

**DEPARTMENT OF MINES,
MINERALS & ENERGY**

VIRGINIA GAS AND OIL BOARD

**TRANSCRIPTS FOR CALENDAR
YEAR 1991**

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VIRGINIA OIL AND GAS CONSERVATION BOARD

HEARING OF JANUARY 22, 1991

9:00 A. M.

AT THE VIRGINIA 4-H CENTER

ABINGDON, VIRGINIA

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1 These matters came on to be heard before the Virginia
2 Gas and Oil Board at the Washington County 4-H Center in
3 Abingdon, Virginia, on this the 22nd day of January, 1991.

4 MR. WAMPLER: Good morning. My name is Benny Wampler. I'm
5 Assistant Director for mining for the Virginia Depart-
6 ment of Mines, Minerals and Energy and I'd like to have
7 our Gas and Oil Board introduce themselves to you this
8 morning.

9 (Members introduced.)

10 MR. WAMPLER: The published agenda -- I'll start off with
11 an apology. I understand that the Bluefield paper
12 published our Item III establishing of a drilling unit
13 in forced pooling for A-38 as A-30 which was a mistake
14 and we're sorry about that, but the information that we
15 provided the papers all said, A-38. I understand at
16 least one person may have appeared here on a-30. The
17 Board has rendered a decision in the past on A-30, a
18 final decision.

19
20 ITEM I

21 MR. WAMPLER: The first item on today's agenda, the Board,
22 upon its own motion, will receive comments and proposals
23 for the establishment of field rules and drilling units
24 for the Berea Sandstone in Buchanan County. This is
25

1 continued from last hearing. The first person on the
2 agenda was Mr. Fain and he has asked to reserve rights
3 for follow up comments. Grant McGuire has signed up and
4 also reserving rights to make additional comments. I'm
5 just going down the list here. Christopher Wallace?

6 MR. WALLACE: Yeah, I'd like to reserve the right to
7 comment.

8 MR. WAMPLER: Okay. Randy Albert.

9 MR. ALBERT: I'd like to reserve the right to comment.

10 MR. WAMPLER: Chad Harding.

11 MR. HARDING: I don't think I'll need to follow up.

12 MR. WAMPLER: All right. That's our list. Is there any
13 other people that wish to address the Board, person or
14 persons that wish to address the Board on the establish-
15 ing of field rules?

16 MR. FAIN: If no one else has anything to say I'd like to
17 respond to the two letters that have been submitted to
18 the Board by Island Creek and Consol and there was a
19 letter submitted by Coke-Carbon, but I see perhaps there
20 are some other objections that need to be stated.

21 MR. BREEDING: Island Creek would just observe the right to
22 comment. Our comments have been previously submitted
23 to you and to other members in writing.

24 MR. WAMPLER: Right. Yes, sir. I understand.

25 MR. FAIN: In that case, Mr. Chairman, Cabot would like to

1 go forward and respond to the comments that have been
2 submitted. I guess basically in opposition to --
3 partially in opposition to Cabot's proposal for field
4 rules, I'd like to address first Island Creek's written
5 submission to the Board.

6 MR. WAMPLER: Excuse me just one second. I was handed this
7 morning a letter from Doug Wells, ^{KSA}Coke-Carbon. Doug, do
8 you have any additional copies of the letter? Do any
9 of the Board members have copies of this?

10 MR. EVANS: Yes, I believe I've got one.

11 MR. WAMPLER: Do you have that one, Mr. Fain?

12 MR. FAIN: Yes, I do.

13 MR. WAMPLER: You have it. So you plan to address that,
14 okay.

15 MR. FAIN: Yes.

16 MR. MASON: We don't have that.

17 MR. WAMPLER: Okay.

18 MR. EVANS: Me neither.

19 MR. WAMPLER: This is dated January 21st.

20 MR. MCGLOTHLIN: I've got one dated January 11th.

21 MR. WAMPLER: Yeah, we all have that in a package. There's
22 one dated January 21st.

23 MR. MCGLOTHLIN: I don't have that one.

24 MR. WAMPLER: Okay. She's going to make some copies. Mr.
25 Fain, do you have the January 21st letter?

1 MR. FAIN: Yes, I sure do.

2 MR. WAMPLER: Okay. I'll allow you to just go ahead and
3 make your comments and the Board will get those copies.

4 MR. FAIN: Okay. I'll start off with the Island Creek
5 letter anyway, Mr. Foreman, although I will address
6 generally the Coke-Carbon letter also at the same time.
7 First, Coke-Carbon and Island Creek suggest to the Board
8 that it is prudent to not allow any oil and gas, deep
9 gas development, conventional gas development also it's
10 been called, until after all mining activities in a
11 particular area have concluded. We respectfully submit
12 that that is not a reasonable position for a coal
13 industry to take, for these coal companies to take or
14 for this Board to really give it much serious consider-
15 ation to that suggestion. Coal mining activities might
16 be completed in the year 2015, 2025, 2050. We just
17 don't know and for a gas company who has the right to
18 develop one of Virginia's important natural resources to
19 be expected to wait until the end of next century to
20 beginning their gas development operations or half way
21 into next century is just not prudent for the Common-
22 wealth and it's not fair to the owners of this natural
23 resource. Island Creek and Coke-Carbon seem to not also
24 recognize that although they may finish their mining
25 activities by the year 2015, for example, or 2025.

1 There are other coal owners on the same tract of land.
2 They may not have even begun their coal mining activit-
3 ies by the year 2015. For example, when one of the coal
4 estates finish -- one of the coal lessees finishes
5 operations and so to expect the natural gas operator to
6 then wait until all coal operators on a track of land
7 have finished their mining activities is simply not
8 prudent. The fact of the matter is, concurrent oil and
9 gas and coal operations are going on now and they're
10 going to go on in the future. Island Creek recognized
11 this and it's own submission. I would direct the
12 Board's attention to this January 10 letter right at the
13 bottom where Island Creeks says, "Even prior to mining,
14 if wells are located in protective pillars and main
15 development the mine-ability of coal should not be
16 impacted." Well, that's a statement from Island Creek,
17 members of the Board, telling you that coal activities
18 and gas developmen activities can go forward con-
19 currently. It's worked in the past and it can work in
20 the future. So we hope that the Board won't give
21 serious consideration to not promulgating field rules
22 because, on the basis that all mining activity on a
23 tract of land, coal mining activity ought to have
24 finished or concluded before natural deep gas develop-
25 ment activities begin. Deep gas or natural gas, I

1 should say, is a very, very important natural resource
2 for this Commonwealth and for the country. I think the
3 Board understands that obviously, particularly in view
4 of what's going on in the Persian Gulf as we speak
5 today. Natural gas is a clear and efficient method of
6 energy and also it provides not that much of an severe
7 impact on the environment to recover it. And also I'd
8 like to address Island Creek's suggestion that the
9 economic impact of Buchanan County ought to be consider-
10 ed by the Board in refusing to promulgate field rules.
11 Well, I hope the Board won't give serious consideration
12 to that either to hold up these field rules for develop-
13 ment of natural gas in the Pilgrim's Knob area. The
14 fact that it takes more man hours to develop coal than
15 it does gas is not a reason for holding up development
16 of this very important natural resource in Virginia.
17 More over, the lessees of that natural gas have every
18 right to begin developing their resource. Now, Island
19 Creek also suggest and Cabot vehemently objects to the
20 suggestion that the deep gas owner, once it gets a
21 permit for a well or once it drills a well, ought to be
22 obligated to either move that well or plug and abandon
23 that well if the coal operators mine plan at a future
24 date changes. Cabot respectfully submits that it's
25 unreasonable to expect that coal mining activities are

going to drive or dictate gas development activities.
If a gas operator applies for a permit and gets a permit
he has every right to develop that resource. If a coal
operator at a future date changes his mine plan and is
not pleased with where that well is located, that mine
operator, that coal owner has got the obligation to
either mine around that well and they have technology to
do that or mine through that well and pay for the
plugging and the reserves left in place. So Cabot
strongly hopes that the Board will not consider putting
into these field rules any kind of a measure that would
require deep gas owners to pay for plugging and abandon-
ing of a well or the movement of a well if at some
future date a coal owner changes his mine plan. It's
just not fair and it's not reasonable to make that
assumption that the owner of natural gas should have to
bear that cost when it has a legitimate permit to drill
for and recover it's natural resource. Now, the next
item I'd like to address is Island Creek's suggestion
that the field boundary for this Pilgrims Knob field
should be smaller than what Cabot has proposed. Island
Creek, if you'll look at the January 10 submission, has
an exhibit where they suggest that the field boundary for
this field should be the ten foot isopach line rather
than what Cabot has proposed, the five foot isopach

1 line. Cabot respectfully submits that if the Board goes
2 along with Island Creek's suggestion, we won't be
3 accomplishing anything by these field rules much at all
4 because about eighty or ninety percent of this area
5 within the ten foot isopach line has already been
6 developed. The fact of the matter is, this Board
7 understands that development is occurring in this
8 boarder area in the Pilgrims Knob area, otherwise it
9 would not have put on this agenda at it's own motion
10 that the promulgation of field rules for this area.
11 Cabot and other natural gas developers are going to be
12 developing in this area out to the five foot porosity or
13 isopach line as you heard from Mr. Levey and from Mr.
14 Blake at the last hearing and you also heard from them
15 the economics of the situation that it makes sense for
16 gas developers to try to develop between the five and
17 ten foot or even thicker isopach areas. Also, we would
18 remind the Board that geology is a science and sometimes
19 it's not a perfectly exact science, although we believe
20 that this area between this outer boundary, five foot
21 isopach line and inner ten foot isopach line designates
22 those isopach thickness. There are going to be in-
23 variably some areas in between that are thicker than ten
24 feet and less than five feet. It's not an exact
25 science. I mean, there's plenty area in here. What I'm

1 trying to tell the Board is there's plenty of area in
2 here to be developed and it's going to be developed.
3 And as long as that's the case why not promulgate the
4 field rules that will govern how this development
5 occurs. This Board really just won't accomplish much if
6 it limits the field boundary as Island Creek has
7 suggested because that area is pretty much already
8 developed. As long as we're here to promulgate rules
9 that give guidance to future development let's do it in
10 the area that is most likely to be developed and as
11 Cabot has already shown the Board at the last hearing
12 that is the five foot isopach line in the Buchanan area
13 around Pilgrims Knob. So we hope the Board will not
14 seriously consider Island Creek's suggestion that the
15 field boundary be limited as suggested in this letter.
16 The next item to address is Island Creek's discussion of
17 the unit sizes and shapes of the units under Cabot's
18 proposal and we don't really see much opposition to our
19 proposal from what Island Creek has to say. Island
20 Creek says that there ought to be some flexibility built
21 into the field rules to account for case by case
22 determinations that require some movement of a well
23 outside of the unit established or the drilling window
24 established on a unit and Cabot couldn't agree more.
25 Cabot would direct the Board's attention to Section 2.9

1 of this proposal and I'll just read it for you very
2 briefly because we think we have addressed this issue of
3 flexibility and we couldn't agree with Island Creek
4 more. That needs to be in the field rules. Section 2.9
5 reads as follows, "The field rules should specify that
6 the Virginia Gas and Oil Inspector may consider and
7 grant location exceptions on a case by case basis and
8 approve their regular unit configurations if he deter-
9 mines it's appropriate to do so." Section 2.10 states,
10 "The field boundaries and units therein should be
11 modified in the future by action of the Board based upon
12 either the recommendation of the inspector or by
13 application and proper showing by parties with an
14 economic interest in the field." So we think we have
15 addressed Island Creek's concern about building into
16 these field rules flexibility to take care of future
17 issues about the location of a well. For example,
18 Island Creek may be concern that it may not be prudent
19 to locate a well on one drilling window in the alternate
20 end of successive unit as Cabot has proposed. Cabot
21 agrees, there may be topographic problems or mining plan
22 problems that will prevent a location of a well in that
23 drilling window. Under Cabot's field rules we can then
24 come to the inspector and say we ought to have a
25 location exception or as Island Creek I think, or

1 someone else has suggested perhaps two units ought to be
2 combined to form one unit in some unusual circumstances
3 where you just can't find any prudent place on one unit
4 for a well then perhaps you could combine two units and
5 put two wells on the adjacent unit. These things could
6 be handled by the Board and by the inspector with
7 Cabot's proposal as written and so we think we have
8 addressed Island Creek's concern about unit sizes and
9 shapes. Otherwise, there is no real objection by Island
10 Creek to the 160 acre size or the rectangular shape of
11 the units proposed by Cabot. Now, that brings us to the
12 last issue that Island Creek objects to and that's the
13 twenty-five hundred foot, interpretation of the twenty-
14 five hundred foot statue that Cabot requests in it's
15 field rules. I would like to remind the Board and I'm
16 sure it understands already, but Island Creek is in a
17 position here as the owner of the coal seam that is
18 likely to be stimulated. Let me show you this exhibit
19 again so we can all understand what I'm talking about.
20 Island Creek is the owner of the Pocahontas 3 seam
21 largely in this area. So Island Creek is the perfect
22 coal company to use as an example of why Cabot thinks
23 this statue ought to be interpreted so that we can all
24 have a clear picture at what's going on here. What's
25 likely to happen -- what will happen under the casing

1 program as suggested, for example, by OXY who is doing
2 most of the coal bed methane development out here, the
3 coal bed methane well is going to be drilled and cased
4 to a point above Island Creek's coal seam. It's not
5 going to be drilled and cased through the coal seam.
6 It's going to stop right here and what you're going to
7 have is open hole stimulation of that coal seam. Now,
8 Island Creek says in it's letter and I'd like to direct
9 you to Page 1 of this letter and I quote, "With careful
10 development and close coordination of coal bed methane
11 activity between the gas companies and the coal com-
12 panies, coal bed methane operations can be done in a
13 manner that should not severely impact the mine-ability
14 of coal reserves." What Island Creek has just told you
15 is -- in preceding that sentence Island Creek said,
16 "That the natural progression of things ought to be coal
17 bed methane drilling activities followed by coal
18 mining." What they're telling you is exactly what Cabot
19 has been arguing all a long and that is that this coal
20 bed methane development does not impact the mine-ability
21 of the coal. To the contrary, it benefits the mine-
22 ability of the coal. These coal bed methane wells serve
23 as vertical ventilation holes to vent gas out of the
24 coal seam. So this coal bed methane -- well, contrary
25 to hindering coal mining activities, it's actually going

1 to benefit. Now, let me give you this other analogy.
2 Say for example this strata was coal, do you really
3 think the Virginia Legislature intended by Section
4 361.12 to say that if this well is drilled up here and
5 at some future date this deep well is drilled over here
6 within twenty-five hundred feet that this coal strata
7 owner ought to have a reason to object to this second
8 well being placed within twenty-five hundred foot of
9 this first well that's no where near it's coal strata.
10 It doesn't effect the coal strata. You bring that
11 analogy up to here and you have the exact-- and the
12 answer is obviously, no, General Legislature did not
13 intend for this deep strata owner to be able to object
14 to a second well placed within twenty-five hundred feet
15 of this first well over here. It just has no impact on
16 it. And bring that analogy up to the situation where
17 the coal owner owns the seam that's being simulated and
18 you have the exact same result. This coal bed methane
19 well is doing nothing but benefiting the coal mining
20 activities and therefore, the legislature that we submit
21 did not intend for this coal seam owner to be able to
22 object to a well coming in within twenty-five hundred
23 feet. Now, that's not to say that the owner of the War
24 Creek seam, for example, or the Jawbone seam would not
25 still maintain this twenty-five hundred foot objection.

1 Why, because it's got two wells drilled and sealed
2 through it's coal seam that it has to contend with
3 during mining activities. That's the purpose of the
4 statue, not to address the situation for this coal owner
5 or the coal owner of the seam that's being simulated by
6 coal bed methane. We're not asking the Board to rewrite
7 the statue. Obviously, the Virginia Legislature needs
8 to rewrite statue or amend statues or abolish statues.
9 All we're asking the Board to do is interpret the
10 statute the way it ought to be interpreted and give
11 guidance, thereby give guidance to all of us out here
12 who are trying to develop coal, oil and gas and coal bed
13 methane reserves. This is the type of leadership we
14 need from a board. If you don't give us this direction
15 you're going to have continued imprudent permitting
16 activities and drilling activities as everyone tries to
17 protect their rights in this area. Now, I'd like to
18 also remind the Board that -- an example of how the
19 Board in the past has been asked to interpret statutes
20 is, for example, OXY's request today that the escrowing
21 statute be refined so that it can be a statute that is
22 meaningful and works and we agree with that effort. We
23 think OXY's dead right about that, but that's an example
24 where existing provision of the Virginia Oil and Gas Act
25 has been interpreted in such a way to give guidance to

1 all of us out here who are developing so that we
2 understand how to proceed. So this is not something new
3 that Cabot's asking for or unusual. At a minimum, at a
4 very minimum, if this Board is not inclined to give a
5 field rule as Cabot suggest regarding the twenty-five
6 hundred foot rule, we certainly hope this Board will
7 give a direction to the regulatory task force, the
8 working group -- the regulation working group task force
9 to address this issue and put it on it's agenda to
10 grapple with this issue and come up with a regulation
11 that fairly interprets the statute so that it will give
12 guidance to all of us out here who have to deal with
13 this issue. If this Board is not inclined to issue a
14 field rule in the Pilgrims Knob area that will clear
15 this issue up, at least for the Pilgrims Knob area, we
16 hope at a minimum you will direct the regulator task
17 force to take this up on it's agenda so that this item
18 which is very, very important to Cabot -- I hope we
19 have shown you that, can be addressed and resolved.

20 MR. WAMPLER: And when you single out saying this issue
21 you're talking about specifically the 361.127

22 MR. FAIN: Yes, sir. Interpretation of that statute so that
23 you don't have confusion about whether or not, for
24 example, Cabot's entire lease hold rights in the
25 Pilgrims Knob area are going to be lost because of coal

1 bed methane drilling that will blanket this whole area.
2 Without direction from this Board, there's just a lot of
3 unneeded activity in this area, permitting activity,
4 imprudent drilling to try and hurry up and be the first
5 one out there because so far what we're seeing is an
6 direction from the Board of first come first serve. The
7 first one out here is first one served and that's a
8 little imprudent. If we could have some understanding
9 as Cabot suggests in 362.12 being interpreted that will
10 ease the burden on all of us and we'll all have a clear
11 picture of our rights and how they're protected. We
12 think that that ought to be put into these field rules.
13 If the Board is not inclined to do that, at a minimum,
14 we hope that it will direct the regulatory task force to
15 take it up and address this issue. Now, I'd like to
16 address briefly Consol's letter of January 17th. First,
17 we're very gratified to see that Consol really does not
18 object to the unit sizes or shapes of units, except for
19 the flexibility concern which I think we've already
20 addressed in 2.9 and 2.10. I'll read from Consol's
21 letter, the third paragraph, "Consol has no problem with
22 the size of drilling units, unit configuration and well
23 spacing proposed by Cabot as long as any field rules or
24 drilling units established in this area have flexibility
25 built in for location of wells with respect to mining

1 operations." We think section 2.9 and 2.10 and certainly
2 ly hope that any field rules you promulgate will include
3 those provisions or address those provisions, takes care
4 of that concern. Otherwise, Consol says it has no
5 problem with the size of the units, 160 acres, or the
6 shape that Cabot is proposing for the spacing of wells
7 within the field as we proposed. Now, very briefly,
8 Consol has also addressed the twenty-five hundred foot
9 issue and Cabot's same position should be made known
10 with respect to Consol's objections. I would point out
11 that I think Consol is misunderstanding the situation
12 here where they say they ought to have protection for a
13 well that's drilled through and not just cased through a
14 coal seam. The point of the matter is this casing stops
15 right here in this situation, as I've told you already,
16 and there's open hole stimulation. The fact of the
17 matter is that situation benefits the coal mine, the
18 owner of this stimulated coal seam and does not prevent
19 a hindrance or a deterrent and we would point you back
20 again to Island Creek's letter where it says on Page 1
21 that that ought to be the natural progression of things,
22 coal bed methane development followed by mining activ-
23 ity. They say that because there's a benefit caused by
24 that. Consol also says, well you ought to consider the
25 fact that in some cases we may not be in a position to

1 deny consent to this coal bed methane well and we'll
2 find ourselves in a position to where we can't mine
3 through that well. I would suggest to the Board that
4 the very last thing that this coal bed methane well
5 owner wants is for this area not to be mined out.
6 That's the whole plan. The whole plan is you put in
7 this coal bed methane well, you vent as much gas as you
8 can and then you hope that this area is going to be
9 mined through turning this coal bed methane well into a
10 gob well or basically a vertical ventilation well. So
11 the very last thing that this coal owner down here ought
12 to concern himself with is some suggestion that he's not
13 going to be able to mine in this area. That's exactly
14 what the coal bed methane operator wants, is for mining
15 activities to occur in this area so that that coal bed
16 methane well can be turned into a gob well. So this
17 Board should not be concerned about Consol's suggestion
18 that they're going to find themselves in a position
19 where they are going to be precluded from mining around
20 a coal bed methane well or in the area of a coal bed
21 methane well. That's just not going to happen. That's
22 exactly what the coal bed methane operator wants.
23 Again, I'd like to in response to Consol's letter remind
24 the Board if it's not inclined to issue a field rule as
25 Cabot suggest be issued here that it direct the regula-

1 tory task force group to take up this issue and give us
2 all direction on this very important issue. I guess I'd
3 also like to address Coke-Carbon's letter that was
4 submitted this morning and really I think I've address
5 that in the other comments. I think what Coke-Carbon is
6 saying here is that like Island Creek, gas drilling
7 activities ought not occur until after all mining
8 activities in the area has occurred and I hope this
9 Board is not inclined to issue a rule like that or to
10 not issue field rules on that supposition. I think
11 I've addressed that already. I see no objection by
12 Coke-Carbon to the other actual proposals submitted by
13 Cabot. No objection to spacing of wells, no objection
14 to the 160 acre units, no objection to the size and the
15 shape of the units that we proposed. So when you boil
16 these letters down you really have two objections
17 outstanding to Cabot's proposal that we put forward.
18 One is that the field boundary ought to be smaller than
19 Cabot has proposed. That's Island Creek's suggestion
20 and I've addressed that. If you'd like to hear some
21 more information we've got Jim Levey and Tom Blake who
22 addressed the Board last time. They're here to answer
23 the Board's questions, if they have any, about the field
24 boundary or anything else. But on this issue, the field
25 boundary, why the five foot isopach line makes sense for

1 the geologic formation boundary, we've got these two men
2 here who can answer your questions about that. We think
3 we've addressed that for you. This Board just won't
4 accomplish anything if it narrows the field to the ten
5 foot isopach line. So that's one issue that has been
6 raised in opposition to Cabot's proposal. And the
7 second one is the interpretation of Section 361.12. We
8 think this Board ought to take that up, be strong about
9 it and show some leadership and let us know how to
10 handle the situation, if not at least direct the
11 regulatory group to take it up on it's agenda. But
12 those are really the only two objections to Cabot's
13 proposal that we've seen. For example, no one has
14 opposed Cabot's suggestion that these field rules apply
15 equally to the deeper Devonian Shell and to the seams
16 above the Big Line, the Raven Cliff, etcetera, in
17 addition to the Berea. No one thinks that's a bad idea.
18 No one has suggested that these field rules not incorp-
19 orate that proposal submitted by Cabot and so we hope
20 the Board will adopt that proposal. You see no real
21 opposition -- any opposition to Cabot's unit con-
22 figurations or sizes. So we hope the Board will adopt
23 our proposal as we have put it forth. The last thing
24 that I would like to say to the Board is that we hope
25 that these field rules will be acted upon swiftly. In

1 fact, we hope the Board will go into executive session
2 today since we seem to have a light agenda for the next
3 two days and really take this on and issue field rules
4 because this is a matter of the utmost urgency and
5 importance to the deep gas developers. There's, as the
6 Board knows, a moratorium on activity in this area and
7 there's been a moratorium for about sixty days now, I
8 think, or forty-five or so days for the promulgation of
9 these field rules. And so we hope that this issue will
10 be handled with great dispatch and that these field
11 rules will be issued today or as soon as the Board is
12 able to do so, but we hope it will take it up swiftly
13 because there is not a moratorium on coal bed methane
14 development in this area and it's going on at a rapid
15 pace. As the Board has told us we need to get out there
16 and start finding our own well sites and we can't do
17 that until this Board takes up this issue. We hope that
18 this matter will not be carried over. I'd like to ask
19 the Board if it has any questions for Jim Levey, Cabot's
20 geologist or Tom Blake, Cabot's petroleum engineer, with
21 respect to the presentation that we gave last month
22 because they're here and they're able to answer any
23 questions or go over the exhibits again. Cabot gave a
24 lengthy presentation last time. We appreciate the
25 Board's patience in listening to us. We hope you

1 haven't forgotten all of what we've said and we've got
2 it all covered in the packets that you each should have
3 and if you don't, we can get you another copy, but these
4 gentlemen are here to answer any questions that you
5 might want to address them to them right now.

6 MR. WAMPLER: Thank you, Mr. Fain. I think we do all have
7 copies of the proposal as well as transcripts from the
8 last time.

9 MR. EVANS: I'll request an additional copy if it's con-
10 venient.

11 MR. FAIN: Certainly, I've got one for you right here.

12 MR. WAMPLER: We you have a question from Mr. Evans.

13 MR. EVANS: Yes, and who ever wants to fill this feel free.
14 It's my understanding in your presentation the last
15 time that the unit spacing or the unit size was deter-
16 mined to be 160 acres, but that could be somewhat
17 larger, somewhat smaller. I think the numbers that I
18 recall were two-hundred down to one-hundred fifty or
19 maybe a little less, is that not correct?

20 MR. BLAKE: That's true, depending on how you look at,
21 whether you look at it in terms of recovery of gas in
22 place or --

23 MR. EVANS: Right, I remember your presentation. It all had
24 to do with the timing of the resource recovery.

25 MR. BLAKE: We picked 160 because it would give you the

1 penetration required to look at the secondary zone such
2 as Raven Cliff and Big Line, especially.

3 MR. EVANS: And as I understood, there was a little larger
4 window there then what was -- as you go lower or
5 larger, as you go smaller or larger there's trade offs,
6 obviously, but could you tell me how big the window
7 around 160 acres would be for essentially the same type
8 of recovery curve?

9 MR. WAMPLER: Excuse me, as you all answer these just so
10 we're able to get a record, please step forward so the
11 microphone will pick you up and identify yourself,
12 please, as you answer.

13 MR. LEVEY: Mr. Evans, I'm Jim Levey with Cabot. By
14 window, do you mean the drilling window?

15 MR. EVANS: Well, no. I'm talking about you take a 160
16 acres. Is there a plus or a minus ten or twenty acres
17 that gives you the same type of recovery curve or
18 essentially the same type of recovery curve that you put
19 forth the last -- I think your presentation the last
20 time dealt with the low end and the high end and I
21 wonder as far as the unit size, 160 versus two-hundred
22 versus one-hundred twenty?

23 MR. LEVEY: I'm not sure I understand the question.

24 MR. EVANS: The reason I say that is because in looking at
25 your proposal you have an alternating pattern.

1 MR. LEVEY: Yes.

2 MR. EVANS: And to me that really restricts the area that
3 you can drill and that also presupposes that every unit
4 will be drilled.

5 MR. LEVEY: I think any unit or unit patterns that you
6 select will have to suppose that you're going to drill
7 every unit. We think that small units probably will
8 not give us the flexibility that we need with the coal
9 operator. If they're too small we have very few places
10 we can drill wells and avoid his plan. If they're too
11 large, then we will not recover the resource.

12 MR. EVANS: I understand that.

13 MR. LEVEY: There will be undrained areas in the reservoir.
14 So a 160 acres is what we think is a reasonable size.
15 It drains the gas resource, gives a flexibility with a
16 coal operator. There's a small amount of compromise in
17 anything we do. We can't say that --

18 MR. EVANS: Okay. One more thing, let me ask you, the
19 obvious is that you use the coal bed methane grid to
20 determine your 160 acres. How many different methods of
21 using that grid did you investigate?

22 MR. LEVEY: I actually plotted two. You can actually use a
23 160 acre rectangles that -- or horizontal runs east west.
24 I think in our testimony at the last meeting we said we
25 like the north south ones because they were oriented a

1 little closer to the geologic shape of the reservoir
2 which was closer to north south than east west. I think
3 that the letters from the coal operators today addressed
4 that point. Certainly, even if you use square units,
5 there has to be a pattern set up and that pattern has to
6 have an origin and so there's an arbitrariness to it.
7 Somewhere -- you have to start from somewhere. In other
8 states they start out from the legal land description
9 where you have section, township and range, sort of land
10 description and they avoid this sort of thing that we're
11 having to promulgate or has been set up on the Oakwood
12 Coal bed development. They don't have to do these
13 things that we're having to do and what we're having to
14 ask the Board to do. But you have to start from
15 somewhere and we thought that it would be administrat-
16 ively simple to have some way of designating convention-
17 al gas units compatible with the coal bed methane units.
18 It just looked to us as one more way that we can achieve
19 a compatibility between the three resource owners here
20 and have a little bit better way to communicate.

21 MR. EVANS: Okay, let me ask you something. Would a 100
22 acre unit size be too -- would that be unacceptable and
23 if so, for what reason?

24 MR. LEVEY: One-hundred and eighty, that's sort of a odd
25 ball number. I don't know if I've ever heard of an 100

acre unit.

1
2 MR. EVANS: Bear with me.

3 MR. LEVEY: Yeah, okay.

4 MR. EVANS: Since you used the coal bed methane grid you've
5 obviously taken an approach of just combining two
6 units, either oriented either north-south, east-west,
7 whichever way. There's another way to split those up.
8 If you take nine coal bed units and make four big units
9 out of it you get rectangles that are approximately one-
10 hundred and eighty acres.

11 MR. FAIN: Rectangles or squares?

12 MR. EVANS: They're squares, same square as a rectangle, but
13 it comes out a square with that center -- with that
14 ninth coal bed methane unit being divided into four, but
15 you come out with a one-hundred and eighty acres. I
16 wondered if that would -- what problems or advantages or
17 anything else that would cause you or solve?

18 MR. LEVEY: It probably wouldn't cause or solve any problem.
19 I don't think it would -- we thought --

20 MR. EVANS: See, I'm ignorant. I just looked at the grid
21 and said there's another way to do this.

22 MR. LEVEY: I think you've been very inventive.

23 MR. FAIN: Tom Blake has studied the economics of 160 acre
24 units and why that drains --

25 MR. EVANS: I want to know how much difference between a

1 one hundred sixty acre unit and if you address that that
2 would be --

3 MR. BLAKE: I'm Tom Blake with Cabot. When we presented all
4 of this we really said -- you know, to say there's some
5 specific acreage involved. There is no one right
6 acreage.

7 MR. EVANS: Right.

8 MR. BLAKE: I mean, I think -- I'm absolutely positive that
9 a one-hundred twenty is too small because I know at
10 the economics, even though that's not something we're --
11 that's not something we talk about here. From a
12 operator standpoint the economics is not going to give
13 us the gas that we need to develop on that.

14 MR. EVANS: Right.

15 MR. BLAKE: When you go on the bigger side then it's a
16 question of recovery time and as the grasp that I have
17 already presented showed, it was saying that something
18 perhaps larger than 160, perhaps in the 180 acre range
19 would be fine. The reason why we chose one-hundred
20 sixties was number one, to get the penetrations of the
21 secondary zones and the other thing is if there's
22 anything that happens in terms of better pricing early,
23 tight gas end credits which incidentally do apply here,
24 any of those kinds of things make a tighter -- a closer
25 spacing more applicable. So we picked 160 for that

1 reason. The other reason and I hate to put up a reason
2 like that's the way it's always been done, but when you
3 do things on section (inaudible.) range in other parts
4 of the country those are all six-hundred and forty
5 square miles. They cut them into fours. That 160 is a
6 very conventional --

7 MR. EVANS: I understand that.

8 MR. LEVEY: -- gas size and I think it's been a gas sizing
9 in that -- for because it's an economically optimal
10 size. So for me to say that there's a drastic dif-
11 ference between 160 and 180, I can't.

12 MR. EVANS: Okay.

13 MR. FAIN: I think I can address one other point that you
14 raised or concern that you raised and that was flexibil-
15 ity. What happens if you can't find a place to drill?

16 MR. EVANS: It seems to me you're really restricting your
17 windows with --

18 MR. FAIN: Yeah, I heard you say that and we think we have
19 worked in a possibility with section 2.9210 that will
20 solve that. We really expect it. We're going to be
21 asking for a lot of location exceptions because if we
22 can't -- remember we're doing alternate windows.

23 MR. EVANS: Right.

24 MR. FAIN: And if we can't find a space here in this window
25 and we hope that we can, it's not a small area and it's

1 much longer than a longwall panel, for example. So
2 we're very hopeful that we'll be able to find a space
3 here to drill, but if not, we would ask the Board or the
4 inspector first for a location exception to come up to
5 this window.

6 MR. EVANS: I guess that's what I'm trying to get around is
7 having a bunch of exceptions and everything else being
8 requested and objected to. May I show you something?

9 MR. FAIN: Sure.

10 MR. EVANS: Those nine squares, those nine units right
11 there, you can make four out of that. It would come out
12 to be 180 acres and they're squares and I wonder why, if
13 there was any reason, why that wouldn't be acceptable to
14 the gas industry. It gives you a bigger area to drill
15 in. You're not restricted to your window size, it's
16 more flexible for the coal industry and flexible for the
17 gas industry.

18 MR. FAIN: Where would the square 180 be?

19 MR. EVANS: If you took this as a center point of these nine
20 units right here, take that as a center point and do
21 this, you have 180 acre units, four of them out of nine
22 coal bed methane.

23 MR. FAIN: Could you draw the perimeter then of the 180
24 square just so I'll understand it?

25 MR. EVANS: Sure.

1 MR. FAIN: Maybe I can draw if on the outline, through the
2 center?

3 MR. EVANS: Though the center of the three units, 3, 80 acre
4 units and the same across this way. If you have the
5 coal bed methane grid just take nine units and put it
6 together and block them out and you have a 180 acre
7 units and you have four of them.

8 MR. LEVEY: Under your suggestion, then half of these
9 boundary lines of the 180 acre units would be --

10 MR. WAMPLER: Excuse me, we can not hear. You need to
11 identify yourself and you need to be on your mike.

12 MR. LEVEY: I'm sorry. I'm Jim Levey with Cabot. Under
13 your suggestion then, Mr. Evans, half the boundary lines
14 would be -- present boundary lines of units, half would
15 be new and how would you designate a unit then?

16 MR. EVANS: You would split -- no different than this
17 offset, but you'd just have a 180 unit in a square
18 configuration and you would have four out of nine coal
19 bed methane which is what you based your --

20 MR. LEVEY: You would use a new alphanumeric or other
21 designation system --

22 MR. EVANS: Sure.

23 MR. LEVEY: -- since we really could not make the other one
24 work.

25 MR. FAIN: Let me just say this --

1 MR. EVANS: I'm just asking if there's a problem with that
2 for the gas industry of the coal industry or if you've
3 even considered it because it seems to me that this is
4 convoluted the way you're going back and forth. You've
5 got irregular shape units and you're going to be asking
6 for drilling locations exceptions and I don't think that
7 that's --

8 MR. FAIN: This is Hugh Fain for Cabot. Let me say this,
9 first, Cabot proposed this method because we thought
10 everyone would really love it. We really thought that
11 this would ease the burden on the coal estate. We
12 really thought it was a nifty idea for combining these
13 three resources. I'm serious about that. We're really
14 trying to have a creative method for easing the burden
15 on everyone. Now, if the Board and if the coal industry
16 doesn't think that this is a nifty idea, you know, we're
17 not wedded to this and if the Board thinks that more
18 uniform squares is what's appropriate from our economics
19 that we presented to Mr. Blake, we still think 160 acre
20 squares makes more sense than 180 acre squares. We
21 think 180 acre is just too large to efficiently and
22 economically to drain the area.

23 MR. EVANS: Excuse me, Mr. Fain. I don't think that's what
24 the gentleman said.

25 MR. BLAKE: I said our preference would be 160 for the

1 reasons I said, but I also said that this is not so
2 exact that you could say 160 or 180. I'd just like to
3 see the opportunity to see secondary targets.

4 MR. EVANS: Does 160 preclude that?

5 MR. BLAKE: It lessens it somewhat.

6 MR. EVANS: How much?

7 MR. BLAKE: Very, very little.

8 MR. EVANS: Okay. Thank you.

9 MR. FAIN: If you go with the squares and if you go with the
10 160 acre squares as Edwards and Harding has proposed, I
11 would just like to throw out some figures for you.
12 Maybe you can write them down for your deliberations.
13 We would suggest that the 160 acre squares have a
14 drilling window of 660 foot offset inside with the same
15 provisions for flexibility for location exception. I
16 think under the Oakwood spacing order flexibility is
17 allowed right up to the unit boundary for location of
18 wells and we would ask for the same type of flexibility
19 on a square unit. That type of a drilling unit would
20 give you a 1320 foot across window, square window,
21 within a 160 acre square and that would call for
22 minimum spacing of wells of 1980 feet between wells.
23 So those are the number we would like the Board to
24 consider for 160 acre square units and I don't know how
25 those numbers translate for 180 acre squares units, but

1 we could work that up for you if that is what the Board
2 is more inclined to go with.

3 MR. WAMPLER: Any other questions of Mr. Fain?

4 MR. MASON: Yes, Mr. Chairman.

5 MR. WAMPLER: Mr. Mason.

6 MR. MASON: Did you not say a minute ago in follow up of
7 your question that in your opinion there is no appreci-
8 able economic difference in the production curves of 160
9 and 180?

10 MR. BLAKE: Yes, that's what I said.

11 MR. MASON: That's what I thought.

12 MR. WAMPLER: Any other questions?

13 MR. FULMER: Mr. Chairman, just for the matter of the record
14 I'd like to bring up the letter that we received late
15 Friday afternoon from Lon Rogers on this subject. Cabot
16 is not aware of the letter or any of the other people,
17 but it is within your records and we do have some copies
18 here if Cabot or any of the people in the audience might
19 like to observe it.

20 MR. MASON: Mr. Chairman, one other question.

21 MR. WAMPLER: Mr. Mason.

22 MR. MASON: You indicated, Mr. Fain, that no one had
23 submitted any objections to this spacing, is that
24 correct?

25 MR. FAIN: Yes, sir, in the letters that have been submitted

before you.

1
2 MR. MASON: I understand that, but at the last meeting
3 didn't Edwards and Harding submit a different grid
4 system?

5 MR. FAIN: That's correct. Edwards and Harding submitted a
6 suggestion for 160 square units and I think it's
7 Cabot's position and I'd like to huddle about this if
8 I'm wrong, but if the Board is going to go to square
9 units because Cabot's idea is not nifty and coordinates
10 the three estates. We would agree with Edwards and
11 Harding 160 acre grid.

12 MR. MASON: What I was trying to clarify is that, you know,
13 from your remarks you indicated that there wasn't any
14 objection to the grid system that you had proposed and
15 I wanted Edwards and Harding, if they would, since they
16 had proposed an alternate system, is that in a form of
17 basically an objection to this system and a proposal of
18 their own? I don't understand exactly what -- do we
19 have two proposals in front of us as regards to this or
20 have they withdraw that or what is the status of it?

21 MR. HARDING: I'm Chad Harding with Edwards and Harding
22 Petroleum. At the Board's own motion you wanted to
23 consider field rules we made an independent proposal as
24 to what we thought a reasonable field rule system would
25 be, unit grid pattern and so forth. It's an independent

1 proposal from Cabot. It is still before the Board. As
2 I stated at the last hearing, we have no fundamental
3 objection to Cabot's proposal. We're simply putting
4 our proposal out for the Board's consideration as what
5 we think is a reasonable system. We do not have a
6 fundamental objection to Cabot's proposal.

7 MR. MASON: Okay. Thank you.

8 MR. WAMPLER: Mr. Fain, how speculative is drilling between
9 the five foot and the ten foot isopach lines?

10 MR. FAIN: What do you mean by speculative, I'm sorry, Mr.
11 Chairman?

12 MR. WAMPLER: How speculative is drilling in between those,
13 the proposed five foot versus the proposed ten foot?

14 MR. FAIN: Beyond saying that we certainly anticipate
15 developing in that area, I would like Mr. Blake to
16 respond to that.

17 MR. BLAKE: In terms of speculative nature right now
18 everybody has their own forecast, the prices and
19 everything so I almost hate to comment on this, but for
20 Cabot's way of viewing this and our price forecast and
21 what have you, ten feet is on the low end and it would
22 depend on what other intervals that you would find in a
23 well. I think, too, that in terms of field rules it's
24 not so much, you know, what it is this year, but what
25 it is next year and the year after and that is the real

1 crust of the matter in terms of putting forth a five
2 foot line. I don't think people are out there hurting
3 for five foot Berea right now unless there's some other
4 potential in the well. So to answer the question about
5 between five and ten is speculative on the ten foot side
6 is an reasonable objection.

7 MR. WAMPLER: Any other questions? Any one else wish to
8 address the Board?

9 MR. MASON: I just want to say, I think that one of the
10 things that we're concerned about is the possibility
11 that the windows, the drilling windows, on this e-
12 longated units are going to produce a situation to
13 where the exceptions that people are going to request
14 are going to be in such number that the real effective-
15 ness of adopting these units -- sort of the exceptions
16 will consume the rule, if you will. I think that's what
17 your considerations is. Have you all studied this grid
18 in terms of actual topography or anything to determine?
19 Have any concept at all of what, for instances, what
20 percentage of exceptions might be required? I mean, do
21 you have any feel for that at all?

22 MR. LEVEY: Mr. Mason, I'm Jim Levey with Cabot. To
23 respond to that, no, we have not done a detailed
24 analysis of each location --

25 MR. MASON: I understand that.

1 MR. LEVEY: -- from each window because from both topography
2 and multiply coal plans come into that and it would
3 require really some extensive planning sessions with the
4 coal operators to know. I think perhaps that you could
5 look at the Oakwood field units and the number of wells
6 that have been permitted and how many of them have had
7 to be permitted outside of that window they've had where
8 they've had difficulties finding an acceptable location
9 and I have not counted them. I have spotted them on the
10 map. They're a fair number. So there will be problems
11 and that's why we're asking for flexibility of the rules
12 and that's why I think our coal operators have asked for
13 flexibility because we know that we can not come up with
14 a preconceived plan that will anticipate everything that
15 will happen in the future.

16 MR. MASON: As you know the whole concept of this, if
17 possible, is to adopt a grid that minimizes the excep-
18 tions to it. You know, we just -- I think, myself and
19 the other members of the Board would like to feel like
20 whatever we do is meaningful in reality and application.

21 MR. LEVEY: It will be. And the reason for that is present-
22 ly we look for a location to drill and we look at the
23 topography, previous wells. We have conferences with
24 the coal operators and we come up with a location and
25 then we have to put a unit around that location, forced

1 pooling unit around that location. Then we have other
2 locations and they come up helter-skelter until you can
3 not draw a system of units that fits together for that
4 scattering and virtually a buckshot pattern of well
5 locations. So we thought the proper way to go about it
6 is to get a unit pattern set up and then fit the wells
7 to the units as best we can on those units and that
8 takes care of the problems of correlative rights and
9 gets us out of these woods of every location being a new
10 ball game and really tying up many peoples time and
11 effort, coal operators as well as oil and gas. So the
12 real thing that's need here is a reasonable set of units
13 --

14 MR. MASON: We agree with that.

15 MR. LEVEY: -- that we can all start to work with and have a
16 basis of communication.

17 MR. MASON: Thank you.

18 MR. WAMPLER: Any other questions.

19 MR. HARRIS: Let me ask just a quick question. Looking at
20 the maps it appears again, that there's some buckshot
21 pattern drilling that's already been done. What
22 percent of this has already been developed? I know
23 that the lower end has not been, but I noticed the upper
24 part has been. What percent of that has already been
25 developed?

1 MR. FAIN: Mr. Harris, I don't know if we've tried to
2 determine in percentage. Tom or Jim, do you know?

3 MR. LEVEY: We haven't made an account by acres, no.

4 MR. HARRIS: The question actually has to do with cor-
5 relative rights again and land owners. What problems
6 exist now among land owners or is there anything
7 specific about the ones that's already been developed?
8 I know that you can always say that these people are not
9 covered in the gaps, but I don't know that we've
10 actually heard people come forth and say that there's
11 anything wrong with what we already had.

12 MR. FAIN: Mr. Harris, I think that the Board was concerned
13 and put it on the agenda at it's own motion because of
14 some of the objections between, I think the Board has
15 heard, between OXY and Edwards and Harding about
16 polygons versus circles and how some areas are left out
17 of that arrangement and I think that's why the Board
18 recognizing that development was occurring in a rapid
19 pace in this area felt like it was important to get a
20 uniform set of field rules to go by and I hope that
21 answers your question.

22 MR. HARRIS: Well, sort of, but about the land owners
23 themselves and other people who would be benefiting from
24 just the drilling itself, not a grid pattern or any kind
25 of a random, but just who would be receiving royalties

1 and whatever here. What about their -- are there
2 complaints from those people based on the system that we
3 have now?

4 MR. LEVEY: Our lessor is Georgia Pacific and perhaps this
5 is hearsay, but Mr. Bill Covington who is our manager
6 of this area has objected to several pervious units
7 that he felt did not incorporate Georgia Pacific acreage
8 properly and has objected in the past to the random sort
9 of units. Earlier units were circles and actually left
10 out acreage, didn't enjoy any revenues at all from the
11 well. So there were gaps and overlaps and things like
12 that. Yes, they have objected and at the last meeting
13 Mr. Covington, and it's in the record, supported wholly
14 our efforts to promulgate some field rules here.

15 MR. HARRIS: Thank you.

16 MR. WAMPLER: Any other questions?

17 MR. FAIN: I could add one last comment. It's Cabot's
18 sincere hope that this issue of rectangle versus
19 squares won't hold up the Board's action on this. We
20 want field rules and we really do and we'd like for that
21 to happen today or as soon as possible. So we're happy
22 to go with the Board's pleasure on that, squares or
23 rectangles. We think, we thought and still think this
24 is a smart pattern to coordinate between the three
25 estates, but if the Board is more incline to go for

1 squares, we can live with that and we would ask the
2 Board to make a decision one way or the other as soon as
3 possible. And finally I'd just like to again thank you
4 very much for your sincere attention to this matter.
5 It's obviously very important to us.

6 MR. WAMPLER: Thank you.

7 MR. MCGLOTHLIN: Mr. Chairman.

8 MR. WAMPLER: Mr. McGlothlin.

9 MR. MCGLOTHLIN: One question to Cabot, regarding Exhibit 4.
10 What are the longitudes and latitudes at the outskirts
11 of your proposed field?

12 MR. FAIN: From here to here, is that the question?

13 MR. MCGLOTHLIN: From here to here and up and down.

14 MR. FAIN: In 2.5 of our proposal we have given the exact
15 meets and bounds of this area in legal meets and bounds
16 to terminology, but I don't think that it says -- I
17 think we would have to do some extrapolation. We can
18 do that for you in a break if you'd like just adding,
19 but I don't know the distance across.

20 MR. MCGLOTHLIN: You've got it in a -- I assume for your
21 longitude and latitudes they should be established.
22 The map I have is not clear. I wonder if you could get
23 that for me.

24 MR. MASON: He's looking at, I think, those grids.

25 MR. LEVEY: I think latitude and longitude is on that map.

That is a USGS plan metric grid.

1 MR. MASON: It's a geographic service grids is what those
2 are.

3 MR. LEVEY: Gentleman, I think what the question is and
4 what would solve a lot of problems is if you had that
5 particular map instead of implanted on topo.

6 MR. MCGLOTHLIN: My concern is that it seems to me as a
7 member of this Board that it's easier for us to -- I'm
8 thinking of not the Pilgrims Knob field, but the next
9 field we go into and if these can be correlated with
10 longitude and latitude lines on a map it's easier for
11 us to go in or it's easier for me to go in and say,
12 okay, from this longitude to this longitude and this
13 latitude to this latitude is going to be the Pilgrims
14 Knob field. And then the Whitewood field, if it ever
15 comes up, will be at this place and whatever rather than
16 the way you have your design now. It crosses. What
17 would be the problem with keeping those within those
18 quads?

19 MR. FAIN: Can you respond to that, Mr. Levey?

20 MR. LEVEY: Well, I think that we have used latitude and
21 longitude to define that pattern, that grid pattern, but
22 then we, of course, used unit sizes to get down to the
23 acreage size to get to the individual unit boundaries
24 so that we could go through a surveying translation or
25

1 map translation program and give each of those boundar-
2 ies a latitude, longitude, each corner would have to be
3 done. We described it, as previous unit grids have been
4 described, by starting out from a latitude longitude
5 point. That being latitude thirty-seven degrees ten
6 minutes and longitude eighty-two degrees two minutes,
7 thirty seconds and then scaling from that point. So
8 there is a map reference. That is a USGS plan metric
9 grid which is the same as a topo map without the contour
10 lines. I think, unfortunately, when we drafted it we
11 must have trimmed off the latitude, longitude ticks and
12 we can correct that.

13 MR. MCGLOTHLIN: I was just ref ing to where you cross
14 this line here if the grid system could be kept within
15 here to here?

16 MR. LEVEY: That is not a latitude or longitude line. That
17 is a grid system internal to Cabot whereby we file our
18 logs to substitute for such section boundary range sort
19 of things. So it does not have a -- those are one and a
20 half minute grids there. We can use those to recover in
21 latitude and longitude.

22 MR. WAMPLER: Mr. Mason.

23 MR. MASON: I was just going to ask, Mr. Chairman I think
24 what Mr. McGlothlin is referring to is that we
25 have sort of become aware or I have individually and I

1 think other members of the Board that the fact that
2 eventually or at some point that all of these units and
3 field rules need to relate on statewide basis to some
4 uniform grid. I think that's been a concern.

5 MR. WAMPLER: Absolutely.

6 MR. MASON: And I understand that the Division of Oil and
7 Gas is presently looking into developing that, is that
8 correct?

9 MR. WAMPLER: We've had our geologist, state geologist
10 working with our Gas and Oil Inspector to determine the
11 best way of making certain that everything is tied into
12 the statewide system.

13 MR. MASON: You know, it is a problem in terms -- so often
14 in a survey, you know, meets and bound surveys, you can
15 find what's contained within them by that and relating
16 that survey to any other survey is frequently very
17 difficult because there's no reference point in an
18 universal grid. I think that's a concern of everybody.

19 MR. LEVEY: Other states, of course, have the luxury of
20 having section township and range land pattern and it
21 is, at least where I've worked and familiar with, that
22 you follow those sections townships ranges. You stay
23 inside a section with a unit. You don't even combine
24 pieces of two different sections and so they have a
25 built in luxury that you're -- that you've seen a need

1 for. I think it would be a good thing to have some sort
2 of a statewide grid perhaps. I don't know the present
3 situation here is the place to create that because I
4 think we're already here and we already have a need for
5 something.

6 MR. FAIN: There is a common reference point, I believe.

7 MR. LEVEY: Yes, there is between, of course, the coal bed
8 methane units and these proposed units. We sort of saw
9 that there was some sort of commonality that was needed
10 and built that into our image. You just expressed that
11 you see a commonality even beyond -- these two surveys
12 here.

13 MR. MASON: I think I was really reflecting on Kevin's --

14 MR. MCGLOTHLIN: I just feel that it needs to be -- and the
15 way you have it situated there, I have a problem with --
16 I know you're going for your five foot Berea and your
17 excluding some and for economic reasons. I understand
18 that, but it just doesn't -- I like straight lines and I
19 don't see going up straight lines. I see steps.

20 MR. MASON: Excuse me, Mr. Chairman, again.

21 MR. WAMPLER: Mr. Mason.

22 MR. MASON: Am I to understand, though, that the blocks that
23 are shown on there are only survey blocks for your
24 internal use. They're not a reflection of another --

25 MR. LEVEY: These?

1 MR. MASON: Right.

2 MR. LEVEY: Yes. Well, they are latitude and longitude
3 lines.

4 MR. MASON: I understand but they're you all's own --

5 MR. LEVEY: We have a numbering system so we can file our
6 electric logs and find them.

7 MR. MASON: Okay.

8 MR. LEVEY: It substitutes internally this township and
9 range which we need for a geographic filing system.

10 MR. WAMPLER: Mr. Johnson, did you have something?

11 MR. JOHNSON: Yes, sir.

12 MR. WAMPLER: I thought I had a signal that you wanted to
13 address the Board.

14 MR. JOHNSON: As you know I showed up here last month and
15 the Chairman said I asked a very intriguing question
16 and I just wanted to go back over that question with
17 you one more time as well as just talk briefly with
18 you. I don't want to spend a lot of time of this
19 Board. I know that the first thing that came up as far
20 as why this Board wanted these rules was because there
21 were some sort of irregular shape units you found that
22 the various parties were showing to the Board. It
23 seemed to me that if this Board wanted to adopt a field
24 rule that all units would be square, that could be your
25 pleasure. It would seem to me that that would solve

1 the problem of seeing circles and squares. One of the
2 things that the act does is talks about units being
3 formed, voluntary units being formed. Again, I don't
4 think the Board -- it would be a question as to the
5 extent to which any action taken by this Board would
6 effect the right of the parties to form voluntary
7 units. Having said that, taking a look at what a grid
8 system does and that's what I think you all need to
9 think about. What does a grid system accomplish? What
10 are the positive and what are the negatives? Cabot has
11 told you, I think, what the positive are and that is
12 that it creates some sort of uniform locked in pattern
13 which accommodates their purposes because they can go to
14 the various owners and tell them, "Hey, we've got to
15 drill within this particular square and this interior
16 boundary established by that square or rectangle."
17 That's what it does for Cabot and the other oil and gas
18 operators who would want to use that as leverage to get
19 locations and I think that that's what they'll do with
20 this Board. They'll say, "Hey, look here's this unit
21 and we've got to drill within this unit boundary in
22 order to preserve correlative rights." I took a look
23 with regard to the distance between wells that would be
24 possible using this grid system and I came up with 850
25 feet as far as how close they could be drilled. It

1 would seem to me that the Board is setting up these
2 blocks and are the people who are being drained by
3 these wells really being protected by those blocks and
4 rectangle. Are they being protected? I think you've
5 got to look at that. I represent several mineral
6 owners who have acreage within the area covered by this
7 including the Rogers family who has already written a
8 letter to the Board and my advise to them was that it's
9 not so bad that they're making some kinds of proposals
10 and I think the grid system may well not serve this
11 area of Buchanan County, Virginia. As I told you
12 before when I worked on the 1982 Act which this grew
13 out of, the people who came from out west to advise
14 those who were working on this law looked at this kind
15 of a rule as being the final step and only when there
16 was some sort of saturation and I think that's the other
17 question that you have to look at. Are we looking at a
18 situation where we really know there's going to be
19 saturation of wells. That they are, in fact, really
20 going to drill all these units and I think that's the
21 other question. If all these units are not going to be
22 drilled, then some people are not going to be protected.
23 Certainly, not all the units are not going to be
24 drilled at the same time and that's one other issue
25 that's out there. These units aren't going to be

1 drilled at the same time. They will be drilled at
2 different times. When I looked at -- the various
3 reasons I came up with for why you shouldn't have a grid
4 system as opposed to requiring square units, why you
5 shouldn't have a grid system is that it will limit the
6 area where wells can be drilled unless an exception is
7 granted. So you're going to have -- you've got an
8 interior and an exterior square and/or rectangle that
9 you're going to be dealing with and so you're going to
10 have areas of land where the wells can not go down
11 unless the operator comes back to the Board and says,
12 "Please let me out of this because I can't find a
13 topographic area or an area where the coal operator are
14 not going to be upset with me." Again, there is an
15 assumption that every unit will be drilled and there's
16 no guarantee here by any of the operators. I don't think
17 any of them will stand up and make assurances that
18 they're going to drill all these units and I wouldn't
19 expect them to. I don't think the field is that hot or
20 that the operator are necessarily that inclined to drill
21 every unit. We've also seen as part of this particular
22 scheme there's some five foot Berea and when you look at
23 five foot Berea and gentlemen here tell you that "Well,
24 five foot Berea is not really something they'd want to
25 go for right now." You have to think about -- are they

1 telling you that they will in the future drill this or
2 are they unsure and they don't know and I don't think
3 the Board knows either. Certainly, as I said, there's a
4 problem with terrain. You've got to try to find a place
5 to put the wells. This is mountainous territory. It's
6 not flat. I don't have to tell anybody that, but you
7 all know it and I know it and all the operators have to
8 deal with that fact. The other fact is that there is an
9 substantial amount of coal reserves underlying this
10 whole area, top to bottom and going down to the Pocahon-
11 tas 3. There's a number of seams and every operator who
12 has any control over any of those seams is going to want
13 to make sure that his coal seams are protected by these
14 various wells and in and that of it's self creates
15 problems which this Board is very much aware of. Much
16 of the area, the Rogers acreage, has two different
17 levels of seam control. Pocahontas 3 is controlled by
18 Island Creek by virtue of their Pocahontas 3 lease.
19 Jewel Smokeless Coal Corporation and Jewelry's Coal
20 Corporation have the upper seams lying above that. Just
21 a lot of problems resulting from multiple ownership of
22 coal seams, multiply and in competition over coal bed
23 methane wells and competition for a conventional gas
24 wells. Also, there's a problem with applications that
25 have already been made and units that are -- applica-

1 tions for permits that have been granted and applica-
2 tions that are in front of the inspector. Those may or
3 may not fit within this grid system that you're going to
4 adopt if you would look to doing that. So there's one
5 more problem. The idea of using rectangles goes back,
6 and I think you all have already mentioned all of this,
7 but the idea of using rectangles goes back to all the
8 other points I just made. By using rectangles, you're
9 saying that the well, in effect, is going to drain -- is
10 more or less assumed to drain in a circle and when it
11 does that a rectangular unit can not be served by that
12 circle. So again, you have to look at the fact that not
13 all these units are going to be drilled and not going to
14 be drilled in the same order and all the problems that
15 would come from a rectangular unit. I think that the
16 idea of establishing an rectangular unit was just as a
17 matter of trying to somehow deal with coal bed methane
18 wells. We don't know how many coal bed methane wells
19 are going to be drilled in this particular area. We
20 don't know where they're going to be drilled. I think
21 all those factors need to be looked at and I think you
22 do need to be looked at and I think you do need to look
23 at the assumption that wells drain in circles when you
24 look at what you're doing here and look at what effect
25 that would have on the way these units look. Again,

1 one thing that I mentioned at the outset, I see nothing
2 wrong with this Board adopting field rules. I see
3 nothing wrong with this Board adopting a field rule
4 which assumes the square. I see nothing wrong with the
5 Board having other sorts of rules that Cabot has
6 proposed. What I question is, is it necessary, is it
7 helpful, does it benefit Buchanan County and does it
8 benefit the royalty owners to have a grid system
9 established in this area. Thank you.

10 MR. WAMPLER: Thank you, Mr. Johnson. Any questions,
11 members of the Board? Thank you.

12 MR. WALLACE: My name is Chris Wallace with Edisto Re-
13 sources. I testified briefly the last time. I'd like
14 to make two quick comments. I think that Edisto is a
15 small, but nevertheless important operator in the field
16 area what favors a less restrictive spacing plan than
17 the one suggested by Cabot for many of the reasons that
18 have been raised here today, topography limitations and
19 so forth. Our acreage happens to be subject to a
20 lawsuit settlement which further restricts our ability
21 to drill and so that we would favor any of the more less
22 restrictive plans that have been made today. In
23 addition, as Mr. Johnson just pointed out, we have, and
24 I don't know how many other operators may be in the same
25 boat, we have at least one permit application pending

1 which is subject to the existing state. We've examined
2 title based on 1320 foot radius. We've sent notices of
3 that permit application on that basis. We've encouraged
4 significant cost in terms of surveying, title work and
5 both Edwards and Harding and Cabot proposals allow for
6 exceptional locations or exemptions from the field
7 boundaries or field rules for existing wells and wells
8 that have been currently permitted but not yet drilled.
9 And again, I'd like to suggest to the Board that that
10 same kind of exception consideration be granted to
11 permit applications that are pending and have not yet
12 been acted on because of the existing estate. And I
13 might just point out for verification that our current
14 permit application is not some wild thing out in the
15 hinter land here. It is very much on the fringe of the
16 developed area as indicated by both the exhibits from
17 Cabot and Edwards and Harding. So we don't think that
18 it would be asking a great deal for our existing permit
19 application be given the same kind of exception that
20 existing wells have. Thank you.

21 MR. WAMPLER: Thank you, Mr. Wallace. Any questions from
22 members of the Board? Any others wishing to address the
23 Board on this subject?

24 MR. ALBERT: Mr. Chairman, members of the Board, my name is
25 Randy Albert. I'm the project manager with Consolida-

1 tion Coal Company. I'll keep my comments brief today as
2 I addressed the Board at length in the last hearing. As
3 Cabot said, Consol has no particular objection to the
4 establishment of field rules or unit spacing or unit
5 sizes. However, we do ask that the Board give the coal
6 operator flexibility in this area. And I'm not sure,
7 Cabot says that 2.9 and 2.10 of their proposal does
8 this, but it's not specific. That is with respect to
9 mine operations or mine operators. So we would ask the
10 Board that when granting these field rules, if it is
11 their pleasure to do so, that the coal operators be
12 given some flexibility in this area. Our main objection
13 remains on 361.12. I've sat here today and heard Cabot
14 say that it was not the legislative intent to have the
15 coal operator be able to object to a coal bed methane
16 well. However, I would say to the Board that it is not
17 in the right of the Board to judge this and that Cabot
18 should go back to the legislature and find out indeed
19 what the intent of the legislature is. Also, one other
20 thing that we would like to bring out, Cabot asserts
21 that coal bed methane wells are always a benefit to the
22 operator. We would point to the Board there are in fact
23 cases that -- there are exceptions to the consent
24 requirements for coal bed methane wells where as the
25 coal operator may not always be the operator of that

1 coal bed methane well. For example, consent is not
2 required where the coal bed methane producer is operat-
3 ing under a lease from the coal operator obtained prior
4 to the effective date of the act. There's also the real
5 potential that coal operator may be successor in title
6 to a coal seam on which previous consent was given to
7 stimulate that seam. So, indeed, I think it was clear
8 these were the things that were bought out in the work
9 group when the act was being drafted. I think everyone
10 on the coal side and oil and gas side was aware of these
11 issues at that time. So, indeed, we would represent
12 that it was legislative intent to give the coal operator
13 the right to veto on 2500 foot, both on coal bed methane
14 and oil and gas. In fact, we stated that they should be
15 considered the same. To say that it is always a
16 benefit, we can not argue with that other than I would
17 say that it is a benefit when done in a controlled
18 manner by responsible operator. That's why there's this
19 750 foot restriction on coal bed methane stimulation.
20 You have to have the consent of the owner. There are
21 instances, and I think Consol can speak of this, because
22 we have probably mined though more coal bed methane
23 wells that have been stimulated than any other operator
24 in the Commonwealth. And to this date we will not do
25 one unless it's in the middle of a longwall panel where

1 we can have reasonable assurance that we can protect any
2 adverse roof conditions caused by stimulation from our
3 workers. So, therefore, I don't think you can make a
4 blanket statement that it will always be to the benefit
5 of the operator. I think that's all the comments we
6 have today and I thank the Board for hearing us again.

7 MR. WAMPLER: Thank you. Any questions? Thank you very
8 much. Mr. Breeding.

9 MR. BREEDING: Mr. Chairman, Board, my name is Steve
10 Breeding. I'm the coal bed methane coordinator for
11 Island Creek Coal Company. I would like to make a few
12 comments with respect to Mr. Fain's comments. I would
13 hope and I know that the Board will read and interpret
14 Island Creek's comment letter for themselves because
15 apparently it wasn't quite as clear as I thought it was
16 since Mr. Fain has read some things into these comments
17 that I didn't realize were there. Regardless of what
18 he's read into these comments or what he would like to
19 read into the comments, we have not suggested that no
20 deep gas development be done prior to mining. We have
21 simply stated that there are areas where the deep gas
22 can be developed without impact of coal reserves. These
23 are primarily in the areas where we have protected
24 pillars and the areas of mains in both and existing
25 operations and, of course, in the area where coal has

1 been mined out there would be no problem. There are on
2 the other side areas that really can't be developed by
3 deep gas reserves without severely impacting the mine-
4 ability of those reserves. These are primarily in the
5 areas projected longwall panels. We have been willing
6 and we're still are willing to negotiate locations for
7 development of these deep gas wells that are mutually
8 agreeable or maybe mutually disagreeable to both
9 parties. Mr. Fain should be very familiar with this
10 situation because only a few months ago we negotiated
11 four particular sites for Cabot within areas of our
12 future mine projecting. It took a good while. Neither
13 party got the exact location they wanted, but we did
14 come to and agreed on four particular locations for
15 Cabot. They have not asked for any additional locations
16 since then, yet they would have you believe we have
17 been uncooperative and we generally are uncooperative.
18 That's simply not the case. We are willing to look at
19 locations on site by site basis. Mr. Fain has talked
20 about the sequence of development that we proposed and
21 he left out the last phase of development which is the
22 deep gas development. He also noted that we proposed
23 that the field boundary be set on the ten foot Berea
24 isopach line and I don't think that's what we said.
25 We're simply pointing out the lack of data and the

1 reason for objecting the field, as Cabot's shown. Even
2 the Edwards and Harding map shows a different five foot
3 Berea isopach line. So, apparently, there is some
4 difference of opinion on the extent of the field. With
5 respect of the 316.12, I think Mr. Fain pointed it out
6 very appropriately that the Virginia Legislature is the
7 one to rewrite the act and I think they have very
8 clearly written the intent of what they have wanted. As
9 far as unit size I don't know that any particular unit
10 really bothers us. All are equally restrictive to some
11 areas of mining regardless of the shape. Frankly, the
12 square units do make more sense, particularly from the
13 correlative rights stand point. We would still maintain
14 that we do want the flexibility to propose alternative
15 size -- alternatively sized units. Perhaps a combina-
16 tion of two or three units blocked together, maybe four
17 or five or six units blocked together with the under-
18 standing that we would allocate a well site for each
19 unit that is block together. Perhaps all of the drill
20 sites maybe more in one particular area. Perhaps half
21 of them may be able to be drilled initially or immediat-
22 ely and some of the others may have to wait until deep
23 mine reserves are developed. That's basically all the
24 comments that I have. I'd like Mr. Watson, if he could,
25 to make a couple of comments with respect to the same

1 situation which occurred in Alabama if that would be
2 allowable.

3 MR. WAMPLER: Okay. We'll hear him.

4 MR. WATSON: You've heard here today of governmental corner
5 to corner sections and everything is set up long those
6 predetermined lines. We're also fortunate enough to
7 have coal bed methane development both in mining areas
8 and in non-mining areas.

9 MR. WAMPLER: Excuse me one second, I don't mean to inter-
10 rupt you, please identify yourself for the record.

11 MR. WATSON: I'm sorry. My name is Tom Watson. I'm
12 speaking on behalf of Island Creek. So we come in
13 starting our development with a system of grids in
14 place, yet the sister agency that regulates it now finds
15 itself in many cases with exceptions covering this
16 docket. One of the things you've not heard here today
17 given this grid plan is a specific development plan
18 marring the development plan with your topography.
19 Regulatory boards will find themselves inundated with
20 problems for exceptional locations unless those matters
21 are thought out and those matters are presented to the
22 permitting agency prior to coming to the Board with
23 recommendations for exceptions. One of the flexibilities
24 that's afforded that you presently have now is negotia-
25 tions among your land owners and the various owners of

1 the coal estates without this imposed grid system, but
2 one of the options that's available to all parties is
3 the voluntary unit concept. We have in Alabama variable
4 spacing in areas that are programed for mining. We
5 recognize mining areas. We have long wall mining there
6 and the spacing in areas to be long wall mined varies
7 from ten acres to eighty acres, maximum size. But what
8 we've done to further refine that to protect the owners,
9 as has been one of the questions both mineral owners as
10 well as surface owners, is we have created units within
11 mining areas based on lease hold ownership. And that
12 would allow a complete obliteration of any grid systems
13 so as to allow the coal bed operator or the conventional
14 operator to position their wells to develop their
15 resources compatibly based on honoring the mining plan,
16 both stripable coal and underground coal. We got away
17 from set back of 660, 330, 80 acres, 10 acres. We
18 created units. That option is available here to this
19 petitioner and to any petitioner and it's particularly a
20 suitable regulatory tool when you have spilt ownerships.
21 Royalties are shared on the basis of percentage of
22 surface ownership within the proposed unit. The unit is
23 created based on the development plans. So you really
24 can build your matrix. The Oil and Gas Board then
25 simply grants approval to the unit as proposed by the

1 operator and that's only after submission is made to the
2 Board by at least seventy-five percent of the royalty
3 owners and seventy-five percent of the working interest
4 owners in the area. That is the majority agree and any
5 minority interest is then forced into the unit, but it
6 protects both the mining plan and it protects the gas
7 resources, both conventional and coal bed. So we have
8 seen a multiplicity of exceptional locations based on
9 fixed grid patterns. I think there in excess of two-
10 hundred items on our docket next week and a lot of those
11 are exceptional locations once we have established grid
12 patterns. So I submit to you that there is an alter-
13 native to establishing grids and the grids is not the
14 panacea of all ills. But if you do consider grids
15 then, you know, you need to be looking at a specific
16 development program and that specific development
17 program would have had already built into it the
18 coordination with the mining plans that exist in those
19 specific areas. Special field rules by the very
20 terminology means that you have a specific plan for
21 development in an area. Otherwise, your state wide
22 rules have allowed development to proceed to date and
23 you should stick to those. Mr. Johnson had a valid
24 point. You offer the maximum flexibility for negotia-
25 tions under your existing statewide rules. You will

1 impose a system of fixed regulations on people and
2 restrict their rights to negotiate with the imposition
3 of these field rules unless you know what it is that's
4 proposed for development. We have a random grid system
5 proposed here. That's all I've seen. I've not heard of
6 six wells proposed. You've not heard any topographical
7 problems. You've not heard that in these six wells two
8 exceptions would be requested. You just don't have that
9 information. So I suggest to you that before you rush
10 into develop your plan, look south, look further south.
11 We have those grids in place. That's a given and we
12 still have problems. Thank you.

13 MR. WAMPLER: Any one else? Mr. Harding.

14 MR. HARDING: I'm Chad Harding with Edwards and Harding
15 Petroleum Company. I just have one brief comment to
16 make and that is clearly Southwest Virginia provides a
17 challenging environment for gas operators to work in.
18 I would simply request respectfully that whatever the
19 Board decides to do with respect to this field rules
20 question that it deal in the maximum amount of flex-
21 ibility so that we gas operators can adequately deal
22 with the challenges that we have. We have heard about
23 the various mineral estates surface problems. I think
24 at this point most of the -- most of the pertinent
25 issues, all of the pertinent issues, really have been

1 addressed here and the Board has the information that
2 it needs to make a decision. I don't envy you your
3 task. It's clearly a very difficult decision, but I
4 would just like to state that whatever the Board
5 decides, we will continue to aggressively develop our
6 lease hold interests and work with the Board with
7 whatever system that it chooses to adopt here. Thank
8 you.

9 MR. WAMPLER: Any one else? All right, Board, what's your
10 pleasure?

11 MR. BREEDING?: Mr. Foreman, just if it will help the Board,
12 it's your pleasure, obviously, but we have thought
13 about a 160 square system and we've got a depiction of
14 that if you'd like to see it in this area based on
15 Edwards and Harding's proposal. We thought well what
16 would 160 squares look like and we've worked up some-
17 thing if you'd like to see it.

18 MR. WAMPLER: You mean this is a specific plan of develop-
19 ment or is this just how it would look?

20 MR. BREEDING?: How it would look in this area.

21 MR. WAMPLER: I don't know if that does anything for us
22 really, but thank you very much.

23 MR. MASON: Mr. Chairman, I move that we move into executive
24 session to seek counsel.

25 MR. WAMPLER: I have a motion that we go into executive

1 session under Section 2.1-344 of the Virginia Freedom
2 of Information Act specifically under Section 7.

3 MR. MCGLOTHLIN: Second.

4 MR. WAMPLER: Have a motion and a second. All in favor
5 signify by saying aye. (All agreed.) Opposed, say
6 no." (None.) We're now in executive session.

7 (HEARING ADJOURNED AND WENT INTO EXECUTIVE SESSION.)

8 MR. WAMPLER: I'll do a roll call here to ask the Board to
9 affirm that all we discussed was matters of the legal
10 counsel under Section 2.1-344 of the Virginia Freedom
11 of Information Act, Section 7.

12 (Roll called.)

13 MR. WAMPLER I now entertain a motion to come out of
14 executive session.

15 MR. MCGLOTHLIN: So moved.

16 MR. MASON: Second.

17 MR. WAMPLER: Motion and a second. All in favor signify by
18 saying yes. (All agreed.) Opposed, say no. (None.)
19 Thank you. We now consider a motion.

20 MR. EVANS: Mr. Chairman.

21 MR. WAMPLER: Mr. Evans.

22 MR. EVANS: I move that this Board adopt field rules for the
23 development of the Berea sandstone formations in the
24 Pilgrims Knob area of Buchanan County, Virginia. The
25 rules shall include square units of approximately 180

1 acres with a set back requirement of 300 feet from unit
2 boundaries. The inspector should be given authority to
3 consider exceptions to the 300 foot set back on a case-
4 by-case basis. Cabot is directed to provide an updated
5 unit map together with legal descriptions based upon
6 USGS topo maps and latitudes and longitudes and their
7 Exhibit 1. The Board declines to address the 2,500
8 foot coal owner objection. Pending permit applications
9 are to be subject to these rules. Any permit issued
10 after July 1, 1990 is to petition this Board for
11 creation of a proper unit. This order shall exclude
12 units previously established by the Board. The 180 acre
13 units shall be based upon the division of nine of the
14 coal bed methane units in the Oakwood Field into four
15 equal squares commencing with the northwest corner of
16 unit B-23 of the Oakwood Field map and incorporating all
17 the proposed fields without gaps as encompassed by the
18 field to include the five foot isopach described in
19 exhibit 1 to the Cabot proposal. The adoption of the
20 unit map shall be subject to the final approval of the
21 Board.

22 MR. WAMPLER: Okay. You heard the motion.

23 MR. MASON: Second.

24 MR. WAMPLER: Motion is seconded. All in favor of the
25 motion signify by saying yes. (All agreed.) Opposed,

1 say no. (None.) Thank you. The motion carries. You
2 want to adjourn for lunch?

3 MR. HASON: Yes.

4 MR. WAMPLER: The Board will adjourn for lunch and will
5 return at 1:30.

6 (AFTER A LUNCHEON RECESS, THE PROCEEDINGS CONTINUED AS
7 FOLLOWS:)

8 ITEM II

9
10 MR. WAMPLER: I call the meeting back to order. The second
11 item on the Board's agenda is continued from last
12 month's board hearing. Motion been made by OXY USA,
13 Incorporated to the Board requesting consideration of an
14 alternative for escrowing funds from a forced pooled
15 unit under Section 45.1-361.22. Mr. Swartz, when you're
16 ready, we're ready.

17 MR. SWARTZ: Between last months hearing and today we have
18 submitted some additional information to the Board and
19 have attempted to address essentially some concerns that
20 the Board had. One was a concern that we look at banks
21 within the Commonwealth of Virginia and the financial
22 estimates that have been submitted include one bank
23 from Pennsylvania and two Virginia banks, both are
24 which are located in Richmond and are large banks. We
25

1 have obtained written proposals from all three of those
2 banks. The letters which transmitted the specific
3 financial requirements of the banks. The terms are
4 summarized in the exhibit that's also attached. In
5 addition, we went back and took a look at the escrow
6 agreement and tried to address issues that were raised
7 with regard of the terms of that agreement by Board
8 members. We then sent the escrow agreements to three
9 banks that we are -- the proposed agreements of the
10 three banks that we obtained bids from, solicited their
11 comments as to which provision they would agree to or
12 not agree to and then the revised escrow agreement
13 which you have in front of you reflects the kind of
14 agreement that we think a bank would be likely to sign
15 based on their feed back with regard to the terms of
16 those agreements. There was also a question -- the
17 third thing that I felt we needed to address after the
18 last hearing was the question that was raised by Mr.
19 Mason and others that was raised as to whether or not
20 the Virginia Code -- that a reasonable interpretation of
21 the Virginia Code Provisions would permit funds from
22 various wells to be consolidated in one account with
23 regards to wells drilled by one operator. I submitted
24 a legal memorandum. The thrust of which, I believe, is
25 that the statute can reasonably be read in my judgement

1 and, obviously, you have to make up your own mind in
2 that respect, but in my judgement can reasonably be read
3 to permit the consolidation of funds for more than one
4 well in one account. I would attach a caveat to that
5 and I would think that the Board should consider this
6 that I would never, ever recommend that more than one
7 operator be in one account. As you'll recall from Mr.
8 Terwilliger's testimony and from the way that OXY
9 conceive this rule might be implemented. OXY would be
10 doing the well accounting in the ordinary course. I
11 mean, it does well accounting anyway and I think to
12 consolidate funds of several operators when the operat-
13 ors are doing their own well accounting would be an
14 invitation to disaster. So I think that any escrow
15 account where funds are consolidated for more than one
16 well ought to be an escrow account per operator. There
17 should not be several operators in one account. Let me
18 tell you what I would hope to accomplish today and what
19 would cause me to leave a happy man so that you'll know
20 what we're asking you to do today and that's two
21 things. One, I would like, if possible, to have a
22 decision from the Board on the question of whether or
23 not it is the Board's view that the Virginia Code
24 permits funds from more than one well to be consolidated
25 and held in one or as we have proposed, two escrow

1 accounts as compared to an interpretation that the
2 statute would require one account for every well. If
3 the Board's pleasure in that regard is that the Board
4 feels that it can reasonable interrupt the statue to
5 permit funds to be consolidated, if we get beyond that
6 stage, it would be my recommendation to the Board that
7 the Board either create a work group or use the rules
8 work group that has already been created by the Board to
9 come up with a standard form escrow agreement and to
10 come up with regulations of governing the escrow funds.
11 I think as we go through some of the comments that I
12 have today you will see that in all likelihood I think
13 that you need to address escrow issues whether you are
14 dealing with one well or whether you're dealing with a
15 hundred wells where the funds from those wells are
16 consolidated. The current orders which we are receiving
17 from the Board require the operator to establish an
18 escrow account for the particular well that's being
19 pooled. Those orders do not specify terms of the escrow
20 arrangement and I think, although OXY would never take
21 this position, I think someone else could come and take
22 the position that all the current order requires is that
23 you go to a bank or a savings and loan and you say I
24 want an account called escrow account number 1 and you
25 open a pass book savings account and you put the funds

1 for that well into that account. I think that the
2 escrow issue, the control of the Board over escrowed
3 funds issue, the solvency of the financial institutions
4 or the insured deposits where they might be placed, all
5 those issues are equally relevant whether you have one
6 account for one well or you have one account consolidat-
7 ing the funds of a number of wells. The second thing I
8 would like to see accomplished is for the Board to
9 consider either delegating to it's committee it already
10 has on rules and regulations or creating a separate
11 committee to address standardizing an escrow agreement
12 and promulgating rules with regard to escrow in general.
13 I think that that committee if it's the standard
14 committee that you already have or if it's another
15 committee should defiantly incorporate one or more
16 representatives of the Virginia Bankers Association or
17 bankers in the state so that hopefully you would come
18 up with an escrow agreement that banks would sign and I
19 think they should have some input into that. I think
20 that the meetings to the extent that they would address
21 escrow issues that the parties that might be interested
22 such as OXY, Cabot, EREX, Ashland have notice -- I
23 understand these meetings are opened to the public, but
24 that they have notice so they could participate and I
25 think that it would be -- our time would be better spent

1 dealing with those kinds of issues in a work study
2 environment rather than keep coming back to this Board
3 and trying to, you know, answer a couple of questions
4 every meeting. I think that that committee could then
5 come back to the Board with a recommendation that have
6 been hammered out by the various groups with interest.
7 If I could take the couple of issues that we've add-
8 ressed in the interim and just -- I assume that you've
9 had a chance to read most of this stuff and I'm not
10 going to spend a lot of time on it. The financial
11 information which we've incorporated, there are three
12 scenarios. A and A-1 contemplates that you would set up
13 two escrow accounts, one in which funds that were
14 participation funds, participate in the well, were
15 consolidated in that and in the other escrow account
16 royalty and working interest funds would be paid into
17 that so that each operator would have, if they availed
18 themselves of this procedure, would have two accounts.
19 One which would be for participation funds and one
20 which would be for proceeds after the deduction of
21 operating expenses and royalty. Scenario B, which is
22 addressed is a situation where every well would have one
23 account. Scenario C, I suppose you could push the
24 interpretation, is a situation where every claimant
25 would have an account. This cost summary -- the cost

1 that I reported for bank one, bank two and bank three
2 are the total cost over a three year period. In other
3 words, it's not the annual cost. So bank A's cost, if
4 you just look at the situation of A and A-1 where there
5 are just two accounts, the total cost for three years
6 would be estimated to be \$70,000. Bank two, \$36,000 for
7 the same period. Bank three, \$54,000. If you get into
8 having two hundred accounts or thousand accounts those
9 numbers are captured, again, for a three year period in
10 the entries under B and C. For your proposes and you
11 can tell from the next page bank one is a Virginia bank.
12 Bank two is the Mellon Bank in Pennsylvania that we had
13 spoken about before. Bank three is also a Virginia
14 bank. The scenario or the costs are broken out on the
15 following page with regard to the various banks showing
16 that some of them charge for different items. I mean,
17 bank one has a base fee, then they've got a management
18 fee which is a percentage fee, a distribution fee,
19 which is the fee that they charge for cutting a check
20 to pay out of escrow and then they have other fees.
21 This bank in particular told us that it would cost
22 \$4,000 to tell us what the weighted average income of
23 any given month was and that's what that other fee is
24 here. You'll notice bank two has a base fee, no
25 percentage fee and a distribution fee and no other

1 fees. Bank three has much higher base fees, but it has
2 no management fee, a lower distribution fee. I mean,
3 they're all different. The next page which is a
4 summary of terms proposed by banks, I've just taken the
5 terms out of the letter proposals we've received from
6 them and summarized them so that you can compare them
7 as to what they're looking for. The last item in the
8 packet you got from me this time around is a discussion
9 of the statute and my view of it. One of the concerns
10 that I raise in here which really isn't a legal argu-
11 ment, but is a particle consideration. If you'll
12 recall that the pooling statute in so far as it deals
13 with gas wells generally requires an escrow account or a
14 creation of a escrow account for unknown interest and if
15 you look at the kind of escrow fees that we're talking
16 about with regard to these various banks, if you have to
17 set up separate accounts it is not difficult to image a
18 situation where the fees that would be chargeable by the
19 bank on an escrow basis would either exhaust the small
20 fractional interest unknown parties that are being
21 escrow. The fees could exceed what's being paid in or
22 over time exhaust that and you've got to realize that
23 these unknown funds with regard to coal bed methane
24 wells, I think, can be anticipated to be escrowed for
25 some period of time because until the ownership issues

1 on our well are resolved the portions of the funds or
2 the right of the unknown claimant to the funds have not
3 been adjudicated. So the time would not start to run.
4 It's apparent to me that in Virginia based on your
5 statue on escheat that the minimum amount of time before
6 funds are presumed to be unclaimed is three years. So
7 you've got some period of time before ownership issues
8 are resolved where the funds would have to be escrowed
9 and then once ownership is resolved, if it's resolve in
10 favor of someone who's unknown, then there's a three
11 year period before the fund would escheat. So you would
12 have them on deposit for a considerable period of time
13 if you're paying any significate escrow fee on a
14 relatively small amount of fractional interest outstand-
15 ing. It's easy to see that the State would never
16 benefit from that money. It would be exhaust by fees.
17 I think, frankly, no one would won't to see that. In
18 addition with regard to the wells in general in escrow-
19 ing funds it is possible on marginal wells where every
20 dollar become very, very important in terms of trying to
21 decide whether it's worth continuing to produce or
22 whether the well should be plugged, you do not want to
23 be paying anymore in escrow fees than you absolutely
24 have to because it may -- it will have an impact on the
25 economics of the wells and if the economics of the well

1 are close to the line escrows fees, depending on which
2 of these banks you might go with, could, in fact, push
3 that particular well over the line. One other thing
4 that I would like to make you aware of is we have copies
5 of one state's statute and regulations and we just
6 received the Wyoming ones last night and I don't have
7 copies, but I would ask you all to take judicial notice,
8 particularly if we get into a work group, of the
9 Oklahoma statutes with regard to unclaimed funds or
10 whatever you want to call it, unknown interest. They
11 have a statute that applies to escheat regarding oil and
12 gas. It is certainly not as detailed as what I would
13 anticipate what we're going to wind up here.

14 MR. WAMPLER: Is this an exhibit, Mr. Swartz, or do you just
15 want to just for our information?

16 MR. SWARTZ: Just take judicial notice of it. You don't
17 really have to number it as an exhibit. In addition I
18 do not have, we just got this fax either late last night
19 or early this morning.

20 MR. FULMER: Could I have a copy of that for the record.

21 MR. SWARTZ: I'm sorry.

22 MR. FULMER: Just to have in the file, thank you.

23 MR. SWARTZ: Wyoming has a more comprehensive arrangement
24 and we will get Diana a copy so that you can pass this
25 around or at least have it on file. Wyoming actually

1 has an escrow agreement that is the official agreement
2 for the escrow of oil and gas proceeds in that state to
3 the extent that it's required. It is apparent to me
4 that the Attorney General of Wyoming working with
5 interested parties came up with this form and it's
6 called the "Wyoming Standard Form Royalty Escrow
7 Agreement" and we will get a copy of this to you all.
8 It is not all that dissimilar in a lot of respects from
9 what we came up with before we found it. It has some
10 other features which are also of interest and we'll get
11 you a copy. Wyoming also has regulations and addresses
12 consolidation of funds from different wells in one
13 account and they're a regulations with regard to
14 that. The regulations that I've given you today from
15 Oklahoma, I think if you go into it you should have a
16 page that has B and C on it. Oh, Page 225 is at the
17 bottom right hand corner.

18 MR. MASON: Just above the copyright mark.

19 MR. SWARTZ: Yes, right. Only one account need be establish
20 by each holder. If only one account is established a
21 record shall be made of deposits and withdrawals for
22 each person for whom moneys are being held. And you
23 can see this that the Oklahoma statute clearly contem-
24 plates photocopying this report -- no, clearly contemp-
25 plates consolidating funds from various wells. The

Wyoming regulations and statute also address that.

1 MS. PATTON: The Wyoming statute was the basis for what was
2 the old Senate Bill 381 which was the law in Virginia
3 for three months from March 1 to July 1 of 1990 and then
4 when the legislator revised the entire oil and gas act
5 they streamlined and simplified a lot of the language
6 and in the process they took what was Senate Bill 381
7 which incorporate the co-mingling authorization from the
8 Wyoming statute, Section 35-302, which specifically
9 stated the escrow agent may co-mingle moneys received in
10 the escrow from anyone unless they are operator. They
11 streamline the escrow provision when they reenacted
12 Senate Bill 382 as well as streamlining a lot of the
13 other language. The intent was never to get rid of the
14 authority to co-mingle. That was based on the Wyoming
15 statute and we have a copy of this escrow agreement.
16 After we looked at how Wyoming had done it as far as
17 coming up with a singular escrow agreement and when we
18 started realizing that you all would be considering
19 escrow agreements from everyone who has escrowed
20 anywhere from a one eighth royalty to several hundred
21 wells including proceeds and participation interest that
22 it appeared that the time, as Mark said, would be better
23 served in light of all this additional information that
24 we've uncovered and the forms that other states have
25

1 used that you all would want to study that in a smaller
2 group where you could look at the agreements and look at
3 the regulations and statutes and maybe come up with
4 something like Wyoming did as far as an Attorney
5 General's issue standard form escrow agreement that
6 everyone uses. The concept of having, of course,
7 someone from the financial institutions on that commit-
8 tee would insure that once it's promulgated you will, in
9 fact, have a financial institution that will abide by
10 the terms and conditions in the agreement that you have
11 now promulgated.

12 MR. MASON: Excuse me, Mr. Chairman,

13 MR. WAMPLER: Mr. Mason.

14 MR. MASON: Mark, I'm reading through the memorandum that
15 you all submitted. One was a comment. I think it was,
16 if I may, interesting that you distinguished the various
17 dictionaries by their weight. That's an unusual
18 citation.

19 MR. SWARTZ: It was on purpose because you can spend a lot
20 of time trying to figure out what a two letter work
21 means looking in --

22 MR. MASON: No, I'm really serious. I think it's a -- I
23 have grapple with the same problem in terms of how the
24 same additions, the same books have -- they're actually
25 different volumes and you can't tell them apart. As I

1 understand it, you all did not find, based on this, any
2 parallel statutory situation in Virginia that would give
3 any other direction where there's any such escrow?

4 MR. SWARTZ: No, I did not.

5 MR. MASON: Okay.

6 MR. SWARTZ: I was unable to find an escrow case that I
7 could bring to your attention.

8 MR. MASON: Or any other parallel in terms of legislatively
9 recommended escrows or mandated escrows and whether or
10 not they're co-mingled?

11 MR. SWARTZ: I could not find that.

12 MS. PATTON: The only parallel was the 381 which proceed
13 this which --

14 MR. MASON: When you refer to that that's the old bill that
15 just was a separate bill for coal bed methane.

16 MR. WAMPLER: As emergency.

17 MS. PATTON: That was emergency.

18 MR. MASON: Right.

19 MR. SWARTZ: One thing that I did find which is not in
20 there, Mr. Mason, is I kept struggling to try and find
21 because I assume that Virginia had a general law that
22 said the singular means the plural and the plural means
23 the singular and I couldn't find it. I did a lexical
24 search and I said that I want you to find all instances
25 of the word plural within twenty-five words or the word

1 singular and I couldn't find anything in a general
2 nature. It appears over and over again in a lot of
3 code provisions. So I came down here one day and went
4 to the library and looked in the books and it turns out
5 that they occur twenty-six words apart and my search
6 was devised wrong and I missed it. And there is a
7 statute in Virginia which is Code Section 1-13.15 which
8 is entitled "Number" and most states have a law like
9 this. It says, "A word importing the singular number
10 only may extend and be applied to several persons or
11 things as well as to one person or thing and a word
12 importing the plural only may extend and be applied to
13 one person or thing as well as to several persons or
14 things." I cited a Virginia case in the memo. You
15 know, I read these statute and cases are saying you need
16 to look at what you're doing and whether the statute
17 limits use expressly. You don't need to worry whether
18 it's plural or singular in reaching a result. I think,
19 to me, the most pertinent provisions in this statute is
20 the fact that there isn't a provision which says you
21 need to establish one per well or that you can't or the
22 reverse. It's just silent. And I guess what I'm
23 trying to convey to you all is that under those circum-
24 stances I think that you can decide what a reasonable
25 interpretation is, given the kinds of results you would

like to see accomplished with regard to escrow.

1 MR. MASON: Mr. Chairman, if I may again.

2 MR. WAMPLER: Mr. Mason.

3 MR. MASON: It is your representation to the Board after
4 your work that there is nothing that you're aware of
5 that prevents us or tells us not to do that?

6 MR. SWARTZ: As an officer of the Court I'm telling you that
7 yes, there is nothing I am aware of that prevents you
8 from doing that.

9 MR. MASON: I interpreted it to mean basically that you're
10 representing to us that A, nothing that prevents you to
11 do it. B, there's ambiguity in light of that ambiguity
12 it should be interpreted to further the ends of the
13 intent of this act in the most expeditious way.

14 MS. PATTON: Yes, that's correct.

15 MR. WAMPLER: Okay. Continue.

16 MR. SWARTZ: If there are questions about anything else
17 we're here to answer them.

18 MR. WAMPLER: Do you plan to make any other presentation?

19 MR. SWARTZ: No.

20 MR. WAMPLER: Okay. Any other questions? Does any one else
21 plan to -- Mr. McGuire.

22 MR. MCGUIRE: I have one question. I talked with Mr. Swartz
23 before. My name is Grant McGuire. I represent Ashland
24 Exploration and Ashland has elected to participate
25

1 which regard to one of the units and has delivered it's
2 funds to OXY and I understand that OXY has deposited
3 that in a fund that is drawing interest and I'd like to
4 confirm that on the record and ask OXY's intention with
5 regard to future participation.

6 MR. SWARTZ: The Ashland money, as I understand it, is in
7 what OXY calls a suspense account and it is and will be
8 incurring interest and it is segregated in an expense
9 account. We have not a suspense which is maintained,
10 not just for this particular fund, but it's a suspense
11 account that funds routinely are placed and then there
12 will be an imputed to that account.

13 MS. PATTON: What we intend to do and tell the Board with
14 respect to how the escrow agreement is to be formulated
15 and how the plan is to be implemented that we intend to
16 place the funds in suspense, interest bearing, at a
17 specific interest rate until we have the fund in which
18 to place any proceeds or any participation proceeds that
19 we receive.

20 MR. MCQUIRE: Okay. That's all I have. I just wanted to
21 confirm that on the record.

22 MR. WAMPLER: Thank you.

23 MR. FAIN: Very briefly, Hugh Fain for Cabot, I just have
24 several comments that are housekeeping really. I spoke
25 to Mr. Swartz about this before. We don't object at

1 all to what to their effort here and we commend it, but
2 we thought there were a couple of items in just reading
3 though this there were a little unclear to us and we
4 wanted to address for the Board just for their con-
5 sideration. First, I think it's obvious, but just so
6 everyone is on the same wave length, we want to make
7 sure that Section 4 on Page 2 which says that the bank
8 agrees that it will cost checks to be issued mailed in
9 accordance with the order of the Board. This does not
10 say whether or not this Board is going to be making the
11 actual determination as to title or who is the actual
12 claimant and I think everyone understand that the
13 Circuit Court is going to be making that determination.
14 But a fresh person reading this escrow agreement may
15 not understand that and we just want everyone to
16 understand that it's the Circuit Court that's going to
17 be making the ultimate determination as to title and to
18 the coal bed methane and not the Board. The bank might
19 be confused that the Board might have that duty. The
20 second thing that we wanted to point out is that we hope
21 that this arrangement makes clear that the operator is
22 to recover all of it's operational cost in drilling the
23 well. That those funds aren't subject to escrow
24 provisions of the statue in this agreement and again
25 that may be clear, but to someone reading it fresh it

1 doesn't really say that in the escrow agreement. We
2 hope that everyone understands that. On Page 3 under
3 Section 7 which begins on Page 2 the very last sentence
4 of Section 7 is little unclear to us. It says, "The
5 escrow agent agrees that it will voluntarily comply with
6 requests regarding unclaimed funds or other requests
7 made by any governmental agency of any state." In
8 talking with Mr. Swartz I think the intent of this is
9 that, and I don't want to speak for him, but I think
10 what he is saying is the intent of this sentence is that
11 the escrow agent will comply voluntarily with any
12 request for information about unclaimed funds and if
13 that's so I think that's appropriate and perhaps the
14 words for information could be added in after the word
15 request, but if on the other hand this means that the
16 escrow agent is to voluntarily automatically turn over
17 any unclaimed funds to the state upon request, we don't
18 think that's wise because there are some situations where
19 the lessee and the state actually go to litigation over
20 unclaimed funds and we are aware of one situation, for
21 example, where those funds have been determined to go to
22 not state under these escheat laws but to the actual
23 lessee. So we think it's unwise for this escrow
24 agreement to say that automatically the escrow agent
25 will turn over any funds to the state if it's requested.

1 If this on the other hand means any request for informa-
2 tion we think that's perfectly appropriate. The last
3 thing that we wanted to point out was that this escrow
4 agreement does not appear to set up these accounts in
5 any kind of a trust. Now, I'm not a trust and estate's
6 lawyer so I'm a little out of my field here, but I
7 understand that if a bank who is acting as an escrow
8 agent has financial troubles which a few banks these
9 days tend to be having and goes belly up and if your
10 escrow accounts aren't in trust you may have difficulty
11 getting in line as a creditor to get your funds out of
12 the bank. Again, I'm not a trust and estate's lawyer,
13 but I think perhaps this issue ought to be looked into
14 as to whether or not it's advisable to have these
15 accounts set up in trusts as opposed to just account at
16 the bank in view of any financial difficulty a bank may
17 have in the future. Those are all our comments. I just
18 wanted to put them on record.

19 MR. WAMPLER: Thank you. Any one else? Questions, members
20 of the Board?

21 MR. MASON: Mr. Chairman, may I ask one thing?

22 MR. WAMPLER: Mr. Mason.

23 MR. MASON: Do you have any -- you were talking about this
24 Oklahoma statue. Do you all have much knowledge or
25 information as to how well that works out there, in

Wyoming, I mean?

1 MS. PATTON: With the escrow agreement that --

2
3 HR. HASON: Yeah, I guess just sitting her pondering about
4 it it seems to me that there is an enormous difference
5 between the escrow agreement that OXY may want to have
6 for a hundred wells or fifty wells and what some small
7 operator might want to have for one or two wells. He
8 may wish to deal with a small bank in his locality. It
9 seems to me there are two ways that you could go with.
10 One is to adopted the uniform agreement. It would have
11 statewide application or adopted a set of like basic
12 rules or guide lines that an agreement must accomplish.
13 These set of rules or these things or if you must have a
14 set of rules that say you have to have these and the
15 agreement has to be approved by the Board or something
16 like that. There's several ways that you could do it
17 that would allow more flexibility. I guess you always
18 have a problem when you have a legally mandated agree-
19 ment because -- for instances in Wyoming, what would
20 happen if no bank --

21 MS. PATTON: This is why we suggested that there be an
22 representative of the financial institution on whatever
23 committee is looking at it. That was just a suggestion
24 because what we realized from the amount of time that
25 we were taking on this that you all had to go through

1 this process every single time a company wanted to set
2 up an escrow account you would probably be spending a
3 lot of time. In the eight years that the escrow
4 agreement has been in usage in Wyoming they have not
5 had a single lawsuit involving it. They have had no
6 problems implementing it. It still appears to give you
7 some flexibility as far as your negotiation with the
8 bank and the provisions in the Wyoming escrow agreement
9 are basically your -- your basic provisions that we
10 incorporated, as Mark said, ours is very similar to the
11 Wyoming one because those are very similar commonly
12 occurring escrow principles. I think what you would
13 have to do if you set up an approved form is that you
14 would incorporate in it only those provisions that you
15 absolutely would want to be sure are in every single
16 agreement and I think that's what Wyoming carefully
17 balanced, but they seemed to have sent the escrow
18 agreement that they were proposing to virtually the
19 entire state and they spent an significant amount of
20 time coming up with their form.

21 MR. SWARTZ: I think you raised a good point.

22 MR. MASON: I can't hear you.

23 MR. SWARTZ: I think you raised a good point. My concern
24 that I expressed to you earlier was that I felt that an
25 inquiry into what an escrow agreement ought to look

1 like whether you're dealing with one well or hundred
2 wells should be made because I think the Board ought
3 have to have some basic concerns with regard to those
4 agreements in general. Now that I think through your
5 thought I'm not sure that there might -- we might need
6 to make some differentiation between them, but for
7 example, I think the Board should feel that the escrow
8 agreement, just to take one basic term whether you've
9 got one well or a hundred wells, ought to address the
10 circumstances under which the escrow agent can make a
11 payment. And I think there are certain basic terms that
12 you want to see in an agreement regardless of how many
13 there are. You may, based on the amount of money, want
14 to form some flexibility to the smaller accounts. I
15 really hadn't thought about that, but that may well be
16 an concern.

17 MR. MASON: Well, if I may?

18 MR. WAMPLER: Sure.

19 MR. MASON: The thing I was particularly thinking about is
20 there may be small operators who are not in the posi-
21 tion, for instances, to do some of the accounting that
22 OXY can do and they may wish for the bank to do that and
23 the agreement that they want to have would be to
24 incorporate in it terms that relate to that. You know,
25 I guess I'm just sensitive to the fact that Virginia has

1 five or six large banking operations centered in
2 Richmond. We also have some smaller regional banks and
3 as long as those regional banks provide the necessary
4 financial security I would not want to be in a position
5 to conclude them from acting in this capacity. I think
6 we want to be sensitive to creating some sort of an
7 economic monopoly for the larger banks and at the same
8 time we really want to create the most secure position
9 available.

10 MR. SWARTZ: One other thing I think that this gives you an
11 opportunity which we have not mentioned. If you look
12 at, I think, the Oklahoma information that I gave you,
13 although it may also be in the Wyoming information,
14 defines what an financial institution is for their
15 purposes and it's somebody that has FDIC insurance of
16 at least \$100,000 per account. I can't remember which
17 state it is. If you get into something like that it
18 allows you to take your concern about the financial
19 stability of the operator and just put that aside
20 because you're putting the money into an account where
21 somebody else's credit is behind the account. So there
22 are some advantages to looking at that as an issue to
23 address some of those problems and I think it also shows
24 that at least one state looked at the question you've
25 raised and said the minimum we're looking for in an

1 financial institution is FDIC insurance which would
2 even include state banks in the equation in a lot of
3 states cause they can buy FDIC insurance.

4 MR. MASON: Well, this Oklahoma statute provides that an
5 financial institution means a federally or state
6 charter bank, savings or loan or credit or union.

7 MR. SWARTZ: One of these has an FDIC --

8 MR. MASON: It's probably Wyoming.

9 MR. SWARTZ: Okay. You'll get a copy of this. It was in
10 one of them.

11 MR. MASON: Yeah.

12 MR. SWARTZ: That was their filter as to what --

13 MR. WAMPLER: It's in this one.

14 MR. MASON: It's in here. It's escrow account means as
15 Mike's pointed established in a financial institution
16 and held in the name of the holder each owner is
17 federally insured to \$100,000.

18 MR. SWARTZ: Okay.

19 MR. WAMPLER: Your proposal to the Board, of course,
20 addresses your company and proposes to the Board that
21 that OXY manage these accounts. What problem would you
22 have if an requirement existed for a third party
23 management of the accounts, disinterested third party?

24 MR. SWARTZ: We couldn't afford it.

25 MS. PATTON: Third party to do the what?

1 MR. WAMPLER: Do the entire management of the account, do
2 the accounting.

3 MS. PATTON: Including the accounting of it?

4 MR. WAMPLER: Yes.

5 MS. PATTON: You mean as far as the individual well account-
6 ing?

7 MR. WAMPLER: Yes.

8 MR. PATTON: Down to the allocations, like the example that
9 we showed you?

10 MR. WAMPLER: Yes. Big A accounting firm or some independ-
11 ent group.

12 MS. PATTON: That would cost probably a half a million to a
13 million dollars a year to have someone do that. Based
14 on initially when we looked at the bank as the escrow
15 agent and asked our treasury department as far as their
16 capacity, the bank's capacity to do accounting of that
17 function and we showed him an example and his reaction
18 was A, we couldn't find a bank who would have the
19 capacity to do that sort of accounting and B, even if
20 someone attempted to do it, his estimate would be at
21 least a half million dollars a year based on the number
22 of accounts we were talking about.

23 MR. WAMPLER: But yet if we had other parties coming to the
24 Board to establish these types of accounts that didn't
25 have a large accounting firm that your folks represented

1 that you have, then they're going to be in a position of
2 either having to hire people on staff or hire this work
3 done or some other means.

4 MR. SWARTZ: The accounting that's required to know -- I
5 can't image that there's an oil and gas company that
6 doesn't know what their proceeds are from a well, what
7 their cost are at the end of a month and you divide
8 proceed by one eighth to get royalty and you subtract
9 cost from -- to escrow funds is not a real significant
10 undertaking and I don't think you've got to be in OXY
11 to do the bookkeeping. What is a problem and what Mr.
12 Terwilliger was addressing was if an inquiry gets into
13 well accounting and the operating expenses which should
14 have been deducted by an given operator to keep track
15 of the well accounting is what's going to generate --
16 Remember you asked him could you account for every
17 penny at the end of a period of time and he said yes
18 and we could give you take accounting ten years ago,
19 tomorrow, ten years from now. But that is a massive
20 undertaking the bigger you are, but even the littlest
21 company has to keep those kinds of records otherwise
22 they can't make a deduction. I mean, I can't image
23 that --

24 MR. WAMPLER: I'm just simply exploring the Board's respons-
25 ibility to insure that these parties unknown or other-

1 wise, other interests out there are afforded in maximum
2 protection.

3 MS. PATTON: Both Wyoming and Oklahoma in establishment of
4 the escrow accounts have made no restrictions having
5 impose no requirements whatsoever in the propagation of
6 their statutes and regulations relating to how the actual
7 accounting is done because every company that has oil
8 and gas operations has their own individual accounting
9 system and, of course, the large company you are,
10 like OXY, unfortunately this type of accounting is a
11 little more difficult for us because we have joint
12 interest accounting which is what you would have if
13 someone elected to participate. We have an entirely
14 separate accounting system for royalty accounting. The
15 difficulty in an escrow procedure that requires you to
16 escrow funds that transcend both types of interest,
17 royalty, participating and proceeds overlaps three
18 separate areas in our company. For a smaller company
19 who deals with, the money comes in, you allocate to this
20 portion, you have the division part of it says twelve
21 and a half percent goes to the royalty, you have 87.5%
22 to the working interest, you've carved out three percent
23 to the override. You have disputed interest on this.
24 You make the determination you're going to escrow. As
25 Mark said, that is a process that companies go through

1 when they do their own individual accounting. The only
2 difference they're going to make on the escrow is
3 they're going to look at the their title and determine
4 if there's a conflict and what portion of that needs to
5 go in the escrow account.

6 MR. WAMPLER: What about the audit then of the funds? Are
7 they done by internal audit group or a disinterested
8 audit group auditing the entire records per well?

9 MR. SWARTZ: Which account? Are you talking about the funds
10 on deposit with the bank?

11 MR. WAMPLER: I'm talking about any funds that the Board
12 causes to be escrowed?

13 MS. PATTON: With respect to audit by whom?

14 MR. WAMPLER: That's the question really. I'm saying that I
15 believe the representation by OXY was that you have an
16 audit, that you employee the auditor to come in that
17 does all of OXY's auditing work and I'm saying how do
18 you get a arms length audit? How do we insure we have
19 an arms length audit, disinterested auditor of the
20 account? I'm not just picking on OXY, but anybody.

21 MS. PATTON: I know.

22 MR. WAMPLER: We're talking any firm that comes before this
23 Board or anybody that uses this provisions if it's
24 granted of escrowing.

25 MS. PATTON: I think our contemplation has always been that

1 our records on this will be open to audit by any third
2 party whether the state or whether a royalty owner or if
3 Ashland wants to know where their proceeds are that
4 anyone can come in and audit our records that those
5 would be available.

6 MR. WAMPLER: Okay.

7 MS. PATTON: We have internal auditors, but they would not
8 be the people that would be utilized for this because
9 clearly, I don't think anyone would be satisfied with-

10 MR. WAMPLER: In the states where you're aware that this is
11 in operation and you probably have wells in those
12 states, do they cause any audit by some independent
13 audit firm each year?

14 MS. PATTON: This is Patricia Bragg from Tulsa, Oklahoma
15 and she's had considerable experience in Oklahoma
16 escrow. She'd be happy to address that.

17 MS. BRAGG: If you don't mind.

18 MR. WAMPLER: Sure.

19 MS. BRAGG: I'm a private attorney in Tulsa, Oklahoma and
20 for twelve years my primary expertise has been oil and
21 gas law and that includes practice before the Corpora-
22 tion Commission of Oklahoma which is our encounter part
23 to your group. And I'm also practiced before the Texas
24 Railroad Commission.

25 MR. WAMPLER: Would you state your name, please.

1 MS. BRAGG: It's Patricia Bragg.

2 MR. WAMPLER: Thank you.

3 MS. BRAGG: We looked at, in Oklahoma, in 1984 the escrowing
4 funds from pooling orders. We had an escheat statute
5 already in place and looked specifically at an escrow
6 for pooling orders and so we went through the legisla-
7 tive process and then once the legislation was passed
8 into internal rule makings which you have had dis-
9 tributed to you, in that process we hammered out a
10 number of these issues and one was to who is the holder
11 of the escrow funds and when. In Oklahoma every
12 pooling order must have a provision in it providing for
13 escrow if they are unknown, unlocatable owners that are
14 being pooled, poolers in that order. The order in the
15 rules also say that the holder of the operator may
16 internally escrow those funds for one year as long as
17 the funds are not co-mingled with the funds of the
18 operator. So that Oklahoma is very liberal on this
19 matter. You must only internally escrow for one year.
20 You can escrow funds from all of your wells into one
21 internal account and then what happens is on the
22 anniversary -- on the one year anniversary date after
23 the pooling order you file a report to the Corporation
24 Commission saying I have had X number of funds on
25 escrow for one year and that those persons remain

1 unknown or unlocated. And then at the end of the year
2 you physically turn over your funds that have been
3 escrowed to the corporation commission and they in turn
4 turn them over to the tax commission who is the holder
5 of all of the states escrowed escheated funds and
6 there's a separate mineral account into which pooling
7 order escrows go for the state, for the Oklahoma Tax
8 Commission and that's the way it's handled in Oklahoma.
9 It's unusual that there's a financial institution
10 involved at all. They are all internal escrows.

11 MR. MASON: Mr. Chairman.

12 MR. WAMPLER: Mr. Mason.

13 MR. MASON: As I understand this escrow agreement as it's
14 presently structured, the Virginia Oil and Gas Board
15 would, in fact, be considered the owner of this escrow
16 account, is that correct, for the holder?

17 MR. SWARTZ: Yes.

18 MR. MASON: You know, I'm not sure, but under -- you're
19 asking about audit? It may well be since we are a state
20 agency that would render these funds subject and
21 probably even required to be audited by the state. We
22 have a director of audit and I know that any agency
23 funds that are considered to be held by state agencies
24 are subject to state audits and the Treasury Department
25 of Virginia issued the report every year and I guess the

Office of Controller. So it may well be that that's required here by the state.

MR. WAMPLER: Any other questions? We appreciate you summarizing what you wanted us to do. I think that was very helpful and I mean that sincerely. On the decision of whether or not the Code permits the funds from multiple wells to be co-mingled into one account, that was the first issue and the other if the answer is no, then a lot of this is mute. If it's yes, then a recommendation that we have some sort of work group. I would go, I guess, to part B and suggest for the Board's consideration and open for discussion here that since Mr. Mason has kindly accepted the delegation of heading our work group and we have an active work group with a scheduled meeting on the 15th of February at 9:00 in Roanoke at the Water Control Board Office that we as a Board defer the establishment of rules and regulations governing an escrow, any escrowing account to that work group and I guess by that recommendation I'm saying that those regulations at least consider provisions that would say that the Board may allow escrowing, co-mingling of accounts in escrow. You may consider that as an motion for discussion or open for other motions.

MR. MCGLOTHLIN: I'd like to ask Mr. Mason if he wants to take this responsibility or what?

1 MR. MASON: In response to that, I have no real difficulty
2 with taking on the additional -- I don't suppose the
3 size of the Gordian knot renders it less such a knot.
4 I'm just curious how much, you know, in terms of the
5 time frame that we have to kind to -- I guess the Board
6 needs to consider whether you want to have a separate
7 group do this and enable people to -- I guess a lot of
8 it depends on how much response we're going to have and
9 how much time would be taken up in dealing with this
10 issue alone and whether that would justify. I don't
11 have any problems personally with it.

12 MR. WAMPLER: My recommendation would incorporate that to
13 be and I'm not truly delegation, but that that would be
14 up to you as you saw the need to establish a sub-group
15 or --

16 MR. MASON: Okay.

17 MR. WAMPLER: -- to spend more time than that would -- or to
18 bring in other parties for your group to consider than
19 that discretion would ride on your shoulders.

20 MR. MASON: Okay. With that on there I wouldn't have any
21 problem with that.

22 MR. WAMPLER: That certainly is clarification of my motion.

23 MR. MASON: Thank you, Mr. McGlothlin.

24 MR. WAMPLER: I have a motion and a second. Any further
25 discussion? If there is no further discussion, all in

1 favor of the motion signify by saying yes. (All agree.)
2 Opposed, say no. (None.) Motion carries.

3 MS. PATTON: Thank you.

4 MR. SWARTZ: Thank you.

5 MR. WAMPLER: Five minute break, please.

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

8
9 ITEM III

10 MR. WAMPLER: Item III is the establishment of drilling unit
11 and forced pooling for the A-38 coal bed methane well in
12 the Garden District, Buchanan County, as requested by
13 OXY, USA, Incorporated. This was continued from the
14 prior docket. There was a motion at the last meeting
15 that the Board require OXY to file more specific mine
16 plans and topographic constraints concerning this well.
17 A clarification on A-38, again, this morning it was
18 brought to our attention it was published in the Blue-
19 field paper as A-30 and I just recognize that it should
20 have been A-38 and that's what we presented to the
21 paper.

22 MR. MASON: It says proposed location and there's a bunch of
23 dots around there, which one is it?

24 MR. SWARTZ: The circle is the proposed location. The lousy
25

1 looking squares are houses, right above the L in
2 location.

3 MR. MASON: Black dot.

4 MR. SWARTZ: Black dot, right. As you may recall from the
5 last hearing we offered the basic testimony that we
6 would offer to pool any coal bed methane unit and a
7 question arose as to why this proposed unit was a one-
8 hundred acres when as you'll recall you had just in the
9 same row approved an eight acre unit. We have a
10 topographic map today. Mine plans are irrelevant to the
11 location of this well, so we haven't submitted anything.
12 The only question is surface owner problems which we
13 will address today and topographic and road access.
14 Before we get to the topographics, we had quite a
15 discussion and I felt it might be appropriate to pick up
16 with this discussion about the boundary units and the
17 sizes of the boundary units when the Oakwood field was
18 created and I've asked Marty Wirth to do calculations
19 with regard to the size of the boundary units. And what
20 I'm talking about is the units that would be at the
21 extreme north of the field, south of the field and east
22 and west of field. Those units are not eighty acres as
23 drawn on the map that was -- on that map. They are
24 different sizes. Marty has calculated that. The reason
25 I think we need to address the various sizes of the

1 boundary units -- Glen tells me that OXY will be coming
2 before this Board probably on fifteen occasions to pool
3 wells that they contemplate drilling in boundary units.
4 So this issue on boundary units is going to come up
5 over and over and over again. I assume that other
6 operators are going to be before you on boundary units.
7 I will tell you up front what we're looking for again.
8 A telegraph would make us all very happy. We would like
9 you to tell us what you want us to do. We don't care if
10 these units are all going to be eighty acres or seventy-
11 five acres or one-hundred acres or we don't care if you
12 tell us -- come back to us on each pooling and make your
13 best selection of a well site and have a reason, but we
14 need some indication from you as to the future. I think
15 it will save you a lot of time and save us a lot of time
16 as to how you're going to treat these. Can we adjust
17 them because they are adjustment units as the field was
18 original created or would you prefer that we do not
19 adjust them? Obviously, today all we need to deal with
20 is the top row, the north row, but I think this issue is
21 going to come over and over again. If I could ask
22 Marty to be sworn so that he that could address the
23 sizing of the field and the unit issue so you have some
24 sense of what we're talking about in terms of acreage.
25

MARTY WIRTH

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

DIRECT EXAMINATION

BY MR. SWARTZ:

Q. State your name, please.

A. I'm Marty Wirth with OXY USA.

Q. And have you testified before this Board before?

A. Yes, sir.

Q. And have your qualifications been accepted by them?

A. Yes, sir.

Q. Could you give me your title with OXY?

A. Coal bed methane project land manager.

Q. Can you tell me whether or not you work for OXY and were present at the hearings where this Board or the predecessor of this Board adopted the Oakwood field rules?

A. Yes, I was.

Q. Okay. And did you have a hand in developing the information that OXY presented in support of it's petition for those rules?

A. Yes, I did.

Q. At my request or at your own instance have you calcu-

1 lated the various sizes of the make up or boundary
2 units in the Oakwood field?

3 A. Yes, I have.

4 Q. Can you tell the Board how the external perimeter of
5 the field is described and how the units were placed
6 within that field?

7 A. The boundaries that we requested on April 10, 1990
8 which the Board -- the previous Board heard were
9 boundaries set. As you heard this morning, what we
10 tried to get a longitude line and we come up with an
11 establishing starting point. So we asked the Board
12 that the boundaries be established -- were on the north
13 side a longitude line of thirty-seven degrees, seventeen
14 minutes, thirty seconds. On the east side it was a
15 longitude line of eighty-one degrees, fifty-two minutes,
16 thirty seconds. On the south side it was a latitude
17 line of thirty-seven degrees, zero seven minutes, thirty
18 seconds. On the west side a longitude line of eighty-
19 two degrees, zero seven minutes, thirty seconds. With
20 the beginning of the established units commencing at an
21 intersection of two lat an long lines which are de-
22 scribed as latitude line of thirty-seven degrees, ten
23 minutes, zero zero seconds and a longitude line of
24 eighty-two degrees, zero two minutes, thirty seconds.
25 The drilling units thereby were established each such

1 drilling unit to be composed of an area of eighty acres
2 more or less in the shape of a square except the make-
3 up drilling units to the internal boundaries of the
4 Oakwood coal bed methane gas field which shall be the
5 such shape and size as necessary to complete the spacing
6 in the field. It was our opinion based on geological
7 engineering and land testimony given at that board
8 hearing and the establishment of the drilling units that
9 OXY should take into considerations the shallow coal,
10 the deep coal, the conventional oil and gas, along with
11 surface owners and topography to be able to try to
12 locate a location where in an eighty acre unit could be
13 formed and OXY would survey an eighty acre unit. Should
14 the proceeding that I just stated be unrealistic OXY
15 would then be allowed that the units which coincide with
16 the internal boundaries of the Oakwood gas field as
17 stipulated in the previous order be able to try to
18 protect correlative rights and not dilute interest of
19 the royalty interest. The driving consideration was to
20 minimize the dilution of the royalty interest. As an
21 example, if I used A-38, if we could locate in an eighty
22 acre unit and it was physically possible even though I
23 should go out that on the boundaries and we don't have
24 the exhibit -- do you all have that in front of you?
25 The north boundary line which you can call the A-Rose,

1 if you'll look at A-1, that unit is comprised of 68.5
2 acres, more or less. A-2 through A-38 is comprised of
3 111.44 acres. A-39, the one in your north eastern
4 corner, is a 106.24 acres. And then going down you go
5 through like B-39 though EE-39, those units are 77.15
6 acres. The FF-39 is 85.18 acres. FF-2 though FF-38 is
7 87.86 with FF-1 being a 90 acre unit. As you go back up
8 from EE to BD-1 you have eighty-one acres more or less
9 in those units. So what it is the boundaries you have
10 a round world and we put in squares and in the other
11 areas you have what you call correction sections and
12 what you heard this morning in sections townships and
13 range. Every township usually in Section 36 or some-
14 thing will have a little more acres than 640 acres in
15 it. It's called a correction section. So, basically,
16 what I have tried to do is tried to is if there was more
17 than one -- in the A-38 we have a simple solution that
18 we have one royalty owner having one-hundred percent and
19 we have an oil and gas lease having one-hundred percent,
20 but if I had in an eighty and went ahead and took that
21 111 acre square as it is and put in two or more separate
22 royalty owners I have just diluted his royalty interest
23 approximately twenty-eight percent. So it was an
24 undertaking that OXY did is tried to keep it to a
25 minimum taking under consideration as I said, topo-

1 graphy, coal and all the other things we had to work
2 with, as to keep it as close to eighty acres as pos-
3 sible, keeping in the guidelines that we can. If the
4 Board's pleasure is to keep it uniform around there and
5 keep it 68.58 acres on one corner and then run 111.44
6 and then the next corner is 106.24 and then you run
7 77.15, you know, we would be more than happy to desire
8 which ever you want. We just took it as to trying not
9 to dilute the royalty interest in that said unit and
10 kept it to the minimum as we could.

11 Q. With regard to the A-38 unit, could you tell me what
12 consideration, if any, was given to surface owners and
13 their desires with regard to the proposed location that
14 is shown on the topo map that the Board currently has?

15 A. Originally, we also contact or we run title -- knock on
16 doors, go to banks, go to deeds, anything we can to try
17 and find out who the surface owner, tax maps and
18 everything. We originally almost came where the two
19 dots below the road you see on the topography map in
20 front of you, we were going to try and locate that well
21 away from those two dwellings and close to the road as
22 possible. The surface owner adamantly objected because
23 of hay fields and we were cutting out the hay that he
24 had for his livestock. We then looked across the other
25 roads and tried in another topography. Working with --

1 do not forget the shallow coal and all the other things
2 that we have to work with. We went over to this
3 location where the surface owner had no problems. He
4 said that if you can locate it here it would be fine
5 with me. Taking under consideration of all the little
6 puzzles we have to work with in having an agreeable
7 surface owner that is how we established the location
8 as it is now.

9
10 GLEN VANGOLEN

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

13 DIRECT EXAMINATION

14
15 BY MR. SWARTZ:

16 Q. Who do you work for?

17 A. OXY, USA.

18 Q. And what is your title with OXY?

19 A. I am the project manager for the coal bed methane
20 project.

21 Q. Have you given some attention or consideration to the
22 size of this unit in the proposed location of the well
23 with regard to A-38?

24 A. Yes, I have.
25

1 Q. Okay. Is the proposed location that's shown as the dot
2 just above the L on the map that the Board members
3 have, is that in or without of an eighty acre unit?

4 A. It is just outside the eighty acre unit. That location
5 could be moved one-hundred feet or so to be within an
6 eighty acre unit.

7 Q. But it would be drilled within how many feet of the--

8 A. It would be drilling within two feet of the eighty acre
9 unit line.

10 Q. And you would need to do what?

11 A. We would have to apply for location exception.

12 Q. Was there also consideration given to locating the well
13 within the eighty acres in a position other than one
14 that Marty has spoken about?

15 A. The guys have gone --

16 Q. Why don't you hold it up and point to it.

17 A. The guys have gone all over the area here. We tried to
18 put the well right in this spot here where we could
19 still get an eighty acre unit and the surface owner was
20 not very amicable to it. In fact, wouldn't let the
21 surveyors even on the property to go look. They've also
22 looked in this area here. Each one of these people in
23 the dwellings were also not very amicable to it. We
24 came across on a little extension down into a hay field
25 here for, I believe it was Mandy Collins, and they were

1 amicable to having the well in this field, in this flat
2 spot in that particular location. Like I said, we can
3 probably move this location one-hundred feet or so by
4 turning location around and actually changing the
5 location of the stake. The Collins will not be very
6 happy, but I think we can talk them in to that location
7 and it will put it two feet within the eighty acre line.
8 Now, the reason we didn't like that is because we don't
9 think that protects the drainage of this unit. It's an
10 adjustment unit and we felt like we were afforded the
11 luxury of an adjustment unit and we can extend the
12 boundary of that unit in order to have effective
13 drainage in that unit.

14 MR. SWARTZ: Just to direct one more question to Marty.

15 MARTY WIRTH

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

18 REDIRECT EXAMINATION

19 BY MR. SWARTZ:

20 Q. Describe the royalty interest within the proposed one-
21 hundred acre unit.

22 A. The royalty interest in that --
23
24
25

1 Q. Or potential claimant interest, I guess, I should say.

2 A. Potential claimant what it is on -- Lon Rogers owns the
3 coal. Fawn Rogers, Bradshaw Trust has the oil and gas.
4 You have an oil and gas lessee of Ashland. You have a
5 coal lessee of Island Creek with OXY as operator on
6 that.

7 Q. If you were to move the line up to capture the other
8 eleven acres, I take it there's -- is this the entire
9 unit shown?

10 A. No, sir.

11 Q. Okay. So there's a little bit of an adjustment?

12 A. There's eleven acres more, yes.

13 Q. If you were to move that up would other potential
14 claimants come into the unit?

15 A. Not on this one. The eleven acres, if you adjusted
16 up -- eleven acres spread out it doesn't take much of an
17 north-south extension to have eleven. That's fairly
18 close to the 111 that we can physically.

19 Q. So this unit can be re-sized, in your opinion, without
20 any dilution of royalty interest or any significant
21 impact?

22 A. In this unit, yes.

23 Q. In this particular unit?

24 A. That's correct.

25 MR. SWARTZ: Unless the Board members have any questions

1 with regard to the location that was selected here and
2 the explanations, that's all we have on A-30.

3 MR. WAMPLER: Any questions? Mr. McGuire.

4 MR. MCGUIRE: Since I'm the culprit that causes it to be
5 brought to this again, on page 4 of the Oakwood coal bed
6 gas field, paragraph 2, "Drilling units are hereby
7 established for the Oakwood coal bed gas field. Each
8 such drilling unit to be composed of an eighty acre,
9 more or less, in the shape of an square except the make-
10 up. Drilling units adjacent to the internal boundaries
11 of coal bed or the Oakwood coal bed gas field which
12 shall be of such shape and size as necessary to complete
13 the spacing of the field." That tells me that -- the
14 way I interpret that is that you base your drilling unit
15 on whatever acreage is in that make-up be it sixty acres
16 or one-hundred and twenty acres, not drilled on, based
17 on eighty acres.

18 MR. SWARTZ: There's really two responses. If you start
19 drawing eighty acre squares, remember the latitude
20 longitude lines that established this field and then
21 you start drawing these eighty acre squares, to go to
22 the internal boundary which is the inside of this line
23 you're going to, and you keep drawing these squares
24 eventually you're going to get to a point where you
25 can't draw a square and reach that. So what you're

1 winding up, what we're concerned about we have 111 acres
2 and we got that extra thirty acres basically. That's
3 just physically drawing a grid within those boundaries.
4 The geologic testimony that was offered, which is a
5 completely different issue than trying to map units, was
6 that the most effective size from the standpoint of
7 drainage and I'll let Glen confirm this if I'm wrong or
8 if I'm right or tell me I'm wrong. I believe was eighty
9 acres.

10 MR. VANGOLEN: That's correct. It was eighty acres.

11 MR. SWARTZ: So what you would like to do from a drainage
12 standpoint, a geology standpoint, is even though you've
13 got a 111 acres here which is a mapping adjustment to
14 get a numbered unit in a boundary row. Ideally, from a
15 drainage standpoint you would like to drill, if you
16 can, in the eighty acre unit.

17 MR. MCGUIRE: I understand that.

18 MR. SWARTZ: Because that is what you're expecting it to
19 drain. Because of the reasons the location issue that
20 we've talked about here, that's the basis for the
21 request that we use up some of the additional acreage
22 in this adjustment unit. To be perfectly frank with
23 you all, you can tell us you've got to put the whole 111
24 in everyone of these on the top row and that will be
25 find with us or you can say, you know, what we heard

1 today made some sense to us and we think that you ought
2 to be allowed to exercise some discretion and come to us
3 and explain that you've exercised it in trying to
4 convince us what you want to do, but I think this is a
5 good example of the decision that can be made with a
6 boundary well and we'd like some guidance from you, I
7 guess, in terms of --

8 MR. MASON: Can I ask something, Mr. Chairman? If you go
9 with the smaller acreage, the eighty acre, especially
10 the northern -- I guess it's northern boundary of that
11 unit, will that be out of alignment with the northern
12 boundaries of any other units in here that have been
13 drilled?

14 MR. SWARTZ: The only unit, I think, that's been approved so
15 far is A-37 and you all gave us an eighty acre unit. So
16 you'd have --

17 MR. MASON: What I'm curious about is allowing this unit as
18 you propose it, is it going to be an uniform boundary
19 or are we going to end up with a solitude arrangement?
20 That's what I'm trying to --

21 MR. SWARTZ: The boundary is always going to be lat and long
22 line.

23 MR. MASON: I understand that.

24 MR. SWARTZ: But what you're going to get within the
25 boundary --

1 MR. MASON: Is a gap.

2 MR. SWARTZ: -- is units, you know, one that might be a
3 little taller. One that might be a little shorter. To
4 answer your question, the boundary is always the same.

5 MR. MASON: Right.

6 MR. SWARTZ: But within that internal boundary you get a
7 saw tooth effect if you let people exercise discretion.

8 MR. VANGOLEN: Mr. Swartz, back to the Oakwood gas coal bed
9 field. I don't see that there's any -- the order
10 doesn't give you the bearings and if it does, please
11 direct my attention to it. I've not read that in the
12 order.

13 MR. WIRTH: What we're saying is, I can make an eighty acre
14 unit, but I'm going to have to go to the oil and gas
15 inspector to ask for an variance and I'm going to be
16 right on that line within three feet. Okay. And then
17 you're going to have a thirty acre unit all the way
18 across up top which nobody would drill on.

19 MR. MASON: As I understand, you want it to go all the way
20 down.

21 MR. WIRTH: That's fine. Believe me, if you so desire we'll
22 make it. Like a said, we can have it. It will be 111
23 acres and some odd until you get to the corners.

24 MR. MCGLOTHLIN: I understand that.

25 MR. WIRTH: These corners will be different --

1 MR. MCGLOTHLIN: This is a flat map on a round world.

2 MR. WIRTH: That is perfectly, whatever you desire. We
3 needed your guidance as that. I was just trying to not
4 dilute the royalty interest. I was trying to protect
5 the royalty interest.

6 MR. MCGLOTHLIN: The order says, "shall be of such size,
7 shape and size as necessary to complete the spacing of
8 the field." It doesn't say that the drilling unit
9 shall be of such size and shape to accommodate whoever.
10 As I read it it should be whatever acreage is in that
11 make-up should be included.

12 MR. WIRTH: Mr. McGlothlin, I was tugging between okay, do I
13 make them eighties and then I've got little thirty acre
14 squares up there or do we adjust them. So I understand
15 what you're saying.

16 MR. WAMPLER: Any other questions? Motion?

17 MR. MCGLOTHLIN: Mr. Chairman, I make a motion that OXY
18 submit the revised application in maps encompassing the
19 entire drilling unit of A-38.

20 MR. MASON: Excuse me, may I interrupt you. It seems to me
21 that is it possible that we could go ahead and approve
22 this based on an extension of the boundaries to that
23 line?

24 MR. MCGLOTHLIN: To the top line?

25 MR. MASON: Yeah, to the boundary line?

1 MR. WAMPLER: Sure.

2 MR. MASON: Rather than have them redo this and come back
3 and go through this again.

4 MR. MCGLOTHLIN: That's fine with me.

5 MR. MASON: I just wondered if we could go ahead and you
6 know -- whatever is more expeditious.

7 MR. SWARTZ: The one question that I have and that certainly
8 would be a welcomed suggestion, but we need to make
9 certain by moving that line up --

10 MR. MASON: Right.

11 MR. SWARTZ: -- that we wouldn't have to include additional
12 parties who already didn't have notice.

13 MR. MASON: Okay.

14 MR. SWARTZ: So could we make -- assuming that you all
15 could do that, could we make it subject to our advising
16 you as to whether or not we would have to notify
17 additional parties?

18 MR. MCGLOTHLIN: Those parties aren't going to be effected
19 by our order unless they've gotten notice anyway.

20 MR. SWARTZ: Yeah.

21 MR. MCGLOTHLIN: The direction is to make the unit extend to
22 the northern line.

23 MR. SWARTZ: Okay.

24 MR. MASON: If we have Kevin's motion, assuming that all
25 necessary parties for the boundary of the field --

1 MR. WAMPLER: I might also offer that, you know, with your
2 clarification of the Board's intent or the actual
3 statements in that order that any of them along those
4 boundary units --

5 MR. MCGLOTHLIN: I was just getting ready to do that.

6 MR. SWARTZ: Good.

7 MR. VANGOLEN: Also, east, west, south, please.

8 MR. MCGLOTHLIN: And further move that all internal boundar-
9 ies include all acreage -- no, wait, I'm not saying this
10 right. Help me out here, Mr. Mason.

11 MR. MASON: I think, you know, that the Board expresses the
12 intent that the boundary units, except for the four and
13 the absolute four corners, would extent to the outer
14 boundaries of the field in conformity of the Board's
15 order.

16 MR. MCGLOTHLIN: If the Chairman will accept a joint motion.

17 MR. WAMPLER: That's fine with me. I have a motion. Do I
18 have a second?

19 MR. VANGOLEN: Should we put that in two motions? I'm just
20 wondering if it's appropriate to put that in one
21 motion.

22 MR. MASON: I don't know.

23 MR. VANGOLEN: Because we're talking about an specific case
24 and then we've gone from that to a general stipulation.

25 MR. WAMPLER: Just for further discussion here, on this

1 specific case Mr. Swartz asked the Board if it would
2 provide guidance to how to deal with this type of case
3 before and I think therefore we're trying to deal with
4 that.

5 MR. VANGOLEN: My question, is this going to affect A-37
6 which was approved last time?

7 MR. MCGLOTHLIN: I don't know. Will this motion affect A-
8 37? Will it extend A-37 up to the northern boundary.

9 MR. SWARTZ: Marty tells me it's the same parties in A-37
10 that are in A-38.

11 MR. WIRTH: We're very lucky up to this point.

12 MR. WAMPLER: Okay.

13 MR. WIRTH: It's not going harm -- I would check title and
14 everything again if we do modify a previous order if it
15 had been issued.

16 MR. WAMPLER: Well, it would probably be cleaner because
17 otherwise you wouldn't have all of them --

18 MR. WIRTH: Right. Right.

19 MR. WAMPLER: -- bunting the out border in this. So we
20 have a motion we approve the proposal by OXY USA for
21 A-38 and further guidance by the Board that all boundary
22 units with the exception of the opposing corners be
23 extended to the outer limits.

24 MR. EVANS: Second.

25 MR. WAMPLER: Motion is second. Any further discussion?

1 All in favor of the motion signify by saying yes. (All
2 agree.) Opposed, say no. (None.) The motion carries.
3 Thank you.
4

5 ITEM IV
6

7 MR. WAMPLER: Next item on the agenda is a appeal by Ashland
8 Exploration of the Inspector's decision concerning
9 proposed coal bed methane well number CBM 8-32 of OXY
10 USA, Incorporated.

11 MR. MCGUIRE: The Board may want to consider Items 4 and 5
12 together since they involve the same unit, but it's the
13 Board's pleasure. I will speak as to our appeal. I've
14 talked with Mr. Swartz and we've agreed that -- Ash-
15 land's issues that it bought up down below are the
16 standing issues, the constitutional issues that have
17 been heard by this Board in forced pooling applications.
18 I don't proposed to go over that again because I have
19 gone over it before and would like to stipulate that
20 the testimony that I would present would be the same as
21 the ones -- the same as the testimony that I have
22 presented and evidenced that I have presented in earlier
23 force pooling applications involving OXY. With that
24 stipulation, I will be offering nothing new with respect
25 to the arguments.

1 MR. WAMPLER: Any objection to that stipulation?

2 MR. SWARTZ: No, I would welcome that.

3 MR. WAMPLER: Any objection in combining 4 and 5?

4 MR. SWARTZ: Why don't you deal with 4 now, if you could,
5 please.

6 MR. WAMPLER: Okay. We accept the stipulation without
7 objection.

8 MR. MCGLOTHLIN: Mr. Chairman.

9 MR. WAMPLER: Mr. McGlothlin.

10 MR. MCGLOTHLIN: I'm curious if a George Cantrell or Brenda
11 Cantrell is present?

12 MR. WAMPLER: Is there any one else here that wishes to
13 address the Board in this case? Are any of the Can-
14 trell's here?

15 MR. FULMER: for this matter this appeal on the inspector's
16 decision based upon Ashland's appeal and decision that
17 the inspector made regarding the it's standing in the
18 informal hearing. The question of the Cantrell's is for
19 a matter for the record for the Board's presentation.
20 These matters were dealt with at the original hearing as
21 far as the surface ownership and the objections you see
22 here. So what we're dealing with strictly is on the
23 appeal of the inspector's decision regarding Ashland.

24 MR. MCGUIRE: And for your reference Ashland made the
25 argument that it owns the oil and gas and the coal bed

1 methane and that OXY had no standing to make the
2 application. We realized that this Board has ruled on
3 that before and expect the same decision to come down
4 from the Board.

5 MR. WAMPLER: Any questions members? What's your pleasure?
6 OXY, do you have anything to say?

7 MR. SWARTZ: You have ruled in our favor on numerous
8 occasions and I would hope that you would telegraph a
9 punch that you were going to change your mind. Other-
10 wise, I have nothing to say.

11 MR. WAMPLER: I need a motion someone.

12 MR. MASON: Mr. Chairman.

13 MR. WAMPLER: Mr. Mason.

14 MR. MASON: Let me make sure I do this right. I assume that
15 the Board -- the motion should properly cast that the
16 Board upholds the and affirms the ruling of the inspect-
17 or, is that correct, and that I remains consistent with
18 it's prior rulings in this regard.

19 MR. EVANS: Second.

20 MR. WAMPLER: Motion with second. Any further decision?
21 All in favor signify by saying, yes. (All agree.)
22 Opposed say, no. (None.) The motion carries.
23
24
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ITEM V

1
2 MR. WAMPLER: Next item on the agenda is appeal by OXY USA
3 of the inspector's decision concerning proposed coal bed
4 methane well CBM S-32.

5 MR. SWARTZ: This is a fairly limited issue. The heat came
6 on just at the right moment. The inspector in granting
7 OXY a permit with regard to S-32 attached a condition
8 to the permit and that condition required OXY to file a
9 pooling application within thirty days of receipt of the
10 order giving us the permit. We have several concerns
11 with regard to that and I'm always reluctant to tell
12 boards or governmental employees that they do not have
13 authority to do what they've done, but I guess we might
14 as well just start by saying that I do not believe that
15 the inspector has the authority to attach as an cond-
16 ition the requirement that the person who was applying
17 for a well work permit file a pooling application.
18 There is no doubt as the Attorney General has pointed
19 out in correspondence with regard to OXY, there's no
20 doubt that the inspector has the authority to attach
21 conditions to permits. The problem here is that OXY
22 believes that attaching as a condition a requirement
23 that you file a pooling application in some, but not all
24 request for permits. Is the inspector intruding into
25

1 the conservation issues because he's made a decision
2 that someone ought to apply for pooling with regard to
3 this permit for some reason or another or intruding into
4 questions of title. Why would the inspectors attach as
5 a condition to a well work permit sometimes a require-
6 ment that you file for a pooling order and other times
7 not unless the inspector is making judgments about
8 title, in other words he's looking at the application
9 for a permit and saying, I see some title problems here
10 and I want those fully aired in a pooling. The other
11 thing that I think you should bear in mind is that
12 indirectly what is happening, if you allow the inspector
13 to require that a pooling order be filed, is that you're
14 allowing in effect your agency to force the issue of
15 pooling. The statute says that the claimants are the
16 people who can come before the Board to pool. There's
17 no provision that the Board can pool or pool drilling
18 units on it's own motion and in effect what's happening
19 here is that the agency is telling OXY or anyone else by
20 attaching this condition to a permit that you are going
21 to have to pool and it's making an decision on pooling.
22 Now, having said all of that and I'm serious about this
23 and I think you need to think about, I have to be
24 realistic and assume that you may feel that you have the
25 authority to do this and it's clear that you can attach

1 conditions. What I'm saying is I don't think you can
2 utilize a screening mechanism or a judgement with
3 regard to title questions or whether or not pooling is
4 appropriate for conditions. I can image other circum-
5 stances where a condition attached to a permit would be
6 appropriate. That you satisfy bonding requirements
7 before you undertake work. I mean, there's all sorts of
8 conditions you could attach, but the fact that we see
9 this on some permits and not on others seems to me there
10 is some judgement with regard to title or something else
11 being applied here and I frankly don't think the
12 inspector or the director has the authority. I think
13 the full Board has the -- is the only person or entity
14 that has the authority to deal with pooling issues and I
15 don't think that anybody but the Circuit Court have the
16 authority to deal with title. So if that's what we're
17 addressing here it shouldn't be done on a permit. The
18 other problem, and now let's get the particular prob-
19 lems, the problem with this particular well and it's a
20 beautiful example, sometimes I'd rather be lucky than
21 smart. I have given you something called Exhibit B
22 which a filing that we all made with you last Friday
23 with regard to notice to people who are potentially
24 interested in this unit and you can see that this is
25 fairly lengthy. Now, we had thirty days to come up with

1 this and you will notice that more than half of the
2 people, perhaps two thirds of the people, we have no
3 idea where they are. Their address -- if you count in
4 and get to the bottom of the second page you'll see Rosa
5 Atkins, address unknown and then the whole next page
6 with a couple exceptions and a bunch more, address
7 unknown. The next page, address unknown. We don't know
8 if these people are alive or dead and we've got a well
9 permit that required us file a pooling application as
10 a condition within thirty days. We've got all these
11 people to track down to determine whether or not their
12 alive or dead. If they're dead, obviously, the list is
13 going to grow. And as a particular matter what we're
14 suggesting to the Board is that if you feel the in-
15 specter has the authority to do this, even though we
16 question that, thirty or sixty days is not a reasonable
17 amount of time for title to be done to get us into a
18 position to come before the Board having had a opportu-
19 nity to lease this acreage so that we're not force
20 pooling people that we haven't had a chance to lease
21 from, to give us an opportunity to do a complete title
22 and having done a title find people. As you may or may
23 not recall a permit is good for two years. A pooling
24 order is good for one year for designation of operator-
25 ship. At a minimum we would request that if you're

1 going to allow conditions to be attached to permits that
2 at a minimum the time in which the condition require a
3 filing of a permit be no less than one year. There is a
4 difference in the way in which title is perform by OXY
5 and I can't speak for anybody else with regard to a well
6 permit or a pooling application and I would ask Mr.
7 Wirth who's still under oath to comment on that for a
8 moment to give you some sense of what he looks at and
9 there is indeed a difference between the title you do
10 for a well permit process as opposed to a pooling
11 process.

12 MR. WIRTH: In a well permit you check the records and go as
13 quickly as possible to try and get the ownership of all
14 the parties as required by under the law, the surface
15 owners, the owner that may be effected on the road and
16 location and any ground disturb, the oil and gas owners,
17 co-owners, co-lessees, oil and gas lessees. And like I
18 said, you would identify the surface owners and it's
19 done in a cursory form, cursory meaning you to the best
20 of your knowledge in Buchanan County because that's
21 where the wells located, the court house records and the
22 tax records this is who the last known person is. You
23 place that, try to find all addresses on these and place
24 it in the format, as the Commonwealth has in the format,
25 all the information and submit it in there. Prior to

1 drilling a well or even pooling we have to do beyond
2 that. We have to know that -- I may have gone and
3 taken a lease from Richard Deskins because, you know,
4 what we had found in the Courthouse, Richard Deskins
5 from ten years or until 1865 the Courthouse has burned,
6 it's flooded twice, the records are -- they have set up
7 deeds. I won't go in the whole situation. I found that
8 previously in 1864 Richard Deskins's great, great
9 grandfather spun off his oil and gas interest to Joe
10 somebody else. It was not known, but we did locate by
11 tracing Tazwell County or into West Virginia or a
12 complete title opinion saying that yes, you took the
13 lease from the proper person, you have the right to
14 drill on that proper person. So you have the complete
15 history, plus I'm also required to cure any dots, t's
16 that aren't crossed, i's that are not dotted. The
17 accruity of information is Eula Mae really E. Mae in the
18 title because the deeds are set up different. They sign
19 it a different way and I have to send out curative
20 information and get all this information to make sure
21 they're the same person. It's an on going, timely
22 thing. It usually takes a base abstract or opinion at a
23 minimum around six weeks to do and then I have another
24 three to six or even longer accruity coming into that
25 effect. So you're looking at a lot of times twelve

1 weeks or even more to even have on a drill site tract.
2 What we do on a pooling, I have to take everybody within
3 that unit. That unit, this is a prime example, has five
4 acres of the Richard Deskina's heirs. They own seven-
5 hundred acres. I have to do a title opinion on that
6 seven-hundred acres just to get to that five acres. I
7 can't just cut that corner out of there and do a title
8 opinion on it. So, time and expenses, it takes a lot
9 and I just can't do it within thirty days. I wish I
10 could, but there is no way possible to do it. So I
11 need a lot more latitude in performing and showing you a
12 due, diligent effort which a prudent operator should
13 before going to force pooling. I'd hate to come into a
14 pooling application and say, "Please pool these." And
15 then after this thirty days come over, "I've done my
16 title opinion and it's completely wrong and I'm going to
17 have to come before this Board again and correct it
18 then. And then again I might have to correct it on a
19 future date." So we try to get everyone in the proper
20 perspective at that point in time and do right the first
21 time is what I'm trying to say.

22 MR. WAMPLER: Is your appeal of the inspector's decision
23 confined to the conditions?

24 MR. SWARTZ: Correct.

25 MR. WAMPLER: To the condition only?

1 MR. SWARTZ: Correct.

2 MR. WAMPLER: That you apply for the pooling order. Mr.
3 MASON.

4 MR. MASON: I would like for the inspector to tell us if
5 there is there any reason why you feel it necessary
6 that it be done in thirty days?

7 MR. FULMER: The question is on any of the applications you
8 get for the inspector to permit and to drill a well,
9 once you grant that permit they have the right to drill
10 that well. If there's any indication that there's some
11 outstanding interest at what point and time should the
12 inspector consider the obligations of the statute and
13 the Board and how to alert the Board to the fact that
14 there is a possibility that there's correlative rights
15 to be protected. There is a condition placed upon this
16 permit order of thirty days. Now, I don't know if
17 thirty days or sixty days, whatever. That might be in
18 question, but bear in mind in my situation is that in a
19 situation where there has been an informal hearing
20 before the Board, that there is known problems with
21 interest that may be effected by the drilling of that
22 well, what obligations I had to alert the Board to the
23 fact that there is a correlative rights issue.

24 MR. MASON: I understand that. I'm not interested at this
25 point in really discussing any limitations of your

1 right to condition in your permits. I was particularly
2 interested in if, for instance, these conditions as to
3 filing this pooling request within a one-hundred and
4 eighty days or three-hundred and sixty days or some
5 other point would that in any way impair your function
6 or --

7 MR. FULMER: It wouldn't impair my function. The thirty day
8 limit naturally come from the fact that the Board
9 meets --

10 MR. MASON: I understand that.

11 MR. FULMER: -- in a situation where that if you filed
12 within thirty days, then it's on the next Board's
13 agenda which is sixty days in reality. The amount of
14 time it requires, I'm not going to argue that point at
15 all.

16 MR. MASON: That's what I'm saying. What I'm just trying to
17 get from you is that if a longer period of time is
18 involved it would not impede you in the discharge of
19 your duties as regard to --

20 MR. FULMER: No.

21 MR. MASON: Okay. That's what I was trying to determine.

22 MR. WAMPLER: Mr. Swartz, is the time period that was
23 required was that your objection or was your objection
24 the inspector's --

25 MR. SWARTZ: I can see you've already decided my first grant

against me. So with that in mind --

1 MR. WAMPLER: I don't recall that decision, Mr. Swartz.

2 MR. SWARTZ: Well, I just had a telegraph and it's operating
3 right now. Curative work, because from time to time I
4 have done it for OXY and other companies, I mean, if
5 you're trying to satisfy a mortgage from the 1800's
6 where the bank was required in the early 1900's -- it
7 can take, to do curative work and locate people, it can
8 take months. I mean, when Marty's telling you twelve
9 weeks, thirteen weeks, fourteen weeks, that's optimist-
10 ic. I don't think a year is unreasonable. You may
11 perceive it as unreasonable, but if you have title
12 problems and you need to do curative work, I mean, if
13 you have to go to New York, have to go to Wisconsin,
14 have to go to Oklahoma, have to go to Texas, have to
15 negotiated with heirs, have to draft documents, have to
16 find -- it can take a long time. You're not just
17 talking with title process. So I'm serious when I say
18 if we're talking time I would really like to see it a
19 year from you all. Thirty days, sixty days is just not
20 at all practical.

21 MR. WAMPLER: How much should have been done even prior to
22 the application to the inspector?

23 MR. SWARTZ: If you look at the application for the permit
24 for the Deskins's heirs they were shown on the permit
25

1 application as the Richard Deskins's heirs in care of
2 the Property Tax Department with a post office box in
3 Houston, Texas.

4 MR. WANPLER: Uh-huh.

5 MR. SWARTZ: But then when you get beyond the permit stage
6 and you're trying to identify the actual heirs, we
7 wound up with three pages. The other thing that you
8 need to consider in terms of the difference between
9 permitting and pooling, for permitting really you
10 probably just do title 753 feet from the well bore
11 because that's the coal notification problem that you
12 have and you could in theory do a different title
13 between the time you file your -- this isn't the way
14 that Marty does it, but I mean, if you wanted to do the
15 absolute minimum that you had to do all you really got
16 to check in the permitting process is 753 foot radius
17 from the well bore. And obviously, once you get into
18 the pooling process you've got to deal with the eighty
19 acres in the unit or if it's a boundary unit, whatever
20 the acreage is. So the minimum you need to do is 753.
21 What Marty apparently does is he goes back some relativ-
22 ely short period of time until he feels like he's
23 identified the basic people that have surface and so
24 forth for the permit situation and, in fact, in this
25 case he picked up the Deskins's heirs as a group, but

1 then between the time you file for a permit and a time
2 you file for pooling you can't just identify them as a
3 group. You've got to assess their title and try and
4 track them down and you can see what that is.

5 MR. JOHNSON: I have some comments whenever it's appropri-
6 ate.

7 MR. WAMPLER: Sure, go ahead.

8 MR. JOHNSON: As the time issue, I think that it is appropri-
9 ate to tie the well permit to the force pooling
10 application. Otherwise you're letting OXY block out a
11 time year span of time which it has a well permit with
12 no promise that it will come forward with a forced
13 pooling application and Ashland who has an interest in
14 this property and interest in seeing the title issues
15 resolved, wants to see the forced pooling applications
16 come as soon as possible to clear up that interest. And
17 with respect to the first issue as to whether or not the
18 inspector has the right to do this, I will say that he
19 is not determining title here. In fact, he is saying
20 that there is a potential claim here, a potential cloud
21 and he is recognizing that the forced pooling statute is
22 the way to address that cloud. I do not think he is
23 determining title by putting this condition on.

24 MR. WAMPLER: Any other questions? Looking for a motion.

25 MR. MASON: Mr. Chairman.

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MR. WAMPLER: Mr. Mason.

MR. MASON: I move that the Board -- I have to think about the proper way to state this. Whether we adopt, suggest, instruct, I hope that the inspector would, as a condition, if he conditions a permit on the application of a forced pooling application by the applicant adopt as a reasonable time for that to be done a minimum period of one-hundred and eighty days and as that relates to this particular decision that his decision in this regard be affirmed with the modification that a one-hundred and eighty days be substituted for thirty days. I think that you shouldn't tie his hands. If the person seeking a permit has some compelling reason why it should be longer then he would have the authority to make it longer if he chose. Does that present any problems, if I may ask that? I just think, you know, if you tie a specific time is probably not a good idea, but if there's some reason why it may be longer that you could do so.

MR. WAMPLER: Have a motion.

MR. EVANS: I'll second.

MR. WAMPLER: Have a motion and a second. Any further discussion? All in favor signify by saying, yes. (All agree.) Opposed, say no. (None.) Motion carries.

1
2
3 ITEM VI

4 MR. WAMPLER: The next item on the agenda is Edwards &
5 Harding. Those parties wishing to address the Board
6 regards to Edwards & Harding's request to allow EH-65
7 conventional gas well, located in Willis District, be
8 drilled closer than 2,640 feet to EH-25, please come
9 forward. Are you ready?

10 MR. MULLINS: Yes, sir. My name is Tom Mullins representing
11 Edwards & Harding Petroleum Company. We are here on the
12 location variation for proposed well EH-65 from well EH-
13 26. It's the only well that we're asking a location
14 variation between on this particular -- before the Board
15 today. We have evidence to present by way of a witness,
16 Mr. Al Mueller, and I guess we just need to have Mr.
17 Mueller sworn and we'll proceed.

18 ALLEN MUELLER

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

21
22 DIRECT EXAMINATION

23
24 BY MR. MULLINS:

25 Q. Mr. Mueller, what do you do for a living?

1 A. I am a Field Engineer for Edwards & HARDING.
2 Q. You have testified before the Board on prior occasions
3 concerning your background and your education.
4 A. Yes, I have.
5 Q. All right, sir. Do you have specific knowledge of
6 proposed well location EH-657
7 A. Yes, I do.
8 Q. What knowledge do you have? Have you been on the site?
9 A. I have been on the site on several occasions.
10 Q. Who owns the surface rights on that proposed well
11 location?
12 A. The United States Forest Service.
13 Q. Who owns the mineral rights?
14 A. The Bureau of Land Management.
15 Q. All right, sir. Did you prepare for the record maps and
16 -- there's a map and a chart on the wall, did you prepare
17 those or make additions to the topographical map up
18 there?
19 A. Yes, I did.
20 Q. Sir, if I could I'd like for you to identify this feature
21 on the topographical map.
22 A. That is the Pound River.
23 Q. And I would also like to ask you to identify this
24 feature.
25 A. That is the Russell Fork River.

1 Q. What, if anything, is the Forest Service planning to do
2 with these rivers?

3 A. Currently in the way there is a study on the Russell Fork
4 and the Pound River tributaries as far as designating
5 those rivers as a Virginia Scenic River.

6 Q. As a scenic river?

7 A. Scenic river.

8 Q. As one of the conditions of designating these rivers as
9 scenic rivers what condition have they imposed upon
10 surface development on each of the river, especially on
11 the side EH-65 is proposed to be located on?

12 A. They have restricted any land disturbing activities below
13 the 1,400 foot contour.

14 Q. Is this blue area the 1,400 contour?

15 A. Yes, it is.

16 Q. All right. So anything to the right of this blue line
17 the Forest Service has indicated no surface disturbance?

18 A. They will not approve any surface disturbances.

19 Q. All right, sir. Is this the well EH-26 that you are
20 asking the location variation --

21 A. Yes, it is.

22 Q. And that's an Edwards & Harding well?

23 A. Yes, it is.

24 Q. Sir, I notice that between the two -- there's a distance
25 between this 1,400 foot contour line and the location of

1 the well. Why was this well not moved to the 1,400 foot
2 contour?

3 A. Because the 1,400 foot contour is approximately at the
4 center of that ridge and the area right above that
5 contour is fairly steep with sandstone outcroppings and
6 small cliffs. It's approximately forty, fifty, sixty
7 percent grade.

8 Q. Between here and here. Is that what your testimony is?

9 A. Yes.

10 Q. All right, sir. Is this a cross section view of the
11 topography?

12 A. Yes, it is.

13 Q. Is this an accurate rendition of what the topographical
14 features are or is this skewed a little bit due to the
15 angle of the cut?

16 A. It's skewed a little bit because the cross section is not
17 exactly perpendicular to the side of the hill. It's at
18 an angle so you'll -- it's skewed a little bit.

19 Q. Do you mean by your testimony then that actually the
20 angle is, in fact, a little steeper than is indicated on
21 this cross section?

22 A. Yes, it is.

23 Q. Have you contacted the Forest Service and the Bureau of
24 Land Management about this site location?

25 A. Yes, they have been contacted and have been to the site.

1 Q. Specifically, what experts, if any, from the Forest
2 Service or the Bureau of Land Management have been on the
3 site?

4 A. From the US Forest Service we have had a forester, an
5 engineer, a hydrologist, a land architect, and three
6 archeologist. And from the Bureau of Land Management we
7 had two personnel. I'm not sure of their titles.

8 Q. Did they renew your proposed site locations?

9 A. They inspected the site, yes.

10 Q. Did they, in fact, give you any suggestions about any of
11 the proposed roadways or the site location itself?

12 A. The site location itself, no. They were in agreement
13 with the site and we did move the roadway a little bit to
14 minimize any disturbances that might have occurred.

15 Q. Are there any other wells that you need to ask a variance
16 for aside from EH-267?

17 A. No.

18 MR. WAMPLER: At the risk of interrupting you, I need to ask a
19 question. I understand you have not applied for -- the
20 Division of Gas and Oil has not received an application
21 for this well.

22 MR. MUELLER: That is correct, sir. We have to go through a
23 federal application process also and --

24 MR. WAMPLER: Have you submitted that application?

25 MR. MUELLER: I think they are in the process of having that

1 submitted in the very near future. I don't know when the
2 proposed time is.

3 MR. EDWARDS: We have submitted a notification with a
4 statement to the Bureau of Land Management which is the
5 first phase of the application process. It's not the
6 actual application for permit to drill, but it's the
7 first phase in that process.

8 MR. WAMPLER: Just further on this subject, could you tell us
9 why that you're before the Board to receive an exception
10 to the location prior to submitting the application? To
11 either us or the Forest Service.

12 MR. MUELLER: It's my understanding that we need to tie down
13 the location for the benefit of the Forest Service and
14 for the Bureau of Land Management to get all of our P's
15 and Q's in order before we can really proceed. We
16 thought that the dual application --

17 MR. WAMPLER: Is there any certainty that they will accept the
18 location that you are proposing for this well?

19 MR. MUELLER: Currently, at this time, they are all in
20 agreement, the US Forest Service and the Bureau of Land
21 Management at this site -- for this site.

22 MR. MASON: The only thing I see in here -- in the information
23 you've given us -- or is it in here -- official letters
24 from those agencies?

25 MR. MUELLER: No, everything is verbal at the moment.

1 MR. WAMPLER: Obviously, where I was heading is the notice to
2 the other parties here and how we -- you know, if we had
3 something here -- if we don't have the cart before the
4 horse.

5 MR. MULLINS: We anticipated that question and I guess we need
6 some guidance from the Board, but it was our thoughts
7 that if we could get at least the permission to put the
8 well where it needs to be placed when the permitting
9 process goes out -- we can't do anything with this until
10 we get a permit. All the notices will go out and if
11 anybody has any objects, either to the well itself or to
12 its location. They can go ahead and file their
13 objections at that time, but we can't proceed with --
14 well, let me just ask the question.

15 Q. (Mr. Mullins continues.) Could we -- will we drill the
16 well if we don't get the location variation?

17 A. No. There's no other place to put the well. No.

18 MR. MULLINS: So aside from going through the dual application
19 process if we can at least get permission to do that --
20 and if we don't get permission then there's no need for
21 us to even proceed on it.

22 MR. WAMPLER: You know, just speaking to talk this thing
23 through I'm just concerned about us --

24 MR. MULLINS: I guess our thoughts are that the well
25 variances between the two wells and the permitting

1 applications between the property owners --

2 MR. WAMPLER: I understand.

3 MR. MULLINS: -- and the other well it's affected is the
4 Edwards & Harding well. It's not a third party well that
5 some other party needs to have notice of. It would be an
6 objection from the other well as far as I know and not an
7 objection from a property owner as to the spacing
8 variation.

9 MR. MASO: Mr. Chairman, do have the authority at this point
10 to issue this exception?

11 MR. WAMPLER: I don't -- ask our legal counsel, but I don't
12 believe we do. I think we could, in just general
13 discussions, say that without any exception here they
14 could move forward and do all the things they need to do
15 in the application and negotiations with the federal
16 agency based on what they represented to us, unless some
17 one here has other factors. But I don't believe an
18 application and all the notifications that we would be in
19 the proper form that we are suppose to be in in granting
20 it. We could just simply say that, I guess, go ahead and
21 do the things you need to do and we don't know any reason
22 that we would hold you up on it, absent of any appealing
23 party coming before the Board on application. Now, I say
24 that, but all you Board members tell me whether you agree
25 with that or not.

1 MR. MULLINS: I guess I would make a motion then to --
2 whatever the Board's pleasure is with this particular
3 item on the docket.
4 MR. WAMPLER: I think we will just take it under advisement --
5 take this application under advisement pending any other
6 proceeding you need to to get it in the form of
7 applications and location negotiations with the
8 appropriate parties and we will have it then for you to
9 come forward at the appropriate time.
10 MR. MASON: I will second that motion.
11 MR. WAMPLER: All in favor say aye. (All agree.) Opposed say
12 no. (None.) Motion carries.

13
14 ITEM VII
15

16 MR. WAMPLER: As to the next two items on the agenda, Item VII
17 has been withdrawn. And Item VIII is continued until
18 next time.
19 MR. MCGLOTHLIN: Mr. Chairman, on Item VII, would it not be
20 proper to receive the withdrawal from Cabot.
21 MR. WAMPLER: Does Cabot have a representative here?
22 MR. FAIN: Yes.
23 MR. WAMPLER: Mr. McGlothlin just said wouldn't it be more
24 appropriate and I'm in agreement that it would for you to
25 formally withdraw Number VII to the Board.

1 MR. FAIN: Mr. Chairman, before we do that I would like to
2 make one correction to this. The original agenda item --
3 for the record the original agenda items left out a well
4 that was originally in the appeal by Cabot -- left out P-
5 34. It should be added to the stipulation. For Cabot
6 Oil and Gas, we hereby withdraw our appeal of the
7 Inspector's decision as to Docket Number VGOB-0122-75.

8 MR. WAMPLER: Thank you. As to the continuance I don't know
9 if there's anyone here for the other parties, but they
10 did notify our attorney to continue that. Any other
11 items of business before the Board at this time. Our
12 next meeting is February the 19th.

13
14 (End of proceedings for
15 January 22, 1991.)
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