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3 VIRGINIA OIL AND GAS CONSERVATION BOARD
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6 HEARING OF APRIL 30, 1991
7

8 9:00 A. M.
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10 IN THE CONFERENCE ROOM OF
11 UNITED COAL COMPANY
12 BRISTOL, VIRGINIA
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April 30, 1991

This matter came on to be heard on this the 30th day of April, 1991, before the Virginia Gas and Oil Board in the Conference Room of United Coal Company, Bristol, Virginia.

MR. CHAIRMAN: Good Morning. My name is Benny Wampler. I'm assistant director of the Virginia Department of Mines, Minerals, and Energy. This is a Gas and Oil Board hearing today and I'll ask our board members to introduce themselves starting to my right.

MR. KELLY: Bill Kelly, oil and gas industry representative.

MR. HARRIS: Bill Harris, a public representative.

MR. LEPCHITZ: Mike Lepchitz with the Attorney General's office.

MR. MASON: Bill Mason, public representative.

MR. EVANS: Ken Evans, coal industry representative.

MR. MCGLOTHLIN: Kevin McGlothlin, a citizen member.

MS. ZANDER: Juanita Zander, public member.

MS. LOWERY: Susan Lowery, legal assistant to the Attorney General's office.

MR. WALZ: I'm Steve Walls with the Department of Mines, Minerals and Energy.

MR. FULMER: Tom Fulmer, Division of Gas and Oil.

MR. CHAIRMAN: Thank you. Just so you know what's going on this morning while we were up here discussing things, and kind of leaving you out, you certainly may listen in

1 as we talk about the rules and regulations that are being
2 presented to the board for their acceptance. Mr. Bill
3 Mason did a great job in carrying the work group that
4 met a couple of times and many of you were represented
5 on that work group in drafting these regulations that
6 are presented to the Board today for discussion as
7 proposed rules. And as we talk you'll hear what the
8 schedule is and those kinds of things. We do not plan to
9 take any public testimony today on these rules. This is
10 strictly an open discussion by the Board for these rules.
11 Board members, I would refer you to our rules and
12 regulations and just tell you that what you have before
13 you are permanent regulations to replace the emergency
14 regulations. And if the permanent regulations is to be
15 effective before the emergency regulations expire we
16 must have your approval for issuance as proposed regs
17 today. Steve Wallace is here to answer questions. He's
18 been one of the staff persons that has worked with Mr.
19 Mason and others on the committee and Steve will be
20 leading us as soon as we finish this portion of the
21 hearing to carry out those functions if we accept
22 these. And also, if we have, then they'll get in-
23 corporated.

24 MR. MCGLOTHLIN: This isn't our last opportunity to suggest
25 changes, is it?

1 MR. CHAIRMAN: No. This is just an acceptance of these as
2 proposed regs. They'll go through the public comment
3 period and then the Board will have another hearing where
4 it will receive the public comments and make any final
5 changes. The emergency regulations became effective
6 October 30, 1990 and they will expire on October 29,
7 1991. And as you know, the Board authorized the regulat-
8 ory work group. As I said, Mr. Mason chaired that and
9 they met twice and produced these draft regulations. The
10 schedule is that we submit the proposed regulations to
11 the Virginia register on May 1, 1991. And the proposed
12 schedule of publication is May 20, 1991. There will be a
13 sixty day public comment period from May 20 through
14 July 19, 1991 with a planned public hearing at the
15 Board's July 16, 1991 meeting. The staff will develop
16 responses to comments and final regulatory language for
17 consideration at the Board's August meeting. Now, some
18 of those dates may have been a little confusing. On
19 July 16 the Board at it's hearing will hold it's public
20 hearing, but the comment period will remain open through
21 the 19th, three days after the Board's hearing. And then
22 staff will prepare draft response to those comments
23 and re-present to the Board at it's August meeting. The
24 plan will then be that we will would submit final
25 regulation to the Virginia Register on September 4 and

1 the final regulations will be published September 23 and
2 then there will be a thirty day final adoption period
3 from September 23 through October 22. And the effective
4 date as planned will be October 23, 1991. I'm prepared
5 to generally walk through these regulations if you think
6 that would be of benefit. I know you've all received
7 them. If you've had a chance to review them, if you
8 would like to dispense with that and simply go to the
9 questions you may have. What's your pleasure?

10 MR. MCGLOTHLIN: I would suggest that we take it by sections
11 and see if there are any comments.

12 MR. CHAIRMAN: Okay. On the definition section, without going
13 through each one, I would just say that definitions are
14 required for consistency and clarity and should be
15 consistent with the department's proposed regulations
16 for continuity between standards governing Articles 2
17 and 3 and that is how these were developed. Are there
18 any questions on the definition section?

19 MR. HARRIS: I did have one. When I read notice, I wonder if
20 everyone understands and maybe that's a legal term that
21 we use that everyone does understand. But do we need to
22 define what we mean by notice or giving notice? And
23 maybe I'm getting too technical in even suggesting this.
24 You know, when we start talking about that, we're talking
25 about written notice. I know that's defined later in

1 the document as different ways of contacting people and I
2 wondered if we should give a definition of it up front.

3 It may be not be. Is it a standard legal --

4 MR. MASON: If I may comment here, I think one of the problems
5 that I would perceive in dealing with that is that the
6 purposes of this act, there are probably really four
7 different kinds of notices and to try and define it in
8 terms of how it's carried out would be to beg the
9 question of these individual sections as set forth in
10 means by which notice for different parts of the regs are
11 carried out. I think you would end up with a situation
12 where notice, if you tried to define it, would have to be
13 so general in order to incorporate all those things.

14 MR. HARRIS: But this is universally understood when you say
15 notice --

16 MR. MASON: Yeah, I think that when you talk about notice
17 that it's sort of really a due process and it's generally
18 understood to be -- because you get into questions about
19 effective notice and -- I don't know. I can understand
20 the fact that it is an issue of some great concern, but I
21 think by trying to define it that you, in fact, may end
22 up worse off than just dealing with it in terms of it
23 sort of being generally understood and then dealing with
24 it in the individual sections where they set forth the
25 mechanics of notice which we've dealt with in here in

1 depth.

2 MR. HARRIS: Yeah, I saw that. Okay. Fine.

3 MR. MCGLOTHLIN: I have a question on the definition of
4 director. Director of the Department of Mines, Minerals
5 and Energy or his authorized agent, could someone explain
6 to me why we need for him to proxy himself?

7 MR. CHAIRMAN: I guess I could refer to Mike to explain the
8 delegation process.

9 MR. LEPCHITZ: Consistent throughout the act there's only the
10 gas and oil act. There is authorizations for the
11 director to delegate his authority to, for instance, Mr.
12 Wampler or to Mr. Fulmer as the gas and oil inspector.
13 The director's not always physically present in Southwest
14 Virginia and clearly doesn't go out on to the site and
15 carry out inspections and other things. That's the
16 purpose of including authorized representatives, so
17 that there is a consistency of authority.

18 MR. CHAIRMAN: Any other questions on definition? If not, in
19 Section 2 under authority and inflexibility, this
20 section is required in general laws and regulations
21 governing the regulatory process and simply sets out
22 what the authority's inflexibility are. Under Section 3,
23 administrative provisions, on page 338 if you're follow-
24 ing through, it essentially sets the general standards
25 for bringing issues before the Board.

1 MR. MCGLOTHLIN: On D-2 of that Section, when required the
2 following materials must be filed with the division at
3 least seven days and we're now under, as I understand, a
4 ten day calender. Would it not be better to change that
5 seven to ten days?

6 STEVE WALZ: I think the thought there was to give the
7 applicants as much time as possible to have notice to be
8 able to delivered and every time you lengthen the time
9 prior to before you're lessening the time, things like
10 certified mail which can be delivered and they can get
11 the green cards back.

12 MR. MCGLOTHLIN: The office is required to get things to us
13 within five business days of the meeting and that's going
14 to kind of cut that down.

15 MR. CHAIRMAN: Yeah. Some of the comments, I guess, that the
16 work groups -- the timing here -- I mean, we had some
17 discussion on that and the language incorporated here
18 was --

19 MR. MCGLOTHLIN: It's going to be difficult for Tom's office
20 to get the information to us before the meetings if it's
21 due the same day it has to go out.

22 MR. CHAIRMAN: Well, I think the way that they said it was
23 absolutely no less than seven days. Obviously, it
24 doesn't leave any room for error to get the things to the
25 Board.

1 MR. MCGLOTHLIN: I would suggest that that be changed to ten
2 calender days.

3 STEVE WALZ: Since the docket needs to be advertised twenty
4 days in advance of the meeting this would not change
5 something being listed on the docket and advertised in
6 the notice of the Board hearing itself. And if it were
7 not submitted the application would not be completed and
8 then it wouldn't fall under the regulation sections
9 where applications are not complete.

10 MR. CHAIRMAN: You're saying it wouldn't come before the
11 Board --

12 STEVE WALZ: It wouldn't come before the Board in that case.
13 But it wouldn't change the -- I don't think it would
14 change what's been sent out to the Board because it's
15 already sent by that time even if intended.

16 MR. CHAIRMAN: Can you follow that?

17 MR. MCGLOTHLIN: I think so.

18 STEVE WALZ: The docket needs to be set twenty days in
19 advance of the meeting for publication of the notice of
20 the meeting as required. So we're trying to give them
21 as much time as possible, but moving it back three days,
22 you still got that twenty day notification for notice of
23 hearing. So it wouldn't change what you're going to
24 have in your hands. So by giving the additional three
25 days, it's not going to help them get things to you in

1 advance any better.

2 MR. CHAIRMAN: Under Section 4 Notice of hearings, we have in
3 there the references to the code requirements for field
4 rules, unitization and pooling hearings.

5 MR. MCGLOTHLIN: Excuse me.

6 MR. CHAIRMAN: That's on page 6 of 38. I'm sorry.

7 MR. MCGLOTHLIN: I still have one on 5 of 38. I didn't flip
8 over. Applications for the establishment of unit
9 spacing and pooling shall be accompanied by a \$100 fee.
10 Could I ask Mr. Mason how that figure was derived?

11 MR. MASON: Well, it was based upon the staff recommendation
12 and the fact that that's what we are charging right now.
13 We talked about changing it, but there wasn't much said
14 about it.

15 MR. EVANS: Is that a non-refundable fee?

16 MR. MASON: Yes. Steve, how did the original number arise, do
17 you know?

18 MR. WALLS: The original number that we came up with was
19 based upon publication cost, and also the publication
20 cost and their copying the costs.

21 MR. WAMPLER: And estimated cost for the Board expends.

22 MR. WALL: And the Board's expenses also.

23 MR. FULMER: I think that it's also consistent with what the
24 legislature looked at when they were setting the fees
25 for the permit, the cover the processing. So we were

1 trying to follow the model that was established in the
2 act.

3 MR. CHAIRMAN: By it being in the regulations certainly -- if
4 it proves to be inadequate or what have you, then there's
5 an ability to come back and propose something at a later
6 date.

7 MR. FULMER: Do you need to add that non-refundable in there?

8 MR. CHAIRMAN: I think you ought to make it clear to everyone.
9 Okay. Anything else on Section 3? If not, on Section 4
10 Notice of hearings, we in the notice of hearings have
11 set the standards for notice of spacing exceptions for
12 the hearings requiring applicants to send a copy of their
13 application with a notice and require notice by public-
14 ation of persons that are not able to be located. And we
15 set the standards for notice of applications to modify
16 orders.

17 MR. MCGLOTHLIN: Okay. A couple of things on this. Section
18 4-D, the applicant for the hearing shall cause a notice
19 to be published in a newspaper of general circulation in
20 the county, city, or cities. I was just wondering if the
21 general circulation newspaper could be a major newspaper
22 opposed to a county newspaper? Could the notice not be
23 put in both, for example in this area, in both the
24 Bristol or for Buchanan County in the Virginia Mountain-
25 eer?

1 MR. CHAIRMAN: Certainly, if it needs any clarification. I
2 think the intent here is whichever publication does reach
3 the masses in that area. I think as a general rule
4 that's what's been practiced by --

5 STEVE WALZ: Yeah. One of the things that we did as a
6 provision was to circulate or send to all the operators a
7 listing of all papers in the circulation area. And we
8 also noted to them which were weekly papers and which
9 were daily papers and we preferred in the notices that we
10 sent to them that they utilize the weekly paper if at all
11 possible. One of the things that they have to meet here
12 is give twenty days notice, too. So that becomes a
13 factor in which paper they choose to do so, but we did
14 send the maps and the areas of the circulation and so
15 forth. The problem is there is a lot of counties --
16 excuse me, in Buchanan County, one part of Buchanan
17 County particularly, there's no paper circulation for the
18 area. These were supplied by the newspapers, by the way,
19 anyhow.

20 MR. MCGLOTHLIN: Just out of common courtesy, this is
21 something I will throw out to the Gas and Oil companies,
22 that maybe your notice could be put in the daily paper
23 and then the following weekly paper if they could get
24 something in there, people would appreciate it, I'm sure.
25 And then D-3, a map showing the general location of the

1 area which would be effected by the proposed action or a
2 description which clearly describes the location, would
3 it not be more effective to put both in there?

4 MR. MASON: If I may respond, we spent quite a bit of time
5 hashing this one around. And I think the reason -- any
6 of the members here correct me if I am wrong, the
7 original idea was to use the map, but then the problem
8 was and the theory was that you try to keep it as close
9 as possible to a map that would show highways and roads
10 and the things that people could find but there are some
11 areas that don't lend themselves to that. And in that
12 event, it might be better to use just a general descriptive
13 text to describe where it is. And the purpose of
14 this was for the one to be used which produces the
15 greatest clarity of where this exactly is located. I
16 think that Tom or somebody made the point that there are
17 areas where there aren't any roads in terms of county
18 roads or state roads. Someone may have made reference
19 to, either formally or informally, to some areas and
20 particularly like that George Witt National Forest
21 acreage, that there really aren't map locations that
22 relate to state or county roads.

23 MR. MCGLOTHLIN: These are just things that popped in my head
24 when I read over them.

25 MR. CHAIRMAN: That's fine. And certainly on an on going

1 basis. Even after as I said, these regulations are
2 published, if we find fault then we will monitor those
3 kind of things and take subsequent action.

4 MR. MCGLOTHLIN: Well, I believe that's all I've got for
5 awhile.

6 MR. CHAIRMAN: All right. On the Section 5, I believe that
7 starts on page 8, application for field rules. This
8 establishes the requirements for material to be submitted
9 in application to establish field rules and requires the
10 description of pools to be in the field including meets
11 and bounds description of field boundaries, unit boundar-
12 ies and areas in units where drilling is being allowed
13 shown on the map using the state plane coordinate
14 system, an affidavit of mailing a notice and other
15 information. Any questions on Section 5?

16 MR. MASON: Mr. Chairman, if I may, I would like to point out
17 that one of the decisions that was made in regard to
18 this, particularly as regard to the state coordinate
19 system, was something that we talked about at the Board
20 and the difficulty we had in trying to have some uniform
21 locating facility. And the work committee's goal in
22 adopting this was to put a start on the road to having
23 the oil and gas maps, fuel maps and so forth all event-
24 ually adopt this one single map reference system.

25 MR. HARRIS: Let me ask a question. Is this the same that

1 USGS uses?

2 MR. HASON: It's my understanding it's not.

3 MR. HARRIS: Okay. We had recommended this because West
4 Virginia and Tennessee are both using similar -- what was
5 the purpose in --

6 MR. CHAIRMAN: The primary purpose was that it's the most
7 universal means available where coal companies, gas and
8 oil companies, could easily convert to a common system.
9 I think it was the underlined reason and we have put a
10 schedule of time in that would allow everyone an opport-
11 unity to plan ahead for that.

12 MR. HARRIS: I just wondered if we needed -- I remember that
13 we've had cases where we talked about in meshing with
14 West Virginia, for instance, or Kentucky or something
15 like that.

16 MR. LEPCHITZ: Right. Well, the staff actually brought to
17 the work committee, as I recall, three alternatives. And
18 we kind of hashed them out and in examining these came
19 to the conclusion that the one system that would have the
20 most universal appeal would be this one. I think
21 primarily because of it's extensive use in the coal
22 industry it would allow the oil and gas wells and coal
23 mines plans and programs to be more readily converted to
24 a common map.

25 MR. CHAIRMAN: Within the State laws it's recommended as the

1 system that most folks in the state that are dealing
2 with mapping are going to.

3 MR. HARRIS: But there's no need then for the meshing then at
4 borders? You know, we've had ---

5 MR. MASON: We can't deal with areas beyond our borders.
6 Whatever we talk about begins at the Virginia State
7 line.

8 MR. HARRIS: I just thought that there might be some standard.
9 that they were standardizing in the states.

10 MR. CHAIRMAN: Okay. On page 10, in Section 6, applications
11 for exceptions to minimum well spacing requirements,
12 this established minimal requirements for materials to
13 be submitted in an application for an exception location
14 under statewide spacing or under a field rule. Any
15 questions under Section 6? Section 7 is found on page
16 11, application is to pool interest in the drilling unit
17 to conventional gas or oil or no conflicting claims to
18 coal bed methane gas ownership. This entire section
19 establishes requirements for material to be submitted in
20 an application for a standard forced pooling order and
21 requires meets and bounds, description and map reference
22 to the state claim coordinate system, identification of
23 gas and oil interests in the pool, a proposed AFV, an
24 affidavit of mailing of notice and other information.
25 Any questions on Section 7? If not, Section 8 begins on

1 page 13, application is to the pool interest in a
2 drilling unit. These applications must meet with Section
3 7 requirements plus provide a description of conflicting
4 claims and a percentage of interest to be escrowed.
5 MR. MCGLOTHLIN: I have a question on 8-D.
6 MR. CHAIRMAN: On page 14 in Section 9 it just establishes
7 your standard for escrow accounts. It requires
8 compliance of Board orders providing flexibility for the
9 Board to use it's own escrow agent.
10 MR. MASON: I have a question on that because I wasn't here
11 the last time. As I understood it, the staff made that
12 recommendation --
13 MR. CHAIRMAN: The Board authorized the staff to go ahead and
14 prepare a request for proposal for an escrow agent to
15 handle these funds and we are in the process now of
16 developing that request for proposal.
17 MR. MASON: The next step would be that they will come back
18 to the Board with that proposal?
19 MR. CHAIRMAN: Yes.
20 MR. MASON: Okay. Do you have any idea what the time frame
21 is?
22 MR. CHAIRMAN: Hopefully, at the next meeting. Section 10 is
23 on page 14 also. It establishes allowable causes that
24 may be shared in pool, gas, oil operations. It uses the
25 cost categories from the counsel of Petroleum Accountants

1 Society for model of accountant procedures and joint
2 operations. It will still require approval of an AFE in
3 each pooling order to allow for flexibility to account
4 for unusual conditions.

5 MR. HARRIS: Actually I have several questions about some of
6 the terminology. We talk about reasonable. Who decides
7 what's reasonable? Is it based on like an average or
8 something within like a plus or minus 10 percent of
9 what's average over the last year? How do we
10 decide --

11 MR. CHAIRMAN: I think it allows flexibility for the operator
12 to present what they consider to be a reasonable fee and
13 then based upon our staff's knowledge and recommendations
14 to the Board of whether or not that, in fact, is the
15 standard for the industry. The Board would have an
16 ability to challenge that if anything was presented, but
17 it provides probably a necessary flexibility for the
18 industry to deal with changing conditions.

19 MR. HARRIS: This is all very subjective and what is reason-
20 able to you might not be reasonable to me.

21 MR. CHAIRMAN: Well, sure it does.

22 MR. MASON: Unfortunately, the legal profession is fraught
23 with determinations of what is reasonable. The reason-
24 able man's standard is something that finds its way
25 through the law and the courts wrestle with it on a

1 weekly basis.

2 MR. EVANS: It's called the lawyer's welfare clause.

3 MR. MASON: Usually it is reasonable under the facts and
4 circumstances then prevailing.

5 MR. CHAIRMAN: Section 11 under record keeping, this requires
6 records be kept a minimum of twenty-four months after
7 claims have been settled or activities completed and
8 requires transfer of records if unit operators changed,
9 if unit operator goes out of business or if a well is
10 plugged by the department. Section 12 is found on page
11 16 of 38, applications to change the unit operator for a
12 unit established by order of the Board, this establishes
13 requirements for material to be submitted for petitions
14 to change a unit operator and set standards for voluntary
15 transfers between operators and involuntary transfers
16 requested by another gas or oil owner. Section 13 on
17 page 18, appeals to the directors decision, establishes
18 requirements for materials to be submitted in an appeal
19 of the decision of the director. Section 14 is the
20 miscellaneous petition. It establishes requirements for
21 submitting any petition not otherwise addressed in
22 regulations. Section 15 on page 20, effective dates for
23 Board orders, pooling orders effective for one year
24 unless operator starts operations. Otherwise orders are
25 effective as established in the individual orders or

1 until amended or vacated by the Board. Section 16 on
2 page 21, enforcement, this establishes the general
3 enforcement tools and defines service of notice or
4 orders. Section 17, notices of violations, this is
5 consistent with standards in the department's proposed
6 regulations, except an operator is not required to abate
7 a violation during an appeal.

8 MR. MCGLOTHLIN: Could we hold just a second there on that,
9 Section 17?

10 MR. CHAIRMAN: Sure.

11 MR. MCGLOTHLIN: I have something marked and I can't -- go
12 ahead and if it comes to mind I'll bring it up.

13 MR. EVANS: Mr. Chairman, in here on the notice of violation,
14 if that notice of violation poses a danger to health or
15 safety of the general public, as far as this appeal
16 goes, is there a duty on NOVE that you can force an
17 action to protect the public health and safety?

18 MR. CHAIRMAN: I think we felt like that anything that would
19 be in that category would be handled under the department
20 rules and regulations.

21 MR. EVANS: Okay.

22 MR. CHAIRMAN: Section 18, under closure orders, here again,
23 this is consistent with the standards in the department's
24 proposed regulations. In Section 19 under civil charges,
25 provides for calculation of recommended amount of civil

1 charges subject to final agreement by the Board and
2 operator and the Board must decide if the methodology is
3 to be established by regulation of Board orders and we
4 have the two options. I'll ask Steve Wallace to discuss
5 the two. One is either to set the system in general by
6 the point system in regulation or by order of the Board.

7 STEVE WALZ: There was discussion in the working committee
8 that developed this fact that it was best to set the
9 ground rules out for everybody to see and know in
10 advance what basis the Board might look at setting civil
11 charges so they can make a decision whether it is
12 worthwhile negotiating civil charge with the Board or
13 take their chances with the court and the civil penalties
14 which are also provided for by the act. So we looked at
15 a number of different options as how to do this. This is
16 based upon the process that the department's division of
17 mining and reclamation. The committee also looked at
18 some more general processes that were set out by some
19 other agencies like the Range Resources Commission. And
20 the Statewide Control Board had decided that they'd like
21 something that was spelled out in a little more detail.
22 And so we drafted it and the committee looked at this and
23 included it in both language that we have before us
24 today. We were looking at this and thinking about it
25 some more since the committee met last week. We realized

1 that in order to provide some flexibility for the Board
2 if we establish this in regulation, if you needed to make
3 any changes to it the Board would have to go through the
4 full administrative process act regulatory shenanigans,
5 you know, the full process which would take them six to
6 twelve months. It would be a long and involved process.
7 So as an option to provide flexibility to the Board we
8 thought that the Board may wish to consider establishing
9 this by order and referencing the order in the regulation
10 so that it still is out there in an order so that all the
11 parties that might be involved will have an idea what the
12 rules are that they are faced with, but it would not
13 require the administrative process act procedures to come
14 in. This is just to develop recommendations that then
15 would go to the Board and the Board and the operator
16 would have to reach an agreement as to use the recommend-
17 ation or not as they see fit, whether to put in the
18 regulation or order. So whether it goes either way it
19 would not affect the process used to agree on the
20 charges with an operator. The other agencies that do do
21 it aside from the MOR, their standards, I think, are more
22 set through some of the more federal requirements under
23 privacy. The other agencies that have this have done it
24 through an order. Some of them have done it through an
25 order of the Board. The Water Board did it that way.

1 Waste Management and the NRC, they just have a document
2 flowing around. I think that it was the sense of the
3 committee that they wanted it to be more formal than that
4 though and have an established document. So the two
5 options are to put it in the reg or reference it in the
6 reg.

7 MR. CHAIRMAN: You can see on page 31 and 38 how the reg
8 agrees if it's by the order of the Board. It's two
9 paragraphs verses the six page detail in the regulations.
10 Do you have a preference?

11 MR. EVANS: The experience with the two different method-
12 ologies for other state agencies that are using the two
13 different approaches, do you have any feedback or feel
14 for which seems to be working best for all concerned? I
15 mean as far as administration and --

16 STEVE WALZ: I don't think so because I don't think that any
17 agency has done both and would have a sense of which has
18 worked better, but this approach I think has worked well
19 with the division of Mines, Labor and Reclamation.

20 MR. CHAIRMAN: I think the key here is that the folks in the
21 work groups were saying that they decided or are at
22 least recommended for the Board's consideration that
23 they would like to have something that everyone would
24 know what the rules of the game are, what's going to be
25 used to make these decisions. And while the Board would

1 still have flexibility, not be 100 percent bound by that,
2 I think that if we show consistency in dealing with
3 civil charges then we'll probably have general acceptance
4 either way you go. If the Board starts changing the
5 rules of the game frequently then I would imagine that
6 there would be a cry to put them in regulation. So I
7 would think that -- and I'm not trying to speak for the
8 public. They can speak for themselves when we open it
9 for comment, but I would think that initially there
10 wouldn't be a major cry either way. But on implement-
11 ation, how we treat it, is going to be the key. And here
12 we have an ability if we found something not applicable
13 to this industry or what have you to make adjustments and
14 accommodations by Board order versus six months process
15 of changing a regulation.

16 MR. EVANS: Well, that's what the -- the influx building once
17 it's in regulation although it can be changed at a time
18 necessary to do that if it need to be at a later date,
19 based on public comment or the actual operation of the
20 system, it can always be put into regulation at that
21 point in time. So for me individually, I think that at
22 least initially the Board doing it as a Board order would
23 allow sufficient flexibility to at least feel our way
24 through it.

25 MR. HARRIS: I have just a couple of things. One is how many

1 cases are we talking about maybe in a year that we would
2 have to --

3 MR. CHAIRMAN: I don't know how you could tell that.

4 MR. HARRIS: Have we had any in the past that would apply --
5 that this would apply to?

6 MR. MASON: Well, if we are talking about enforcement actions
7 in any way, shape or form I don't know how you could
8 even estimate that.

9 MR. HARRIS: I mean, just by past history, I mean in the past
10 year, did we have six or ten that we would normally have
11 gone to this type of regulation to do?

12 MR. KELLY: Excuse me Mr. Chairman. The fact is that we
13 didn't have the advantage of civil charges prior to the
14 law being changed in July when it went into effect. So
15 this is the first year going around that you've had to
16 address civil charges.

17 MR. CHAIRMAN: But I guess thinking back, and you're saying
18 had we had this how many would we have had, I can think
19 of one specific case in the last two years and perhaps a
20 second one dealing with what the Board would apply.

21 MR. FULMER: I just have mixed feelings. If it is too
22 general like on page 31, it gives us more leeway, but
23 then to a person receiving the charges or receiving
24 penalty, I can imagine they would wonder is arbitrary or
25 is it being consistently applied. And then we're going

1 to have to have some reference when we apply some kind of
2 penalty and I would think that we would go to something
3 similar to what's being listed --

4 MR. CHAIRMAN: Well, that would be the plan that assuming
5 that this proposal is acceptable dealing with civil
6 charges, then whether it's in regulation or whether it's
7 by Board order, we're not proposing. The staff hasn't
8 recommended any change either way and I think that the
9 work group essentially came forward with this kind of
10 recommendation that this is a reasonable methodology.
11 The question is is it by Board order, this methodology,
12 and if it is then it's a published document that people
13 have access to or is it by regulation?

14 MR. HARRIS: It would longer to change if we want to
15 change something.

16 MR. CHAIRMAN: If there's a need to change.

17 MR. MASON: The same wording would be in both.

18 MR. HARRIS: I understand. I lost something along the way,
19 but yeah, okay.

20 MR. FULMER: I'm like you. I have mixed emotions about it.
21 I can see the advantages of the Board order, but dealing
22 -- we are an amenity of the State. We need to put these
23 in regulations.

24 MR. HARRIS: To an operator, is there any difference in the
25 Board order and the regulation? I mean, when they look

1 at the penalty system and look at numbers and they're
2 saying I done this and I'm going to get penalized X
3 number of points, does it matter that it's in a regula-
4 tion or a Board order? I mean, does it matter that it's
5 in a regulation or from a Board order. I hate to even
6 suggest this, but would they tend to ignore it more if
7 it's a Board order as opposed to a regulation? Does the
8 Board order carry as much weight? I guess it wouldn't,
9 but would it have the same effect.

10 MR. FULMER: That section is largely discretionary in terms
11 of assessment of the penalties under set of circumstanc-
12 es. You're going to have to have agreement of the
13 operator before you do anything.

14 MR. CHAIRMAN: So that's an opportunity for an operator really
15 to avoid going on into court to get the charges. It's
16 settlement tool is what it is.

17 MR. HARRIS: So it's really to their advantage. If they're in
18 a situation where they're going to have to pay a penalty
19 or something or pay civil charge.

20 MR. EVANS: I think one of the main advantages to having it a
21 part of the regulation is it just would probably be more
22 widely dissimulated than it would just being a Board
23 order. If it's a Board order it would be more widely
24 published. If it is a Board order, it won't be as
25 widely published.

1 MR. HARRIS: Well, you could always have the point system
2 listed and then at the end or beginning say at the
3 discretion of the director.

4 MR. EVANS: Well, it says that I think.

5 MR. HARRIS: I must have missed that. So there is an opport-
6 unity to not bypass but at least to modify this?

7 MR. MCGLOTHLIN: I'm looking down the road, thinking down the
8 road. Surely this Board would never do it ourselves,
9 but who's to say when another member comes on. It's
10 just too easy to change as Board regs. I have a problem
11 with that. I mean, it needs to go through the ad-
12 ministrative process to change whatever we put in.

13 MR. MASON: So you think it should be part of the regs?

14 MR. MCGLOTHLIN: Part of the regs.

15 MR. KELLY: I have mixed emotions. I can see points both
16 ways. From an operator's standpoint it might be of
17 benefit to know what's in place and to know if it's going
18 to be changed then you have to go through a fairly
19 extensive process to change it, but at the same time,
20 since we really don't have much of a history in dealing
21 with this type of thing, there hasn't been that kind of a
22 violation history that's really come up on appeal to the
23 Board that has required Board action, I can see the
24 advantages of having the flexibility to let the system
25 work for a while and see how it does work and then if it

1 needs to be modified we'd be able to modify it in a
2 shorter period of time. I don't really have a strong
3 feeling either way, maybe a little bit more on the side
4 of flexibility.

5 MR. CHAIRMAN: Any further discussion on that?

6 MR. HARRIS: Well, the other comment, and it's the one I've
7 made before about subjectivity and the interpretation,
8 you know, the difference between slight, actual and
9 moderately significant actual and those kinds of things
10 or significant actual or potential damage, those kind of
11 things, and who's to decide where the cutting point is
12 and then that is almost your flexibility there because
13 at some point the interpretation comes in or you jump
14 over to the next range and within the range there's one
15 or two points and there are multiple points, three to
16 four points, five to six points. So you have some
17 flexibility built into the range if you want to stick
18 with the range. The more I think about this -- I'm
19 almost in favor of in the point system as was first
20 recommended and then modifying it later. I really don't
21 think we're going to have a lot of cases to have to go
22 back and look at this and say, "Gee, this isn't going to
23 work and we need to modify." But at least if it's in
24 writing people sort of know what is subjective as it is.
25 The operators will still know what they're going to be

1 accountable for.

2 MR. KELLY: Tom, to expand on your comment earlier, are you
3 saying that if a system like this had been in place
4 previously it would have been utilized more and there
5 would have been penalties assessed where there couldn't
6 have been before?

7 MR. FULMER: Right. You didn't have the ability on the past
8 statute. The problem is under the past statute that
9 there's only one or two things you could do. You could
10 either revoke the permit and go on, there's no question.
11 I mean, that's the ultimate penalty. You don't have a
12 system. You could call it a system if you want, but
13 that was the way it was done -- a forfeit or whatever.
14 You can get them for a Class I misdemeanor. There's two
15 things coupling here that I would mention to you. One is
16 that the ability to assess our own ability is built into
17 the act now. The other is that enforcement procedures
18 have changed in Article 3. You will be hearing appeals
19 from the director's decisions under Article 3. And now
20 you've got a different situation. So the number of cases
21 may increase and the number of cases may not increase,
22 but the likelihood is probably they will increase.

23 MR. KELLY: But from the standpoint of the magnitude -- from
24 the number of violations and the magnitude of those
25 violations, do you think just from your experience were

1 there that many violations that would have followed
2 through a process invoking this type of penalty?

3 MR. FULMER: Not that many, no.

4 MR. EVANS: But you've got new regs and new laws and
5 that's --

6 MR. KELLY: That's true, but the basis is still the same.

7 MR. MCGLOTHLIN: I have a question on the procedure of this.
8 When a fine is levied, what's the procedure after that
9 if they want to appeal that fine?

10 MR. CHAIRMAN: Well, I don't think you would have that
11 situation in this case. You can correct me if I'm wrong
12 case. What this is, rather than go on to court and to
13 challenge at the court level and deal with it there, it's
14 an ability for the company and the department and Board
15 to deal with this on a settlement agreement type and hear
16 the standards for the settlement agreement for charges.
17 It's not something that for every violation that's
18 reviewed for assessment coming to the Board and assess-
19 ments levied in appeal procedures. It's not that kind of
20 circumstance. The law allowed a provision and this was
21 the mechanism that the work group chose.

22 MR. MCGLOTHLIN: If somebody in the department goes out and
23 fines ABC Gas Company, what's their appeal?

24 MR. FULMER: The director on arbitrary doesn't have the power
25 to assess fines. The Board has the power.

1 MR. MCGLOTHLIN: That's what I'm getting at. As I read this,
2 and I might have been reading two or three different
3 sections together here and forgive me if I have, but if
4 somebody goes out and levies a charge on the point system
5 or however and then it goes to an informal fact finding
6 hearing --

7 MR. FULMER: What the director does is recommend to the Board
8 what the fine should be going through the process. They
9 have already went through director's process and the
10 appeal is to the Board and he will recommend a fine to
11 the Board.

12 MR. CHAIRMAN: Let me try another shot at this. If an
13 inspector issues a violation to a company and it's a
14 violation in the nature that would lead to civil charges,
15 then that company could appeal to the Board.

16 MR. MCGLOTHLIN: Do they appeal it directly to the Board or do
17 they have to go through an informal fact finding hearing?

18 MR. CHAIRMAN: To appeal the inspector's decision?

19 MR. MCGLOTHLIN: Yeah, the inspector's decision.

20 MR. CHAIRMAN: To the Board.

21 MR. MCGLOTHLIN: Directly to the Board. They don't have to go
22 through Tom or --

23 MR. EVANS: They've already gone through Tom.

24 MR. FULMER: The violation can be upgraded to the inspector.
25 The inspector makes a decision and the appeal is from the

1 inspector. The informal is at the inspector's level.

2 MR. CHAIRMAN: The appeal of the inspector's decision comes to
3 the Board, but that's separate and distinct from civil
4 charges.

5 MR. MCGLATHLIN: I don't know if I'm not understanding or
6 what. The way I read this, let me put it this way. When
7 a deputy goes out here and gives a traffic violation to
8 somebody, that, in a sense, would be the inspector in our
9 case or an inspector. Then, as I read this, the in-
10 spector Tom would levy the points against that person.
11 Am I right so far? No? Okay.

12 MR. LEPCHITZ: You have two separate distinct forces working.
13 One is the violation which the inspector is obligated to
14 right. That is totally separate and distinct from this
15 process. This process may or may not come into being.
16 That's the problem. And in this you've got two phases
17 to consider. One is the potential for initiation of a
18 collection action or civil penalty assessment action in a
19 Circuit Court. Clearly, those are going to be the
20 serious violations where the attorney general seeks to
21 initiate an action in the Circuit Court and recover
22 substantial fines, \$10,000 fines. The provision that is
23 in your regulation is an opportunity for settlement of
24 claims. It's not one that's binding upon the operator
25 and it's not one that's binding upon the Board. There

1 has to be an agreement between the operator and the Board
2 as to how to deal with the potential for this type of
3 action.

4 MR. MCGLOTHLIN: Who assesses the points?

5 MR. LEPCHITZ: The Board. You would make that determination
6 in your review of the violation.

7 MR. MCGLOTHLIN: Well, here it says the director shall assign
8 up to ten points based on the seriousness of the vio-
9 lation in accordance with the following.

10 MR. LEPCHITZ: The section that authorizes says, "The Board
11 with the consent" and the decision is yours.

12 MR. MCGLOTHLIN: Okay. I just want to make sure that once
13 somebody recommendation a violation, that it comes
14 directly to the board. There's no --

15 MR. LEPCHITZ: There's going to be some discussion, clearly,
16 between the inspector and the company before it gets to
17 the Board. And that's probably how it will come to you
18 is in the form of an recommendation. We have talked,
19 this is what we agreed, this is how we come to this
20 conclusion, Board, what do you think?

21 MR. CHAIRMAN: That's why I use the term settlement agreement.
22 By the time it comes to the Board it would be in the form
23 of a proposed settlement agreement and the Board would
24 either accept it or reject it or what have you, I would
25 think.

1 MR. MCGLOTHLIN: When I read it, it sounded like the deputy
2 would give the ticket and the sheriff would assess the
3 fine and it didn't sound right to me. But as long as we
4 have the ultimate -- I mean, I don't think there should
5 be an informal fact finding hearing before it comes to
6 us. I think that should be --

7 MR. CHAIRMAN: There won't be on penalties.

8 MR. KELLY: Mr. Chairman, I would just ask Mr. Mason. In his
9 work group meetings, were there any strong feelings
10 expressed either way, where were the sentiments in this
11 particular situation?

12 MR. MASON: Well, we talked about it quite a bit and in fact,
13 one of the reasons that the alternatives were presented
14 instead of a single one was that the work group didn't
15 arrive at a consensus. It was felt like that the
16 ultimate impact in terms of how these things would be
17 administered wouldn't be particularly affected one way
18 or the other.

19 MR. CHAIRMAN: And the staff just simply recommended the
20 alternative for your consideration and it's up to the
21 pleasure of us here to make that decision. Which way do
22 you want to go?

23 MR. EVANS: As I've said, I'm still initially in favor the
24 Board order approach because you can always put it in
25 regulation. But I'm not opposed to putting it at

1 regulation if that's what --

2 MR. CHAIRMAN: All right. Let's go this way rather than take
3 a vote. What's your preference? To have it by regulat-
4 ion, raise your hand.

5 (MR. MASON AND MR. MCGLOTHLIN AFFIRM.)

6 MR. CHAIRMAN: By Board order, raise your hand.

7 (REMAINING MEMBERS AFFIRM.)

8 MR. CHAIRMAN: Okay. We'll go by Board order as far as the
9 proposal and then we will receive comment and we'll still
10 have --

11 MR. MASON: Okay. Then, we're going to adopt, for purposes
12 of going forward with this public hearing, the short
13 version?

14 MR. CHAIRMAN: Section 19 as presented on page 31 of 38.

15 MR. MASON: Okay. In conjunction with that then, will the
16 Board on it's own motion adopt this language as a part of
17 an order?

18 MR. CHAIRMAN: That would be the way we would go. In other
19 words, what we should do, I would think, is wait until we
20 finish the public comment period and if it's finally
21 decided that we're going this way then we could on our
22 own motion at that very next board meeting adopt those.
23 Okay. Section 20, surveys and tests, sets the standards
24 for inclination and directional surveys. The Board must
25 decide if it's necessary to require inclination survey on

1 all wells including those drilled at statewide spacing or
2 only those wells drilled in accordance with a field rule
3 order of the board and we have an issue paper on that.

4 STEVE WALZ: I guess it was the last meeting of the workman
5 committee there was some discussion of what types of
6 surveys ought to be required and where. And there was
7 discussion that an inclination survey should either be
8 required on all wells drilled or if a well is drilled at
9 statewide spacing due to the distances between wells and
10 the positions of the field that an inclination survey
11 would not serve the purpose of protecting of correlative
12 rights. So I think the issue is is it needed for the
13 protection of the resources, do they know where the
14 resource is being produced from. They wanted to see
15 options showing that all wells drilled, under a Board
16 order or any type of a unit established by the Board or
17 on statewide spacing, would require that an inclination
18 survey be done. And then if it is outside of certain
19 limits that they would be required to run a directional
20 survey to more adequately locate the bottom of the hole.
21 The second option that they want to cover was that the
22 inclination survey would not need to be run at statewide
23 spacing only if it were under a unit established by the
24 Board or the other requirements where a directional
25 survey might need to be run in those cases of whether

1 that statewide spacing or not would need to run (In-
2 audible.) So you've got two options, one starting at
3 page 31 and then one starting at page 34 to modify
4 subsection A-1 which would require the inclination
5 survey.

6 MR. EVANS: I have a comment on that. In areas where there
7 is coal consideration as far as mineability or recover-
8 ability of a coal seam, obviously the gas company and the
9 coal company are going to have to work together based on
10 other provisions of the act as far as locations. It
11 becomes extremely important to the coal industry to know
12 where the bore of that particular gas well is because
13 they have some fairly tight considerations from health
14 and safety aspects to stay away from that well bore.

15 STEVE WALZ: This particular regulation starts below the
16 coal, going through the coal or in areas that there is no
17 coal. Going through the coal is addressed in the
18 department's regulations.

19 MR. EVANS: Okay.

20 MR. MASON: The question is, essentially, do you require it
21 in all events or just in the case where you're drilling
22 something other than the statewide spacing. That's
23 really the question.

24 MR. HARRIS: Well, I have a question. I'll show you how
25 naive I am about this. I always assumed that whenever

1 you drill a well that it was a vertical hole, but
2 apparently and obviously it's not because there is two or
3 three pages of regulations here that recommend -- talk
4 about deviations and whatever. How do you not drill
5 this thing vertical? I mean, I don't know enough about
6 drilling, I guess.

7 MR. MASON: The drill bit frequently has a mind of its own.

8 It takes off in some direction other than vertical.

9 MR. HARRIS: I mean, over a period of several hundred feet --
10 are you talking about a lot of deviation here?

11 MR. EVANS: You can.

12 MR. KELLY: It's a function of a number of things, rotary
13 speed and weight on the bit, the type of rock that you're
14 drilling, the depth of the rock --

15 MR. MASON: Suffice to say, I'm no great expert at this
16 either, but in many instances the well bore will deviate
17 considerably from a perfectly vertical line. As I
18 understand it somebody can cut a corkscrew around, I
19 think.

20 MR. KELLY: That's probably the most common.

21 MR. MASON: So not only would it be off at an angle, but you
22 might even deviate on the way down and end up somewhere
23 close to where you started but in between it all.

24 MR. CHAIRMAN: Any further discussion? What's your pleasure?

25 MR. MASON: Bill, what about from your standpoint? Obviously,

1 the burden of the cost of this is going to fall on the
2 industry. It's a question of whether it's required in
3 each instance or only in the instance dealing with units
4 and field rules.

5 MR. KELLY: Well, I think I'm real appreciative of the
6 concern of coal and I think we've gone through this many
7 times before in the '82 act and prior to that, in fact,
8 leading up to the '82 act. The compromise that was
9 reached with coal during that period, I think, how
10 much --

11 MR. MASON: The reason the work committee made that distinct-
12 ion, it was our perception that when you were drilling in
13 a unit or in a field that this that because of the nature
14 of the units and the drill spacing and all, that the
15 surveys could be more critical than they would be in a
16 situation where you were drilling in accordance with just
17 statewide spacing.

18 MR. KELLY: Well, I think if you're looking to maintain a
19 certain spacing and maintain a critical distance from
20 other wells and property boundaries and things like that,
21 that when you're in a field rule situation that certainly
22 could be more critical. Although, I guess, looking at it
23 from a standpoint of the degree of how critical it is,
24 are you talking about enough distance at total depth to
25 be of a concern versus the distance through the coal

1 measures to be of concern. I think in most cases --
2 well, you're relying in all cases on a prudent operator
3 standard for the most part. And unless it's an in-
4 tentiously -- unless it's an intentional deviated hole
5 then, for the most part, it's to the operator's advantage
6 to maintain the hole near the vertical as possible and
7 the standpoint of getting the pipe in the hole and other
8 problems that can be created when the hole does deviate.

9 MR. MASON: It's a bigger problem like in over thrust material
10 and stuff like that.

11 MR. KELLY: It can be a problem in highly dipping strata and
12 other areas where you've got geological situations that
13 are extreme in a number of ways. There again, when
14 you're in a situation like that, you exercise more
15 control and take more precautions to keep the hole
16 straight. So, you know, there's a balancing effect
17 there. I guess I would lean toward things, obviously,
18 that don't put additional costs and burdens on the
19 industry. But at the same time I would fall back, again
20 to the compromise situation between oil and gas and coal
21 that was reached a number of years ago. I would more or
22 less look to that as somewhat of a guiding influence.

23 MR. EVANS: Mr. Chairman, I guess that this --

24 MR. KELLY: I assume John Graham spoke to that in some of the
25 meetings, possibly.

1 MR. EVANS: Is this basically a correlative rights issue as
2 how you -- as I see it it's how to assure the resource
3 owner particularly in the pool situation, that you're
4 not taking a resource that's "not yours".

5 MR. CHAIRMAN: I think that's true.

6 MR. MASON: I think one of the -- excuse me --

7 MR. CHAIRMAN: I was just going to say that the section of the
8 law that protects the coal owners' rights remains. So
9 we're talking, as Steve indicated, in either case below
10 the coal seam.

11 MR. MASON: I think the thing the work committee was looking
12 it was in one of these maps, the outside -- this is the
13 Oakwood, how wide is this band on the outside? I don't
14 remember.

15 MR. CHAIRMAN: 300 feet.

16 MR. FULMER: 300 feet.

17 MR. MASON: 300 feet, yeah. That if you had a well right to
18 the outside of that the deviation could be enough to make
19 that significant whereas if you're dealing with 2,500
20 feet, it's not as likely that it would ever become
21 critical. We felt like that the alternatives were -- we
22 felt like in all events if you were drilling in a unit or
23 in a field rule position that you should have it. The
24 question is whether do you need it otherwise, does it
25 justify the burden on the operator.

1 MR. EVANS: Bill, what's typically the additional cost of an
2 inclination?
3 MR. KELLY: Maybe I'm misinterpreting it, but I assume by an
4 inclination survey you just diminished the top coal. So
5 in that case it depends on the number of times you take
6 the survey. It requires a stopping of drilling oper-
7 ations for about 20, 30 minutes.
8 MR. MASON: This specifies the shots will be around 1,000
9 feet, don't they?
10 MR. FULMER: This is written -- it really comes from two
11 different positions. One, what was in the old act as far
12 as the coal situation dealing with the wind shock should
13 be taken. The second, and some of this came out in the
14 second gas and oil regs, which applied directly to
15 inclination surveys, inclination being deviation surveys
16 (inaudible) surveys or inclination surveys. We didn't
17 specify what type to use. Several companies may want to
18 use different types. Basically, most of this as dealing
19 with the claims, with rigging that you're talking about
20 is down time on the rig during survey.
21 MR. KELLY: Unless you met some kind of a critical situation
22 in the hole where shutting down for a period of time
23 might endanger the hole.
24 STEVE WALZ: Mr. Chairman, you raised the point that the way
25 the regulations reads that it would allow an operator to

1 make a survey even during a normal course of drilling or
2 after the well has reached total depth. So it would not
3 necessarily requiring the rig to be shut down.

4 MR. HARRIS: I have another question. What do we do with
5 this once we get it, this information -- the surveys?

6 MR. MASON: It's filed it with the director, is that correct?

7 MR. CHAIRMAN: It's to protect correlative rights like they
8 were talking. I mean, that was the whole intent. Is
9 where the bottom hole is, is it outside this unit
10 boundary?

11 MR. HARRIS: If it is, what happens?

12 MR. FULMER: You would either have to come up and correct or
13 plug it out.

14 MR. MASON: Yeah. That's why your point is true. They
15 wouldn't have to do it during drilling. But if they
16 completed drilling and then did the survey and find they
17 were outside of the unit, for instance, they'd have to
18 back up and go back in the hole and bring it back into
19 the drill unit.

20 MR. KELLY: Well, I think it's unlikely you'd wait until you
21 got the --

22 MR. MASON: Yeah. Well, that's what I'm saying.

23 MR. KELLY: If you're going to do it, you're going to do it
24 periodically as you drill the well. I guess the question
25 is as far as cost is how often are you required to do

1 it.

2 MR. MASON: So you're saying the down time of the drilling is
3 more expensive than running the survey?

4 MR. KELLY: Well, I mean, it's part of the process. I mean,
5 it's rig time and, of course, you have to rent the tools.
6 Some people, I guess, own their tools.

7 MR. FULMER: You would look at in a normal well, in the
8 Appalachian basin you're talking about running for a
9 survey, basically what you're talking about on a 6,000
10 foot well, it's made deeper if you've got a (inaudible)
11 situation. Once you come out of the coal it's around
12 2,200 feet toward Buchanan County, for instance, it's a
13 lesser depth, but otherwise, you're talking about
14 (inaudible).

15 MR. EVANS: Well, again, common industry practice, how often
16 are they run and how often are they not run? It just
17 depends on particular formations you're drilling and
18 where it is.

19 MR. KELLY: It varies quite a bit. Yes, where it is and the
20 likelihood that you may have a deviation problem.

21 MR. EVANS: And what the consequences of the deviation
22 problem are?

23 MR. HARRIS: But you would know when you're drilling if the
24 bit's deviating or if the system -- would
25 you know that? I mean, these things aren't that flex-

1 ible.

2 MR. KELLY: You can see indications of it if it deviates too

3 much. I mean, you'll have drag coming in and out of the

4 hole.

5 MR. MASON: If you deviate too much it'll break.

6 MR. KELLY: You can see additional torque on the drill

7 string. Those are the principal things you would see. I

8 mean, it can be an expensive problem to correct if you

9 allow it to get out of hand. So that's why it's a

10 prudent practice to not allow that. I mean, you want to

11 get the hole real fast, but within reasonable constraints

12 which include keeping the hole straight.

13 MR. HARRIS: The only time I could see where this would be

14 important is -- well, of course, you can't predict at

15 what angle, but I'm just thinking if you're near a

16 boundary to an area which has resources that you're not

17 supposed to tap into, then I can see where it would be

18 important. We may know by looking at the surface

19 location if there's a potential at a given angle,

20 whatever, that it may actually go over that point. I

21 don't know if we need them on all --

22 MR. MASON: Well, that was the reason for the difference.

23 MR. CHAIRMAN: Yeah. That's the reason the option that's on

24 page 34 was proposed by the work group.

25 MR. MASON: Typically when you're drilling units or field

1 rules you're dealing with smaller blocks than you do
2 under statewide spacing.

3 MR. CHAIRMAN: So what's your pleasure? The regs beginning on
4 page 31 or the option proposed by the Regulatory Work
5 Committee beginning on page 34?

6 MR. EVANS: I'm of the opinion that it should be run where
7 there are field rules and established units by statewide
8 spacing and up.

9 MR. HARRIS: I agree with that.

10 MR. EVANS: What do you think, Kevin?

11 MR. MCGLOTHLIN: I'm either way.

12 MR. CHAIRMAN: Is there any opposition to the option proposed
13 beginning on page 34 for surveys and tests? If not,
14 that's the one we'll go with. Section 21, allowable
15 production, this provides for the establishment of
16 production and allowables to prevent waste and protect
17 correlative rights for conventional wells. It states no
18 allowables are to be set for coal bed methane wells.
19 Section 22, enhanced recovery, requires 51 percent or
20 more of interest to agree before an enhanced recovery
21 project may be authorized by the Board. Section 23, page
22 36 of 38, underground storage of natural gas, prohibits
23 underground gas storage in an underground field without
24 an order of the Board. That concludes the discussion.
25 How about any further comment? We have some options that

1 I've asked Steve to go through and I'm going to hand
2 those out now that are just some minor modifications as
3 recommended by our Assistant Attorney General, Mike
4 Lepchitz. Let me go ahead and give you this and Steve
5 Wallace will discuss these with us.

6 STEVE WALZ: Due to the time frame from throwing this all
7 together after the work committee finished, we weren't
8 able to send the proposed language until the same time
9 they were sending it to you. So I apologize for having
10 the proposed changes like this. There are only so many
11 hours in the day. The changes here fall into three
12 general categories. In the first set, Mr. Lepchitz
13 suggested that changes to the application requirements
14 that are placed on operators for notice when the identity
15 or location of a person whom notice is required to be
16 given is unknown need to be done a little differently. He
17 suggested that instead of using the language that an
18 affidavit that notice has been mailed as is shown, for
19 example, in Section 5-A 10 on the first page of the hand
20 notes, that the language should require that an operator
21 submit an affidavit demonstrating that due diligence was
22 used to locate and serve everyone. This language about
23 mailing the affidavit is here in Sections 5, 6, 7, and
24 12. And then, as I was looking through it this morning it
25 also carries it out in Section 4 and I would need to make

1 the same change there. So we would be making the same
2 change in each of these cases. As you go through the
3 packet, it would show you in each case what the language
4 would be where it changes from an affidavit of notice has
5 to be mailed in accordance with the Code of Regulations,
6 together with a list of persons to whom notice has been
7 provided and a list of persons to whom notice has not
8 been provided. That would changed to an affidavit
9 demonstrating that due diligence was used to locate and
10 serve person in accordance with the Code of Regulations.

11 MR. EVANS: You can't mail them to them if you don't know who
12 they are or where they live and if you're required to it
13 makes it real tough.

14 MR. CHAIRMAN: Is that change acceptable?

15 MR. EVANS: Yes.

16 MR. MASON: Yes.

17 MR. CHAIRMAN: Then we'll go with that.

18 MR. MCGLOTHLIN: And you say you're going to do that for
19 Section 4 also?

20 STEVE WALZ: 4-B. The next area is in Section 10. In the
21 section of allowable costs which may be shared in a
22 pooled gas or oil operation, subsection D, where it's
23 stating that in a dispute which may arise regarding the
24 unit operator's cost the unit operator shall be entitled
25 to the benefit of the presumption of reasonableness where

1 it was shown that the types of costs being disputed are
2 by customary practice, customary and usual within the
3 industry. Mr. Lepchitz recommended that we make it very
4 clear that the amount of the cost is not presumed to be
5 reasonable. So we're suggesting adding a sentence to the
6 end of subsection D as shown there saying the unit
7 operator shall not be entitled to the presumption of
8 reasonableness of the amount of the cost being disputed.
9 So the presumption will be of type and not of the amount
10 and that will be taken before the Board for Board
11 determination. It's more of a clarifying --

12 MR. MASON: Yeah. You and I have talked about that previously.

13 STEVE WALZ: Mr. Mason felt that that was an important
14 distinction.

15 MR. CHAIRMAN: Is that acceptable? Okay. Then that change
16 will be made.

17 STEVE WALZ: Then the final one in Section 12, down in
18 subdivision C, which starts on the bottom of the second
19 to last page of the hand-out. We had written it and made
20 a mistake. We had said that involuntary transfer of
21 rights to operator of unit may be requested if -- and,
22 in the first one or i there, the unit operator does not
23 commence gas or oil operation under the well or oil well
24 within the time limit set. Mr. Lepchitz pointed out if
25 that happens, if the operator does not commence the

1 operations within the time set by the Board, the order
2 will no longer be in effect. So there is no order to
3 propose the change. So he suggested that we delete the
4 first subdivision in C-1 and only leave that involuntary
5 transfer may be requested if the unit operator does not
6 continue gas or oil operations in the unit or the permit
7 for any well in the unit has been revoked by the depart-
8 ment. We leave the first part of it.

9 MR. CHAIRMAN: Okay. Any problems?

10 MR. MASON: Do it.

11 MR. CHAIRMAN: Thank you. Let's take a ten minute recess and
12 then we'll come back and get on with the rest of the
13 agenda. For the record, I'll just say that the Board
14 approves these regulations to be proposed for public
15 comment.

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

17 MR. CHAIRMAN: We're back on record. I do want to say that we
18 appreciate those of you that participated with the
19 Board's work group and we appreciate Mr. Mason's fine
20 effort in that regard. Before we continue with the next
21 item on the agenda, I want to review the agenda and make
22 sure that some of you don't sit here all day or for the
23 duration of the board hearing if we have cases that are
24 continued, et cetera, that may affect you. Items 3 and 4
25 on the agenda, specifically VGOB-0326-86, referred to as

1 Item 3, has been continued. Item 4, Docket number VGOB-
2 0326-99 is continued until next meeting. I would say if
3 there are any problems with people that are here today
4 that if you'll signal as we go through this or if you
5 have others, please signal as we go through. Item 6, 7,
6 8 and 9 -- I'll back up and say Item 6, VGOB-0219-83 is
7 continued. Item 7, VGOB-0326-89, is continued. Item 8,
8 VGOB-0326-90, is continued.

9 MR. MCGLOTHLIN: Excuse me, Mr. Chairman. Can I ask the
10 reason for continuing these? As they were continued from
11 the last meeting as well.

12 MR. CHAIRMAN: On these that I'm reading right now?

13 MR. MCGLOTHLIN: Yes, sir.

14 MR. CHAIRMAN: I had a request from Mr. Counts to continue
15 these until the next hearing, I think with the intent of
16 working with the parties hopefully to get things resolv-
17 ed.

18 MR. MASON: Is number 9 continued also?

19 MR. CHAIRMAN: Number 9 is also continued, VGOB-0326-88. I've
20 also had a request to continue Items 15 through 20. Item
21 15 is VGOB-0430-99. Item 16 is VGOB-0430-100. Item 17
22 is VGOB-0430-101. Item 18 is VGOB-0430-102. Item 19 is
23 VGOB-0430-103. Item 20, Docket number VGOB-0430-104.
24 Are there any problems from anyone in the room with this
25 continuance?

1 MR. RASNICK: I would like to ask the Board on behalf of
2 Edwards and Harding --

3 MR. CHAIRMAN: I'm sorry. Would you please come to the
4 microphone and identify yourself, please.

5 MR. RASNICK: My name is James Rasnick. I'm with Edwards
6 and Harding Petroleum Company. On their behalf, I would
7 ask the Board to continue Item number 5 on page 1.

8 MR. CHAIRMAN: Could you state the reason for the request for
9 continuance?

10 MR. RASNICK: At this point the well has not been fracked and
11 we don't anticipate fracking that well until August or
12 September. And whether the necessity of this variance is
13 necessary or not, we're not sure at this point.

14 MR. CHAIRMAN: You have a permit that has been issued, is that
15 correct?

16 MR. RASNICK: That's correct.

17 MR. CHAIRMAN: And you do understand that to locate that
18 permit anywhere other than statewide spacing, you would
19 have to have an exception to that which was proposed
20 here. You're saying at this point in time that you don't
21 plan to locate that well?

22 MR. RASNICK: That well has been drilled. I think that Tom
23 may be able to explain further.

24 MR. FULMER: Yeah. The situation is that the permit did not
25 include all formations and they've got another formation

1 that they probably would or would not frack.

2 MR. MASON: So there was an exception granted earlier?

3 MR. FULMER: No. There are two different formations.

4 MR. CHAIRMAN: Any others?

5 MR. RASHICK: Also on Items 10 through 14 on page two, the

6 applicant, Edwards and Harding Petroleum Company request that

7 their application for pooling be withdrawn.

8 MR. CHAIRMAN: Okay. You request that they be withdrawn.

9 What about the permits that you filed?

10 MR. RASNICK: At this time I'm not aware of the permits being

11 withdrawn,. just the pooling applications.

12 MR. CHAIRMAN: Okay. I think what we need to do on 10 through

13 14 since the permits have been referred to the Board and

14 the reason I was asking about the permits is that the

15 inspectors referred the permits to the Board. Tom, do

16 you want to address us regarding Items 10 through 14.

17 MR. FULMER: Yes, sir, Mr. Chairman. This is a decision that

18 I reached --

19 MR. CHAIRMAN: Excuse me, just a second. Okay. I think what

20 we're going to do here is not receive this decision but

21 to deal in more general terms at this point in time.

22 Tom, tell us why you referred the petition to the Board

23 and, of course, to do that I realize you're going to

24 have to disclose some of the rulings, but I think in

25 general terms you can address the Board.

1 MR. FULMER: The situation with permits VH 92 through 96 is
2 in the same area that the Board considered last time in
3 regards to spacing in Wise County and this was within the
4 spacing request by Edwards and Harding, the same wells
5 were. The decision of the Board denied the field
6 spacing. It wasn't considered at that time. They also
7 made a ruling on EH-87 in regards to the distance
8 limitation for the EH-87. The wells in question here and
9 why it was referred to the Board are under the same
10 scenario that EH-87 was under. And due to the fact that
11 the Board made a ruling on EH-87, there needs to be some
12 resolution as to the other wells which is under the same
13 situation.

14 MR. CHAIRMAN: Thanks. Now, let me see if I can up-date you.
15 And the reason I wanted to get that discussion out,
16 you're withdrawing 10 through 147

17 MR. RASNICK: Right.

18 MR. CHAIRMAN: And the Board does not have before it any
19 appeal of the inspector decision on the well -- on the
20 permit application. And that's why I returned those
21 without receiving them because that's not before the
22 Board and that is something that if Edwards and Harding
23 chooses, that's your choice. If you choose to come
24 forward with that and then later on appealing an in-
25 specter decision or something like that, it would need

1 to go on the Board's coming agenda. Okay?

2 MR. RASHICK: Okay.

3 MR. CHAIRMAN: It'll be already on the agenda next time.

4 MR. FULMER: It would have to be. I referred it to the

5 Board.

6 MR. CHAIRMAN: Right. He's referred it to us. So the next

7 agenda item will be the permit application. Then you'll

8 have to decide whether you put these back on and you need

9 to make that decision today because the Board will --

10 MR. RASHICK: For the permit application, I would ask that

11 they be continued.

12 MR. MASON: Mr. Chairman, if I may, I don't understand. I

13 guess I'm a little confused. 10 through 14 appear to be

14 petitions for pooling units and yet you make reference to

15 appeals of a director decision.

16 MR. CHAIRMAN: Inspector decision.

17 MR. MASON: Excuse me, inspector decision. I'm sorry. I

18 don't understand.

19 MR. LEPCHITZ: The permitting issue has not matured yet.

20 It hasn't --

21 MR. MASON: Well, I know, but these were petitioned for

22 establishment of the drilling units. These aren't

23 appeals from the inspector decisions, are they?

24 MR. CHAIRMAN: No.

25 MR. MASON: Is that the distinction you're drawing?

1 MR. CHAIRMAN: Yes. And I'm trying to make sure that app-
2 licant Edwards and Harding understands that the inspect-
3 ors referred them to the Board which will be on the next
4 agenda. They're withdrawing these and I was making sure
5 that they, the applicant, understand that if they want
6 these back on, that he's withdrawing, not continuing.
7 You know, I think we're prepared to grant that. I'm not
8 trying to be presumptuous, but if we do that --
9 MR. MASON: I was just trying to understand myself.
10 MR. CHAIRMAN: I want to make sure you understand where you
11 are.
12 MR. MASON: I mean, the establishment of a compulsory drilling
13 pooling unit and an appeal of the inspector's decision
14 are two different things entirely.
15 MR. CHAIRMAN: That's why I wouldn't receive that decision.
16 MR. MASON: Okay. I was confused, that's why --
17 MR. CHAIRMAN: I'm sorry. I was just trying to get the scope
18 of the issue before us and particularly to make sure the
19 applicant, Edwards and Harding, understands the process
20 of how we'll be dealing with this. So you want these
21 withdrawn?
22 MR. RASNICK: These items on page 2, I would ask that they be
23 withdrawn.
24 MR. CHAIRMAN: Item 10 through 14?
25 MR. RASNICK: Right.

1 MR. CHAIRMAN: And you have asked a continuance on Item 5, is
2 that correct?

3 MR. RASNICK: Correct.

4 MR. CHAIRMAN: Okay. Anything else?

5 MR. SWARTZ: Mr. Chairman, I'm Mark Swartz. You indicated
6 already that OXY had requested that Docket items 15
7 through 20 be continued until the next hearing. The
8 letter that we wrote to Tom Fulmer on April 15th included
9 21 and 22 as well. I don't know if something got lost
10 there, but we would also request that 21 and 22 be
11 continued. All of these items, 15 through 22, involve
12 EREX. There are ongoing negotiations and we are optimis-
13 tic that we can work something out with them and that's
14 why these are being continued. They're the only parties
15 and the named respondent. So we would like another month
16 to try to do that.

17 MR. CHAIRMAN: Okay. Anything else?

18 MR. FULMER: I want to reiterate these to make sure that they
19 are correct. I've got these continued, Item 3, 4, 5, 6,
20 7, 8, 9, 15, 16, 17, 18, 19, 20, 21 and 22.

21 MR. CHAIRMAN: I believe that's correct.

22 MR. FULMER: Withdrawn, I've got Agenda Items 10 through 14.

23 MR. CHAIRMAN: That's correct. Is there anything else?

24 Anyone else wishing to address the Board on these items?

25 Any problems with the requests, board members? The

1 requests will be granted as presented. Also I understand
2 that some folks have traveled distances to be here for
3 Item 30 on the agenda today. I want to just ask the
4 folks in the room if there is any objection of moving to
5 Item 30 to deal with that request to accommodate people
6 that have to travel?

7 MR. SWARTZ: We don't have a problem with that.

8 MR. CHAIRMAN: Does anyone have a problem with that, anyone
9 that has other cases? Going once, going twice -- we'll
10 now take up Item 30 on the agenda.
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ITEM 30

1
2
3 MR. CHAIRMAN: I would ask that all persons that wish to
4 address the Board regarding Item 30 on the agenda, this
5 is a petition for establishment of a compulsory pool
6 drilling unit from OXY, USA, Inc. for proposed well CBM
7 I-AA9, located on the D. W. Price surface near Indian
8 Grave Gap off Route 662 in the South Grundy District,
9 Buchanan County, Docket Number VGOB-0430-116. I would
10 also just remind the Board members that some of the folks
11 indicated difficulty in hearing us in here. If we'll all
12 try to project a little more. I would also invite those
13 of you that are sitting in here to move forward where you
14 can hear better. Feel free to do that. For those of you
15 that may not be familiar with this process, we'll ask the
16 petitioner to go forward and present their case and then
17 we will listen to any opposing views.

18 MR. PRICE: Well, I kind of speak for D. W. Price, the heirs
19 that haven't signed yet. It's like some of the things,
20 we don't --

21 MR. CHAIRMAN: I'm sorry. If you will, let's let OXY go ahead
22 and present their case and then you'll have an opportu-
23 nity to have heard what they're saying and then we will
24 give you an opportunity. When we do that, we'll ask you
25 to give us your full name and we'll go forward in that

1 manner.

2 MR. PRICE: I'm sorry. Okay.

3 MR. SWARTZ: Mr. Chairman, Mark Swartz and Tim Scott appearing
4 for OXY. I would like to call Mr. Marty Wirth as a
5 witness.

6 CLERK: (Swears witness.)

7
8 MARTIN E. WIRTH

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

11
12 DIRECT EXAMINATION

13
14 BY MR. SWARTZ:

15 Q. Mr. Wirth, could you state your name for the record.

16 A. Martin E. Wirth.

17 Q. Where do you live, sir?

18 A. In Lebanon, Virginia.

19 Q. Are you employed?

20 A. Yes, I am.

21 Q. By whom?

22 A. OXY, USA.

23 Q. How long have you worked for OXY?

24 A. Over thirteen years.

25 Q. And, in general, what department have you been in?

1 A. Land department.

2 Q. Do you have a title currently?

3 A. I'm project land manager.

4 Q. Are you project land manager for any specific project?

5 A. For the coal bed methane project.

6 Q. In southwestern Virginia?

7 A. That's correct.

8 Q. Could you tell me, in a general sense, whether or not

9 your duties as project land manager have anything to do

10 with pooling and drilling?

11 A. Yes, it does.

12 Q. In general, what would that be?

13 A. I'm responsible for all title, for getting the well

14 ready to be drilled which includes any pooling applica-

15 tions, any voluntary pooling, any voluntary leasing,

16 etcetera.

17 Q. Have you personally been involved in work with regard to

18 Unit AA9?

19 A. I have.

20 Q. Did you draft the notice of hearing?

21 A. Yes, I did.

22 Q. Did you draft and sign the application that's on file?

23 A. Yes, I did.

24 Q. Have you drafted and reviewed most of the exhibits that

25 have already been filed?

1 A. Yes, I have.

2 Q. Starting with the notice, a notice was filed with the
3 Board with regard to this unit. I'm showing you a Notice
4 of Hearing dated March 22, 1991. Is that the notice that
5 you prepared?

6 A. Yes, it is.

7 Q. And it is a notice to pool what unit?

8 A. It's notice to pool Unit number AA9.

9 Q. Does that notice state on the first page, the people who
10 you want to make respondents on this forced pooling
11 application?

12 A. Yes, it does.

13 Q. There's a list of how many folks?

14 A. 53, possibly.

15 Q. With regard to these 53 people that are identified in the
16 Notice of Hearing and that you want to make respondents
17 on this pooling application, can you tell me what notice
18 or efforts to give notice to these 53 people were made
19 by you?

20 A. A copy of the Notice of Hearing and a copy of the
21 application were provided by certified mail to the last
22 known address of record, if known.

23 Q. With regard to those certified mail receipts, have 10
24 copies of the receipts been filed with the Board with
25 regard to Unit AA9 as Exhibit F?

1 A. Correct.

2 Q. Were any of the 53 people that you mailed these notices
3 to -- did you get back cards indicating that they
4 couldn't be found?

5 A. Yes, I have.

6 Q. Have you advised the Board as to who those folks might
7 be?

8 A. Yes, I have.

9 Q. Do you have that handy? There were four people, right?

10 A. Yes, there were four people.

11 Q. In the ten copies of the certified mail receipts that you
12 have filed with the Board, were copies of those four
13 pieces of mail that came back unclaimed filed?

14 A. Yes.

15 Q. So that you can identify those four people from the
16 exhibits that are on file as Exhibit F with regard to
17 AA97?

18 A. That's correct. And with the letter I also provided a
19 copy of the certified return as address unknown or
20 unclaimed.

21 Q. In addition to sending certified mail to the 53 people in
22 the Notice of Hearing, did you undertake any other
23 efforts to notify people generally?

24 A. Yes. We did a publication in a local newspaper.

25 Q. What was published in the newspaper?

1 A. The Notice of Hearing as sent out to all parties was
2 published in the newspaper. We included in this Exhibit
3 A1, which is a map. As you all discussed earlier in your
4 regulation, we have tried the mapping system. Also the
5 map has been published at other locations.

6 Q. These Notices of Hearing were published in what newspaper
7 on what date?

8 A. This was in the Bluefield Daily Telegraph on April 17,
9 1991.

10 Q. Did you obtain proofs of publication from the newspaper?

11 A. Yes, I did.

12 Q. With regard to AA9?

13 A. That's correct.

14 Q. Can you tell me whether or not 10 copies of the proofs of
15 publication have previously been filed with the Board as
16 Exhibit E with regard to this unit?

17 A. Yes, it has. On April 17th I provided 10 copies to the
18 Board of certification of publication.

19 MR. CHAIRMAN: Excuse me, one second. I'm going to refer to
20 the inspector because the Board members don't have in
21 their notebooks items E and F. Tom, would you address?

22 MR. FULMER: That's the notice.

23 MR. CHAIRMAN: Copies of the notice. What was item --

24 MR. SWARTZ: E is the certificates of publication, which we
25 got from the newspaper, which are forms like this that we

1 routinely file with the Board. F is the proof of mailing
2 which we file which is copies of the receipt for certifi-
3 ed mail that we get when we mail something and then the
4 green card that comes back when somebody signs for it.

5 MR. FULMER: I do have those, Mr. Chairman. You just don't
6 have them. I do have them.

7 MR. CHAIRMAN: Okay.

8 Q. (Mr. Swartz continues.) Mr. Worth, could you tell me
9 what you or other people in the OXY organization or
10 other people that were hired by OXY have done with
11 regard to unit AA9 to try to identify the 53 people that
12 you found and identify other people who might be persons
13 that you would want to notify who might have interests or
14 estates. Could you just describe generally what you did
15 with regard to this unit?

16 A. Basically we commenced at the courthouse to find the
17 owner of records. The main problem in this unit, we
18 identified the last known owner of record under partial.
19 I'm not talking the whole unit. We identified some as
20 the Price heirs, the W. A. Armes heirs. We've identified
21 most of the Price heirs and feel that we've identified
22 most -- the W. A. Armes family tree was not identified as
23 of record. We then went to other counties. We went to
24 banks. We went to phone books. We talked local and did
25 find some of the Armes heirs and have taken affidavits of

1 ownership from them. Again, allowed us to go to dif-
2 ferent counties or even other states to find -- we found
3 either probates, wills and it's a long process, but we're
4 going on what we have of the last known of the Armes
5 heirs and every day that we're going through all these
6 wills and everything either chain back or chain forward
7 trying to find these heirs. So these are the known that
8 we can, but there also may be some of the heirs of W. A.
9 Armes and M.C. Armes, his wife, heirs of this tract.

10 Q. There is an exhibit attached to the application which is
11 entitled Parties Respondent Exhibit B, do you see that?

12 A. Yes, sir.

13 Q. This was filed when you filed the original application?

14 A. That is part of the evidence of the case, yes, sir.

15 Q. This list names and addresses to the extent they're
16 available, describes the ownership interest of the 53
17 people, the gross acreage and their undivided interest
18 as best you've been able to ascertain as of the date this
19 application was filed?

20 A. That's correct.

21 Q. Did Exhibit B which was attached to the application
22 include all known owners as of the date the application
23 was filed?

24 A. That's correct.

25 Q. Do you have anybody you want to add as of today's date?

1 A. Not at this time.

2 Q. Is it possible that in the future there may be additional
3 folks who turn up?

4 A. Definitely in the future, there may be some decedents and
5 children of them.

6 Q. I found the letter with regard to the mail that came back
7 unclaimed. If you could give us the date to who it was
8 and identify the people who did not claim the certified
9 mail for the record.

10 A. The date of the letter informing the Board on April 22,
11 1991. Respondents that came back unclaimed or address
12 unknown or a lot of them maybe were forwarding address
13 expired. There's Tibis Armes, Ruth Coleman, Martha Irene
14 Deel, Billy Armes and Cathy Seers.

15 Q. Other than those five people whose names you just read,
16 all of the balance of the 53 people signed for --
17 somebody signed for that mail?

18 A. Yes, someone accepted the certified.

19 MR. MCGLOTHLIN: Could you go over those names again?

20 MR. SWARTZ: It's Tibis Armes, Ruth Coleman, Martha Irene
21 Deel, Billy Armes, and Cathy Seers.

22 Q. (Mr. Swartz continues.) Just to finish up on the notice,
23 Mr. Wirth, there is an Exhibit A1 to the notice. What's
24 the purpose of that?

25 A. Exhibit A1 is a description of the location of the land

1 via a mapping system. We took a Buchanan County map
2 which identified nearest highways or markers and was able
3 to try to get a xerox and come up with a proximity of
4 where this well and unit will be located in that area.
5 Q. The dot on that cropped map on A1 is the approximate
6 location of this unit AA9?
7 A. That's correct.
8 Q. This map was actually published in the Bluefield paper?
9 A. Yes, it was.
10 Q. Turning to the application, the parties to the applica-
11 tion obviously are -- OXY is the applicant?
12 A. That's correct.
13 Q. And you're seeking relief against the 53 people you've
14 identified in Exhibit B?
15 A. That's correct.
16 Q. Turning to Exhibit A, page 2 to the application, what
17 does Exhibit A, page two, show?
18 A. That's the ownership information pertaining to the unit.
19 It represents the percent of the coal bed methane rights
20 leased to OXY and the percent of coal bed methane rights
21 not leased to OXY. Also the percent of the coal estate,
22 how much is leased to OXY.
23 Q. In essence, it's possible from this to determine what
24 OXY's interest in the unit is?
25 A. Yes, it can.

1 Q. What is OXY's interest relating to the coal in the unit?
2 A. We have 100 percent of the coal under lease.
3 Q. With regard to the oil and gas, what interest, if any,
4 does OXY have?
5 A. Gross, we have 100 percent of the oil and gas under
6 acreage under lease.
7 Q. With regard to coal bed methane specific leases, could
8 you tell me what the situation is?
9 A. Coal bed methane specific leases, we have approximately
10 in gross acreage now 100 percent under lease. We have
11 at least a percent of every person under a percent of
12 every tract under lease -- at least some part of it under
13 lease. This is gross acreage.
14 Q. So 200 percent would be all of it, correct?
15 A. Correct.
16 Q. When you say you have about 100% of the gross under
17 lease, you're saying about half of the potential claim-
18 ants have leased to you?
19 A. That's correct.
20 Q. Going back to page 1 of the application under the facts,
21 we've identified the applicant, the respondents, OXY's
22 interest in the unit. You have provided the Board, have
23 you not, with the application, a plat map?
24 A. Yes, we have.
25 Q. That's exhibit what?

1 A. That's Exhibit A.

2 Q. Generally, what is shown on Exhibit A?

3 A. Exhibit A shows generally the coal owners, the oil and
4 gas owners, coal lessees, oil and gas lessees, coal bed
5 methane lessees, service owners of the area to be
6 disturbed is basically going with the well permit
7 application that shows any and all parties inside the 80
8 acre unit on these parcels.

9 Q. Does it also show a percentage in terms of gross acreage
10 within the unit for the various interests?

11 A. That's correct, under the various interests of those
12 tracts effected.

13 Q. Exhibit A is certified as required?

14 A. That is certified by either a certified engineer or a
15 land surveyor.

16 Q. In this instance, which was it?

17 A. In this instance it was the land surveyor in charge.

18 Q. His stamp says that he is a --

19 A. Certified professional engineer also.

20 Q. The unit that is shown on Exhibit A is a unit in a
21 field, correct?

22 A. Yes. It's an application under the Oakwood coal bed gas
23 field.

24 Q. The AA9 is simply off the Oakwood grid?

25 A. That's correct.

1 Q. The total acreage in the AA9 unit is how many acres?
2 A. 80 acre unit.
3 Q. What seams does this application seek to pool?
4 A. Anything below the tiller formation to the lowest coal
5 formation under the tiller.
6 Q. The application, in fact, states that, does it not?
7 A. Yes, it does. And it also identifies specific names and
8 their replacers in the application.
9 Q. Paragraph D of the application deals with the question of
10 whether or not there's a well work permit?
11 A. That's correct.
12 Q. What's the status with regard to unit AA9?
13 A. Well permit number 1612 was issued on February 22, 1991.
14 Q. Going down to paragraph four of the application which is
15 entitled relief sought, do you see that?
16 A. Yes.
17 Q. In summary fashion, can you tell me whether or not you're
18 seeking to pool all interests and estates of all persons
19 named herein and their heirs and successors to the --
20 their interest in all coal seams below the tiller seam of
21 coal in this drilling unit?
22 A. Yes. We are trying to pool any and all interest of coal
23 bed methane rights in the subject's formations.
24 Q. Going to paragraph 4B, are you requesting that the Board
25 in entering a pooling order establish an election

1 procedure for all of these people?

2 A. Yes, we are.

3 Q. What are the three options, in a general sense, that
4 you're asking the Board to utilize in entering a pooling
5 order here?

6 A. To assign or lease the coal bed methane gas interests, to
7 enter into a voluntary agreement or to participate in the
8 well or be bought as a carried or a working interest
9 owner.

10 Q. Are you also requesting that OXY, USA be designated the
11 unit operator for this unit AA9?

12 A. Yes, we are.

13 Q. With regard to this unit, did I ask you to look at and
14 give the Board an example of the kinds of issues that we
15 get into when we look at potential escrow?

16 A. Yes, we did.

17 Q. Did you prepare an exhibit with regard to that?

18 A. Yes, I did prepare an exhibit on this well and other
19 wells also as a matter of information.

20 Q. What's the exhibit letter with regard to this well and
21 other wells you have prepared in dealing with the
22 question of looking at escrow?

23 A. We submitted this as to be entered as Exhibit D, Escrow
24 Recommendations.

25 Q. That's a two page exhibit, isn't it?

1 A. This one is a one page exhibit.

2 Q. What have you tried to show on Exhibit D with regard to

3 unit AA9?

4 A. What I've done here, breaking out as a matter of inform-

5 ation and it's also subject to the elections under the

6 relief sought of all parties as what an escrow recommend-

7 ation will do is if there is conflicting claims under

8 this unit. If you follow, you have the well plat

9 Exhibit A. If you can go under what I've said, X22 under

10 Exhibit A, that's the tract number. I identified each

11 and all claimants whether they have a royalty interest or

12 possible -- you'll see the astericks under there, subject

13 to the relief sought. They could be possibly instead of

14 a royalty interest become a working interest. We won't

15 know that until after the order is issued and they have

16 the election tie. So this is just a matter of inform-

17 ation of what it could look like. I also identified the

18 mineral ownership, whether they are an oil and gas owner

19 or a coal owner. I also tried to break down the percent

20 they have in that tract. Exhibit D of AA9. this only

21 shows one tract which has conflicting claim. So just for

22 these hearings, I asked our counsel to submit something

23 as an escrow recommendation, what it could look like as a

24 matter of information. This is not true and Bible and

25 should not be -- it's the Board discretion to use

1 whatever they want.

2 Q. The conclusion, I want to spend a minute on that, with
3 regard to Exhibit D. If you were just looking at this
4 unit as of this point in time what would your recommend-
5 ation be with regard to royalty interest in terms of what
6 needed to be escrowed for conflicting claims?

7 A. For royalty interests or subject to any working interest
8 and elections 100 percent of the royalty interest would
9 have to be escrowed under this scenario here.

10 Q. So 100 percent of the royalty is in doubt or dispute as
11 to who might be the owner?

12 A. That's correct. There's a conflict. There's one owner
13 of the coal and there's other owners of the oil and gas.

14 Q. With regard to the working interest, what does your
15 analysis tell you at this point in time?

16 A. At this point in time, subject to an election, there's 0
17 percent working interest that will need to be escrowed.

18 Q. What could happen that would change that?

19 A. Under the relief sought here with the recommendations
20 and the request that a party has the right to participate
21 or be carried interest and that would become a working
22 interest claim. That portion should be escrowed at that
23 time.

24 Q. In your judgment, when is the point in time that de-
25 cisions can be made on an informed -- an informed

1 decision can be made with regard to what needs to be done
2 in terms of escrow either working interest or royalty
3 interest or both?

4 A. A step, the Board has to make the issue of the order.
5 The operator and/or applicant must notify each party of
6 the order and send them a copy. They have a certain time
7 frame then to make these elections under 1, 2 or 3 or
8 any so elections the Board may also want to enter into.
9 So that's usually 30 days upon receipt of mailing or
10 recording, depending on which regulations the Board
11 adopts in the future. So you have almost 60 days or even
12 longer. It could be even 90 days until you know how
13 much royalty and how much working interest will be
14 escrowed. Again, at this time, it's just something to
15 show the Board the way we came up and the way we can
16 figure it "subject to their election".

17 Q. Going back to the application, the application contained
18 a detailed well estimate in terms of cost, did it not?

19 A. Yes, it did.

20 Q. Does the application state what the estimated total cost
21 for this particular well on unit AA9 would be?

22 A. Yes, it does.

23 Q. What is that amount?

24 A. The total estimated cost to the depth of this well is
25 \$255,926.

1 Q. Mr. Karam, who will be called later, apparently prepared
2 this and can testify with regard to that estimate?
3 A. That is correct.
4 Q. Do you, at this point, wish to dismiss anyone as a
5 respondent?
6 A. Not at this point, no.
7 Q. Has a consent to frack in Exhibit G been filed with the
8 Board with regard to AA9?
9 A. No, it has not.
10 Q. Do you have that with you today?
11 A. Yes, I do.
12 Q. You have 10 copies?
13 A. Yes, I do.
14 MR. SWARTZ: If I might, I'd like to file 10 copies of what
15 we've marked as Exhibit G which is a consent to frack
16 with regard to this unit, Mr. Chairman. Since we took
17 this out of order, I have written the wrong exhibit
18 number on 10 copies of another document. I had planned,
19 as you'll recall, we have offered affidavits that state
20 that the person who signs the consent has the authority
21 to do that on behalf of Island Creek. I would like to
22 file at this time even though it's a little out of order
23 an Exhibit H in VGOB-04-30107 which is an affidavit of
24 Ken Price who is vice president and general manager of
25 the Virginia Division of Island Creek Coal with regard to

1 the authority of Mr. Epperly to sign these affidavits --
2 or to sign these consents. As you have probably noticed,
3 our Notice of Hearing is new and our application form is
4 new. We have also embarked upon a practice of submitting
5 10 copies of the proposed order to you that is individual
6 to each unit. So I have just handed -- we're not marking
7 this as an exhibit. We could in the future if you want
8 us to, but I have just provided the Board with 10 copies
9 of an order that we would propose be used with regard to
10 unit AA9. I would like to spend a moment to go through a
11 few provisions of this order with you through the
12 services of Mr. Wirth. I think a lot of this will look
13 familiar, but the reason I want to go through part of it
14 with Mr. Wirth is because it contains and should be
15 regarded as containing our recommendations -- I've given
16 you the wrong one. No, I didn't. Did I give you AA?

17 MR. CHAIRMAN: Yes, you did. I was just making sure these
18 folks -- do you have copies of these that they just
19 presented to the Board? Circulate those.

20 MR. SWARTZ: I'd like to go through part of this order with
21 Mr. Wirth and I'd like you to recall that the reason I'm
22 doing that is that I would ask that the Board consider
23 this order as constituting Mr. Wirth's recommendations to
24 the Board with regard to the terms of the order. I'm
25 going to go through some of the familiar terms that he

1 usually testifies with regard to.

2 Q. (Mr. Swartz continues.) Mr. Wirth, does this order
3 contain a section that deals with election options?

4 A. Yes, it does.

5 Q. Can you tell me what you would be offering to anyone who
6 might desire to offer coal bed methane to you for lease
7 in this unit, what would your terms be presently?

8 A. There would be a bonus consideration of \$1.00 per acre
9 with a royalty interest of one-eighth.

10 Q. Does this order, in the various options that are afford-
11 ed, make the same offer to gas and oil?

12 A. Yes, it does.

13 Q. A \$1.00 bonus and a one-eighth royalty?

14 A. That's correct.

15 Q. Does this order address the question of how someone might
16 participate?

17 A. Yes, it does.

18 Q. Does this order address the question of how someone might
19 elect to be a carried operator?

20 A. That's correct.

21 MR. CHAIRMAN: Mr. Swartz, may I interrupt you just one
22 second. You're referring to this proposed order that you
23 presented to the Board. Do you wish to have this
24 introduced as an exhibit? I didn't clearly understand.

25 MR. SWARTZ: I sort of left that up to you. Do you want me to

1 mark it as an exhibit?

2 MR. CHAIRMAN: I think if you're going to have Mr. Wirth go
3 through it and testify to it it would probably be more
4 appropriate to have it referred to as an exhibit.

5 MR. SWARTZ: This would be J.

6 Q. (Mr. Swartz continues.) With regard to the various
7 options, have you made provision in the proposed order
8 for election periods?

9 A. Yes, we have.

10 Q. Have you made provision -- and that would be at what
11 paragraph?

12 A. That would be paragraph 8.

13 Q. In general, what does that require or provide?

14 A. It requires -- trying to follow the Gas and Oil Act 30
15 day election period.

16 Q. Who is to provide notice under this order to people that
17 they have to elect within a period of time, who sends
18 out that notice?

19 A. That would be the applicant.

20 Q. Whoever is the designated operator?

21 A. That's correct.

22 Q. Does this proposed order state what happens in the event
23 that people should fail to elect, just not make any
24 choice at all and not return the paperwork?

25 A. Yes, it does.

1 Q. What paragraph is that dealt with?
2 A. That would be under paragraph 10.
3 Q. Does it provide what happens if someone elects to
4 participate, agrees to pay sums in participation and
5 then fails to pay?
6 A. Yes, it does.
7 Q. What paragraph would that be?
8 A. That would be following paragraph 11.
9 Q. Does it specify who the unit operator would be?
10 A. Yes, it does.
11 Q. Who is that?
12 A. That would be OXY, USA.
13 Q. Does it give OXY's current address and phone numbers?
14 A. Yes, it does.
15 Q. And identifies you as the contact person?
16 A. That's correct.
17 Q. Does it provide a requirement with regard to commencement
18 of operations by the operator?
19 A. Yes, it does.
20 Q. At what paragraph?
21 A. That would be paragraph 14.
22 Q. What period of time are operations required to be
23 commenced under the terms of this order?
24 A. One year from the date of the issue of the order.
25 Q. Does it also provide for escrow provisions in general?

1 A. Yes, it does.

2 Q. Those are dealt with at what paragraphs?

3 A. Paragraph 16, in sequel after that, depending on the

4 escrow provision pertaining to working or royalty

5 interest.

6 Q. Going to paragraph 20, what does that require that the

7 operator do?

8 A. The operator shall mail a copy of the order and file an

9 affidavit to the Board saying that we did perform the

10 acts required by the Board saying the order was mailed to

11 each respondent.

12 Q. Does the order have an effective date that's stated

13 therein?

14 A. Yeah. The effective date of this order shall be upon the

15 execution.

16 MR. SWARTZ: That's all I have on direct for Mr. Wirth at this

17 point.

18 MR. CHAIRMAN: Any questions by member of the Board of Mr.

19 Wirth?

20 MR. MASON: Yes, sir.

21 MR. CHAIRMAN: Mr. Mason.

22 MR. MASON: Mr. Swartz, I noticed under 19, special finding,

23 you've requested that the Board find that the applicant

24 is a Delaware corporation and relay the matters to

25 authorize, do you intend to present evidence to that

1 effect?

2 MR. SWARTZ: Other than an assertion in our application which
3 we're asking you to believe, no. We could. Mr. Wirth
4 tells me that he has filed something with Mr. Fulmer to
5 that effect.

6 MR. WIRTH: The well operator -- we have a registration.

7 MR. MASON: Well, I just -- you know, the allegation I realize
8 has been made. I just didn't know whether there was any
9 evidence that's ever been presented to this Board that
10 would support a finding to that effect.

11 MR. SWARTZ: Apparently other than the bare allegation, no.
12 Although, I think a could come up with that.

13 MR. MASON: Let me ask this. Mr. Wirth, is, in fact, OXY, USA
14 a Delaware corporation?

15 MR. WIRTH: Yes, it is.

16 MR. MASON: Is it authorized and qualified to transact
17 business in Virginia?

18 MR. WIRTH: Yes, it is.

19 MR. MASON: Thank you.

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

21 MR. MCGLOTHLIN: In line with Mr. Mason's -- who is the re-
22 gistered agent for OXY, USA in the State of Virginia?

23 MR. WIRTH: We have for service, Mr. McGlothlin, contact at
24 OXY, USA either Mr. Glenn Vangolen or myself. Now, the
25 certificate of service for any chancery or actions like

1 that will be an attorney in Richmond, Virginia. That's
2 a matter of record with the DMGE.
3 MR. MCGLOTHLIN: Name for the record, please?
4 MR. WIRTH: I'd have to look it up, but I believe it's Edward
5 A. Parker. It's on the file with the Board.
6 MR. SWARTZ: Mr. Parker is the agent for CT Corporation. So
7 you serve OXY by serving Mr. Parker who is an agent for
8 CT. His agency is limited to accepting service of
9 process. The other agent is Glenn Vangolen, as I
10 understand it, who's in Richlands.
11 MR. CHAIRMAN: Anything else?
12 MR. EVANS: I have one.
13 MR. CHAIRMAN: Mr. Evans.
14 MR. EVANS: Just a point of clarification. On Exhibit A, page
15 2, ownership information pertaining to the unit, do you
16 want to go through that again with me very slowly so
17 that -- I'm looking at this and one and two look very
18 similar to me in their set-up and the only changes I see
19 are in numbers and the word "not" being present in one.
20 Run that by me again, just exactly what I'm looking at.
21 I'm talking about percent of coal bed methane rights
22 leased to OXY.
23 MR. WIRTH: Of course, you see in parenthesis, this is where
24 it gets confusing, the gross amount. If you consider
25 the gross amount under each, this unit -- 80 percent

1 equals 100 percent. 80 acres equals 100 percent. If we
2 have under lease 1 percent, we have 80 percent of this --
3 I mean, 100 percent of this unit gross. Net figures,
4 this is where you get net and gross is confusing. What
5 we have of the coal owners that -- coal bed methane
6 rights, we have 100 percent gross acreage under lease.
7 Oil and gas owners gross acreage, we have 100 percent
8 under lease. Now, the coal bed methane that's not leased
9 is that we do not have the oil and gas owners, approx-
10 imately 75.16 percent, under contract with the lease of
11 the oil and gas owners. It's confusing and believe me,
12 as a land man it's one of the technicalities that may
13 have to be addressed later on, but that's the way it
14 says. You need to specify as in the unit gross acreage.
15 MR. EVANS: Okay. I'm still absolutely unclear. Can anybody
16 help me?
17 MR. HARRIS: Is the problem with the percentage is 100 percent
18 leased and then 75.16 percent not leased for the same --
19 it appears to be the same thing. Is that the problem?
20 That's the problem that I was trying --
21 MR. EVANS: Yes.
22 MR. WIRTH: Gross net, that is the problem. This shows gross,
23 Mr. Evans.
24 MR. MCGLOTHLIN: What's the net?
25 MR. WIRTH: The net percent is how many of the outstanding

1 interest are not under lease. We have approximately
2 75.16 oil and gas owners percent under lease or vice
3 versa.
4 MR. MASON: Is what you're saying here, you've got parts that
5 are leased and parts that are not leased?
6 MR. WIRTH: That's correct. We do have --
7 MR. MASON: Of the amount that are leased, you own them all?
8 MR. WIRTH: That's correct.
9 MR. MASON: Of the ones not leased --
10 MR. EVANS: You don't own any?
11 MR. WIRTH: Possibly. At this time, we don't know. You have
12 to do title and undivided interest is where we come into
13 the net interest.
14 MR. CHAIRMAN: Do you meet the qualifications as stipulated by
15 law and regulation to be designated as an operator?
16 MR. WIRTH: The qualifications, I'll have to read --
17 MR. CHAIRMAN: Percent of ownership?
18 MR. WIRTH: Yes, we do.
19 MR. SWARTZ: Excuse me, percent?
20 MR. CHAIRMAN: Yes. Do you meet the minimum qualifications to
21 be designated as operator?
22 MR. SWARTZ: There are no minimum qualifications for coal bed
23 methane. All you need is an interest. It's not like
24 conventional, as I read the statute, Mr. Chairman.
25 MR. CHAIRMAN: Well, I'm asking if you meet the minimum

1 qualifications to be designated as an operator?

2 MR. WIRTH: Yes, sir, we do.

3 MR. CHAIRMAN: I think that's --

4 MR. SWARTZ: Kenneth, if I can go back to your questions.

5 MR. EVANS: I'm going to ask you a straightforward question.

6 MR. SWARTZ: There are going to be some units where everything

7 adds up to 100 percent gross as we go through the next

8 seven. In those units, if everybody -- if you're dealing

9 -- this drives me nuts, too.

10 MR. EVANS: For me, it's a short trip so --

11 MR. SWARTZ: For example, with regard to unit -- I don't know

12 if you all have this in front of you, you can flip to it.

13 To give you another example that when I look at it, it

14 makes sense to me and, then, I look at the one we're just

15 looking at and I have the same problem you have. Maybe I

16 can get Marty to compare these two for us and that might

17 help us. If you look at 29 -- I don't know if you've got

18 a folder that has -- that would be docket 115.

19 MR. MASON: It's the one right in front of us, isn't it?

20 MR. SWARTZ: If you look at the same exhibit with regard to

21 2-9 -- let me find it. Have you got that? This to me

22 adds up to 100 percent all the way around and seems

23 pretty simple. Okay.

24 MR. EVANS: I can understand that one.

25 MR. SWARTZ: What I would like Mr. Worth to do is tell both of

1 us why can happen with regard to Z-9 and why it doesn't
2 happen with regard to AA-9 and maybe we'll understand.
3 We'll take a stab at it anyway.

4 MR. WIRTH: Well, if we go back to AA-9, if you go to Exhibit
5 A, that's your well plat. It shows your percent of
6 interest of each tract under this one thing. Identified
7 on Exhibit A-1 is pertaining to the question. We have
8 partial interest under lease under -- if you'll see the
9 words "D. W. Price" It says, "Surface oil and gas". We
10 do have partial of that interest under lease, which is
11 45.9 percent of this unit. If you go to about seven
12 o'clock from that position, it also identifies W. A.
13 Armes as an oil and gas interest owner which has 30.07
14 percent. We do have some of that under lease. If you
15 add 45 percent and 30 percent, you come up with the
16 "75.16 percent" gross I do not have under lease. Gross.
17 If I broke it out, and it's going to be very hard under
18 the W. A. Armes tract, because you'll notice that of the
19 53 respondents, most of it is under the W. A. Armes
20 Estate. We don't know exact net figures to be able to
21 tell you at this time what I have and what I do not have
22 under lease. So gross figures -- I do have some under
23 the 40 and I do have some under the 30. I have all under
24 the Anchor Redcliff and I have all under Landon Wyatt.
25 So I have 100 percent under lease gross under that.

1 MR. MASON: Would it be fair to say what causes this is when
2 you've got these fractional undivided interests.

3 MR. WIRTH: That's exactly -- the net undivided interest, it's
4 fair to say. You could, possibly, on these figures since
5 there -- also, there's other lessees that could come --
6 involved in other units. You could have, possibly, 600
7 percent under one unit.

8 MR. EVANS: Now, I understand, I think, a little bit more of
9 what you're trying to represent.

10 MR. WIRTH: Yeah, that's correct.

11 MR. MASON: You could have one-eighth of a tract that con-
12 stituted half of a unit?

13 MR. WIRTH: Right. That's correct.

14 MR. MASON: So you're dealing with fractional interests of the
15 tracts and, then, the percentage of the tract constitutes
16 the whole unit.

17 MR. SWARTZ: What will happen in other units like 29, where
18 you don't have that mess, you know, you look at it and it
19 appears to make sense because you have less owners and
20 no fractional interest.

21 MR. CHAIRMAN: How do you protect those folks that are in
22 those unleased categories?

23 MR. WIRTH: What we do is make sure and as a part of the field
24 rules that we establish -- Oakwood, correlative, you
25 name any and all parties that are known plus any unknown.

1 That's why we do the publication so anybody -- party --
2 we try to notify any and all parties of the known and the
3 publication for the unknown and everything to protect
4 their rights. That gives them -- it kicks in the
5 options. You have a right to lease, you have a right to
6 participate with your interest, or you can be carried in
7 that part of that interest. That how you protect the
8 correlative rights on these units.

9 MR. EVANS: I've got one other question. In a situation such
10 as a heirship, do you attempt to -- you make notification
11 to all that you can find. Do you attempt to sign
12 individual leases with each and every as opposed to a
13 designated --

14 MR. WIRTH: Yes, sir. If they would agree and they contact us
15 or anything like that, or by letter writing, I do -- even
16 on this one. I have a letter from one of the respondents
17 saying he would interested in leasing his efforts. I
18 don't dismiss him at this time, but I will send him a
19 lease and notify the Board at a later date for modifica-
20 tion. We try each -- you see 53, but there is also any
21 unknown heirs. If they come forward, we also and
22 everything. So I could have under just this one unit --

23 MR. EVANS: Considerably more.

24 MR. WIRTH: Yeah, as a matter of fact, as you notice this
25 unit, on an heirship like W. A. Armes, if you'll remember

1 in the past, we had what we called -- another one that
2 had 78 different owners -- the Richard Deskins heirs and
3 everything like that. As a matter of fact, communica-
4 tions and -- we've almost got 100 percent of "Richard
5 Deskins". Well, I have 93, because there's other people
6 contacted. I do have 93 people under lease. Of the 78 I
7 thought we identified, there was a death and passed on
8 inheritance and everything like that. So it's quite
9 detailed.

10 MR. EVANS: You just simply -- in the heirship case, you
11 haven't determined what each individual interest is?

12 MR. WIRTH: Exactly.

13 MR. EVANS: You know what the heirship is in total, but not as
14 broken down?

15 MR. WIRTH: Each and every divided interest in that.

16 MR. MASON: May I ask one question.

17 MR. CHAIRMAN: Mr. Mason.

18 MR. MASON: What is an heirship?

19 MR. WIRTH: An heirship is -- someone may have passed away and
20 has decreed this is who owns it or, of course, Virginia
21 had to do this. They did away with the dower interest.
22 If a person passes away, the spouse has a one-third dower
23 interest depending on the date. Now, in Virginia --

24 MR. MASON: Well, I understand all of that. I mean, I do a
25 lot of legal work in estates and estate administration.

1 Until I got on this Board, I'd never heard of it.
2 Heirship -- I mean, it doesn't have any real legal
3 meaning as far as I know. But, I mean, it's a common
4 word of usage here.

5 MR. WIRTH: There's a lot of standard forms in the industry,
6 especially in the oil and gas. You'll see a proof of
7 their death and heirship. You'll see affidavit of
8 heirship. That's why we commonly refer the heirship as
9 the descendants or whom that person --

10 MR. MASON: You're talking about just the list of heirs?

11 MR. WIRTH: List of heirs that owns interest in --

12 MR. MASON: Yeah, you know in Virginia when somebody dies, if
13 you probate the will, you file a list of heirs and you
14 qualify an administrator or executor. Those are the two
15 primary documents that relate to administration of the
16 estate.

17 MR. WIRTH: That's correct.

18 MR. MASON: But you're saying, if somebody -- what I was
19 trying to get at. If somebody dies and there's no
20 administrator, no executor --

21 MR. WIRTH: Intestate.

22 MR. MASON: No list of heirs ever formally filed, then you're
23 saying that this pool of people who inherited this have
24 an heirship. Is that what you're saying?

25 MR. WIRTH: That's correct. It may not -- of course, if

1 you'll bear with us, we're in Buchanan County. Now the
2 courthouse has burned once and flooded twice. So they
3 have set-up deeds. You have to go back to -- we try to
4 go back to the patent or sometimes even the crown, if we
5 can be so lucky, and bring those forward and everything,
6 on the title. A lot of times, it just stops. Well,
7 doing do diligence, like I say, go to the phone books,
8 banks, word of mouth. We might find somebody who can
9 tell he died and left a will and it is recorded under
10 such and such in Tazewell County, and we go there. A lot
11 of people doesn't know to be an owner of record, you must
12 record it where that land is situated. That puts us on
13 notice that there has been an interest claimed or
14 somebody does have an interest in it.

15 MR. EVANS: Thank you for the explanation.

16 MR. MASON: Likewise.

17 MR. WIRTH: I'm sorry. I understand.

18 MR. CHAIRMAN: Any other questions? Do you gentlemen have a
19 question of Mr. Worth?

20 MR. PRICE: Yes.

21 MR. CHAIRMAN: Would you identify yourself for the Board,
22 please?

23 MR. PRICE: I'm partial into the D. W. Price ownership, I
24 guess. My name is Russell Price, Box 41, Midland,
25 Virginia. They have owned both wells -- it'll take me a

1 couple seconds to get it together here -- AA-9 and, I
2 believe, it's Z-9. They have 100 ownership of the coal.
3 So I'd like to bring something out that I have in files
4 here -- papers. We have a legal paper that's recorded at
5 the courthouse in Buchanan County. We assume that
6 Samuel Price was our great great grandfather. Now, in
7 the year of 1888, the coal rights were sold. But in the
8 lease they signed up, and I'll get the Board a copy if
9 they want. I don't have it present now. In the lease
10 they signed up, it says that William Price, which was a
11 son of Samuel Price, reserves five acres around his house
12 and five acres around his father's house, Samuel Price.
13 I mean, I'm not saying that they don't own 100 percent.
14 It would have to be a legal thing to go through, I guess,
15 for them to say that, and for us to say no. But I feel
16 like, you know, that this is coming down to saying they
17 want mineral rights and stuff. We're losing a lot here,
18 you know. Like five to ten acres of coal is quite a bit
19 of money. I don't have to explain that to anybody, I
20 guess. Going back to their papers, like the gentlemen
21 had questions, I, also have questions. I'm not trying to
22 prolong or say they can't take the gas out, because I
23 know that progress and now we've come up with the fact
24 that there's a pollution problem and stuff and natural
25 gas seems to be one of the answers to the pollution

1 problem. I believe that natural gas is going to be one
2 of the things of the future that's is going to be of
3 great value and that's my belief. We got this paper, or
4 this lease, in the mail saying that they wanted us to
5 sign it. That one-eighth of the gross, I think it is --
6 when I sit down, I think to myself, we own, possibly,
7 five to ten acres of coal. So, therefore, no matter who
8 says gas -- it belongs to the coal company or the owner
9 or whoever, if this is right, we still own five acres of
10 gas -- five to ten acres of gas. If it's up to the
11 landowners, we still 100 percent of the gas except the
12 ones that has signed. That was leaving 25 percent, like
13 he said, of the Price heirs. I got this paper for us all
14 to sign in northern Virginia saying that they would give
15 us one-eighth as a total. To me, you know, to be an
16 owner, that's giving them 88 percent. I don't know if
17 the Board has this one-eighth set up or they set it up or
18 who set it up. That's one of my questions. Which is
19 greater, the gas or the well? Why would they put a well
20 in if it wasn't for the gas. Evidently they feel like
21 they're going to make more money off the gas in the well
22 or they wouldn't put the well in. So why do they ask for
23 88 percent and say we'll give you 12 percent? Is not the
24 gas worth more than the well? Okay, another thing -- I
25 do understand the time release. I'm not going against

1 their theory that when the coal company goes through,
2 that, possibly, some of the gas will leak out. I don't
3 know -- I'm not that familiar with the gas and stuff, but
4 they're asking for a 10 year lease which can be continued
5 at their convenience. So evidently they're planning 10
6 years, possibly 20, possibly more. So last night I got a
7 call from people -- the company wanting to put in the
8 pipe line. So evidently it must be going to be some-
9 thing. They're wanting to put pipe lines in, gathering
10 lines, and stuff. To my understanding, now I may have
11 misunderstood the conversation, but they were asking for
12 a lifetime right-a-way for these lines. I question,
13 myself, my children -- I was an heir -- I'm an heir of
14 today. Yesteryear I was not an heir. The heirs of the
15 future -- my children, our children, will be heirs. When
16 we sign this for one-eighth, we have signed away their
17 heirship that was handed down through generations. So my
18 request refers back to the one-eighth. Have they a legal
19 right to say, "You've got to sign this lease for one-
20 eighth or we'll take it or we'll do what we want to do
21 with it." Or put it in escrow. I don't know. I'm
22 asking the Board, you know. I'm putting myself at the
23 mercy to the Board. Okay? On the pooling, we are not
24 actually able to pay big expenses in the well. You know,
25 we just aren't that financially able. I have one member

1 that may be, but as far as myself, I'm not. Now when we
2 go on into the lawsuits, they say the coal company owns
3 the coal. It's already been leased. When they start
4 putting these wells in, is this coal company going to
5 come back and start putting suits against us because we
6 gave them right-of-ways -- I mean, gave them legal rights
7 to put wells in? I don't know. I mean, you know. So
8 that's some of the questions that's in my mind. It's
9 like I don't want to stand in the way of progress, but I
10 want an equal shake. I think anybody present in this
11 room would ask the same thing. Is the one-eighth set up
12 by the Board, by the state, or who as being a legal
13 breaking of this is what you get. I question the Board.
14 Is that set up by the Board? I question Oxy. Is it set
15 up by Oxy? I question the state. Is it set up by the
16 state? I don't know. So do you all know? In other
17 words, would you fill me in on that part?

18 MR. CHAIRMAN: Let me just try to address a couple of things.
19 One, you're raising a mineral rights issue question of
20 whether or not and we don't know that and won't know
21 that. As you properly said, that if you have a dispute,
22 it would have to be resolved in the courts. That part of
23 it. The reasonableness of the one-eighth royalty is
24 whatever the market will allow. If you can negotiate a
25 better deal, then go for it. One-eighth is a royalty

1 rate that has been consistently proposed to this Board --
2 we can tell you that -- in numerous other coal bed
3 methane situations. I don't know that we could represent
4 anything beyond that.

5 MR. MCGLOTHLIN: I can remember one-eighth back in 1976.

6 MR. CHAIRMAN: It's gone back for --

7 MR. MCGLOTHLIN: Several years.

8 MR. PRICE: So it has been carried as a --

9 MR. CHAIRMAN: It's an industry practice.

10 MR. PRICE: Okay, is Oxy going to give us papers clearing us
11 from any suit from the coal leases? That they will not
12 turn around and sue us when we give them rights to take
13 the gas out? That's a question I'm asking Oxy.

14 MR. SWARTZ: No.

15 MR. PRICE: You will not give us any.

16 MR. SWARTZ: I guess the reason -- a long answer to your
17 question is if Oxy drills a well and the coal people were
18 -- let's assume --

19 MR. CHAIRMAN: Excuse me just a second. I think, maybe, this
20 kind of discussion, we'd have to ask you to do outside
21 the -- what's before the Board today. But I can tell you
22 this. Regarding those kinds of questions, you're just
23 going to have to talk them out. Basically, would the
24 company -- the Board has to consider -- Virginia law
25 addresses the fact -- this legislation in 1990 ack-

1 nowledged that there's disputed claims. It acknowledged
2 that operators may come forward that have an ability,
3 financial and other ability, to actually drill the well.
4 That it was in the best interest of the Commonwealth to
5 have a mechanism that would allow that process to go
6 forward to get the wells drills. It would also protect
7 the rights of those folks that are in these disputed
8 interest situations by affording the ability to have this
9 open process of the hearing for forced pooling and that
10 those provisions for escrowing accounts -- money to paid
11 in that -- so that throughout all these court cases -- if
12 it comes to that or other negotiated settlements -- that
13 no one is ultimately harmed. So we really can't -- as
14 far as the Board's concerned, we can't get into whether
15 or not Oxy can indemnify you from suits from outside
16 parties and those kinds of things. That goes far beyond
17 our scope. I hope you understand that, but it really
18 does.

19 MR. PRICE: Okay. Thank you for enlightening me on that.

20 MR. SWARTZ: Mr. Worth and I -- if I might -- Mr. Worth or I
21 would be more than happy to talk to you on a break and
22 talk about those kinds of things. We don't have to do it
23 in this room, but we can do it out in the hall if they
24 take a break.

25 MR. WIRTH: I may point out. Your concern for your homestead

1 of your five acre reservation, that five acres did not
2 fall physically under this unit. That's why it's not
3 identified. We're only asking the Board to pool coal bed
4 methane gas rights in and under this unit. Not your
5 entire acreage that may be surrounding or around this --
6 just in this unit and this parcel of this unit here.

7 MR. PRICE: But you're saying this unit. Now, there's two
8 units also. One time in conversation, someone from your
9 company informed me, "Well, how can you prove where the
10 coal is at?" I can prove, possibly, we have 40 acres and
11 somewhere in that 40 acres is 5 or 10 acres of coal.

12 MR. WIRTH: Correct. I know and it's a matter of record if
13 there's a reservation. We'll be identifying it on one of
14 the plats if it's involved.

15 MR. PRICE: Okay. Now, you're saying -- if I'm getting out of
16 line, you know, correct me. You're saying the coal will
17 not be taken in as an agreement in this?

18 MR. WIRTH: No, we're not entering into a coal lease or asking
19 for a coal lease. This is for just the gas rights only
20 -- for the coal bed methane rights. It doesn't even take
21 in -- if you own conventional oil and gas, it does not
22 even include conventional oil and gas. That's separate.

23 MR. CHAIRMAN: The other gentleman -- I don't know your name.
24 Do you have anything to add?

25 MR. D. PRICE: No.

1 MR. CHAIRMAN: Do you want to call your next witness?

2 MR. SWARTZ: Yes. Mr. Chairman, I'd like to call Mark Karam.

3

4

5 MARK S. KARAM

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

8

9 DIRECT EXAMINATION

10

11 BY MR. SWARTZ:

12 Q. State your name, please.

13 A. Mark S. Karam.

14 Q. Where do you live?

15 A. Richlands, Virginia.

16 Q. Who are you employed by?

17 A. Oxy, USA.

18 Q. Do you have a title?

19 A. Yes.

20 Q. What is that?

21 A. I'm a regulatory engineer.

22 Q. As part of your duties, do you prepare DWE's?

23 A. Yes.

24 Q. Did you prepare a DWE with regard to this well, AA9?

25 A. Yes, I did.

1 Q. Has that been submitted as Exhibit E as part of the
2 application?
3 A. Yes, it has.
4 Q. Down at the bottom, there's a signature?
5 A. Yes.
6 Q. Is that yours?
7 A. Yes, that is my signature.
8 Q. When was this DWE prepared?
9 A. March 12, 1991.
10 Q. That's less than 90 days from today, right?
11 A. Yes, that's correct.
12 Q. Could you tell the Board, in general, how you go about
13 obtaining prices and detail information to prepare these
14 DWE's.
15 A. Yes, I've contacted several of our field personnel. We
16 viewed past receipts, sales slips, et cetera, and got an
17 idea of how much each item costs.
18 Q. Then you know, do you not, how deep the well is proposed
19 to be?
20 A. Yes, that's correct.
21 Q. This particular well, if we turn to the application at
22 paragraph E, what is the depth that is proposed for this
23 well?
24 A. 2,210 feet.
25 Q. And the total costs on the DWE are what?

1 A. \$255,926.

2 Q. How many fracks or stimulations are included in your DWE?

3 A. Three.

4 Q. The total for all three is what?

5 A. Around \$81,100, approximately.

6 Q. What seam or seams does this well target?

7 A. The Pokey 3 --

8 Q. Is definitely a target?

9 A. That's right. That's the projected target.

10 Q. What will be involved in making a decision whether or not

11 to frack additional seams?

12 A. It will depend on log interpretation as far as the coal

13 seam (inaudible).

14 Q. Assuming that the logs are positive, you will stimulate

15 additional seams and assuming they aren't, you wouldn't.

16 Is that what you're telling us?

17 A. That's correct.

18 Q. Can I assume that your experiences told you that the

19 Pokey 3 is usually a seam that you would want to stimu-

20 late?

21 A. That is correct.

22 Q. Is this well deep enough to test and produce from the

23 Pokey 3?

24 A. Yes.

25 Q. Have you reviewed the notice of application?

1 A. Yes.

2 Q. The application, itself, and the exhibits to that?

3 A. Yes, I have.

4 Q. In fact, have you participated in preparing those
5 documents?

6 A. Yes.

7 Q. Your educational background, in addition to being an
8 attorney, do you have any other degrees?

9 A. Yes, I'm an engineer -- petroleum engineer.

10 Q. Can you tell me whether or not, in your opinion, the well
11 that is proposed for unit AA9 is a reasonable development
12 plan to produce and drain coal bed methane from that
13 unit?

14 A. Yes.

15 Q. Can you tell me whether or not the detailed well es-
16 timate, Exhibit C, I believe -- whether or not the
17 numbers reflected on that are in fact reasonable es-
18 timates with regard to the costs that will likely be
19 incurred in drilling the proposed well?

20 A. Yes, they are.

21 MR. SWARTZ: That's all I have.

22 MR. CHAIRMAN: Any questions?

23 MR. EVANS: I have one question.

24 MR. CHAIRMAN: Mr. Evans?

25 MR. EVANS: Just real quick. In some of the -- I know this is

1 a well estimate, but this one appears to be just a few
2 thousand dollars higher than some of the others. Could
3 you explain, possibly, where that difference --

4 MR. KARAM: Yes, sir. This proposed depth is around 2,200
5 feet and I base my estimates on costs per foot for the
6 contractor. It's going a little extra for pipe and bits.
7 You know, we'll have to have longer bit runs. That's
8 probably the difference. Of course, the wire logging is
9 going to cost a little more. Some of them that are, say,
10 1,850 feet, won't be quite as much as this one.

11 MR. EVANS: In looking at it -- I don't have any of the
12 previous ones right here before me -- but I was looking
13 at your totals and it appears that again, obviously on a
14 specific case by case basis -- a little deeper. This is
15 a little deeper than average?

16 MR. KARAM: Yes, it is.

17 MR. EVANS: What is your average depth, probably?

18 MR. KARAM: I would say 1,850 feet.

19 MR. EVANS: Okay, so you're another 300 feet deeper?

20 MR. KARAM: Right. You know, we'd have to run more pipe, it
21 would take a little more cement.

22 MR. CHAIRMAN: Any other questions?

23 MR. EVANS: That's all I have.

24 Q. (Mr. Swartz continues.) Just to give the Board some
25 indication of how well depth might affect price, could

1 you give them some prices that you've recently obtained
2 on a per foot basis so that they could get some idea of
3 how much an additional foot may or may not cost?

4 A. Yeah, like for casing, we get billed so much a foot for
5 it.

6 Q. What would that charge be for foot?

7 A. For like nine and five-eighths, it's around \$11.00 a
8 foot. For contract drilling, we've used pretty much a
9 ball park figure -- so much for foot, you know. Move on
10 location and TD the well.

11 Q. Approximately what would that be?

12 A. Around \$20 a foot, more or less.

13 Q. Other things that you've talked about -- electric logging
14 -- would fluctuate per foot. What are some of the other
15 items that --

16 A. For completion costs like tubing -- when we run our
17 pumps, we'll have some rods that are run in the well and
18 they cost so much per foot so if it's projected deeper,
19 you'll see a significant increase.

20 MR. EVANS: That \$20 per foot on your drilling cost, what all
21 does that include? That's just --

22 MR. KARAM: For the rig --

23 MR. EVANS: For the rig time?

24 MR. KARAM: The rig time, yes, sir.

25 MR. CHAIRMAN: Thank you. Anything else?

1 MR. SWARTZ: That's all I have.

2 MR. CHAIRMAN: Any other questions? Do you folks have
3 anything else you want to say for the record?

4 MR. PRICE: No.

5 MR. CHAIRMAN: Okay. Thank you very much. We'll direct the
6 attorney to prepare an Order and present it to the Board.
7 Thank you. We'll break for lunch and come back at 1:30
8 P. M.

9 (AFTER THE LUNCHEON RECESS, HEARING CONTINUED AS FOLLOWS:)

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1
2 ITEM 29
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4 MR. EVANS: The next item, we're going to take number 29.

5 Oxy, if you will proceed.

6 MR. SWARTZ: I'd like to call Mr. Wirth. Can we just remind
7 him that he's still under oath?
8
9

10 MARTIN E. WIRTH

11 a witness who, after having been previously sworn, was
12 examined and testified as follows:
13

14 DIRECT EXAMINATION
15

16 BY MR. SWARTZ:

17 Q. You need to state your name for the record, again.

18 A. Martin E. Wirth.

19 Q. Mr. Wirth, we're going to be dealing with Oxy's applica-
20 tion in regard to unit 29. Okay?

21 A. Yes, sir.

22 Q. Can you tell me whether or not, with regard to unit 2-9,
23 you also prepared the notice of hearing, application and
24 most of the exhibits that were submitted with the
25 application?

1 A. Yes, I have.
2 Q. Can you tell me, or identify for me, who the applicant on
3 unit Z-9 is?
4 A. The applicant is Oxy, USA, Inc.
5 Q. Who are the persons that Oxy has made respondents?
6 A. The heirs of Mary Lester, Patty Lee Price, Russell E.
7 Price and David W. Price.
8 Q. I would ask you whether or not copies of the notice of
9 hearing and application and exhibits have been sent to
10 those four people?
11 A. Yes, they have.
12 Q. I would ask you whether or not you received, by returned
13 mail, an indication that all of these people, or someone
14 on their behalf, had signed for the mail?
15 A. Yes, they have.
16 Q. Have 10 copies of the certified mail receipts and, then,
17 the return receipt forms been filed and identified as
18 Exhibit F with regard to this unit?
19 A. Yes, they have.
20 Q. In addition to mailing, as we've just discussed, can you
21 tell me whether or there was a publication notice?
22 A. Yes, there was.
23 Q. What paper was that notice published in?
24 A. That was in The Bluefield Daily telegraph.
25 Q. The date, if you recall or you can check the newspaper?

1 A. April 17, 1991.

2 Q. What was published in the paper?

3 A. It was the complete notice with a map of the area.

4 Q. That map that was published in the newspaper is part of

5 the notice and is Exhibit A1, is it not?

6 A. That's correct.

7 Q. If I understood your testimony correctly earlier, it's a

8 portion of a county map showing roads, creeks, and

9 hollows and there's a little circle with an arrow toward

10 it, and that's the approximate location of this unit?

11 A. That's correct.

12 Q. Can you tell me, or do you know, whether or not Oxy is a

13 Delaware corporation that is licensed to transact

14 business in the Commonwealth of Virginia?

15 A. Yes, I know and yes, it is.

16 Q. Have you filed, or has Oxy filed, any documents with the

17 DHME with regard to conducting or engaging in the oil and

18 gas business in Virginia?

19 A. Yes, the registration form is on file with the depart-

20 ment.

21 Q. Are there any bonds on file or blanket bonds?

22 A. Yes, there is.

23 Q. With regard to what kinds of activities?

24 A. Plugging and restorations from.

25 Q. There is an Exhibit B attached to the application which

1 is entitled, "Parties Respondent". Could you turn to
2 that for a moment?

3 A. All right.

4 Q. Is this a complete list of the parties against whom you
5 are seeking relief and with regard to whom you are
6 seeking a pooling order?

7 A. That's correct.

8 Q. You don't wish to amend or add any additional parties at
9 this point in time?

10 A. No, not at this point in time.

11 Q. Do you wish to dismiss any of these folks?

12 A. Not at this point in time.

13 Q. In a general fashion, could you describe what you did to
14 identify these people as respondents or as people who
15 needed to be respondents?

16 A. Again, Oxy, USA initially checks the courthouse records,
17 chancery files, anything in the courthouse of record.
18 Tax maps -- who is paying the taxes to try to identify
19 any and all possible claimants under this unit.

20 Q. At the time you filed this application, is this the
21 complete list of people that you've been able to identify
22 who should be joined as respondents on this pooling
23 effort?

24 A. That's correct. That should be joined.

25 Q. There is also part of the application an Exhibit A. If

1 you could turn to that.

2 A. Okay.

3 Q. Page 1 of Exhibit A is what?

4 A. That is a plat of the 80 acre unit identifying any and
5 all parties that own the coal, oil and gas surface to be
6 disturbed. Coal lessees, oil and gas lessees, coal bed
7 methane gas lessees.

8 Q. Does it also show with regard to the various tracts, the
9 acreage and the percentage of acres in the unit?

10 A. That's correct, it does.

11 Q. Does it show the size of this unit that we're seeking to
12 pool?

13 A. Yes, it does.

14 Q. What is the size?

15 A. This is an 80 acre unit.

16 Q. Is this 80 acre unit subject to any field rules?

17 A. Yes, it is. It's subject to previous Board order -- the
18 Oakwood coal bed gas bill. I believe it's OGCB3-90.

19 Q. When was that Order entered?

20 A. It was ordered May 18, 1990.

21 Q. The grid map that was prepared with regard to that Order,
22 does that identify this tract that we're talking about
23 today as Tract 29?

24 A. Yes, it does.

25 Q. So you used the number from that Board proceeding?

1 A. That's correct.

2 Q. I'd like to turn to Exhibit A, page 2. Okay?

3 A. Yes, sir.

4 Q. You understand that Oxy or anyone who applies to be
5 appointed as designated operator needs to demonstrate
6 some interest in the unit in question, correct?

7 A. Correct.

8 Q. Is Exhibit A, page 2, a break out or discussion of this
9 various ownership interests?

10 A. Pertaining to this unit is ownership information as to
11 coal bed methane gas rights.

12 Q. Could you tell us what is reflected on Exhibit A, page 2,
13 with regard to ownership?

14 A. On Exhibit A, page 2, it indicates a percent of coal bed
15 methane gas rights leased to Oxy. Of the coal owners who
16 may have rights to coal bed methane, we have 100 percent
17 gross under lease. The oil and gas owners, we have 85.08
18 percent. The percent not leased to Oxy -- of course,
19 coal owners, we have 0 percent not leased. The oil and
20 gas owners, 14.92 percent not leased.

21 Q. And the five people who have been named as respondents
22 are the people you have been able to identify with regard
23 to the outstanding 14.92 percent of the oil and gas?

24 A. Yes.

25 Q. With regard to the application, again, at paragraph 2D.

1 Has a well work permit been issued with regard to this
2 well or this drilling unit?

3 A. To date, a well work permit has not been issued from the
4 Department of Mines, Minerals and Energy.

5 Q. The date would be what date if you look at the end of
6 the application for the date this was signed?

7 A. Date of the application -- it was dated the 22nd day of
8 March, 1991.

9 Q. What is the proposed depth of this well?

10 A. Approximately 1,510 feet.

11 Q. What is the estimated cost of drilling this well?

12 A. The estimated cost for drilling this well is \$233,941.

13 Q. Is there an Exhibit C attached to the application that
14 breaks out those costs?

15 A. Yes, there is.

16 Q. Who prepared Exhibit C?

17 A. Exhibit C was prepared by Mark Karam.

18 Q. And the date that's shown that that was prepared?

19 A. 3/14/91.

20 Q. Which is less than 90 days from the date of this hearing?

21 A. That's correct.

22 Q. Going down to paragraph 4 of the application. Are you
23 requesting that the Board enter a pooling order pooling
24 all interests and estates of the persons named as
25 respondents with regard to the coal bed methane underly-

1 ing this unit?

2 A. Yes, we are.

3 Q. What seams are you talking about or are you seeking to

4 have pooled by this Order?

5 A. Basically, coal seams below the tiller formation to the

6 lowest or deepest known or unknown coal seam.

7 Q. Are you requesting that the Board enter an order est-

8 ablishing an election procedure?

9 A. Yes, we are.

10 Q. That election procedure provides, essentially, three

11 options?

12 A. That's correct.

13 Q. What, in general, are those three options that you're

14 asking to be provided?

15 A. The respondents may either assign or lease his or her

16 coal bed methane gas interest. They may enter into an

17 agreement to participate and share in the cost of said

18 well. They may become a carried working interest --

19 being that they would carry their interest on a per-

20 centage basis after recoupment of the operator's share

21 of costs attributed to that well.

22 Q. Are you also requesting that the Board's Order designate

23 Oxy as the operator of the unit?

24 A. Yes, we are.

25 Q. And that that Order will authorize Oxy to drill, develop,

1 produce, market and sell any coal bed methane gas that
2 this unit might produce?

3 A. Yes, we are.

4 Q. Have you filed previously with the Board an Exhibit G --
5 a consent to frack, specifically with regard to this
6 unit?

7 A. No, we have not.

8 Q. Do you have that with you today?

9 A. Yes, I do. I have 10 copies.

10 Q. Who was this consent obtained from -- what company?

11 A. It was obtained from Island Creek Coal Company.

12 Q. The consent was signed by?

13 A. Harold Epperly.

14 MR. SWARTZ: We previously filed the affidavit with regard to
15 his authority, which I would ask you to incorporate. I
16 think, in fact, it was marked with regard to this.

17 Q. (Mr. Swartz continues.) There is an Exhibit D that has
18 also been submitted to the Board with regard to this
19 well, is that correct?

20 A. That's correct.

21 Q. Again, we talked about this earlier. Is this an example
22 of -- if we were to look at escrow questions today of
23 what a royalty interest recommendation might look like
24 and what a working interest recommendation might look
25 like.

1 A. That is correct.

2 Q. This recommendation example is a little different than
3 the one we looked at with regard to AA9 because it has a
4 second page?

5 A. No, this one does not.

6 Q. Which one has a second page that I keep --

7 A. That would be the first one on our agenda -- it would be
8 U12.

9 Q. Which is an explanation of what --

10 A. It's a summary of what I've written down here.

11 Q. Again with regard to Exhibit D, the numbers on Exhibit D
12 -- the recommendations with regard to working interests,
13 particularly, are they contingent on any events?

14 A. They are contingent on the relief sought under the
15 orders under the petition. The parties have a subject
16 election to either participate, be carried, or become a
17 lease.

18 Q. Until those elections are made or the time passes, we
19 really don't know what to do in that respect?

20 A. That's correct.

21 Q. With regard to the publication, were 10 copies of the
22 certificates of publication marked as Exhibit E and filed
23 previously with the Board?

24 A. Yes, they were.

25 Q. Lastly, we have 10 copies of an Order in regard to this

1 unit. They have been marked as Exhibit H. I would like
2 to work through just a couple of areas of the Order with
3 you. First of all, for people who would come to Oxy to
4 determine whether or not you were interested in leasing
5 coal bed methane from them, what kind of offer are you
6 currently making to people who might approach Oxy with an
7 interest to lease their coal bed methane interests.

8 A. \$1.00 an acre, plus we offer a one-eighth royalty
9 interest.

10 Q. Have you signed leases that provide for \$1.00 an acre
11 bonus and a one-eighth royalty?

12 A. Yes, on coal bed methane.

13 Q. Could you give us some idea -- is it hundreds of leases?

14 A. The last record -- it was about 1,300.

15 Q. In general, has the term been \$1.00 bonus and a one-
16 eighth royalty?

17 A. For coal bed methane rights.

18 Q. Do you pay something different if there are also conven-
19 tional oil and gas rights?

20 A. That's correct.

21 Q. What would that be?

22 A. We're offering \$20.00 an acre for conventional oil and
23 gas rights and coal bed methane rights.

24 Q. If they're together?

25 A. If they're together, yes, sir.

1 Q. What would the royalty be?
2 A. It would be one-eighth royalty.
3 Q. Have you entered into some of those leases?
4 A. Yes, we have.
5 Q. You are not seeking in unit 29, however, to pool conven-
6 tional oil and gas, is that correct?
7 A. No, these are drilled under the Oakwood coal bed gas
8 field.
9 Q. Are you familiar with the Order that was prepared -- the
10 proposed Order -- with regard to unit 29?
11 A. Yes, I am.
12 Q. There is a request -- obviously there are a number of
13 requests -- but there is a request with regard to
14 election options, correct?
15 A. That's correct.
16 Q. With regard to that request, is there any provision in
17 there for the payment of \$1.00 bonus or a royalty
18 payment?
19 A. Yes, there is.
20 Q. What are the terms that are proposed in this Order?
21 A. It's \$1 an acre with a one-eighth royalty.
22 Q. Those are expressed -- one of the places -- in paragraph
23 9.2, correct?
24 A. Yes, that's the second option.
25 Q. The first option would be an option to participate?

1 A. Correct.

2 Q. And the dollar amount -- estimated cost of the well is
3 set forth in that option?

4 A. That's correct.

5 Q. The third option is what?

6 A. That is, also, the sharing of development as a non-
7 participating party or carried interest. Receive
8 consideration on (inaudible).

9 Q. Is there a provision with regard to failure to properly
10 elect?

11 A. Yes, there is.

12 Q. Is there a provision that you've recommended that be
13 incorporated with regard to someone who decides to
14 participate and then fails to pay?

15 A. Yes, there's a default provision in there.

16 Q. That's a paragraph 11?

17 A. That's correct.

18 Q. The Order, as requested in the application, also provides
19 for designation of Oxy as operator?

20 A. That's correct.

21 Q. Does the Order correctly set forth Oxy's legal name,
22 address, phone number, and the person to contact?

23 A. Yes, it does.

24 Q. Does the Order provide for a time within which operations
25 must be commenced?

1 A. Yes, it does.

2 Q. What is that period of time, sir?

3 A. Within 365 days of the issuance of the Order.

4 Q. Does the Order address escrow issues?

5 A. Yes, it does.

6 Q. Lastly, does the Order require Oxy to mail copies of the

7 Order to the respondents?

8 A. Yes, it does.

9 MR. SWARTZ: That's all I have of Mr. Wirth.

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

11 MR. EVANS: Yeah, I do have a question, Mr. Chairman. The

12 differential, I noticed, and I'm going to go back to your

13 estimated well costs -- the differential is \$20,000, is

14 that not correct?

15 MR. WIRTH: Mr. Evans, I'll be glad -- Mr. Karam will put on

16 testimony as to the DWE. He's more qualified than I am

17 to answer that.

18 MR. CHAIRMAN: Do you folks have any questions of Mr. Wirth?

19 MR. PRICE: I have one question on the royalty. They're

20 saying that if we don't sign or lease or whatever, they

21 put the money in royalty. Under what names would it be

22 put under in royalty?

23 MR. WIRTH: The escrow?

24 MR. PRICE: Or the escrow -- yes.

25 MR. WIRTH: The Board presently is developing a procedure as

1 to the identification of any and all claimants. It will
2 be under the known names and addresses, if possible. If
3 they're unknown as heirs or anything, it will be under
4 the preceding -- like great grandfathers or something --
5 if we don't know their descendants, it would be put under
6 that name or identified by order number which can be
7 referred back to. That procedure is being discussed by
8 the Board. I hope I didn't --

9 MR. MASON: Mr. Chairman?

10 MR. CHAIRMAN: Mr. Mason.

11 MR. MASON: It is my understanding -- the present posture of
12 the Board of the staff of Division of Mines, Minerals and
13 Energy is preparing a proposal for this issue which is
14 going to be submitted. As we understand, what will
15 probably happen is there will be a banker, or some other
16 institution, who will act as an escrow agent for the oil
17 and gas Board. Who will hold these funds in escrow, and
18 invest them until such time as the ownership issues and
19 other issues are resolved.

20 MR. PRICE: But will there be like another party -- Island
21 Creek Coal Company or any coal company claiming to own
22 coal -- will they be entered into this escrow account
23 also?

24 MR. MASON: You mean will they be one of the owners?

25 MR. PRICE: Right.

1 MR. MASON: No. The Board, itself, will actually -- you have
2 to understand we haven't adopted any final thing. But
3 it's my understanding, and my understanding of the
4 consensus of the Board, that, based on what's occurred,
5 is that the Board would hold title to it by means of an
6 agent. This agent will be some institution and so forth.
7 In other words -- then, of course, any money that comes
8 out of this escrow account, will only be disbursed by
9 order of this Board. That's in the -- yes, sir?

10 MR. HARRIS: I'm not sure that's what your question is. It
11 seems to me what you're asking is if at sometime later
12 there's a dispute over something else, are they entitled
13 to some of that money also or will it be further divided
14 or if you're designated as getting a certain percentage
15 of it, is that going to change over the next two years or
16 something. Is that what you're asking?

17 MR. PRICE: Yes. You know, like on their Exhibit A, page 2.
18 They have the percentages broken down -- I'm sorry --
19 it's the same --

20 MR. HARRIS: The one that listed all of the people?

21 MR. PRICE: Yeah.

22 MR. CHAIRMAN: Well, let me see if I can pose your question to
23 Oxy. Assuming that Mr. Price is one of the heirs and
24 assuming he's one that's designated to be pooled -- how
25 would you treat him? His money that he -- assuming that

1 you owed money to him, how would that be handled?

2 MR. WIRTH: If there is no outstanding claimant, of course,
3 there would not be an escrow fund -- or if it's been
4 settled. Your money would be disbursed as Oxy is being
5 operated as any other gas well or operation. We have
6 complete accounting systems that we report to the State
7 and have our own -- that we've sold so many cubic feet of
8 gas that month. It hits the system -- it goes through
9 the system and you are issued a check for that royalty
10 for that money. In that check stub, it tells you how
11 much and when and who we sold it to.

12 MR. SWARTZ: What he's telling you in short order is if there
13 was no dispute to your interest, they would write you a
14 check, probably, on a monthly basis. You would get it in
15 the mail from Oxy on a monthly basis. It would have a
16 stub that would tell you how much gas was sold and what
17 your royalty share was. The problem is there may be a
18 dispute. I think that was kind of what you were asking,
19 too. If there is a dispute, Oxy -- instead of sending a
20 check to you or somebody else who may be claiming the
21 same money -- will be sending a check, probably, to the
22 Board or to some institution like a bank that the Board
23 has chosen. The Board will be holding that money until
24 you and whoever else is claiming the money either work it
25 out or sue each other. Then, when you come to the Board

1 with a Court Order or a settlement agreement, then they
2 will order the money paid out to whoever you've agreed or
3 the Court has said should get it. Those are the two
4 things that are -- one or the other of those is going to
5 happen.

6 MR. PRICE: Okay, to clarify what's in my mind. Like you have
7 the percentage of ownership broke down as the unleased
8 ownership. Will the Mary Lester account be a separate
9 account or will it be all one account?

10 MR. SWARTZ: No, there will be, I would guess --

11 MR. PRICE: Well, okay, the Board's --

12 MR. SWARTZ: I mean, they are sort of our boss, you know, but
13 I would guess that there will be a well account for this
14 unit. It won't be designated, really. It'll be a
15 royalty interest for unit 29. It won't really have
16 anybody's name on it, okay?

17 MR. HARRIS: But someone somewhere will have the amount that
18 we would owe you assuming everything was straightened out
19 as far as any conflict or whatever. At some point, you
20 know, it's not like 20 people all of the sudden are going
21 to equally divide money. If there is a certain per-
22 centage that you're entitled to, you will get that
23 percentage of the amount of money that's held in escrow.

24 MR. MASON: Plus your proportion of the earnings on it.

25 MR. PRICE: Right. And so there's -- like the coal company

1 owns no interest in this gas.

2 MR. SWARTZ: You realize that other people are going to claim
3 they own it. I can't predict what the coal companies are
4 going to say. You know, they might well say, "No, we own
5 that". And you're saying, "Well, I own it". That's the
6 problem. That's why it's being escrowed.

7 MR. MICHAEL PRICE: How about the people that's already signed
8 it?

9 MR. SWARTZ: Signed what? The lease?

10 MR. PRICE: Signed a lease for the one-eighth.

11 MR. SWARTZ: The problem with that is we can't pay them a
12 royalty if you're claiming they don't own it and you own
13 it. So their money gets escrowed, too. Everybody who
14 claims a one-eighth royalty -- if there's a disagreement,
15 all of that money is going to have to be paid in to the
16 Board until that's sorted out.

17 MR. PRICE: Even though some people has signed a lease and
18 some has not?

19 MR. SWARTZ: Correct. Correct.

20 MR. PRICE: Then the whole amount would go in escrow.

21 MR. SWARTZ: We could get really complicated, but if you had
22 three people and two of them had signed leases and one of
23 them hadn't. One claimed under coal, and the other two
24 claimed under oil and gas. You probably would have to
25 escrow that whole one-eighth until you found out who was

1 going to win. Does that make some sense, I hope?
2 MR. PRICE: Yes. Uh-huh. Thank you.
3 MR. MCGLOTHLIN: If no dispute arises and two of the three
4 people sign leases -- the third one does not and he's
5 pooled -- then that person gets a check. The one that's
6 pooled will get a check.
7 MR. SWARTZ: The third person would probably get a check, too,
8 because he'd be leased under the order.
9 MR. MCGLOTHLIN: Everybody would get a check.
10 MR. SWARTZ: So there would be no escrow.
11 MR. MCGLOTHLIN: That's the way I perceived your question.
12 Just because you don't sign it, you're still going to
13 get --
14 MR. MICHAEL PRICE: Okay. I see what you're saying now.
15 MR. PRICE: So long as there is one outstanding party that
16 will not sign or agree or claims to have a claim to the
17 ownership of this gas, then they can tie up the whole --
18 MR. SWARTZ: To the ownership -- yeah.
19 MR. MASON: I don't want to belabor this, but I think you
20 should feel very comfortable with the fact that the Board
21 is not going to disburse this money until the Board is
22 very, very convinced that this ownership issue has been
23 resolved and that all the matters related have been
24 settled. You don't have to worry about somebody coming
25 in and getting the money, you know, and being gone with

1 it before you ever know --

2 MR. PRICE: Okay. I'll enlighten you on a little thing
3 that --

4 MR. MASON: I mean, we're going to do everything that we can
5 to see to it that all the potential claims to this money,
6 you know, that that's all resolved before any money is
7 disbursed to anybody.

8 MR. PRICE: That's like a so said company. See we feel like
9 we own five to ten acres of coal from one of the old
10 papers in the courthouse. Somewhere in our family's
11 past, a coal company went in and took all the top seam of
12 coal out. So when we turned around and tried to find
13 this company, it so happened -- my father was in the
14 process of trying to make the coal company stand respon-
15 sible for taking out the coal. He passed away during
16 this process. Well, some period after that, the coal
17 company happened to go bankrupt. So we're sitting with a
18 hole in the ground unless there's more coal underneath.

19 MR. MASON: I think, it's safe to say, that we're very
20 sensitive to those kinds of problems. The Oil and Gas
21 Act adopted by the General Assembly contains within it a
22 mandate for this Board to look after that.

23 MR. PRICE: I trust the Board. It's nothing to do with
24 trusting the Board. I don't want to some day find out
25 that the coal company comes along saying, "Oh, but we own

1 the interest. We'll take all the money out of escrow."
2 Then we have to turn around in a lawsuit -- to decide it
3 now or not -- I mean, that's the question, you know.

4 MR. MCGLOTHLIN: I don't think that the Board -- we're not
5 going to tell you that's not going to happen. That could
6 very well happen, but it's out of our hands.

7 MR. CHAIRMAN: Mr. Swartz, go ahead and call your next
8 witness. I'll remind the witness you're still under
9 oath.

10
11
12 MARK S. KARAM

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

15
16 DIRECT EXAMINATION

17
18 BY MR. SWARTZ:

19 Q. Would you state your name for the record?

20 A. Mark S. Karam.

21 Q. You're still under oath. You understand that?

22 A. Yes.

23 Q. Who are you employed by?

24 A. Oxy, USA.

25 Q. Your title again?

1 A. Regulatory engineer.

2 Q. Mark, did you prepare Exhibit C which is attached to the
3 application?

4 A. Yes.

5 Q. What is the depth of the well?

6 A. The proposed depth is 1,510 feet.

7 Q. Does this estimate that you've prepared take the depth of
8 the well into consideration?

9 A. Yes.

10 Q. What is the cost that you estimate to drill this well on
11 Z9?

12 A. \$233,941.

13 Q. In your judgment is that a reasonable estimate as to what
14 the cost could ultimately turn out to be?

15 A. Yes.

16 Q. Again, does this include fracture stimulation?

17 A. Yes, it does.

18 Q. How many?

19 A. Three.

20 Q. Is this well intended to produce from the Pocahontas
21 Number 3 coal seam?

22 A. Yes.

23 Q. In fact, you show that as a projected target?

24 A. That is correct.

25 Q. Is it your intention now, as we sit here today, to

1 fracture that coal seam?

2 A. Yes.

3 Q. With regard to the other two, depending upon what the
4 logs show, that decision will be made subsequently?

5 A. That's correct.

6 Q. Is this well deep enough to penetrate and produce from
7 the Pocahontas Number 3 seam?

8 A. Yes, it should be.

9 Q. Is it your opinion that the proposed pooling of this unit
10 and the proposed well, which you have provided an
11 estimate for, are a reasonable method to produce the coal
12 bed methane gas within this 80 acre unit and would you
13 recommend this application to the Board?

14 A. Yes.

15 MR. SWARTZ: That's all I have.

16 MR. CHAIRMAN: Mr. Mason.

17 MR. MASON: Sir, I'm kind of curious. This unit and the one
18 we just took up are immediately north/south of each
19 other, is that correct?

20 MR. KARAM: Right.

21 MR. MASON: Yet there's apparently a 700 foot difference in
22 the drilling depth. Why is that?

23 MR. KARAM: I think the AA-9 is sort of up on a hill. It has
24 a higher elevation. On the Z9, it's more in a lower
25 area. So the target is going to be -- you're going to

1 have to go through a lot less dirt to get to the Pocahon-
2 tas 3.
3 MR. MASON: How much difference does that make in the cost of
4 drilling?
5 MR. KARAM: Quite a bit because this is targeted at 1,500
6 feet and the other one is targeted about 2,200 feet. So
7 that's 700 feet less drilling --
8 MR. MASON: Approximately a third?
9 MR. KARAM: It's hard, you know, to knock it into a third.
10 I mean, there are some costs that are going to be a third
11 less.
12 MR. MASON: No, I mean in depth.
13 MR. KARAM: Oh, in depth, yes.
14 MR. MASON: I think 700 feet against 2,200 feet is approxi-
15 mately a third.
16 MR. KARAM: Yeah. I'm sorry. I thought you meant as far as
17 costs. It won't necessary be a third less.
18 MR. MASON: You anticipated my next question. The drilling
19 costs are not a third less?
20 MR. KARAM: I'm sorry. No, I don't believe they should be.
21 They wouldn't be.
22 MR. HARRIS: Are there certain fixed costs that will not
23 change? I'm just comparing these and it appears that for
24 the lower section here there is several things that
25 appear to be the same for both. They are not a function

1 of depth?

2 MR. KARAM: Yeah, like your contract drilling, that's going
3 to be a little less. Pipe -- your rods you use for your
4 pumping unit, your tubing, and your casing -- especially
5 five and a half inch casing, you know, that's going to --
6 you said so many feet above the Pocahontas 3 -- that's
7 going to be a lot less. But as far as costs like the
8 separators and the casing shoes, you know, subsurface
9 equipment That should stay pretty much consistent.

10 MR. HARRIS: So there would be certain basic costs regardless
11 of the depth?

12 MR. KARAM: Correct.

13 MR. HARRIS: Then, you just -- what's added, then, or what's
14 different is actually the depth that's drilled and the
15 casing and whatever --

16 MR. KARAM: Right. Right.

17 MR. MASON: The actual difference in cost is the difference in
18 \$255,000 and \$233,000, which isn't great.

19 MR. HARRIS: About 10 percent, something like that.

20 MR. MASON: Yeah, it's not very much. Let me ask you another
21 question. Excuse me, Kevin.

22 MR. EVANS: I'm sorry I was just --

23 MR. MASON: Go ahead. I was going to ask them on a different
24 matter.

25 MR. EVANS: No, I'm just --

1 MR. MASON: I'm curious on the survey, Exhibit A. The survey
2 plat where it says 120.
3 MR. KARAM: I'm sorry. Where are you looking?
4 MR. MASON: The little table there on the left at the bottom.
5 It says acres.
6 MR. WIRTH: That is -- may I answer that? That is how many
7 acres in the total farm or what they call -- the tract is
8 called Big X 17 and complete tract 17 contains 120 acres.
9 That is just a nomenclature of the farm name that's been
10 throughout West Virginia, Virginia and Kentucky. They
11 just - how many acres in that complete Big X 17.
12 MR. MASON: Okay, so that's the tract out of which this will
13 survey?
14 MR. WIRTH: That's correct.
15 MR. MASON: It doesn't appear to me that anywhere on here --
16 does the surveyor tell us that the unit is, in fact, 80
17 acres? Is that correct?
18 MR. WIRTH: I don't believe it does. We just have to add up
19 every -- it's divided up 3. some odd acres and added and
20 it comes up to 80 acres on that. You're correct.
21 MR. MASON: Okay, well, I mean -- the thing that concerns me
22 about it is that we are working -- we don't know, based
23 on this without going through these mathematical, whether
24 this plat, in fact, conforms with an adjoining unit or
25 not. I would suggest that it might be appropriate to

1 have these plats reflect the actual acreage of the
2 drilling unit.

3 MR. WIRTH: We can. The previous Order on the Oakwood coal
4 bed methane --

5 MR. MASON: Oh, I understand that the field map does. But
6 when you actually -- don't you all get your permits off
7 of these things?

8 MR. WIRTH: Yes, that's correct.

9 MR. MASON: Well, you know, I think it would be appropriate
10 -- I don't know if the Board disagrees with me or not --
11 but these plats would reflect that this survey is, in
12 fact, a duplicate of the field rules map or the field
13 unit now.

14 MR. WIRTH: It's probably exact more because there was a
15 physical survey coming off the computer. But we can
16 instruct the surveyors to --

17 MR. MASON: I just think it would be appropriate that we would
18 know that each one of these individual plats would match
19 up with -- and I realize, you know, I think it's reason-
20 able to assume there may be some variances. I mean, it's
21 not a --

22 MR. WIRTH: The boundary at this, Mr. Mason, will be (in-
23 audible). We can instruct them, you know, if it's 111
24 like we previously had on the edge of the road down there
25 at Dewberry's on the 80 acre unit.

1 MR. MASON: Yeah, I understand that.

2 MR. CHAIRMAN: Any other questions of Mr. Karam? You don't
3 have any questions on the -- do you have any further
4 witnesses, Mr. Swartz?

5 MR. SWARTZ: No, I just want to point out to you all that the
6 AA9 plat shows 400 acres. I mean, this -- they are just
7 picking up a number that is meaningless to us and we will
8 address that 80 acre issue. In addition, all of these
9 show the elevation of the well site. So you can do the
10 quick math if that's of interest to you. That's all I
11 have.

12 MR. CHAIRMAN: Is it the Board's pleasure -- I'll go ahead and
13 entertain a motion. We can do it that way.

14 MR. EVANS: I'll move that we accept Oxy's proposal.

15 MR. CHAIRMAN: Okay, I have motion to accept the proposal as
16 presented.

17 MR. HARRIS: Seconded.

18 MR. CHAIRMAN: The motion is seconded. All in favor signify
19 by saying aye. Proposed say no. Thank you. (Motion
20 carries).

21 MR. SWARTZ: I'm not sure that I got a decision with regard to
22 AA-9.

23 MR. CHAIRMAN: Yeah, I'm going back to that right now because
24 I did deviate from that. We had general understanding
25 regarding AA9. Ken brought that to my attention at

1 lunch.

2 MR. SWARTZ: I didn't want to interfere with lunch, but it was
3 on my mind.

4 MR. CHAIRMAN: That's fine. I'll entertain a motion regarding
5 AA-9.

6 MR. MASON: I move that we accept Oxy's proposal to pool the
7 unit.

8 MR. CHAIRMAN: Okay, I have a motion.

9 MR. HARRIS: Second.

10 MR. CHAIRMAN: The motion is seconded. All in favor signify
11 by saying aye. Oppose say no. Motion carries. Thank
12 you.

1
2 ITEM 2
3

4 MR. CHAIRMAN: Now, we'll go back to item 2 on the agenda.

5 Okay, we're going to take up item 2 on the agenda.

6 Consideration by the Board of a permanent field rule
7 order for the Pilgrims Knob Gas Field in Buchanan County,
8 Virginia as approved by the Virginia Gas and Oil Board on
9 January 22nd. We'd ask all parties that wish to address
10 the Board regarding this matter to come forward to the
11 tables, please. The Board has before it a draft Order --
12 I'm sorry -- two draft Orders.

13 MR. MASON: Who are the draftees of the two orders?

14 MR. CHAIRMAN: Hugh Fain and Mike Lepchitz. I think, essen-
15 tially, they've generally reconciled any differences. I
16 think, you know, we're getting to the point that,
17 hopefully, what we'll do here with this draft Order is
18 answer any questions that the Board has and, then, I
19 would submit that we, at least, consider authorizing our
20 attorney, Mike Lepchitz, to work with Mr. Fain to
21 finalize the Order. But in the meantime, we'll go
22 through and try to answer any questions. Do you have any
23 opening statements?

24 MR. FAIN: Well, I would just say -- I'm not sure there is so
25 much differences between Mr. Lepchitz's draft and mine as

1 so much as refinement of language. Mr. Lepchitz prepared
2 a draft Order and was kind enough to show it to me and I
3 had some suggestions for refinements. I guess there are
4 three or four issues that are different in Mr. Lepchitz's
5 draft that the Board has and the draft that I prepared
6 that refined it. One of them is the issue of notice. I
7 think the Board will see that they're different. It was
8 Mr. Lepchitz's recollection that Oxy was an applicant for
9 field rules. It's my recollection that -- at first, we
10 thought that we were an applicant, but the Board clarif-
11 ied that for us at the December Board meeting and
12 reminded us that it was on the Board's own motion. That
13 they felt like field rules should be made for the
14 Pilgrims Knob area. The Board was asking for proposals
15 from various industry representatives. With that
16 understanding, Cabot then submitted a proposal, as did
17 Edwards and Harding, and I think some other folks made
18 some comments at the hearings. I made a change to
19 reflect that. On the Board's own motion, at the January
20 22 hearing, proposals were accepted from various parties.
21 The next change is a little more complicated. This is
22 probably the major area of -- it's not really concern. I
23 think Mr. Lepchitz and I agree with what the Board did
24 during executive session. It was my initial understand-
25 ing that as Cabot requested, the Board decided that the

1 field rules would apply equally with respect to other
2 natural gases that are found to be productive, aside from
3 the Berea formation. In other words, if a producer goes
4 for the Berea -- because the testimony is clear that that
5 is the main producing zone in this area
6 -- and just gets lucky enough and finds in it's produc-
7 tion log that there is a pay zone at the Big Lime or the
8 Raven Cliff or deeper at the Gordon, for example, that
9 they ought to be allowed to produce out of that zone.
10 It's Mr. Lepchitz's recollection -- the Board didn't
11 specifically say that these rules will apply to those
12 other zones, but that a producer is not precluded in any
13 way from producing out of these other zones that may be
14 found to be productive out of the same well bore when
15 they're shooting for the Berea.

16 MR. LEPCHITZ: That by adding -- consistent with his well work
17 permit.

18 MR. FAIN: Exactly. As long as they make it clear in their
19 well work permit that these other target zones are
20 potential targets. So, with that understanding, the
21 second -- I guess, my order, my refined order with
22 handwritten notes that I made today -- reflect that
23 understanding. That is that these field rules will apply
24 only to the Berea formation for spacing purposes and for
25 unitization purposes. But if a producer, in going for

1 the Berea formation, gets lucky and sees on his produc-
2 tion log that the big line, for example, is producible,
3 they can frack there to and produce out of the same well
4 bore. By the same token, if they do that on one unit
5 and, then, they go to the next unit adjacent and are
6 producing -- shooting for the Berea again and, again, get
7 lucky and hit the big line, they ought to be able to
8 produce out of both of these well bores -- the additional
9 pay zones if they happen to get lucky. This second Order
10 that I draft reflects that understanding. Mr. Lepchitz
11 and I can talk further about it, but I think -- aside
12 from language refinements -- we're in agreement with that
13 understanding is what the Board intended when it went
14 into executive session.

15 MR. CHAIRMAN: Have you got anything to add, Mr. Lepchitz?

16 MR. LEPCHITZ: No, that is a accurate compilation of our
17 discussions.

18 MR. FAIN: Another issue. Mr. Lepchitz's draft left blank a
19 space for what the minimum distance ought to be between
20 the wells going to the Berea formation in this Pilgrims
21 Knob field and Cabot has suggested 1,700 feet as the
22 minimum distance between wells. The reason we suggest
23 1,700 feet is that with the 180 square units, each side
24 square is going to be 2,800 feet. Half of that, which
25 would be the radius from the center to the boundary, is

1 1,400 feet. Now you also have a 300 foot set off for
2 each unit. So 300 feet additional into the next unit
3 totals 1,700 feet. So if one producer puts a well right
4 on his window boundary -- 300 feet off of the unit
5 boundary -- 1,700 feet gets you back to the square -- the
6 center of the next boundary. Therefore, you can get back
7 on center spacing if someone elects to put a well right
8 on the 300 foot window. In addition, if someone is in
9 the center of a unit, that means the adjacent unit has
10 full flexibility to use the entire window for drilling
11 purposes. So that's why we think 1,700 feet is an
12 appropriate minimum distance for wells in the Berea
13 formation in the Pilgrims Knob area.

14 MR. MASON: Mr. Chairman?

15 MR. CHAIRMAN: Mr. Mason.

16 MR. MASON: Why have you added to that that no exception will
17 be granted?

18 MR. FAIN: Where is that? Mr. Lepchitz's has draft written on
19 top.

20 MR. MASON: I'm just curious. I mean, no exception will be
21 granted.

22 MR. FAIN: I don't think that's in the Order. In fact, the
23 Order says that the inspector may consider a case by case
24 location exceptions upon the appropriate showing of
25 evidence.

1 MR. MASON: Tom, is that your --

2 MR. FULMER: The reason for that, conceivably, whatever

3 distance you may have, if the Board allows the exception

4 within the drilling windows, then you could conceivably

5 have two wells sitting in the exception area that's less

6 than the distance -- 600 feet. So whatever you set the

7 distance between the well, there cannot be no exceptions.

8 MR. EVANS: Either that or you change the offset.

9 MR. MASON: Well, I understand that there shouldn't be any

10 wells within the 600 foot window, you know, the three and

11 three. But if you -- in effect, what you're doing when

12 you say that -- I don't know. I mean, it may, in fact,

13 if someone elects to drill right next to the window, and

14 depending on the topography of an adjoining well unit,

15 that may preclude them from drilling that unit at all.

16 It's sort of a race to pick your location.

17 MR. FAIN: There is language in the proposed Order -- both

18 proposed Orders, Mr. Lepchitz's and mine.

19 MR. FULMER: Only if the two adjacent wells were in the same

20 section there. See you've already allowed -- what's

21 written into the Order -- that the inspector will allow

22 exceptions within the drilling window.

23 MR. MASON: As I read this, though, it says a minimum spacing

24 between conventional natural gas wells drilled in the

25 Berea shall be 1,400 feet and no exception shall be

1 granted.

2 MR. CHAIRMAN: What he's saying is that 1,700 feet is the
3 recommendation. You know, that's one thing, obviously,
4 we have to decide. We may as well decide both of those
5 of whether or not we feel that saying no exception shall
6 be granted is necessary here. Is that unduly binding?

7 MR. MASON: Yeah. I just have a -- I guess I always have, you
8 know, life being what it is. I sometimes have problems
9 when you say you won't change anything. You know, there
10 are facts and circumstances that produce reasons not to
11 be rigid. Sir?

12 MR. FAIN: From Cabot's perspective, I'm real unclear on that.
13 I didn't know that that was a suggestion. In fact, as I
14 understand, when the Board came out of executive session
15 and, then, the handwritten motion -- it said that the
16 inspector may consider location exception on a case by
17 case basis. That is reflected in my --

18 MR. MASON: I understand that in no event should it be less
19 than 600 feet.

20 MR. FULMER: That's not what the exception is. You're
21 confusing two different exceptions. The exception is
22 drilling within the window. It's not between distance
23 between wells, it's drilling in the window --

24 MR. MASON: I understand. What that would be there would be
25 no wells ever closer to each other than 600 feet. That

1 would be 300 foot of one window on one side and 300 feet
2 on the other. That's not what this says.

3 MR. FULMER: But if you had two wells in the same exception
4 on the same side of the unit, is what you're trying to
5 address.

6 MR. EVANS: Can you go to the blackBoard and show me what
7 you're talking about?

8 MR. FULMER: What I'm talking about is you've got two units,
9 you've got this window and you've got this unit and
10 you've got this one. You allow one to drill here and one
11 to drill there --

12 MR. MASON: That's not what I'm talking about.

13 MR. FULMER: That's what I'm talking about.

14 MR. MASON: But what I'm saying, if you put this language in
15 here that the distance shall be 1,400 or 1,700 feet and
16 there will be no exceptions --

17 MR. EVANS: That could never happen.

18 MR. MASON: That -- could not only can that never happen, but
19 (inaudible) you know, you can't never have --

20 MR. CHAIRMAN: 1,700. You said minimum distance is whatever
21 you choose.

22 MR. MASON: What I'm talking about is that if you've got to
23 drill -- somebody drills right here it would mean that,
24 and say this was right over here and there was 300 feet
25 here. Then, this guy would have to be over here at least

1 1,400 feet or he couldn't drill. I don't think that's --
2 I don't -- you know, that's pretty harsh.
3 MR. FULMER: He said 1,700 feet.
4 MR. FAIN: Right. Providing the inspector has the latitude as
5 it says in the Board's motion when you came out of
6 executive session.
7 MR. MASON: But that's not what it says.
8 MR. FAIN: I don't know. I haven't seen that.
9 MR. FULMER: What does it say?
10 MR. CHAIRMAN: It's penciled in comments that (inaudible) on
11 and on that draft order.
12 MR. MASON: What I'm trying to do is if the inspector can
13 grant exceptions (inaudible) drilling in the window. I
14 don't have any problem with saying that in no event can
15 anybody drill closer than 600 feet which would effective-
16 ly protect these two windows. That's my problem.
17 MR. CHAIRMAN: I don't think you're going to say that either.
18 Because you said that there would be some discretion
19 allowed to prove a well in there.
20 MR. MASON: You mean if a guy on the other side drilled one
21 all the way over on the window on the other side?
22 MR. CHAIRMAN: Yeah.
23 MR. MASON: Then you might would allow the guy on this unit to
24 come in there. Yeah, I agree with that.
25 MR. CHAIRMAN: It's unlikely, but I mean, here again, do you

1 want to tie your hands? I mean, making the same point
2 you are, is it wise -- is there a need for us to say no
3 exception when, in fact, we're here to consider requests
4 for exceptions. That somebody can come in with a need
5 and present it and still do all -- protect the correla-
6 tive rights and do all the things we're here to protect.
7 Then, in fact, do we want to bind any further than that?

8 MR. FAIN: I agree with you both. I think the concept is that
9 -- the presumption is that there shall be 1,700 foot
10 minimum distance and that's what ought to happen on a
11 case by case basis. If you have a good reason for an
12 exception, you ought to be able to pitch it to the Board
13 or to the inspector and get an exception if you can. But
14 the presumption is there ought to be a 1,700 foot
15 minimum.

16 MR. LEPCHITZ: That's clearly the intent of the Order.

17 MR. FULMER: Well, that brings up the other thing. The
18 comment that I made is address the problem. If you're
19 going to space wells, how are you going to space them?
20 What number are you going to give them? That was the
21 basis of my comment is what it amounts to.

22 MR. CHAIRMAN: Right. Right. You're trying to get -- what is
23 this distance we should be dealing with. Of course, when
24 you tack on no exception, it's different. Excuse me?

25 MR. FAIN: This is Jim Leedy who is regional exploration

1 manager for Cabot Oil and Gas Corporation.

2 MR. LEEDY: Cabot still feels there is only going to be one
3 well per unit if that's Mr. Fulmer's worry about having a
4 1,700 foot spacing. Nominally, there will still only --
5 on an overall basis, there would still be something like
6 a 2,800 foot average well spacing out there that would be
7 the dimensions of these units. The minimum would be
8 1,700, but still only one Berea well per unit. So --
9 there will be no more than one Berea.

10 MR. FULMER: I don't have no problem with that. What I'm
11 saying is if the Order is going to require a distance
12 between wells, what window will they be assigned to?
13 Will they be assigned 300 feet, 200 feet, 100 feet?

14 MR. LEEDY: Minimum distance.

15 MR. FULMER: Minimum distance, see -- the problem comes if
16 you allow two wells in the same (inaudible) window inside
17 the unit that could conceivably (inaudible).

18 MR. FAIN: That's why we would suggest a minimum distance of
19 1,700 apply and be stated in the Order -- unless there's
20 a darn good reason to have an exception to that which you
21 would have to show to the inspector.

22 MR. FULMER: Well, I don't have no problem with that. I guess
23 the way I wrote that is probably different. What I'm
24 saying is you have to be -- whatever distance you choose,
25 you can't go down low unless you come back to the Board.

1 Because the only thing that I can grant is an exception
2 within the window. That's the part I'm getting to.

3 MR. FAIN: Right.

4 MR. CHAIRMAN: Is 1,700 feet the general acceptance?

5 MR. FAIN: Well, I would add this, though. In the handwritten
6 Order that came out of the executive session, it says
7 that the inspector should be given authority to consider
8 exceptions to the 300 foot set back on a case by case
9 basis.

10 MR. LEPCHITZ: I think that's the window area.

11 MR. CHAIRMAN: That's the window he's referring to.

12 MR. CHAIRMAN: This area right here. Does everybody under-
13 stand that?

14 MR. FAIN: Right. And he's got the authority on a case by
15 case basis to allow a well to be placed closer than 300
16 feet to the unit boundary.

17 MR. CHAIRMAN: That's right -- based on presentation and
18 acceptance of that.

19 MR. LEPCHITZ: Exceptions to the 1,700 foot rule still come
20 here.

21 MR. FULMER: Yeah, that's the part I was trying to address.
22 You still have to go back to the Board for the excep-
23 tions.

24 MR. FAIN: We can work on that language. In fact, I'm not
25 sure that either draft specifically says that -- that the

1 inspector shall have --

2 MR. CHAIRMAN: I think that's an important point to get
3 clarified.

4 MR. FAIN: I think it is.

5 MR. CHAIRMAN: He has exception authority for the 300 foot
6 window and the Board has the exception authority for the
7 1,700 or 1,400 or whatever we decide.

8 MR. MASON: That's what I wanted.

9 MR. EVANS: I just had a -- maybe whoever -- if you've worked
10 on this, Mr. Fain, and whoever else. 300 feet, as I got
11 to thinking about that, a 300 foot off set. You've got
12 180 acre unit. You've got a 300 foot off set. Is that
13 sufficient to -- it gives you a heck of a large area in
14 which to drill and it's not very restrictive. Is there
15 the potential for an operator to come in and drill one
16 corner? Say he has four units -- most of it under lease
17 and whatever else -- but different royalty people and
18 whatever else. So he drills his one in the corner and
19 effectively you have a presumption of circular drainage.
20 Well, you know, your circular drainage -- you're in a
21 field rule now, so you can affect 300 drilling units that
22 may not be drilled.

23 MR. FAIN: I have three comments to that. First, as I
24 understand, this Board wanted a wide window to allow for
25 maximum flexibility to work with mine plans so that we

1 can avoid longwall panels. That was the idea behind
2 getting a wide window. Second, to prevent that problem
3 from occurring, and you're never going to prevent
4 drainage from offsetting the units, but one way to help
5 prevent that problem is the minimum distance requirement.
6 Another well can't be within 1,700 feet of that well,
7 anyway. Finally, I would add, if you look at Cabot's
8 Exhibit, I think it's 4 or 5, to the proposal we sub-
9 mitted, you'll see that Cabot owns the great majority of
10 all of this acreage anyway. So I'm not saying there
11 aren't going to be some fringe areas where there are
12 going to be some offset problems, but there aren't going
13 to be many. Most of this Pilgrims Knob area either has
14 already been developed or unitized or the remaining
15 acreage, Cabot is probably going to be developing.
16 Cabot feels comfortable with the other developers that
17 own the remaining acreage -- Ashland, for example --
18 that we will be able to work those kinds of problems out.

19 MR. EVANS: Let me ask you one other thing. If I'm not
20 mistaken, were there not some units already put together?

21 MR. FAIN: Yes, and that was my number four point on my list.
22 Mr. Lepchitz's Order didn't address it, but my draft
23 Order does. I think the Board said in executive session
24 that these rules should not apply to units that are
25 already in existence and shall not affect those. My

1 draft addresses that issue so they're included in my
2 draft. One other thing that my draft addresses that
3 wasn't in the first one was that these field rules shall
4 apply to all permits that were filed after July 1, 1990.
5 In that regard, Cabot asked for in its proposal, and I
6 hope the Board would consider also, making it clear in
7 this Order that units that have already been permitted,
8 but after July 1, 1990, would have a liberal location
9 exception if they happen to fall not within a window. I
10 think that was the Board's intent. Mike, that's one
11 thing that you and I might -- I don't think that I
12 addressed that in my Order, specifically. We may want to
13 address that.

14 MR. CHAIRMAN: So we have, really, one critical issue before
15 us. That is, as I see it -- we'll take up any others --
16 is 1,700 feet acceptable?

17 MR. EVANS: It is to me.

18 MR. KELLY: I have no problem.

19 MR. MASON: I would venture to say it was appropriate.

20 MR. CHAIRMAN: Any other questions?

21 MR. KELLY: I just have one question. Maybe this has already
22 been taken care of. I assume it has, some way. On the
23 pre-existing units, some of those were irregular shapes
24 and so forth, I assume this plan just fits up against
25 those wherever they may fall and continues out from

1 that. Is that --

2 MR. FAIN: Some of the units that butt up against them or

3 either oversized or slightly undersized. But they can

4 fit into the pattern.

5 MR. CHAIRMAN: Anything else?

6 MR. MASON: Do we need a motion? I'd like to --

7 MR. CHAIRMAN: I'd like to have a motion to -- well, we can do

8 that or have the attorney put together the Order and

9 acceptance of this draft as -- and the discussion.

10 Incorporating the discussions to prepare a final Order

11 for the Board.

12 MR. MASON: I guess my question was would that include

13 adoption of it now?

14 MR. LEPCHITZ: Yeah, it would be --

15 MR. FULMER: I have a map to go along with this -- having all

16 the wells located on. For your information and purposes,

17 by having a map that shows all the units

18 MR. CHAIRMAN: Just tie it in with the state plane coordinates

19 and it would be a part of the Order.

20 MR. MASON: I so move the adoption of the Order as amended by

21 the discussions to include the map.

22 MR. CHAIRMAN: Okay. I have a motion.

23 MR. FAIN: We had one other question. I don't know if it's

24 appropriate to bring up now. We were curious to know how

25 you wanted to designate these units -- alpha-numerically,

1 sort of following the Oxy coal bed methane Oakwood field
2 order or do you want to address that now. At this point,
3 this map doesn't designate the units by --
4 MR. MASON: There's no x and y access designation.
5 MR. FAIN: Right. I think that needs to be done. I don't
6 know if want to do it now or clear it up later, but at
7 some point we need -- you may say in your motion that you
8 authorize the attorney general to --
9 MR. CHAIRMAN: We'd just have the staff forward it to the
10 Attorney General's office unless someone has a specific
11 recommendation.
12 MR. FAIN: It matches up with the Oakwood coal bed methane
13 grid if you call it AA -- no, that doesn't work because
14 they've got some AA's.
15 MR. LEPCHITZ: There's a AA. Why don't you call it Pilgrims
16 Knob A1?
17 MR. FAIN: PK A1 or something like that.
18 MR. MASON: That's a good idea. Then you could tell where
19 they were.
20 MR. MCGLOTHLIN: Mr. Chairman, I've been looking at this map
21 a little bit more in detail. It seems to me that we
22 requested that this be squared up so there wasn't a
23 jagged edge on these things.
24 MR. FAIN: If I could address that. We specifically discussed
25 that when you all came out of executive session. In

1 fact, my handwritten notes reflect that -- I asked if you
2 all wanted to square it up or if you wanted to leave it
3 jagged. You told me to leave it jagged. So I made this
4 note to myself. It was my recollection that you wanted
5 to follow, as closely as possible, the isopac line.

6 MR. CHAIRMAN: That was the key -- to stay in the isopac line,
7 I believe, Kevin.

8 MR. MCGLOTHLIN: I don't recall that. I recall that -- well,
9 maybe that I requested or I asked that it be squared up
10 and somebody overruled me.

11 MR. LEEDY: The handwritten Order, Mr. Chairman, says "The
12 direction of nine of the coal bed methane units in the
13 Oakwood field into four equal squares, commencing with
14 the northwest corner of unit B23 in the Oakwood field
15 map and incorporating all of the proposed field without
16 gaps, as encompassed by the five foot isopac described in
17 Exhibit 1 to the Cabot proposal. Therefore, we followed
18 that five foot around with the unit line.

19 MR. CHAIRMAN: Yeah, that was the outer five foot isopac line,
20 is what we directed, which did cause them to --

21 MR. MCGLOTHLIN: I understand. It was just -- it seems to me
22 if we squared it up, it would be a whole lot easier for
23 the next one to do it.

24 MR. CHAIRMAN: It may have been terminology. I think it is
25 squared up around the edges. So maybe you were saying

1 one thing --

2 MR. MCGLOTHLIN: I was thinking that the next --

3 MR. CHAIRMAN: And we were thinking something else.

4 MR. CHAIRMAN: They squared it up around these edges --

5 MR. EVANS: Maximum coordinates is what you're talking about?

6 MR. MCGLOTHLIN: Yeah.

7 MR. MASON: You want it rendered into one single square.

8 MR. CHAIRMAN: I don't think anybody picked up on that, Ken.

9 MR. MCGLOTHLIN: Or a rectangle or whatever and that was

10 basically so -- it might be three months down the way or

11 six years or ten years down the way -- the next field

12 rule's answer is easier to square up.

13 MR. KELLY: That would be outside the field boundaries,

14 though, wouldn't you -- it may be irrelevant.

15 MR. MCGLOTHLIN: It could be out.

16 MR. CHAIRMAN: Okay, he's made a motion that we direct the

17 attorneys to prepare an Order for the Board and incor-

18 porate the map as part of the Order.

19 MR. KELLY: Second.

20 MR. CHAIRMAN: I have a motion to second. Any further

21 discussion? All in favor signify by saying aye. Oppose

22 say no. Motion carries. Thank you.

23 MR. FAIN: Mr. Chairman, this means that we can submit the

24 Order to you and you can sign it without having to come

25 before the Board again? Is that my understanding?

1 MR. CHAIRMAN: We'll finalize the Order without having to come
2 back.

3 MR. MCGLOTHLIN: Mr. Chairman, before we get on to the next
4 agenda. Just out of curiosity. Did we receive the map
5 from Edwards and Harding from the last hearing?

6 MR. CHAIRMAN: I haven't received --

7 MR. MCGLOTHLIN: I wonder if Edwards and Harding could address
8 that if they're here today.

9 MR. FULMER: Kevin, I'm at a loss. We were supposed to
10 receive 10 copies of the maps (inaudible).

11 MR. CHAIRMAN: That was a map, you're talking about, that they
12 used as an exhibit at the last meeting. Okay. It was
13 the one that shows the wells that you're planning on
14 drilling nearing the National Forest Land on this side --
15 I don't know if it was forest but at least ANR land on
16 this side. It was a big map that did span a couple of
17 counties.

18 MR. MCGLOTHLIN: I would like the record to reflect that we
19 have not received that.

20 MR. CHAIRMAN: Would the parties that wish to address the
21 Board regarding item 23 please approach the tables?
22 This is a petition for the establishment of a compulsory
23 pooled drilling unit from Oxy USA, Inc. for proposed well
24 CBM-I-U12, located on the Ida Meadows surface near
25 Skeggs, off Route 627 in the Grundy District. Docket

1 Number VGOB-0430-107.
2
3

4 MARTIN E. WIRTH

5 a witness who, after having been previously sworn, was
6 examined and testified as follows:
7

8 DIRECT EXAMINATION
9

10 BY MR. SWARTZ:

11 Q. I need you to state your name for the record again.

12 A. Martin E. Wirth.

13 Q. I'm just going to remind you that you're under oath. Did
14 you prepare the notice of hearing, application, and some
15 of the exhibits that accompany the application and
16 notice?

17 A. Yes, I did.

18 Q. Did you, in fact, sign the notice and the application?

19 A. Yes, I did.

20 Q. Did you mail copies of the notice of hearing and applica-
21 tion to anyone?

22 A. Yes, I did.

23 Q. Are those people listed in the notice of hearing?

24 A. That's correct.

25 Q. There are three parties?

1 A. That's correct.

2 Q. Did you receive return receipt cards indicating that
3 someone on behalf of these three companies accepted that
4 mail?

5 A. Yes, I did.

6 Q. So we don't have any outstanding mail here?

7 A. No.

8 Q. Have you filed proof of mailing as Exhibit F with regard
9 to this unit -- 10 copies of that with the Board?

10 A. Yes, I have.

11 Q. Did you publish in a newspaper with regard to this unit?

12 A. Yes, we did.

13 Q. What newspaper?

14 A. That would be The Bluefield Daily Telegraph.

15 Q. That would be the same date that we've been talking about
16 here which is April 17th?

17 A. That's correct.

18 Q. Was the entire notice published -- and the map?

19 A. That's correct.

20 Q. Did you file 10 copies of the certificates of publication
21 that you received from the newspaper with the Board as
22 Exhibit E?

23 A. Yes, we did.

24 Q. With regard to the application, Oxy is the applicant?

25 A. That's correct.

1 Q. The people who are to be respondents, are they all
2 identified in Exhibit B?

3 A. Yes, they are.

4 Q. Would you read their names?

5 A. Garden Realty Corporation, Consolidation Coal Company,
6 Columbia Gas Transmission Corporation and, under another
7 tract, again, Garden Realty Corporation becomes involved.

8 Q. You've already testified that you sent notice to those
9 people?

10 A. That's correct.

11 Q. Do you wish to dismiss any of these respondents listed in
12 Exhibit B?

13 A. Not at this time, no.

14 Q. Do you wish to add any people beyond the people that you
15 have listed on Exhibit B that should be respondents in
16 your judgment as of today?

17 A. No.

18 Q. In general, what did you do to identify these people or
19 entities as persons that should receive notice of this
20 pooling application?

21 A. Again, Oxy USA approached the courthouse and went through
22 any and all records that was available to us -- tax
23 records, recording information, deeds. We also checked
24 with local banks, telephone directories and everything we
25 can and any known title opinions, should we have one

1 available.

2 Q. With regard to Exhibit A, if you would turn to that for a
3 moment. What is the size of this unit?

4 A. The size of this unit is 80 acres.

5 Q. The tract that covers part of this unit that's shown on
6 the survey is what acreage?

7 A. That is U-12?

8 Q. With regard to U-12. The surveyor wrote in an acres
9 blank a number, didn't he?

10 A. Yes, that's W. Clyde Dennis, et al farm containing 228.74
11 acres.

12 Q. That has no relationship at all to the size of this unit?

13 A. No, it does not.

14 Q. In the application, have you specifically stated and
15 requested that this unit be formed pursuant to the
16 Oakwood rule and that it is approximately an 80 acre
17 square.

18 A. That's correct.

19 Q. The Exhibit A, Page 2. Does that disclose the nature of
20 Oxy's interest in this unit?

21 A. That's correct.

22 Q. What, generally, is Oxy's interest in this unit U12?

23 A. Oxy has leased coal bed methane rights from 100 percent
24 of the coal owners. 94.21 percent of the oil and gas
25 owners. We have not leased 93.58 percent of the oil and

1 gas owners' gross acreage under this unit.

2 Q. So, essentially, you have leases from all of the coal

3 owners and just some of the oil and gas owners?

4 A. That's correct.

5 Q. Are you relying on those leases to give you standing to

6 file this pooling application?

7 A. That's correct.

8 MR. CHAIRMAN: I might just toss out a challenge to us all to

9 think about and to try to figure out a better way of

10 presenting these percentages. I mean, I don't have one

11 to suggest. I don't know that anyone does. I'm not

12 being critical but -- just if we can figure out a better

13 way to depict this it might help everyone.

14 MR. SWARTZ: I have a suggestion that maybe you all could

15 respond to. I'm not sure that we need to even tell you a

16 percentage. We could tell you we have the following

17 leases and not even get into percentage. All we have to

18 do is demonstrate, in my judgment, that we have an

19 interest as a claimant. We don't even have to fool with

20 percentages, frankly, to have standing. That would be a

21 lot easier for everybody.

22 MR. CHAIRMAN: Well, let us think about that and let's just

23 think about ways that we can -- with whatever is included

24 in the application, that we can just better depict what's

25 going on here.

1 MR. SWARTZ: Because we could give you, you know, a listing of
2 some leases --

3 MR. CHAIRMAN: The same kinds of questions can keep coming up
4 over and it can be confusing. I think we understand how
5 you arrived at --

6 MR. WIRTH: We could work with your staff and the Attorney
7 General's staff and maybe come up with something that
8 would be more.

9 MR. SWARTZ: We'll do something between -- well, it's going to
10 take two months because we've already filed their
11 applications. Not next time, but the following time.

12 Q. (Mr. Swartz continues.) There is an Exhibit D, again,
13 with regard to -- just an example of what an escrow might
14 look like?

15 A. Yes, there is.

16 Q. Since we finally got to the one I thought I was going to
17 start with, is this the one that has the second page that
18 explains it a little bit?

19 A. Counsel, you finally got it. Yes, sir.

20 MR. SWARTZ: We've been through this, but Exhibit D was an
21 effort just to give you an example of what, you know, if
22 we were to make an escrow recommendation or anticipate
23 what escrow might look like on this unit, it's set forth
24 in there for royalty interest and working interest. It
25 gives you an example and Marty did give you an explana-

1 tion with regard to this one. We have previously filed
2 as Exhibit H, which was marked with regard to this unit
3 the affidavit of Ken Price with regard to authority.
4 I've got 10 copies of Exhibit G, which is the consent to
5 frack with regard to this particular unit U-12. Why I'm
6 handing you stuff, we've also have Exhibit H-1, which is
7 a proposed border, for exhibit.

8 Q. (Mr. Swartz continues.) Is Oxy a Delaware corporation
9 authorized to do business in the Commonwealth?

10 A. Yes, it is.

11 Q. Has Oxy duly qualified itself with regard to filing of
12 bonds and other information with the DMME?

13 A. Yes, it has.

14 Q. Does the application set forth the projected depth of
15 this well?

16 A. Yes, it does.

17 Q. What is that depth?

18 A. The projected depth is 2,444 feet.

19 Q. The estimated cost, as shown on Exhibit C, is what
20 amount?

21 A. \$270,005.

22 Q. Are you requesting that the Board pool all interests and
23 estates of any and all persons, specifically the respon-
24 dents named in this action, their interests and estates
25 in coal bed methane in this 80 acre unit?

1 A. Yes, we are.

2 Q. You're asking that they establish an election procedure
3 which we've previously discussed?

4 A. Yes, I am.

5 Q. And that election procedure is one of the election
6 options involved -- a cash bonus and a royalty?

7 A. That's correct.

8 Q. What are you currently offering people that you might
9 voluntarily contract with in terms of a bonus for coal
10 bed methane and royalty?

11 A. \$1.00 an acre with a one-eighth royalty interest.

12 Q. Does the proposed Order that has been submitted here,
13 Exhibit H-1, with regard to unit U12, contain a provision
14 for \$1 bonus and a one-eighth royalty?

15 A. Yes, it does.

16 Q. You are also making provision in your proposed Order and
17 requesting that the Board enter an Order dealing with
18 issues of participation and carry operatorship status?

19 A. That's correct.

20 Q. Are you requesting that Oxy be designated the operator
21 with the right to drill, develop, produce, market, and
22 sell this gas?

23 A. Yes, we are.

24 Q. You have provided, have you not, for escrow of funds to
25 the extent it's necessary in your proposed Order?

1 A. That's correct.

2 Q. Have you recommended in your proposed Order that the

3 Order have a specific period that it's in effect?

4 A. Yes, we have.

5 Q. What would that be?

6 A. 365 days from the date of issuance of the Order.

7 Q. Unless what?

8 A. Unless we drill the well.

9 Q. Or commence operations?

10 A. Commence operations.

11 Q. Does the Order provide that the duty to mail copies of

12 the Order with regard to any elections -- rights the

13 people have -- is on Oxy?

14 A. That's correct.

15 MR. SWARTZ: That's all I have.

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

17 other parties have questions?

18 MR. EDWARDS: I have no questions. I would just like to make

19 a statement for the record. Rex Edwards, Jr., staff

20 attorney for Columbia Natural Resources. On Exhibit A

21 and Exhibit B of Oxy's application, Columbia Gas Trans-

22 mission Corporation is listed as owning the lessee's

23 interest in the oil and gas interest in this property --

24 or at least a percentage of the property. I just want to

25 assert for the record that the ownership is properly in

1 Columbia Natural Resources, Inc., not Columbia Gas
2 Transmission. I don't have the recording information,
3 but I can get that to Marty. That property has been
4 assigned to CNR. Just for the sake of going on the
5 record, we would like to assert CNR's claim to the
6 ownership of the oil and gas in the unit and, therefore,
7 the interest in the coal bed methane in the unit.

8 MR. SWARTZ: Let me ask you this. Could you agree that we
9 could safely provide it in the Order to just substitute
10 CNR for the transmission company?

11 MR. EDWARDS: Yeah.

12 MR. SWARTZ: You would have the authority to tell us we could
13 do that?

14 MR. EDWARDS: It wouldn't be any problem.

15 MR. SWARTZ: So we can just change the name of the respondent
16 in the Order.

17 MR. CHAIRMAN: Would you make that amendment?

18 MR. SWARTZ: I will do that, but I wanted to get him to say it
19 was all right.

20 MR. CHAIRMAN: Okay. So you will follow up by filing an
21 amended --

22 MR. SWARTZ: Yes. Proposed Order.

23 MR. HASON: If I may butt in again. I was just going to say,
24 do you waive notice of an amendment to this Order?

25 MR. EDWARDS: Yes.

1 MR. HCGLOTHLIN: I'm sure the question I have should be
2 addressed to MR. KARAM:. You're going to be calling
3 him --
4 MR. SWARTZ: Absolutely. He'll be fair game in a moment.
5 MR. CHAIRMAN: Any other questions of Mr. Wirth? Members of
6 Board? Call your next witness, please.

7
8
9 MARK S. KARAM

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

12
13 DIRECT EXAMINATION

14
15 BY MR. SWARTZ:

16 Q. Would you state your name for the record?
17 A. Mark S. Karam.
18 Q. I'll remind you -- you're still under oath. You have to
19 answer out loud, Mark.
20 A. Yes.
21 Q. Did you prepare a DWE with regard to unit U12?
22 A. Yes, I did.
23 Q. Is that marked as Exhibit C?
24 A. Yes.
25 Q. What is the proposed depth of this well?

1 A. 2,444 feet.

2 Q. Does this DWE take that into consideration?

3 A. Yes.

4 Q. What is the amount that you estimate would be the
5 reasonable cost of drilling the well in question?

6 A. \$270,005.

7 Q. Have I asked you to change the format of these DWE's?

8 A. Yes.

9 Q. Have I asked you, for the next filing, to segregate costs
10 which are sensitive to depth from those which are not?

11 A. Yes.

12 Q. So will we be seeing a DWE with two categories?

13 A. Yes.

14 Q. For example, if we were to pick some costs which were not
15 sensitive to the depth of the well, meaning -- which
16 wouldn't change. Would stimulation change or not change?

17 A. Not.

18 Q. So it's not sensitive to depth?

19 A. No.

20 Q. How about contract hauling?

21 A. No, it shouldn't change.

22 Q. How about the service rig? Is that somewhat depth
23 sensitive?

24 A. That's questionable. It could be, yeah.

25 Q. But are you going to make an effort to try and pull out

1 the ones that are and are not and list them separately?

2 A. Yes.

3 Q. What is the target of this well?

4 A. The Pocahontas Number 3 coal seam.

5 Q. Have you looked at the depth of this well and the data to

6 satisfy yourself that this well will indeed -- if it's

7 drilled to its projected depth -- will indeed penetrate

8 and be able to produce from the Pocahontas Number 3 seam?

9 A. Yes.

10 Q. Is it your opinion that Pocahontas Number 3 seam will be

11 fracked?

12 A. Yes.

13 Q. Do you have an opinion with regard to whether or not

14 there will be additional fracks at this point?

15 A. Maybe. Probably.

16 Q. You've provided for how many fracks or stimulations in

17 this estimate?

18 A. Three.

19 Q. Are you generally familiar with and did you assist in

20 preparing the notice of hearing and application and some

21 of the other exhibits?

22 A. Yes.

23 Q. In your opinion as an engineer, is Oxy's proposed well

24 and development of this unit a reasonable method to

25 develop the coal bed methane resource within unit U12?

1 A. Yes, it is.

2 MR. SWARTZ: That's all I have.

3 MR. CHAIRMAN: Any questions?

4 MR. EVANS: I have a question. We've looked at three coal bed
5 methane wells today and DWE's from each one. There are
6 certain fixed costs that are there no matter what and,
7 then, there are others that are depth sensitive. Correct
8 me if I'm wrong. We've looked at a 1,500 foot well, a
9 2,100 foot well, and, now, a 2,400 foot well, is that
10 correct?

11 MR. KARAM: Right.

12 MR. EVANS: Is that pretty close?

13 MR. KARAM: Basically, yes.

14 MR. EVANS: So we've got -- for a 1,500 foot well, we've got a
15 total cost of \$233,000. For a 2,100 foot well, we've got
16 \$255,000, and 2,400 foot, we've got \$270,000, is that
17 correct?

18 MR. KARAM: Yes.

19 MR. EVANS: 600 feet of difference -- we've got \$22,000. 600
20 feet less, we've got \$22,000 difference. 300 feet more,
21 we've got \$15,000. Why is there a differential when we
22 go deeper? Does our cost per foot change if the depth is
23 the only thing that's different?

24 MR. KARAM: Well, you know, you're going to have some costs
25 in here that are not going to change. You're going to

1 have a basic figure -- you know, if I could say, "Well,
2 it's going to cost you about \$220,000 to drill a well".
3 Then after that, it's going to be hard to say, "Yeah,
4 it's going to cost exactly this, this, this", to go that
5 much deeper. What I base mine on is on how much extra
6 pipe we're going to run, on how much extra day rate is
7 going to cost. That's more or less --

8 MR. EVANS: My only question is why is there such a -- if
9 you're going shallower? If you're only drilling 1,500
10 feet, I would think that that would be a tremendous
11 decrease on a foot basis.

12 MR. KARAM: See that's what I'm saying. You got a pretty
13 good fixed cost right now, say, if you go to 1,500. To
14 go that much deeper, you know, I can't say, "Well, it's
15 going to increase or decrease (inaudible) or whatever".

16 MR. EVANS: But there is no incremental cost, you know, as far
17 as -- you're saying that to drill 1,500 feet --

18 MR. KARAM: Which figure was that?

19 MR. EVANS: \$233,000. Now, drill 2,100 feet or 600 more feet.
20 It only costs you \$255,000. So you've drilled 600 feet
21 for \$22,000. Now, we want to go 300 feet more than that
22 2,100 and, now, we're at \$270,000.

23 MR. KARAM: That's \$15,000, right?

24 MR. EVANS: Uh-huh.

25 MR. KARAM: Well, that, you know that almost stands to

1 reason, then, if I understand you correctly. If you go
2 from 1,500 to what was the second well? What was the
3 depth on that one?

4 MR. EVANS: 2,100.

5 MR. KARAM: 2,100, that's 600 feet so it's going to cost you
6 a little more to go 600 feet than it is going to cost you
7 to go 300 feet. I mean, I'm not going to sit here and
8 say, "Oh, yeah, it's directly proportionate to the depth
9 and all that". These are estimates.

10 MR. EVANS: 600 feet, that's \$22,000. That's what you're
11 saying?

12 MR. KARAM: Ball park figures.

13 MR. EVANS: Now, you're saying 300 feet or half that, for
14 \$15,000, right? It just depends on which way we're going
15 here it looks like. The deeper we go, the more the
16 differential is. I mean, as far as --

17 MR. KARAM: Well, see that's true --

18 MR. EVANS: Per foot cost.

19 MR. KARAM: That's probably right. Because when you go
20 deeper, you know, you're going to have more rig time,
21 more footage costs, the pipes going to cost more. I see
22 what you're getting at, but I'm confused.

23 MR. EVANS: I'll put it this way. I hope we never drill a
24 3,000 foot well because, you know, it appears to me that
25 we're not getting the same differential here. I need

1 to --

2 MR. KARAM: It is not.

3 MR. EVANS: I need to have that explained to me a little bit
4 more. That for an average cost per foot, to go -- is
5 there some magic cut-off where it gets to be considerably
6 more expensive to drill?

7 MR. KARAM: I don't think. I mean, if I would just take an
8 average, you know, so much per foot to drill a well,
9 would that be better to say, "Look, we're going to go to
10 2,000 feet and our past experience is --"

11 MR. EVANS: No, I want the detail.

12 MR. KARAM: -- "\$45.00 a foot to drill a well".

13 MR. EVANS: I just want some, I guess, some assurance that --

14 MR. KARAM: I think where I might be missing the connection
15 is that, you know, you're going to have a set cost to
16 move on location to get all this stuff going. From then
17 on, it'll cost substantially more to go deeper and
18 deeper. But it's not going to be a -- I can't say a
19 4,000 foot well is going to cost twice as much as a 2,000
20 foot well, because it won't. Because you're going to
21 incur costs at 2,000 feet that you're going to also incur
22 at 4,000. That's not reflected -- the difference --

23 MR. CHAIRMAN: I think what we're going to need to see on
24 these DWE's is the consistency in those fixed costs and,
25 then, those costs that change. You know, if you're using

1 more casing and the casing is \$10.00 a foot, then it
2 ought to be the same on the per foot basis for a K55 on
3 every page we find et cetera, et cetera.

4 MR. KELLY: Is that not what you --

5 MR. SWARTZ: They are.

6 MR. KARAM: They are. I mean, if you use the same price for
7 each -- for nine and five-eighths, five and a half, two
8 and three-eighths.

9 MR. KELLY: But you've just proposed to segregate those costs
10 on future DWE's that are depth sensitive versus the fixed
11 costs.

12 MR. SWARTZ: I would suggest to you, that if you pull out
13 Exhibit C from the three wells that we're talking about
14 and put them side by side like I just have, there are
15 different pipe links on every one of them. One of them
16 has three times the nine and five-eighths inch casing as
17 another one. I mean, the costs do not have a linear -- I
18 mean, maybe we could ask some of those questions. You
19 can tell exactly where these costs are. If you look
20 across on the cost which he is projecting do not change,
21 they are not changing. So, I mean, you could take this
22 item by item, if you wanted to, with him, or I can.

23 MR. CHAIRMAN: I used casing because I think that's the answer
24 to his question, perhaps, is because you did use such
25 different numbers here.

1 MR. SWARTZ: He really did.

2 MR. CHAIRMAN: On the sizing. If it is projected the same
3 dollar figure, it did do a lot to drive that difference,
4 apparently.

5 MR. EVANS: I'm looking at a total thing here. Now, I'm
6 wanting you to explain to me why it appears that there's
7 a big difference in per foot cost --

8 MR. KARAM: I would say, as you go deeper -- let me -- I
9 might have said this wrong. As you go deeper, the cost
10 per foot will probably be less because you're going to
11 incur the same cost on a shallow well as you will on a
12 deep well. We do \$25,000 worth of title work and drill a
13 500 foot well and, then, we're going to do \$25,000 worth
14 a title work and do, you know, drill a 2,000 foot well.
15 The cost per foot of the well is going to vary con-
16 siderably.

17 MR. EVANS: Okay. You've got certain fixed costs that go with
18 every well.

19 MR. KARAM: Right.

20 MR. EVANS: Notwithstanding the fixed costs, notwithstanding
21 the fact that it costs you \$81,000 to do three fracks, to
22 do this, that, and the other thing. Things that are
23 depth sensitive. To go deeper, it'll cost you more?

24 MR. KARAM: Yeah.

25 MR. EVANS: Okay. That's because of the requirements for the

1 larger casing sizes and the deeper you go, you have to
2 have more larger casing?

3 MR. KARAM: More larger casing, right. Not more strings.
4 Not necessarily more strings of pipe, more --

5 MR. EVANS: You've just got to have more -- if you've got to
6 have 1,000 feet of nine and five-eighths casing, that
7 cost you more per lineal foot than two and three-eighths?

8 MR. KARAM: That's right. I want to say something else, too.
9 On these wells, we've looked at core holes from Island
10 Creek -- these (inaudible) holes that they logged. In
11 the interest of protecting freshwater seams, or whatever
12 -- like for U12 and U15, as you can tell there's a
13 difference in nine and five-eighths. That's why U12, you
14 know, that's why that cost is off a little bit more
15 because we're going to run more pipe -- more nine and
16 five-eighths, you see. I mean, I can't go in and say,
17 "Hey, it's going to cost exactly this, this, this", and
18 give you dollar per foot. If you go to 2,000 to 4,000, I
19 could go up on my curve and say, "Oh, that's going to
20 cost this much". Because they are going to vary. Nine
21 and five-eighths -- running twice as much is going, you
22 know, that's a \$5,000 difference right there.

23 MR. EVANS: That's fine. All I needed was for you to explain.

24 MR. KARAM: Okay. I did. I'm sorry.

25 MR. MCGLOTHLIN: I hate to do this to you. On your cement and

1 cement services, you have labor and incidentals at
2 \$13,000. They've been \$13,000 for the last -- why is
3 that figure not adjusted with depth?

4 MR. KARAM: On a lot of these, we hadn't -- it takes a few
5 days to get all of the bills back. These were just the
6 figures that -- I'd talk to our field personnel and say,
7 "How much does it cost for cement jobs". They said,
8 "Look, on nine and five-eighths, it's going to cost so
9 much. On five and a half inch, it's going to cost so
10 much". So I just added the two together. But you are
11 right. It would cost more to cement more --

12 MR. MCGLOTHLIN: More footage. I mean, you use more yardage
13 of concrete. Okay.

14 MR. KARAM: Exactly. What I'll -- you know if the Board
15 wishes, I'll try to get a cost per foot per cement.

16 MR. MCGLOTHLIN: I think in the future, if you're going to do
17 your -- divide it a little bit there, that might be
18 something to look into.

19 MR. KARAM: You're right. You know, I'm not contesting that.
20 It's just -- I'll try to get some old tickets or some-
21 thing and say, "It's going to cost this much per foot to
22 cement".

23 MR. MCGLOTHLIN: I wasn't sure. I thought you might be
24 contracting with a company for "x" amount of dollars per
25 hole. If you were, you were doing pretty good. That's

1 all I have.

2 MR. CHAIRMAN: Any other questions? Anyone else wishing to
3 address the Board regarding this matter? Do you have
4 anything else, Mr. Swartz?

5 MR. SWARTZ: No.

6 MR. CHAIRMAN: All right -- entertain a motion for a petition
7 for Oxy.

8 MR. MASON: Excuse me. Is there anyone here objecting?

9 MR. CHAIRMAN: I asked that.

10 MR. MASON: Oh, okay.

11 MR. CHAIRMAN: Anyone object? I'll ask again. The only we've
12 had is Columbia asserting ownership and I think we've got
13 that cleared up. We're going to have a refiling to clear
14 that up.

15 MR. MASON: I move the adoption or granting the petition to
16 compel for the Oxy petition.

17 MR. EVANS: Second.

18 MR. CHAIRMAN: Okay. The motion is seconded. All in favor
19 signify by saying aye. Oppose say no. Motion carries.

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

1
2 ITEMS 24-28
3

4 MR. CHAIRMAN: We will consider these other cases, 24 through
5 28. Are there any persons in the room that have any
6 objections to any of these cases before the Board? If
7 not, then I will let you go ahead and combine what may be
8 combined but make sure we are able to keep a clear
9 record. To the extent we can do that, we'll allow
10 combining of the testimony.
11
12

13 MARTIN E. WIRTH

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

17 DIRECT EXAMINATION
18

19 BY MR. SWARTZ:

20 Q. Mr. Wirth, would you state your name for the record,
21 please?

22 A. Martin E. Wirth.

23 Q. I'll remind you that you're still under oath?

24 A. Okay.

25 Q. You're an employee of Oxy?

1 A. That's correct.

2 Q. We have five wells remaining on the docket or five units

3 to discuss -- pooling applications. My first question is

4 -- can you tell me whether or not you personally prepared

5 the notices of hearing and the applications with regard

6 to wells U33, W10, Y8, Y10, and Z8?

7 A. I did.

8 Q. Were you in charge of mailing copies of the notice of

9 hearing to all respondents listed with regard to these

10 five units?

11 A. Yes, I was.

12 Q. Were those mailed certified mail, return receipt re-

13 quested?

14 A. Yes, they were.

15 Q. With regard to each of these units, have you filed 10

16 copies of proof of mailing and identified that as Exhibit

17 F with regard to each of these five units?

18 A. Yes, I have.

19 Q. On these five units, did any of those cards come back

20 where a person did not sign for them?

21 A. No, it did not.

22 Q. The only unit that that happened on was the first one we

23 dealt with this morning?

24 A. AA9, that's correct.

25 Q. So everybody who was sent notice, someone signed for it

1 and kept it?

2 A. That's correct.

3 Q. Who did you mail to on these five units? I mean, if we
4 wanted to find out who you mailed to, is there an exhibit
5 that we would look at?

6 A. Yes and no. Exhibit B -- the names of the respondents --
7 they were all served with notice and a copy of the
8 application.

9 Q. Their names are also stated in the notice of hearing, are
10 they not?

11 A. That's correct.

12 Q. So with regard to U33, who was sent a notice?

13 A. Ashland Exploration.

14 Q. With regard to unit W10, who would have been sent a
15 notice?

16 A. Delmar Kyle Meadows and Janice Meadows.

17 Q. With regard to Y8, who was sent the notice?

18 A. There was no notice sent on Frank Howard or James A.
19 Tiller. They were deceased a very, very long time ago
20 and there's no known addresses -- so we published.

21 Q. With regard to any heirs or successors that they might
22 have?

23 A. That's correct.

24 Q. With regard to Y10, who was the notice sent to?

25 A. Again, that was to Mary Lester, heirs, successors or

1 assigned. That was to an individual who's overseeing her
2 property. It has not been probated so it's not a matter
3 of record and there's not a known factor as to the heirs.
4 Q. But the notice that was sent with regard to Mary Lester,
5 is described in Exhibit B to that application?
6 A. That's correct.
7 Q. Who was it sent to?
8 A. It was sent to, in care of, Clayton Keen Perkins or
9 Clayton K. Perkins in Vansant, Virginia.
10 Q. There was also a publication with regard to this unit
11 Y10?
12 A. That's correct.
13 Q. With regard to unit Z8, who was notified?
14 A. Again, that is a Frank Howard and James A. Tiller. It
15 was done by publication because of no known address.
16 Q. Exhibit B, with regard to unit Z8, states that you were
17 unable to find an address to mail?
18 A. That's correct.
19 Q. Were these notices published with regard to these five
20 units on the same day?
21 A. That's correct.
22 Q. What paper were they published in?
23 A. The Bluefield Daily Telegraph.
24 Q. And the date?
25 A. April 17, 1991.

1 Q. With regard to each of these five units, have 10 copies
2 of the certificates of publication been filed with regard
3 to each unit, and identified as an Exhibit E with regard
4 to each unit?
5 A. That's correct.
6 Q. In each of these units, is Oxy requesting to be appointed
7 the designated operator?
8 A. Yes, it is.
9 Q. Are the same seams or productive coal seams sought to be
10 pooled in each of these units?
11 A. Yes, they are.
12 Q. The description of those seams in the various applica-
13 tions is what?
14 A. Basically, below the tiller formation to the lowest or
15 deepest known coal formation -- coal seam.
16 Q. Has an Exhibit C or a DWE been filed or attached to each
17 of these five applications?
18 A. Yes, it has.
19 Q. Does that DWE state the target seam?
20 A. Yes, it does.
21 Q. In all instances, is that the Pocahontas Number 3 seam?
22 A. Yes, it is.
23 Q. With regard to these five units, do you have with you 10
24 copies of a consent to frack?
25 A. Yes, we do.

1 MR. SWARTZ: I'm having Mr. Scott furnish you with 10 copies
2 of a consent to frack for W10, which has been marked
3 Exhibit G with regard to that unit. Also, another
4 Exhibit G with regard to Y8. Another Exhibit G, Y10.
5 Exhibit G for unit Z8. Exhibit G, consent to frack, for
6 U33.

7 MR. CHAIRMAN: Mr. Swartz, do you accept the letter from Grant
8 McGuire that's in the U33 documentation where he proposes
9 to handle evidence and procedure in the application in
10 the same manner as you did for S32 and Q33?

11 MR. SWARTZ: I signed a stipulation to that effect, yes. I
12 was going to get to that.

13 MR. CHAIRMAN: Sorry.

14 MR. SWARTZ: That's okay, but yes.

15 MR. CHAIRMAN: Go ahead and get to it.

16 MR. SWARTZ: I think we have covered all of the exhibits that
17 are in common with these five units and have filed them
18 with the exception of proposed Orders. I have proposed
19 Orders for every unit and we'll save that for last. I'd
20 like to cover some of the differences between the five
21 units that I think we need to address. With regard to
22 U33, as Mr. Wampler has pointed out, there was an
23 objection filed with the Board. It should be familiar
24 to you all because it is an objection that we have been
25 seeing periodically for months now. Previously, I had

1 agreed with Grant McGuire, who represents Ashland, on
2 some other units that we could handle on a stipulated
3 basis. There is a stipulation on file with the Board
4 which I assume you all have access to. It essentially
5 says Ashland would like you to note their objections to
6 the extent that you have a recollection of this having
7 been litigated before. I assume you have a recollection
8 of how you dealt with these objections. They didn't want
9 to come and participate. They would ask you to consider
10 their objections and rule on them based on the record as
11 you will recall it in other cases. I have one exhibit
12 that I would like to offer. You will also notice that
13 the stipulation provides that they could change their
14 mind and show up. It also provides that I can offer
15 evidence if I should choose to do so. I'm not going to
16 belabor this, because I think we've been around and
17 around on this. Something new has happened that I
18 thought I would bring to your attention. I have an
19 Exhibit I which Mr. Scott will give to you. It is a
20 letter that Oxy received from Ashland. It's dated April
21 9th and it's real short so I'm just going to read it --
22 the one paragraph that's of importance. Addressed to
23 Oxy, it says, "Gentlemen. As you know, forced pooling
24 orders of the Virginia Gas and Oil Board provide for an
25 election to be made within "30 days after the date of

1 mailing" of the order. In the future, you may assume
2 that Ashland Exploration, Inc. elects to share in the
3 operation of any well for which forced pooling orders may
4 be entered "on a carried basis as a carried well operat-
5 or" unless we inform you otherwise." I would suggest to
6 you that we were surprised when we received this letter
7 that they are objecting to wells and, at the same time,
8 telling us that for all intents and purposes for the
9 future, we're telling you that they're going to be on a
10 carried basis. I think that their position is somewhat
11 inconsistent and I am pointing that out to you. They
12 need to decide if they're going to fight all these or
13 their going to elect. Also, I am pointing this out to
14 you because I think that any Order that comes out of the
15 with regard to U33 ought to just treat this filing -- or
16 this letter to us -- as a fait accompli and not force us
17 to mail to them and treat them as having deemed to have
18 made an election to be on a carried basis. So that's the
19 dual purpose of filing this with the Board. I'm not
20 going to spend any significant time on their objections.
21 They appear to me to be, again, an argument that we don't
22 have standing or that we are not a principal or a lessee.
23 Those objections were generally raised in the past when
24 Oxy was before the Board contending that they had
25 standing because they had a designated operatorship

1 agreement. I would like to distinguish this unit from
2 those previous units because it is different. I ask Mr.
3 Wirth to look at Exhibit A, page 2.

4 Q. (Mr. Swartz continues.) Rather than get into the
5 percentages, Mr. Wirth, this shows, does it not, that Oxy
6 has leases from coal owners?

7 A. That's correct.

8 Q. Does Oxy, on this unit, also have leases from oil and gas
9 owners?

10 A. Yes, it does.

11 Q. Not 100 percent of them?

12 A. Yes, it does.

13 Q. Does Oxy have 100 percent of all of the oil and gas
14 interests in this unit under lease?

15 A. That's correct.

16 Q. With coal bed methane specific leases?

17 A. Coal bed methane specific leases.

18 Q. As you understand it, what interest, if any, is Ashland
19 claiming in this unit?

20 A. Ashland acquired an old -- their predecessor had an oil
21 and gas lease from the same people that we've taken coal
22 bed methane, specifically. Based on what I read, they're
23 claiming that their lease and ownership issue contains
24 methane provisions.

25 Q. So, in essence, Oxy has a coal bed methane specific

1 lease from the same people that Ashland has just a
2 conventional oil and gas lease?

3 A. In addition to the coal owners, yes.

4 Q. The contention, apparently, of Ashland on this unit is
5 that their oil and gas lease covers the methane?

6 A. That's correct.

7 Q. Would you agree that this is considerably different than
8 the designation of operatorship questions that we
9 previously addressed?

10 A. Yes, they was.

11 Q. Because you actually have a lease here?

12 A. That's correct.

13 MR. CHAIRMAN: Mr. Swartz, would you explore that just a
14 little bit further and tell us why -- or Mr. Wirth, ask
15 him to tell us why he thinks it's different?

16 MR. WIRTH: In the previous applications before Ashland
17 claimed and disputed the rights of the designation
18 operator. Island Creek has designated Oxy USA as their
19 operator in developing coal bed methane under their coal
20 leases. As you're well aware, there's possible, con-
21 flicting claim as to did the coal owners when they
22 executed a coal lease to the coal lessee, did they also
23 pass rights to the coal bed methane under that coal
24 lease. Island Creek has stipulated by the designation of
25 operator limited power of attorney is Oxy USA to develop

1 any coal bed methane rights under that agreement.
2 Previous subject wells Ashland has protested or objected
3 to is that we had no standing. Well, we are the design-
4 ated operator for Island Creek. We act on behalf of
5 limited power of attorney and as their operator on
6 behalf of Island Creek. So we were coming in asking the
7 Board saying, "We have a claim under Island Creek's coal
8 lease and we would like to pool". In this situation, we
9 approached all the oil and gas owners, whom in this case
10 also are the coal owners who have executed -- the coal
11 owners executed a coal lease with Island Creek. But
12 there is also -- the coal owners and the oil and gas
13 owners have entered into a separate agreement with Oxy
14 USA as to coal bed methane gas specific. Therefore,
15 we're not acting on behalf of Island Creek as a design-
16 ated operator or a limited partnership. There's not
17 question we have our own specific coal bed methane lease
18 on partial this Alpha C. Stickley tract which is part,
19 plus we have a coal bed methane lease from Yukon Pocahon-
20 tas, et al. So we virtually do have a claim to 100
21 percent of this unit. In lawyer's terms, the difference
22 -- I'm not going to make Ashland's argument for them
23 because I don't agree with it. It was my understanding
24 of their argument before that they were claiming that Oxy
25 was not a claimant if its only basis for its claim was a

1 designation of operator agreement. The difference here
2 is that we are not relying on a designation of operator
3 agreement, but we're relying on some actual coal leases
4 to convey standing to be a claimant. If you look at
5 Ashland's objection, the number two point that they make,
6 is it appears to me they just run this off on their word
7 processor. You know, they've taken this from the last
8 time. They say at point number two -- "Oxy is not a
9 principal or lessee". Well, we are a lessee. When we
10 were only before you on a designated operatorship
11 agreement, we were an attorney in fact for Island Creek.
12 Obviously, you ruled in our favor under those circum-
13 stances. This is a considerably different case because
14 we are relying on coal bed specific leases in this
15 situation. So I would suggest that this is considerably
16 different than the issues that we dealt with before.
17 With regard to -- before we move off of U33 --

18
19
20 MARK S. KARAM

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

23
24 DIRECT EXAMINATION
25

1 BY MR. SWARTZ:
2 Q. First of all, state your name again.
3 A. Mark S. Karam.
4 Q. Did you prepare a DWE Exhibit 3 with regard to U33?
5 A. Yes, I did.
6 Q. Exhibit C. Is your signature on Exhibit C?
7 A. Yes, it is.
8 Q. When was this prepared?
9 A. March 12, 1991.
10 Q. The projected depth of this well is shown in the applica-
11 tion as what?
12 A. 1,542 feet.
13 Q. Let's hope that the total cost here is close to the other
14 1,500 foot well that we've talked about today. What is
15 the total cost?
16 A. \$234,914.
17 Q. I would show you Exhibit 29, which we've previously
18 discussed. The depth of that well was approximately
19 1,500 feet. What was the projected cost of that well?
20 A. \$233,941.
21 Q. The difference is approximately --
22 A. About \$1,000.
23 Q. What is the targeted seam in this DWE?
24 A. Pocahontas Number 3 coal seam.
25 Q. Is this projected well deep enough to penetrate and

1 produce from that seam?

2 A. Yes.

3 Q. Have you assisted in preparing the applications, notice
4 of hearing and a lot of the exhibits with regard to this
5 well?

6 A. Yes.

7 Q. Is it your opinion that the well that is proposed here
8 for this unit is a reasonable method to produce and
9 develop the coal bed methane in unit U33?

10 A. Yes.

11 Q. Is your detailed well estimate a reasonable estimate as
12 to what the costs will probably be to complete the well
13 in question?

14 A. Yes.

15 Q. Moving to W-10. Mr. Wirth, is W-10 -- the size of the
16 unit that we're trying to pool, is it 80 acres?

17 A. Yes, it is.

18 Q. In Exhibit A, page 2, you set forth Oxy's interests which
19 you contend convey standing as a claimant?

20 A. That's correct.

21 Q. What is, in general, the nature of Oxy's interest in well
22 or unit W10?

23 A. Oxy has under lease 100 percent of the coal owners and
24 99.63 percent of the oil and gas owners. We do not have
25 under lease 0.37 percent of the oil and gas owners.

1 Q. The outstanding interest that is not under lease is the
2 Meadows' interest?
3 A. That's correct.
4 Q. And you've previously testified that they were notified
5 by mail and by publication?
6 A. That's correct.
7 Q. And they signed their cards and they came back to you?
8 A. That's correct.
9 Q. Mark, with regard to unit W10, did you also prepare an
10 Exhibit C?
11 A. Yes.
12 Q. Do you have it in front of you? Okay. Let me show you
13 Exhibit C for W10. Does that have a target coal seam?
14 A. Yes, it does.
15 Q. What is it?
16 A. Pocahontas Number 3 seam.
17 Q. Is this well deep enough to penetrate and produce from
18 that seam?
19 A. Yes.
20 Q. What is the total that you project on Exhibit C?
21 A. \$226,238.
22 Q. Is it your opinion that that sum is the reasonable,
23 probable cost to drill and complete this well?
24 A. Yes.
25 Q. When was this prepared?

1 A. March 11, 1991.

2 Q. And you've signed it?

3 A. Yes.

4 Q. Did you participate in preparing the notices, applica-
5 tions, and exhibits with regard to unit W10?

6 A. Yes.

7 Q. Is it your opinion that this proposed well and the
8 development of this unit is a reasonable method of
9 developing the methane gas within this 80 acre unit?

10 A. Yes.

11 MR. SWARTZ: With regard to unit Y10.

12

13

14

MARTIN E. WIRTH

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

17

18

DIRECT EXAMINATION

19

20 BY MR. SWARTZ:

21 Q. This was a situation where you noticed by publication,
22 Mr. Wirth, correct?

23 A. That's correct.

24 Q. Could you tell me what efforts you've made to try and
25 track down people that you could notice personally with

1 regard to the Howard and Tiller interests?

2 A. There's quite a few Tillers in Buchanan County. One
3 being a deputy clerk in the Circuit Clerk's Office. She
4 had no knowledge of being an heir. There's also a few
5 attorneys with the last name of Tiller. We went through
6 them and asked them and they had no knowledge of the
7 heirship. We do, on this one, have a title opinion that
8 flagged that there's a possible break in the chain of
9 title as to the oil and gas interest. It remained in
10 Howard and Tiller. We, therefore, tried to our best to
11 find Howard and Tiller -- are still trying to find Howard
12 and Tiller. We went to Russell County, Tazewell County,
13 Dickenson County and the surrounding counties and checked
14 their courthouse records and found no wills or probates
15 or anything. We also, again, checked around some of the
16 banking and phone book establishment and tried to do it
17 as best as we can -- contacting anybody with the last
18 name of Tiller or Howard. Tiller seemed to pop up quite
19 a bit, but knowledge was very, very slim of the Howard
20 and Tiller which, I may add, is one of the major grants
21 back in the early days. A lot of this acreage came out
22 of coal estates and the oil and gas estates. At the top
23 of my record, we're talking the latter 1800's when this
24 was severed. So we assume that they are deceased and
25 there is heirs out there, but we don't know who they are.

1 Q. With regard to Oxy's standing to file this application
2 with regard to unit Y8, could you describe, using Exhibit
3 A, page 2, generally, what Oxy's interest in this unit
4 is?
5 A. Using A, page 2, Oxy has 100 percent of the coal owners.
6 They are definitely known and we have leased 100 percent
7 of the coal ownership with the coal bed methane specific
8 lease. As to the oil and gas owners, we also have 100
9 percent, due in fact, that we do have partial interest
10 that Howard and Tiller did not own a complete 100 percent
11 under all the tracts. There is undivided interest that
12 we do have partial under lease but we do not --
13 Q. Would page 1 of Exhibit A show the tracts that Oxy has a
14 lease as opposed to the tracts that Oxy does not have a
15 lease?
16 A. Exhibit A will show Oxy USA as a coal bed methane lessee
17 under all the tracts or some of the tracts, but it will
18 identify under each -- I think it's part of the require-
19 ment in the permitting that it show what interest we do
20 own in it. We show Oxy USA under the majority of these
21 separate tracts plus, it says on the bottom, that we are
22 a coal bed methane gas lessee.
23 Q. It also shows, does it not, the Howard heirs and Tiller
24 heirs and what tract is outstanding -- unknown interest
25 is associated with?

1 A. Correct. Exhibit B would also show on a per tract basis.
2 It says, "Tract Number 16", if you refer back to Exhibit
3 A, it says, "Tract Number 16", and that's where the
4 Howard and Tiller heirs and devisees come in the (in-
5 audible).

6 Q. Further, with regard to Y-8, what is the projected depth
7 of the well?

8 A. 1,756 feet.

9
10
11 MARK S. KARAH

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

14
15 DIRECT EXAMINATION

16
17 BY MR. SWARTZ:

18 Q. Mark, did you do an Exhibit C with regard to Y-8?

19 A. Yes.

20 Q. What's the date of that?

21 A. March 13, 1991.

22 Q. Does this show a target seam?

23 A. Yes, it does.

24 Q. What is that?

25 A. Pocahontas Number 3 coal seam.

1 Q. From your knowledge of the area and of this unit, can you
2 tell me whether or not this well and its projected depth
3 will be deep enough to penetrate and produce from the
4 Pocahontas Number 3 seam?

5 A. Yes, it should.

6 Q. What is your projected cost to drill and complete this
7 well?

8 A. \$241,374.

9 Q. Is that figure a reasonable estimate as to the probable
10 cost of drilling and completing this well?

11 A. Yes, it is.

12
13
14 MARTIN E. WIRTH

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

17
18 DIRECT EXAMINATION

19
20 BY MR. SWARTZ:

21 Q. With regard to Z-8, again we have Howard and Tiller, do
22 we not?

23 A. That's correct.

24 Q. Would it be fair to say that the efforts that you've
25 described just a moment ago to track their heirs down

1 with regard to unit Y-10 would also apply to -- excuse
2 me, to unit Y-10 -- no, sorry with regard to unit Y-8,
3 would also apply?
4 A. Yes, it will.
5 Q. To Z-8?
6 A. That's correct.
7 Q. And I take it you have been unsuccessful tracking those
8 heirs down?
9 A. That we are.
10 Q. What is Oxy's interest in unit Z-8 that you claim confers
11 standing?
12 A. Again, OXY, USA has coal bed methane leases from 100
13 percent of the coal owners and 92.61 percent from the
14 oils and gas owners with 7.39 percent of the oil and gas
15 owners outstanding not leased to OXY, USA.
16 Q. And Exhibit B shows the Howard and Tiller interests as a
17 group -- shows that their addresses are unknown -- these
18 people are unknown. But it does set forth their gross
19 acreage interest in the unit and their undivided interest
20 in the unit, does it not?
21 A. That's correct.
22 Q. And what is the projected depth of the well on unit Z-8.
23 A. Projected total depth, 1,620 feet.
24
25

MARK KARAM

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

DIRECT EXAMINATION

BY MR. SWARTZ:

Q. Mark, did you also prepare a DWE with regard to Z-8?

A. Yes.

Q. The date on which you prepared this?

A. March 13, 1991.

Q. And that date appears at the bottom of the form?

A. Yes.

Q. The projected target seam here?

A. Is the Pocahontas #3 coal seam.

Q. Is this well deep enough to penetrate and produce from that seam?

A. Yes.

Q. And what do you project the cost to be?

A. \$238,709.

Q. And is it your opinion that that sum of money represents a reasonable estimate as to the probable cost of drilling and completing this well?

A. Yes, it does.

Q. Did you participate, again, in developing the notices and

1 the applications and some of the exhibits for this unit?

2 A. Yes.

3 Q. Is it your opinion that the projected well here that
4 we've discussed and the pooling of this unit represents a
5 reasonable method to develop the coal bed methane
6 resource within the 80 acre unit?

7 A. Yes, it does.

8
9
10 MARTIN WIRTH

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

13
14 DIRECT EXAMINATION

15
16 BY MR. SWARTZ:

17 Q. Mr. Wirth, with regard to exhibit Y-10, we had some
18 discussion earlier concerning Mary Lester. And I believe
19 you indicated on this unit you had published because you
20 had some uncertainty as to whether or not you had been
21 able to identify Mary Lester's heirs, successors although
22 you has a name of someone who was familiar with her
23 affairs?

24 A. That's correct.

25 Q. So you mailed to that person and also published?

1 A. Yes.

2 Q. Could you describe what you have determined or discovered
3 with regard to the status of the heirs of Mary Lester or
4 the status of this estate?

5 A. The estate has not been probated and it has not even
6 commenced probabtion and they don't know how long it will
7 take and hasn't been a matter of record. So Mary
8 Lester's heirs, devisees and/or assigns interests which
9 is very minuscule interest as we can see has not been
10 probated at this time. It may take quite a while.

11 Q. Did Mary Lester die recently?

12 A. Within the last year.

13 Q. Okay. Is it your understanding that eventually her
14 estate is going to be divided up or probated or something
15 is going to happen?

16 A. I assume so.

17 Q. Well, is that what Clayton Perkins is telling you?

18 A. Clayton Perkins is hoping that that's the case, but they
19 do not have the monies and everything at this time. I
20 hope they do it some time.

21 Q. Okay.

22 A. We contacted her son, who is out of state and is a
23 leasee to OXY, USA, to try to assist in the matters.

24 Q. Exhibit B shows the interest of the Mary Lester heirs and
25 the gross acreage within the unit and also the undivided

1 acreage in the unit. And what are those two figures?

2 A. The undivided interest within this is .0004 percent and
3 the acreage is 1.66 percent gross of the 80 acre unit.

4 Q. And what is OXY's interest in this unit?

5 A. OXY's interest -- again, we have 100 percent of the coal
6 owners under lease with the coal bed methane lease. We
7 also have 97.93 percent of the oils and gas owners under
8 lease with 2.07 percent of the oil and gas owners
9 outstanding are not leased to OXY, USA.

10 Q. And what is the projected total depth of this well?

11 A. 1,716 feet.

12
13
14 MARK KARAM

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

17
18 DIRECT EXAMINATION

19
20 BY MR. SWARTZ:

21 Q. Mark, did you prepare an Exhibit C with regard to well Y-
22 107

23 A. Yes, I did.

24 Q. Did you sign it?

25 A. Yes.

1 Q. Is it dated as to when you prepared it?

2 A. Yes, it is dated.

3 Q. What is the date?

4 A. MARCH 3, 1991.

5 Q. Does this show a projected or target seam?

6 A. Yes, it does.

7 Q. And what would that be?

8 A. The Pocahontas #3 coal seam.

9 Q. Is this well deep enough to penetrate and produce from
10 that seam?

11 A. Yes.

12 Q. And what do you estimate the probable cost of drilling
13 and completing this well?

14 A. \$240,681.

15 Q. And is that sum in your judgement a reasonable estimate
16 of the probable cost to drill and complete this well?

17 A. Yes.

18 Q. Lastly, did you participate in preparing the application
19 and notices and some of the exhibits with regard to this
20 unit?

21 A. Yes.

22 Q. So you are generally familiar with it?

23 A. Yes.

24 Q. Is it your opinion that this projected well and the
25 request to pool all the interest in the unit are a

1 reasonable method to produce the coal bed methane
2 resource within the unit?

3 A. Yes.

4 MR. SWARTZ: I have -- and I think we can take these together,
5 but I can give you ten copies each of an order for each
6 one of these units. As you have probably figured out by
7 now the provisions are generally the same and we can --
8 we were basically filing in the blanks. I do feel that I
9 need to ask Mr. Wirth about the lease information to make
10 that record with regard to these. So I'm going to do
11 that.

12
13 MARTIN WIRTH

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

16
17 DIRECT EXAMINATION

18
19 BY MR. SWARTZ:

20 Q. Mr. Wirth, with regard to these five wells are you
21 familiar with the proposed orders that we're submitting
22 today?

23 A. Yes, I am.

24 Q. And each of those proposed orders contains a provision
25 with regard to election.

1 A. That's correct.

2 Q. Is one of the electional alternatives an option to lease?

3 A. That is correct.

4 Q. And it provides uniformly in these orders for what

5 payments and royalties?

6 A. A \$1 bonus consideration per acre plus it also offers a

7 one-eighth royalty interest to all parties.

8 Q. Are these the same terms you are currently offering to

9 people who might come to you a voluntary basis and ask

10 you to lease their coal bed methane interest?

11 A. Throughout the area, yes.

12 Q. And you have entered into many of these leases at \$1 an

13 acre and a one-eighth royalty, have you not?

14 A. That is correct.

15 Q. Do each of these orders require OXY to mail a copy of the

16 order to the respondents to the extent that you have

17 addresses?

18 A. That's correct.

19 Q. And that requirement is that you mail them within seven

20 days of receipt, I believe?

21 A. That's correct.

22 Q. Do each of these orders have a length of time that they

23 are in effect?

24 A. Yes, it does.

25 Q. And generally what does the order provide?

1 A. 365 days.
2 Q. Unless --
3 A. There is a commencement of operations.
4 Q. But if you do nothing then they expire of their own --
5 A. That's correct.
6 MR. SWARTZ: That's all I have.
7 MR. CHAIRMAN: May I return you to U-33 and ask the following
8 question? Did I understand you correctly to represent
9 that you have 100 percent of coal bed methane ownership?
10 MR. WIRTH: That's correct.
11 MR. CHAIRMAN: Did I also understand you to agree to these
12 stipulations then as presented by Ashland?
13 MR. SWARTZ: I agree that we can handle their objections today
14 without them being here and we really didn't stipulate to
15 anything. I mean, that's all we stipulated to. I mean,
16 it's really kind of a meaningless exercise.
17 MR. MASON: Mr. Chairman.
18 MR. CHAIRMAN: Mr. Mason.
19 MR. MASON: Do you all have a written stipulation?
20 MR. SWARTZ: Yes. It was filed with you all.
21 MR. MASON: I don't have a copy. All we got was --
22 MR. SWARTZ: Well, I mailed you one that I signed a little
23 while ago. Oh, that's why you are asking me that. Well,
24 I signed that -- because I signed that ten times, because
25 he sent me --

1 MR. CHAIRMAN: Do you have a copy with you?
2 MR. SWARTZ: Yeah.
3 MR. CHAIRMAN: All I'm asking you to do is if you have one
4 with you that is signed to show us, if not I'll ask you
5 to stipulate that you have signed copies and that you'll
6 present one either at the end of the day or tomorrow.
7 That is why we kept going back --
8 MR. SWARTZ: Yeah, I really was a little confused there.
9 Here's the one that I signed.
10 MR. CHAIRMAN: The record will show that I've seen a signed
11 copy, that was copied April 19th, certified mail -- sent
12 -- okay.
13 MR. FULMER: Mr. Chairman, we're very much concerned about
14 this stipulation. We're having alot of problems with it
15 as far as record keeping is concerned. What it does with
16 it -- it is an open-ended stipulation which means every
17 case is brought in OXY's file. And just to give you a
18 little bit of background is that he is (inaudible) and
19 each time we do that we have to go by and get every
20 record of what OXY stipulated and it's getting volume-
21 tric.
22 MR. CHAIRMAN: Well, he's specific here with -- as we did for
23 units S-32 and Q-33.
24 MR. SWARTZ: Those are open --
25 MR. CHAIRMAN: And even those were carried forward. I see

1 what you are saying. Instead of going back to the
2 originals --

3 MR. SWARTZ: I might tell you one thing that's prudent to your
4 thinking because I think itbptains to what you are
5 talking about. When Mr. McGuire called in this unit, U-
6 33, I called my client to see if I could agree to this
7 and was told "No" and I told my client that Mr. McGuire
8 had accommodated me on the last two and I really felt I
9 owed him one. So I accommodated him on this one and my
10 client reluctantly allowed me to go on with it and and I
11 have been told that the next time that I am asked for
12 this kind of a stipulation I am not to agree to it. So
13 you will not, unless Mr. Wirth changes his mind, ever see
14 one of these that we have agreed to.

15 MR. CHAIRMAN: Well, we'll ask the attorney to work with
16 attorney from Ashland and you folks and get whatever we
17 need so that the staff can have a clear reference, if
18 there is any future stipulation. Any questions memebers
19 of the Board? Mr. Kelly?

20 MR. KELLY: I have one question. Perhaps this is unneces-
21 sary. It may have been handled somewhere else and I was
22 just not aware of it. But for locations Y-8 and Y-10,
23 the well location -- those on the plat, is outside of the
24 central area of the unit in the proper and around. Is
25 not some exception to the filed rules not required in

1 order to do that or how is that been handled?

2 MR. WIRTH: You're correct. In the permitting stage we
3 request from the Department -- the Oils and Gas Inspector
4 for a variance if we are outside in the 300 foot. And he
5 reviews it and if he approves it or disapproves it, he
6 informs us of the same. We use it as Exhibit A for
7 forced pooling -- I'm not saying the well was drilled in
8 that area. It could be changed if the Inspector says.
9 But that's what -- it shows everything. Now, whether Mr.
10 Fulmer approves it permit-wise, that's his decision.
11 He's the authority on whether we can have that location
12 exception or not.

13 MR. SWARTZ: Mr. Kelly, what were the two? Z-8 and Y-8 and L-
14 10?

15 MR. KELLY: Yes.

16 MR. SWARTZ: If I might also point out pertaining to your
17 question that the application talks the pooling forma-
18 tion, the unit size and shape and then for permitted
19 location. And essentially what we are asking you to do
20 is pool this and allow us to drill -- and it says, "Any
21 point within the drilling unit allowed by order number
22 OGCB" which said we could drill anywhere in a window and
23 gave Mr. Fulmer the authority to consider exceptions. So
24 the application does kind of indirectly cover what -- and
25 then, of course, we have to deal with it at the permit

1 stage.

2 MR. CHAIRMAN: That's all. Thank you. Any other questions?

3 MR. SWARTZ: I just want to give you these copies of these
4 orders except for the well numbers (inaudible) --

5 MR. CHAIRMAN: Is there anyone present who wishes to address
6 the Board pertaining to these cases? If not, would
7 anyone entertain the motion?

8 MR. EVANS: Mr. Chairman, I move that we accept OXY's petition
9 for wells designated U-33, W-10, Y-8, Y-10 and Z-8.

10 MR. CHAIRMAN: Motion was seconded. All in favor signify by
11 saying yes. (All agree.) Opposed say no. (None.)

12 Motion carries. We have one other item to take up with
13 the Board. Mr. Wallace has come back since this morning
14 and has brought back to us a corrected copy. The age of
15 technology has allowed him to incorporate the comments of
16 the Board -- and this is a copy of the proposed regula-
17 tions that will go to the Registrar tomorrow. Any
18 further business? Let me bring up one other thing and
19 maybe we can deal with it quickly and if we can't we can
20 think about it until the next time. But you heard today
21 a number of times throughout the presentations that Mr.
22 Swartz referred to in questioning Mr. Wirth to Exhibits E
23 and L. And you noted that you didn't have them and
24 what's happening is -- and it's happening not just with
25 OXY, but with whomever comes before the Board, generally

1 a couple of days or a day before the hearing -- I don't
2 know the exact time, but certainly before the time period
3 the Board's asked to receive the material -- or after the
4 time period the mailing has to go to from staff they
5 receive these other exhibits and there is still 10 copies
6 being presented. The question is do you want to see all
7 of those? And we're dealing with notice. It's what
8 we're talking about specifically. And if you do that's
9 fine. I want to make sure, though, that we are not
10 requiring ten copies to be filed and trashing the others.

11 (Discussion inaudible.)

12 MR. NABON: You actually need two of them, don't you? That's
13 the way we've been doing it.

14 MR. FULMER: (Inaudible.)

15 MR. MASON: I thought there was one for your records and one
16 to us. The reason for the number ten was, I thought,
17 was seven members for the Board and two others.

18 MR. SWARTZ: Is that publication and proof of mailing?

19 MR. CHAIRMAN: Both. Anything else? If not, we will close.
20

21 (End of proceedings for
22 April 30, 1991.)
23
24
25

1
2 CERTIFICATE
3

4 COMMONWEALTH OF VIRGINIA

5 COUNTY OF WASHINGTON
6

7 I, Cleadys D. Griffin, Notary Public in and for the
8 Commonwealth of Virginia, at Large, do hereby certify that
9 the foregoing is a true transcript of the proceedings had in
10 the matter heard before before the Virginia Gas and Oil Board
11 on April 30, 1991; that all of said proceeding was electronic-
12 ally recorded by Tamara L. White, Notary Public, in and for the
13 Commonwealth of Virginia, at Large, and were reduced to
14 writing by me and that said transcript is a true and correct
15 transcript of the aforesaid to the best of my ability.

16 I further certify that I am not a relative, counsel or
17 attorney for either party, or otherwise interested in the
18 outcome of this action.
19

20 GIVEN under my hand this 21st day of May, 1991.
21

22 Cleadys D. Griffin
23 CLEADY D. GRIFFIN
24 NOTARY PUBLIC
25

My commission expires March 19, 1993.