings had.  
16

17 GIVEN under my hand this 18th day of December, 1990.  
18

19  
20 JUNE J. PARKS  
NOTARY PUBLIC  
21

22  
23 My commission expires August 31, 1994.  
24  
25

VIRGINIA:

1  
2 CERTIFICATE  
3

4 COMMONWEALTH OF VIRGINIA

5 COUNTY OF WASHINGTON  
6

7 I, Cleadys D. Griffin, Notary Public in and for the  
8 Commonwealth of Virginia, at Large, do hereby certify that the  
9 foregoing is a true transcript of the proceedings had in the  
10 matters before the Virginia Oil and Gas Conservation Board in  
11 Abingdon, Virginia, on November 22, 1990; that all of said  
12 proceedings were recorded electronically and have been reduced  
13 to writing by me from said electronic recordings, and that to  
14 the best of my knowledge and ability, said transcript ac-  
15 curately reflects the proceedings had.  
16

17 GIVEN under my hand this 18th day of December, 1990.  
18

19  
20 CLEADYS D. GRIFFIN  
21 NOTARY PUBLIC  
22

23 My commission expires March 19, 1993.  
24  
25

VIRGINIA: