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VIRGINIA GAS AND OIL BOARD HEARING

ON AUGUST 20, 1991

9:00 A. M.

AT THE SOUTHWESTERN VIRGINIA 4-H CENTER

ABINGDON, VIRGINIA

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1 August 20, 1991

2 These matters came on to be heard before the Virginia Gas
3 and Oil Board, on this the 20th day of August, 1991, held at
4 the Southwestern Virginia 4-H Center, Abingdon, Virginia.

5
6 THE CHAIRMAN: My name is Benny Wampler and I'm Assistant
7 Director for Mining for the Virginia Department of Mines,
8 Minerals & Energy. We welcome you to the Gas and Oil
9 Board hearing today. I'll ask our Board members to
10 introduce themselves.

11 (MEMBERS INTRODUCED.)

12
13 (ITEM I)
14

15 THE CHAIRMAN: We're going to go by an agenda that's been
16 submitted to the Board. The first item on the agenda the
17 Board will consider for final adoption regulations of
18 the Virginia Gas and Oil Board. At the last Board
19 meeting we had a public hearing and received comments,
20 both written and oral comments, that the Board has
21 considered. And prior to today's meeting the Board has
22 received copies of the staff's draft response to that
23 and we will not receive any further public discussion,
24 but the Board will now consider these regulations for
25 adoption. The Chair is open for any comments that you

1 may have on the -- the comments and the proposed respon-
2 ses. And, of course, if you don't have comment -- if
3 they're acceptable we're open for a motion.

4 MR. EVANS: Mr. Chairman, barring any discussion I move that
5 we accept the regulations and adopt them as written.

6 THE CHAIRMAN: I have a motion for adoption.

7 MR. MCGLOTHLIN: Second.

8 THE CHAIRMAN: A motion and a second. Any further discussion?

9 (None.) If no further discussion, please signify your
10 acceptance of the motion for adoption of the regulations
11 by saying Aye. (All affirm.) Opposed say no. (None.)
12 The regulations are so adopted.

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2 (ITEM 2)
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4 MR. CHAIRMAN: The second item on the agenda, the Board will
5 give consideration to approving the issuance of a request
6 for proposal to hire an agent for management of escrow
7 accounts established by Board orders. This was an item
8 that we continued from the July meeting. Mr. Fulmer, do
9 you have the updated copies of those? The Board has a
10 previous draft, but there has been some further refine-
11 ment of that. The staff of the Department has had
12 meetings with the Treasury and others within the State
13 government where we have to comply with their guidelines.
14 The intent here is for the Board to be able to employ an
15 escrow agent to manage the funds that are escrowed in
16 accordance with the Board orders.

17 MR. MCGLOTHLIN: Mr. Chairman, to simplify matters could Mr.
18 Fulmer explain the changes from the draft that we
19 received for this last one?

20 MR. FULMER: On this particular draft?

21 MR. MCGLOTHLIN: Yes, sir. From the one we received last
22 week, what changes were added.

23 MR. FULMER: There were some changes done to --

24 THE CHAIRMAN: Let me review some of them and then we'll take
25 time to go through it and give you time. But under

1 "Background" that we have on Page 1 of 20, I'll give you
2 some examples. We've inserted, "The Virginia Gas and Oil
3 Board directs the pooling of conflicting interest," that
4 wasn't in there before. It just said, "of interest."
5 And then the sixth line down some words have been
6 inserted here. "Associated shares of proceeds less
7 operating cost regarding the well." "Regarding the well"
8 and "less" were added "Are deposited in escrow." Those
9 kinds of things that just are cleaning up the document to
10 hopefully tell a potential group that may propose to be
11 the escrow agent further define what we're looking for
12 and what they'll be dealing with.

13 MR. MCGLOTHLIN: I know this is a long term question, but
14 what happens in the event of unclaimed property?

15 THE CHAIRMAN: Well, there's a --

16 MR. FULMER: Code section for disposition.

17 THE CHAIRMAN: Yeah. There's a code section with deals with
18 unclaimed properties that we would have to comply with
19 that. This money will be handled in accordance with the
20 Code of Virginia that deals with unclaimed properties.

21 MR. MCGLOTHLIN: Do we make reference to that in the proposal?

22 THE CHAIRMAN: No, that would automatically be caught, though.
23 The escrow agent wouldn't really deal with that. They
24 would deal with the collection of the funds and then once
25 we had an unclaimed property throughout that entire

1 procedure that the Board would then order staff or what
2 have you to follow the unclaimed property for distribu-
3 tion of funds. This keeps the Board orders and the Board
4 in control of any transactions that occur with this
5 escrow agent. They're the manager of the funds only.
6 They don't take any action with the funds unless so
7 ordered by the Board.

8 MR. EVANS: How many responses to this request do we expect to
9 receive? Do you have a list of who we're going to send
10 it out to?

11 THE CHAIRMAN: Not really. We plan to do wide publication of
12 the RFP, but I don't know how you could guess at that.
13 But I certainly expect that we'll have a dozen.

14 MR. EVANS: If I may make a suggestion that if possible that
15 prior to bringing a dozen proposals to this Board for
16 each member to look through each one that staff and
17 competent individuals, whoever staff needs to help them,
18 at least narrow that down to two or three, the two or
19 three most promising so that we don't waste a lot of
20 time going through a dozen proposals.

21 THE CHAIRMAN: Okay. Is that agreeable with everyone?

22 MR. MCGLOTHLIN: With all due respect, Mr. Evans, I think that
23 the Board's -- with the fiduciary responsibilities that
24 we should review each one.

25 MR. EVANS: That's fine with me, I guess.

1 THE CHAIRMAN: We have in here provision of interviewing of
2 potential offers. Do you what any narrowing down by
3 staff at all to do prior interviews and recommend a
4 couple or three and give you copies of all the proposals
5 to conduct an oversight of what's going on or do you --
6 MR. MCGLOTHLIN: I'm agreeable to staff -- the ones that are
7 just clearly not qualified to handle the account for
8 staff the delete those, but I think for the staff to
9 narrow it down just to two or three or four is -- I think
10 we going to get more responses than twelve.
11 THE CHAIRMAN: I said, "At least." I have no idea how many
12 we'll get.
13 MR. MCGLOTHLIN: Yeah. Then again, I could be wrong and we
14 could get one. Who knows. Whatever the will of the
15 Board. I'm amenable. There's one other issue, Mr.
16 Chairman, in the old proposal before the updated copy, it
17 had requested an original and two copies. Do we want to
18 copy those ourselves or should we amend that to request
19 ten copies of all other proceedings before the Board?
20 THE CHAIRMAN: I think certainly, depending on how we -- if
21 the Board wants copies of all the proposals we need to
22 amend that accordingly.
23 MR. MCGLOTHLIN: Something to the effect that if staff does
24 narrow it down to one original and two copies and then it
25 could further provide ten copies if selected to to be

1 reviewed by the Board.

2 THE CHAIRMAN: Okay.

3 MR. MCGLOTHLIN: And just a little clean up job on Page 6 of
4 20 under 10, please note in addressing the objection to
5 change it to the securities without the approval of the
6 Gas and Oil Board instead of the Oil and Gas Board?

7 MR. FULMER: Do what?

8 MR. MCGLOTHLIN: You have this backwards.

9 MR. FULMER: Oh, that's right.

10 MR. MCGLOTHLIN: You have the Oil and Gas Board instead of the
11 Gas and Oil Board.

12 THE CHAIRMAN: Yes, sir Thanks. I'd like your authorization
13 to make further refinements similar to that as we do a
14 last draft to get out to the public and to make public
15 announcement, if it's otherwise acceptable to you and
16 you, of course, will get a copy of the document that
17 finally goes out for bid.

18 MR. MCGLOTHLIN: I believe that's all I had.

19 MR. HARRIS: Do you need a motion to that?

20 THE CHAIRMAN: Yes.

21 MR. HARRIS: I move that we allow staff to make final correct-
22 ions, adjustments, amendments to the proposal and submit
23 it to interested parties, advertise it, however we -- I'm
24 not sure how that should be done.

25 THE CHAIRMAN: Advertise is fine.

1 MR. FULMER: I have two changes, Mr. McGlothlin?

2 MR. MCGLOTHLIN: I think so.

3 MR. FULMER: Ten copies.

4 MR. MCGLOTHLIN: Ten copies, if there are selected.

5 THE CHAIRMAN: Did we come to an agreement that the staff
6 would narrow it down to the offers, but the Board would
7 narrow the offers down to the ones that are -- or did we
8 come to an agreement on that?

9 MR. MCGLOTHLIN: I'm fine with staff deleting any ones that
10 are just not duly qualified to do it.

11 MR. FULMER: That's all I want is a cut. I just don't want to
12 look at forty or twelve or whatever. I'd like to look at
13 the ones that are meaningful.

14 MR. MCGLOTHLIN: Okay. That's fine. I'll second Mr. Harris's
15 motion.

16 THE CHAIRMAN: We have a motion and a second. Any further
17 discussion? (Pause.) All in favor signify by saying
18 yes. (ALL AFFIRM.) Opposed say no. (NONE.) The motion
19 carries.

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1 permitted by the Inspector. The Board went into Execu-
2 tive Session and kicked us out and I cried right here in
3 front of the Board and told the Board that we had spent
4 \$100 and that you had thrown us out. Those clients have
5 not come back to me. At the same time I asked this
6 Board to continue the James White and Harold Holbrook
7 matters in order that we could go back and amend by
8 filing a more formal application with the Board. That
9 we have attempted to undertake to do. And as a form for
10 that I have certainly no pride and authorship and never
11 will. The application that we used we followed applica-
12 tions which had been successfully prosecuted by an
13 outfit that has appeared in front of this Board many,
14 many times by the name of OXY USA, Inc. We used their
15 form and attempted to adopt it to this situation.
16 Basically, what we're asking is that the Board establish
17 a unit. We don't have geologists. We don't have
18 petroleum engineers. We don't even have surveyors
19 involved in this project. This is our project, to ask
20 the Board to require the operator who has already filed a
21 well application, who is already in the process of
22 drilling a well or had drilled a well, to form a unit so
23 that the funds can be escrowed. That's all that we're
24 here for. We don't have anything fancy to present to you
25 nor will we, but it seems to us that if the well is to be

1 produced there needs to be a unit formed and an operator
2 has already come forward for the purpose of drilling the
3 well, has already drilled it or is underway in drilling
4 the well. I'd like to call as my first and only witness
5 Mr. James H. White, who is the applicant.

6 MR. COUNTS: At this point in time, Mr. Chairman, I'd like to
7 request the Board to hear a motion to dismiss with regard
8 to this matter. I'd like to specifically inquire into
9 the notice requirements of 361.19 and also as to the
10 completeness of the application before Mr. Johnson
11 continues with his examination.

12 THE CHAIRMAN: Go ahead.

13 MR. COUNTS: Thank you very much. Mr. Fulmer, do you happen
14 to have copies of the notice that Mr. Johnson and his
15 client have seen out with regard to this particular
16 application?

17 MR. FULMER: No, I do not.

18 MR. COUNTS: 361.19 provides that any person who applies for a
19 hearing in front of the Board pursuant to the revisions
20 of 25.1 361.20.21 or .22 shall simultaneously with the
21 filing of such application provide a notice by certified
22 mail, returned receipt requested. Before we proceed I'd
23 like to make sure that notice of the amended application
24 has been duly sent forth in accordance with 361.19.

25 MR. JOHNSON: In response to that my response is very brief.

1 The first thing is we complied with the notice provisions
2 of the statute when we sent out the original application.
3 This is an amendment to that application. In the
4 amendment I certified and sent out by regular US mail to
5 all parties a copy of the amended application. We had
6 already put everyone on notice when we filed our original
7 application, which was a simple letter, that we had this
8 application pending. Mr. White's got his stuff and we'll
9 be glad to have the Board take a look at that, but he did
10 send certified out to all the parties.

11 THE CHAIRMAN: Mr. Fulmer, did you have copies of the cer-
12 tified that the notices were sent out on the original
13 application?

14 MR. FULMER: No.

15 MR. JOHNSON: Mr. Chairman, I'd also like to present the Board
16 with a copy. I do not happen to have ten because I
17 wasn't expected to address this. This was the original
18 "Application" that was sent forth and notice of which was
19 given. And I would suggest that any amended application
20 which does not apply to 361.19 would not have involved
21 parties in terms of due process notification.

22 THE CHAIRMAN: We have that. This is your letter in here
23 that's dated 4/3/91.

24 MR. JOHNSON: Is Mr. Counts saying that his parties didn't get
25 notice of the application and didn't receive the amended

1 application? Is he telling the Board that?
2 MR. ?????: Mr. Counts is not saying that. Mr. Counts is
3 saying that the requirements of 361.19 with regard to the
4 filing of notice were not complied with. At least I
5 haven't seen any evidence of that.
6 MR. JOHNSON: We've got the certifies. I'll be glad to put
7 Mr. White on. I filed a --
8 MR. COUNTS: Are these certifies with regard to the original
9 application?
10 MR. JOHNSON: Original application.
11 MR. COUNTS: Where are the certifies with regard to the
12 amended application?
13 MR. JOHNSON: We did not send those by certified mail.
14 MR. COUNTS: Then it is defective.
15 MR. JOHNSON: Tom, those are the certified that we sent out
16 with the original. You got this. It's just a letter
17 that you sent.
18 MR. COUNTS: Mr. Chairman, my position is that the Board
19 cannot recognize that notification sent out on this
20 "Application" would be sufficient for purposes of this
21 hearing and in fulfilling the purposes as mandated by
22 361.19. This is what certification was sent consistent
23 with this "Application" one page letter stating essen-
24 tially that, "I claim an interest in the methane gas. I
25 request that a unit be issued for this well" which is

1 certainly not consistent with the Board procedural rule
2 of the filing of an application.

3 THE CHAIRMAN: Mr. Johnson, is your client requesting anything
4 different than what you've stated in this 4/3/91 letter?

5 MR. JOHNSON: No, sir. All that we did with the amended
6 application was to put it in a more formal status. I
7 mean, to formalize it. I sent this to the Board, hand
8 delivered it to Mr. Fulmer's office and sent copies of
9 all that to Mr. Counts -- to Pegasus, Clinchfield, Pine
10 Mountain, and Mr. Lepchitz and filed ten copies of that
11 with the Board. We did not send that out by certified
12 mail, but felt it was not necessary because all we were
13 doing was amending the application and that we had
14 already filed an application. We had already had the
15 Board schedule this matter for hearing and had it
16 continued and filed an amended application whereby all we
17 did was formalize the application. And I think Mr.
18 Counts will readily admit he had plenty notice of this
19 and his clients received it and I'll be glad to certify
20 that I mailed it to everyone.

21 MR. COUNTS: Mr. Chairman, it wasn't simply a matter of an
22 amended application. In fact, the Board made a decision
23 at the May hearing that this application was not suffi-
24 cient and that's why the Board granted Mr. Johnson and
25 his client a two month continuance. When they got the

1 continuance not only did they not provide notification as
2 required by 631.19, in addition of which they did not
3 file a completed application once again. Either 361.19
4 has purpose and effect, it has to be complied with by all
5 parties before this Board whether it be operators or
6 whether it be surface owners or whomever or it does not.

7 THE CHAIRMAN: Mr. Counts, are you saying that the amended
8 application is not in compliance with the --

9 MR. COUNTS: That is also incorrect, but I'm also disputing
10 Mr. Johnson's claim that the amended application is
11 essentially the same as his application of 4/3/91. The
12 amended application is much more specific, although it
13 falls far short of being a completed application. While
14 we're on that, Mr. Chairman, I would like to present an
15 exhibit that I'd like to have marked as Exhibit A. This
16 is a form which is required to be accompanied by applica-
17 tions before the Board. You will note that I have
18 checked improvisations which Mr. Johnson has included in
19 his application. And I think you will note that not only
20 is the application incomplete, it is seriously incomplete
21 and now we're looking at a period of time where the Board
22 has granted a two month continuance in order to make sure
23 it a completed application. I'd like to go through that
24 for the Board, if I may.

25 MR. WHITE: While these guys are getting their notes together

1 can I interject one thing?

2 THE CHAIRMAN: Yes, sir.

3 MR. WHITE: You guys are sitting up there taking care of my
4 destiny. Has any one of you people gone and seen an
5 operation that these people literally destroy our place?
6 Has any member of this Board seen an operation?

7 THE CHAIRMAN: I don't know that all --

8 MR. WHITE: Have you seen the large tanks sitting there in the
9 middle of our small farms?

10 MR. EVANS: Possibly not your particular piece of property
11 but, yes, I've seen operations.

12 MR. WHITE: I'll transport you people up if you want to see a
13 wreck of a farm. I don't know your procedural areas or
14 procedural administration or whatever you wish to call
15 it, but us land owners are so unhappy. We feel like the
16 people are stealing off of us. I have a super highway up
17 to my farm. The only things there are cows. I don't
18 need a super highway.

19 THE CHAIRMAN: We're in a situation where the law and the
20 regulations enable production to occur and the protection
21 comes to you from the standpoint of making sure that the
22 construction takes place in a responsible fashion and
23 that the extraction of the mineral is allowed to occur in
24 accordance with the law. And that's what we're here to
25 determine and to hear you today in accordance with our

1 procedures and we have to make that determination first,
2 if you're proper before the Board, and if you are you'll
3 be hear and if not then hopefully we can tell you why
4 not.

5 MR. COUNTS: Mr. Chairman, in addition, referring to the
6 Board's procedural rules dated September 5th, 1990,
7 specifically VR 480-05-22.24C or for those of you who
8 prefer not to use quite so many numbers it's Page 3 of 5.
9 The procedural rule requires with regard to the filing of
10 the application under 361.22 -- and I'm reading under
11 Paragraph 2-E -- "A valid permit" and all these also will
12 be reflected on the handout that I'm giving you. The
13 valid permit number, if issued, permit number for 1934 is
14 1608. That was not included in the application.

15 MR. JOHNSON: It was on the exhibit.

16 MR. COUNTS: It was issued on --

17 MR. JOHNSON: It was attached as an exhibit.

18 MR. COUNTS: -- February 22. I believe that was Exhibit C
19 which was the permit application filed by Equitable
20 Resources, right?

21 MR. JOHNSON: Right. It should have the number on there.
22 Yes, sir.

23 MR. COUNTS: It was not specifically listed in the body of the
24 application as required, in addition to which that
25 permit was issued on February 22nd of 1991, some five

1 months before the application was filed. Under Paragraph
2 G, Mr. Johnson did submit a plat but he essentially
3 copied EREX's plat with regard to its permit application.
4 The unit map is not certified by a land surveyor or an
5 engineer employed by the applicant and it's also not
6 attested to by the applicant. Under Paragraph H, the
7 percentage of ownership and status, not provided.
8 Paragraph I, percentage of ownership held by applicant,
9 not submitted. Paragraph J, requires an escrowing plan,
10 not submitted. Paragraph K, formations to be produced,
11 not submitted -- and those formations were within Equit-
12 able's permit application and certainly could have been
13 easily obtained. Paragraph L, estimated production, not
14 submitted. Paragraph M, estimated reserve, not sub-
15 mitted. Paragraph N, estimated cost, not provided.
16 Clearly the application is incomplete. Mr. Chairman, in
17 addition to the fact that notice was not proper under
18 631.19, the fact that the application is totally defi-
19 cient and incomplete, the fact that Mr. Johnson and his
20 client have already been given a two month extension to
21 file a complete application with the Board I am request-
22 ing that the Board dismiss this application.

23 THE CHAIRMAN: Anything further.

24 MR. JOHNSON: I'd be glad just to tell this Board that what
25 Mr. Counts is saying is that because someone is not an

1 operator, doesn't employ a geologist, a petroleum
2 engineer, a land surveyor and a fleet of lawyers, that
3 that person has no standing to come before this Board and
4 to try to submit an application. What we have attempted
5 to do was to comply to the extent that we were capable of
6 complying with those provisions in order to ask this
7 Board to force Equitable to form a unit.

8 MR. COUNTS: Mr. Chairman, that's not what's contemplated by
9 the act nor the regulations. It's "Compliance to the
10 extent compliance is capable of being handled." If Mr.
11 Johnson has a concern with regard to the way surface
12 owners applications are required to be submitted it is
13 redressed with the Virginia General Assembly. It is not
14 in compliance with the rules in -- not even in semi-
15 compliance or partial compliance with the rules promul-
16 gated by this Board.

17 MR. JOHNSON: Certainly in compliance with the statute on
18 which the Board operates. And the Board was established
19 to require or allow persons who have an interest in the
20 oil and gas. And I know that I probably helped in making
21 this mistake, but what we're talking about is people who
22 claim an interest in the oil and gas, not surface owners,
23 not mineral owners, not coal owners, but people who claim
24 an interest in the oil and gas. The statute is establish-
25 ed or is set up for the purpose of allowing units to be

1 formed and rights to be protected, particularly the coal
2 bed methane statue which was established to provide that
3 any conflicting claims of ownership would be handled by
4 this Board and that this Board would establish rules and
5 regulations to permit applicants to move forward. What
6 we have attempted to do by filing this more or less
7 formal application is to give the Board all the informa-
8 tion that we had available to us and ask the Board to
9 require the operator to come here and give you the
10 documented information in order to establish the unit.
11 We're trying to keep the well from producing oil and gas
12 until such time as a unit is formed and to allow the
13 money to be escrowed from the production. What Mr.
14 Counts is asking the Board to do is to kick us out again
15 because we don't have the geologists, the petroleum
16 engineers, the land surveyors and the money to come in
17 front of this Board and protect our rights.

18 MR. ????: Mr. Counts is only requesting that the Board
19 comply with the provisions of 361.19 of the Virginia Gas
20 and Oil Act and also under the Board's own procedural
21 rules. If this application is a complete application, if
22 the notice was proper, then due process is thrown right
23 out the window. In addition, Mr. Johnson missed the mark
24 with regard to the protection. The protection is there.
25 If a party sincerely desires to develop minerals underly-

1 ing any unit, be it coal bed methane or be it a conven-
2 tional unit, and if that party is a surface owner,
3 mineral owner, coal owner, whomever, that person if they
4 have an interest and if they have the right to develop
5 have the right to petition the Board and they have the
6 right to develop that unit the same as any other party.
7 This situation here, obviously -- these regulations were
8 written under the perception that an operator is going to
9 be the party making the application because that's the
10 party to whom the correlative rights and the waste, which
11 are the fundamental responsibilities of this conservation
12 Board, are to protect. And as a result the information
13 required in those applications is absolutely essential to
14 insuring that those correlative rights are protected.
15 361.19 notification is not in compliance in addition to
16 which the more procedural rules with regard to the
17 content of the application, the application is completely
18 incomplete. As a result again we would request that the
19 application be dismissed.

20 MR. JOHNSON: I have one more thing to say. In this case the
21 operator has refused for whatever reason to come to this
22 Board and ask for a unit. He has said, "I'm drilling
23 this well. See you later." We're saying, "No, operator.
24 You can't do that. You should form a unit here." The
25 operator comes in here through its counsel and says, "Oh,

1 no. You can't make us do that because we don't want to."

2 MR. COUNTS: Mr. Chairman, I'm glad Mr. Johnson brought that
3 up. If I could just answer --

4 MR. JOHNSON: I'd like for you to answer that, Rick.

5 MR. COUNTS: Thank you, sir. I'm glad you brought that up,
6 Mr. Johnson. Essentially Equitable has said we're going
7 to go ahead and drill our well. They have proceeded with
8 the wells. The wells have been drilled and for one
9 reason. Mr. Johnson's client has no interest in the
10 coal bed methane underlying those units. Mr. Johnson is
11 attempting to use this Board to circumvent the Circuit
12 Court. He has appropriate remedy, he has redress and
13 any damages to which his client's entitled is appropriat-
14 ely obtained in Circuit Court. He's attempting to make
15 this Board make property determinations and title
16 judications which are not within the providence of this
17 Board. Thank you, sir.

18 THE CHAIRMAN: Thank you. I think we've heard the arguments
19 on the motion to dismiss and we have an application
20 before us. What's your pleasure? Does the Board want to
21 discuss that?

22 MR. EVANS: I'd like to move that we go into executive
23 session. I've got a question for Mr. Lepchitz.

24 MR. MCGLOTHLIN: Second.

25 THE CHAIRMAN: Okay. We have a motion and a second for the

1 Board to go into executive session. We'll do this in
2 discussing legal matters within the jurisdiction of the
3 Board as permitted by Section A, Paragraph 7, of Section
4 2.1-344 of the Code of Virginia. This motion is made
5 with respect to Item III on the agenda. All in favor
6 signify by saying yes. (ALL AFFIRM.) Opposed say no.
7 (NONE.) Okay. We're in executive session.

8
9 (Thereupon, the Board went into Executive Session and
10 after having duly deliberated returned to open proceedings.)
11

12 THE CHAIRMAN: Whereas the Virginia Gas and Oil Board has
13 convened in executive meeting on this date pursuant to an
14 affirmative recorded vote in accordance with the provis-
15 ions of the Virginia Freedom of Information Act and
16 whereas Section 2.1-344.1 of the Code of Virginia
17 requires certification of this by Virginia Gas and Oil
18 Board that such executive meeting was conducted in
19 conformity with Virginia Law. Now, therefore, it be
20 resolved that the Virginia Gas and Oil Board hereby
21 certifies that to the best of each members knowledge on
22 only public business matters lawfully exempted from open
23 meeting requirements by Virginia Law were discussed in
24 the executive meeting to which this certification
25 resolution applies. And only such public business

1 matters as were identified in the motion convening the
2 executive meeting were heard, discussed or considered by
3 the Virginia Gas and Oil Board. I'll ask you to vote and
4 give your name, please.

5 (MEMBERS VOTE. ALL AFFIRM.)

6 MR. EVANS: Mr. Chairman, in this matter I'd like to make a
7 motion. I move that we take EREX's motion to dismiss
8 under advisement. I also move that we find the applica-
9 tion as technically deficient because the information
10 submitted is not sufficient to legally define the
11 proposed unit boundaries, and that although Mr. White is
12 a claimant he does have the burden of providing suffi-
13 cient information to the Board upon which we can make a
14 decision. I move to continue this matter until the next
15 scheduled Board meeting.

16 MR. MCGLOTHLIN: Second.

17 THE CHAIRMAN: Motion and a second. Any further discussion?
18 If not, signify your pleasure by saying yes. (ALL
19 AFFIRM.) Opposed say no. (NONE.) The motion carries.
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2 (ITEM 4)
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4 THE CHAIRMAN: The next item on the agenda is a petition by
5 Harold Holbrook, surface owner, for the establishment of
6 a compulsory pooled drilling unit for EREX proposed well
7 VC-1935. This is Docket Number VGOB-0521-118.

8 MR. JOHNSON: This is the same amended application. I think
9 the facts and circumstances with regard to Mr. White's
10 application are identical to Mr. Holbrook's application.
11 He had a continuance from the May hearing. He filed an
12 amended application using the same basic outline as was
13 used with regard to Mr. White's application. So I would
14 ask that the Board take whatever action. I would assume
15 -- I won't make the motion for Mr. Counts, but I assume
16 he will have a motion to make and ask the Board to take
17 action on that so that we can move along.

18 MR. COUNTS: Mr. Chairman, essentially, as Mr. Johnson
19 indicated, the facts are essentially the same and there
20 would not be any different evidence that would be
21 presented with regard to 1935. I request that the Board
22 make the same decision or ruling in the sense with regard
23 to 1935 as it has for 1934.

24 MR. EVANS: Mr. Chairman, I'd like to make a motion in this
25 matter and I would like it to read exactly the motion I

1 made immediately in the preceding matter with the
2 exception of the name Mr. White being changed to Mr.
3 Harold Holbrook.

4 THE CHAIRMAN: Okay. And the well number changes to 1935.
5 MR. EVANS: The well number changed pursuant to the matter at
6 hand.

7 THE CHAIRMAN: Okay. Motion.
8 MS. ZANDERS: Second.

9 THE CHAIRMAN: A motion and a second. Any further discussion?
10 MR. HARRIS: I do have a question. I understand Mr. Counts
11 said that he would ask the Board to make a decision the
12 same as it did in the previous matter. That's not the
13 same thing as -- before your motion was for what?

14 THE CHAIRMAN: Dismissal.

15 MR. HARRIS: Is that the same thing you're saying now?
16 THE CHAIRMAN: Yes. He was just putting it's the same issue
17 before the Board.

18 MR. HARRIS: Okay. The motion is appropriate then?
19 THE CHAIRMAN: Right. Any further questions? If not, all in
20 favor signify by saying yes. (ALL AFFIRM.) Opposed say
21 no. (NONE.) The motion carries.

22 MR. COUNTS: We do have a question, Mr. Chairman. Is the
23 Board willing to take briefs into consideration with
24 regard to this matter and make a decision on my motion to
25 dismiss at such time as this hearing is convened again

1 and prior to the introduction of evidence?

2 THE CHAIRMAN: I think certainly that either party can submit
3 any additional information that they like before the next
4 meeting. We have continued this hearing until the next
5 meeting in September and you'll be notified of that date.
6 The Board will be happy to receive any filing prior to
7 that hearing that you would like to make. Thank you.
8 We'll take a five minute recess before we start with Item
9 5 on the agenda, the compulsory pooled drilling unit from
10 Pocahontas Gas Partnership.

11 (AFTER A BRIEF RECESS, THE PROCEEDINGS CONTINUED AS
12 FOLLOWS:)

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(ITEM 8)

THE CHAIRMAN: I believe that we've had a request to clean the docket a little bit, Mr. Counts.

MR. COUNTS: Yes, sir, Mr. Chairman. Thank you. As I have indicated Item 8 on the docket, which is VGOB-91-0820-138. Equitable is requesting the Board to allow Equitable to withdraw that application for location exception. In addition I have requested that the Board allow Mr. Johnson and myself to proceed with Item 9 on the docket with respect to the appeal of the inspector's decision regarding well VC-1863 and Ms. McClanahan representing the Pocahontas Gas Partnership has agreed to do that.

THE CHAIRMAN: Okay. Any problems with the withdrawal of Item 8 on the agenda and moving it to Item 9?

MR. EVANS: Is Edwards & Harding represented today?

THE CHAIRMAN: Is Edwards & Harding represented today?

MR. RASHICK: Yes, sir. They're number ten on the docket, Mr. Chairman.

THE CHAIRMAN: You're just verifying that they don't have any --

MR. EVANS: Do you have any objections to the withdrawal of 88?

1 MR. RABNICK: Edwards & Harding has no objection.

2 THE CHAIRMAN: Okay.

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2 (ITEM 9)
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4 THE CHAIRMAN: We'll go to Item 9 on the agenda, the petition
5 for Appeal of the Inspector's Decision under 45.1-361.23,
6 concerning proposed well VC-1863. This is Docket Number
7 VGOB-91-0829-139.

8 MR. JOHNSON: Ladies and gentlemen of the Board and Mr.
9 Chairman, I'm Donald R. Johnson and I represent Mrs.
10 Thelma Musick and Mr. Curtis Rasnick who have filed an
11 appeal to the decision of the inspector, the Honorable
12 Byron T. Fulmer, which denied the objections which were
13 raised by my clients in a letter to Mr. Fulmer stating
14 forth their formal objections and also pursuant to a
15 hearing which was held in front of the Inspector. At
16 that hearing Mrs. Thelma Musick testified in her own
17 behalf and on behalf of her brother and also Equitable
18 presented witnesses. We come to this Board aggrieved by
19 the decision of the Inspector and wish to put on evidence
20 to the Board concerning the objections that my clients
21 have respecting the well application. I want to make
22 sure that it's clear on the record that there really are
23 two objectors who own separate parcels. Mrs. Thelma
24 Musick, who sits next to me, had raised objections to the
25 surface parcel that she owns. Likewise her brother,

1 Curtis Rasnick, owns a tract next to he's, adjoining
2 hers, which would also be affected by the well. He is
3 not present here at this hearing and his sister will
4 present the situation to the Board. But I wanted to make
5 clear on the record that we really are talking about two
6 persons with separate parcels.

7 THE CHAIRMAN: Mr. Johnson, I would remind you and the Board
8 that this hearing will be conducted both based on the
9 record and I think you indicated that, but just for
10 clarity to the Board you have the Inspector's decision
11 and the record of June 19th, the inspector's decision?

12 MR. JOHNSON: Yes, sir.

13 MR. MCGLOTHLIN: Mr. Chairman, ask Mr. Fulmer if he happens to
14 have the first page of his decision. I've got two back
15 pages.

16 MR. FULMER: Yes.

17 MR. JOHNSON: Mr. Wampler, if it's the Board's pleasure either
18 Mr. Counts can, if he chooses, make some sort of opening
19 statement since I have and then -- I haven't really gone
20 through what the objections are, but I'm ready to proceed
21 to put on Mrs. Musick as my only witness in this matter.

22 THE CHAIRMAN: Let me ask you just for clarification, are you
23 really objecting to points 2, 3 and 5 of the decision in
24 your letter of May 8th, is that a correct understanding?

25 MR. JOHNSON: Whatever my letter of May 8th says that's -- no,

1 wait a minute. I wrote -- Yeah. I wrote a letter to
2 Mr. Fulmer which I sent to Mr. Fulmer by certified mail
3 with a copy to Mr. Counts dated July 18th. In that
4 letter I advised him that we are withdrawing the objec-
5 tions #1 as stated in the previous letters, but continue
6 objections on the other grounds. And I also advised that
7 if a copy of the consent to stipulate would be forwarded
8 for our inspection we would withdraw ground #4. That has
9 not been done.

10 MR. COUNTS: Mr. Chairman, I don't have any comments in the
11 way of opening statement to make. Certainly, Mr. Johnson
12 has the burden of proof with respect to the decision
13 rendered by the Inspector. I would, however, ask the
14 Board at this time to consider my motion to dismiss Mr.
15 Johnson's petition for appeal based upon lack of com-
16 pliance with the Administrative Process Act and the
17 rules of the Supreme Court of Virginia.

18 THE CHAIRMAN: Do you want to go ahead and amplify on that a
19 little bit?

20 MR. COUNTS: Yes, sir. Mr. Johnson, I thought you might be
21 interested in that. The decision was rendered by the
22 Inspector on the 19th of June, 1991. Mr. Johnson lodged
23 his appeal -- a petition for appeal dated June 26th,
24 1991. It was a timely petition for appeal but, basical-
25 ly, quoting from his letter of June 26th. "Mr. Wampler,

1 my clients, Thelma Musick and Curtis Rasnick hereby
2 petition and request a hearing before the Virginia Gas
3 and Oil Board to appeal the decision made by Mr. Byron T.
4 Fulmer, State Gas and Oil Inspector, June 19th, 1991
5 regarding the above referenced proposed gas well pursuant
6 to Section 45.1-361.23 of the Virginia Gas and Oil Act."
7 The reasons for the request for appeal are that "The
8 inspector granted the permit over the objection of my
9 clients." Certainly the Virginia Gas and Oil acts are
10 subject to the provisions of the Administrative Process
11 Act and Section 9-614 12 litigated issues hearing which
12 is a type of hearing that we're here before today. It
13 states that parties to such formal proceedings shall be
14 given a reasonable notice of the time, place, nature
15 thereof, basic law or laws which the agency contemplates
16 as possible exercise of authority in matters of fact and
17 law asserted or questioned by the agency. In addition
18 the Supreme Court rules, Virginia Rule 2A:4, petition for
19 appeal with regard to appeals pursuant to the Administra-
20 tive Process Act requires in Paragraph B that the
21 petition for appeal shall designate the regulation or
22 case decision appealed from, specify the errors assigned,
23 state the reasons why the regulation or case decision is
24 deemed to be unlawful and conclude with a specific
25 statement of the relief requested. Certainly there are

1 no errors assigned or stated. There are no reasons
2 stated why the regulation or case decision is deemed to
3 be unlawful or erroneous and there is no specific
4 statement of the relief requested. As a result I will
5 state that the petition for appeal is defected and
6 request that the petition for appeal be dismissed.

7 MR. JOHNSON: If I may respond. Again Mr. Counts wants us to
8 go to the Circuit Court and we're not in Circuit Court.
9 I wrote a letter on behalf on my clients setting forth
10 the objections that my clients had to the application.
11 Pursuant to that notice the inspector sent notice to all
12 the parties listing the objections that my clients had to
13 the well in question. Then a decision was rendered by
14 the inspector after a hearing. Now, what the act
15 contemplates is that if you're aggrieved after all of
16 that, that is you have stated your objections in writing,
17 you have had an informal fact finding hearing in front of
18 the inspector, that you have the right to appeal. I
19 believe that the Code sections that Mr. Counts is
20 referring to are to appeal from the Inspector's decision.
21 I believe that the provisions that Mr. Counts is refer-
22 ring are appeals from this Board to the Circuit Court.
23 We believe that we have complied with the rules and
24 regulations as now exist in which we simply gave a
25 notice, noted our appeal, and said that we were aggrieved

1 by the decision of the Inspector. The Inspector then
2 wrote to me and said, "Mr. Johnson, tell us why. Tell me
3 why. Give us some more details so I'll know more about
4 why you're objecting and going to the Board." And I did
5 that. I said, "Mr. Fulmer, here are the items that we
6 are continuing to raise objection to as are stated in
7 our letter." I believe that we have met not only the
8 spirit but the contents of the statute. I think all
9 we're required to do is to give notice that we are
10 asserting an appeal. This is not an appeal to the
11 Circuit Court, but an appeal from the inspector. And in
12 the process of putting the documentation together in
13 order to lodge that appeal you've got to state your
14 objections to the well application, you've got to have a
15 hearing, you've got to present evidence and all the
16 parties are given notice of that. In addition, the
17 inspector renders a formal decision which goes to all the
18 parties setting forth the objections that were raised and
19 setting forth the reasons why he believes that the
20 objections are right or wrong and also deciding whether
21 or not there should be any action taken with regard to
22 the location of the well. What Mr. Counts is telling you
23 is that we've got to follow the Circuit Court rules and
24 we've got to do all these other things when, in fact, we
25 have followed the rules, we have noted our appeal.

1 There's nothing in the statute that says we have to do
2 anything more, I believe, than just advise the Inspector
3 and Mr. Wampler of our intent to appeal. And we did give
4 the grounds. We stated them in our original letter. We
5 raised them in the informal hearing. They are very well
6 set forth in the inspector's decision. And I believe
7 that's all that we're required to do under the statute
8 and the regulations as they now exist.

9 MR. COUNTS: I'm sorry. Mr. Johnson, what grounds did you
10 state in your original letter?

11 MR. JOHNSON: Those are as set forth in my letter to the
12 Inspector dated -- two letters dated to the Inspector
13 dated May the 8th.

14 MR. COUNTS: No, I'm just talking about your original letter
15 that you stated that you had stated your grounds.

16 MR. JOHNSON: May 8, 1991.

17 MR. COUNTS: And that's prior to the decision, correct?
18 That's not the petition for appeal?

19 MR. JOHNSON: That's prior to the decision. The Inspector
20 then heard all the objections and made findings with
21 regard to them.

22 MR. COUNTS: I'm not trying to contest what decisions or what
23 grounds that Mr. Johnson laid forth prior to the hearing
24 of the inspector, Mr. Wampler. I'm only stating that an
25 appeal must be filed within ten days in order to be

1 timely and Mr. Johnson did file a quote petition for
2 appeal with no specific allegations, no specific wrongs
3 and no request for relief by the agency. Mr. Fulmer did,
4 indeed, write him a letter on July 1st and Mr. Johnson
5 did respond again on July 18th, well beyond the time
6 period for responding and for filing a timely and proper
7 petition for appeal. I'm not asking Mr. Johnson to go to
8 Circuit Court. I'm only asking him to comply with the
9 rules of Supreme Court and also the Administrative
10 Process Act and Section 9-614 12 on litigated issues,
11 Paragraph A, that indicates that with respect to informal
12 hearings under Section 9-614 11 which this was proceeded
13 before the inspector that Paragraph B will none the less
14 apply which indicates that the basic laws under which the
15 agency contemplates a possible exercise authority and the
16 matters of fact and law asserted or questioned by the
17 agency must be stipulated. As a result it is my feeling
18 that the petition filed by Mr. Johnson is defective and I
19 would submit to the Board that if there's a good reason
20 for this from a policy standpoint, that is that these
21 rules and procedures are designed to provide the most
22 efficient administration of the Board's power in addition
23 to insuring due process requirements of all the in-
24 dividuals and parties involved. And without specifying
25 the reasons for appeal and relief requested due process

1 is certainly not being complied with and as indicated by
2 this motion to dismiss the Board's not allowed to
3 efficiently act in the administration of it's duties.

4 MR. CHAIRMAN: The matter before us, I think, is that this is,
5 as I noted earlier, an appeal on the record and the
6 record did stipulate all the complaints. I think a
7 couple of key questions are and I would ask our attorney
8 to advise and then we'll act on the motion that the
9 appeal was defective, whether or not the rules of the
10 Supreme Court and the Administrative Process Act as
11 stated by Mr. Counts are applicable in this case.

12 MR. LEPCHITZ: The reference to rule 2A-2 is to appeals to the
13 Circuit Court from agency decisions. They govern an
14 appeal from this Board to the Circuit Court. The
15 provisions of the Administrative Process Act are ap-
16 plicable so long as they are consistent with the Gas and
17 Oil Board's general powers and provisions. You have set
18 a procedure in motion, a two-tiered hearing procedure
19 that have internal time limits and guidelines. Those
20 internal time limits and guidelines govern how appeals
21 from the inspector come to this Board. Now, I heard some
22 alligation from Mr. Counts that not withstanding that
23 fact the petition is still defect. That's the question
24 that we must address.

25 MR. CHAIRMAN: You've heard the arguments.

1 MR. EVANS: If we're being asked straight out, I'd like to
2 hear the rest of the testimony.

3 MR. CHAIRMAN: Do we have a motion to deny the dismissal and
4 go ahead and hear the testimony?

5 MR. EVANS: Mr. Chairman, I make a motion that we deny the
6 petition to dismiss and hear evidence on this matter.

7 MR. CHAIRMAN: Okay. We have a motion that the petition to
8 dismiss be denied and that we hear this case.

9 MR. MCGLOTHLIN: Second.

10 MR. CHAIRMAN: A motion and a second. Any further discussion?
11 If not, all in favor signify by saying yes. (ALL
12 AFFIRM.) Opposed say no. (NONE.) The motion carries.
13 Proceed, Mr. Johnson.

14 MR. JOHNSON: I think it might be helpful to the Board if I
15 just read -- or if the Board has a copy of my letter to
16 the inspector dated May the 8th, that sets forth what
17 we're talking about. We did have a full hearing in front
18 of the inspector and we are withdrawing objection #1 and
19 indicated that if we had some proof that there was a
20 consent to stimulate document in the record that we would
21 withdraw #4. Okay. I'd like to call as my first and
22 only witness in this matter Mrs. Thelma Musick. Mrs.
23 Musick, will you be sworn, please?

24 COURT REPORTER: (Swears witness.)
25

1 THELMA MUSICK

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

5 DIRECT EXAMINATION
6

7 BY MR. JOHNSON:

8 Q. Mrs. Musick, first I'd like for you to state on the
9 record your full name and where you now reside.

10 A. My name is Thelma Musick and I live in Abingdon, Vir-
11 ginia.

12 Q. And Mrs. Musick, would you briefly tell the Board with
13 regard to the well application that EREX has proposed,
14 where the property is within the Commonwealth of Vir-
15 ginia? Where is that located?

16 A. It's located on Sandy Ridge. That's the name of the
17 little community. And it's near the Buchanan boarder on
18 the upper side of Russell County.

19 Q. So it's near the Buchanan County line, is that correct?

20 A. Yes, it is.

21 Q. All right. And what is the property like there? What is
22 the terrain like where your land is?

23 A. Well, it's hillside down in below where they want to put
24 the well. It's level, but up where they're putting the
25 well it's very steep and hill country and it's sandy

1 soil. There is no clay. It's very sandy, rich soil.

2 Q. And with regard to structures on this tract, where are
3 the structures and what are they and where are they in
4 relation to the well that's being proposed?

5 A. Well, I have a house that is directly below where the
6 well will be and out from me I have a barn. This is the
7 house that I lived in when I was on this property.

8 Q. And what current use is being made of the property?

9 A. Well, right now it's vacant. It was farmland before I
10 left there. We had cattle, raised corn, tobacco and hay.
11 Now I have on each side of the little hollow -- see, on
12 each side there would be a hollow going down. And
13 there's quite a bit of Walnut timber in there. There's
14 Maple and Poplar and Oak.

15 Q. Now, with respect to what's known as Route 621, just tell
16 the Board briefly where your property is with respect to
17 that route as well as where the well is with respect to
18 the route.

19 A. Well, on the front side on my property 621 comes around
20 on this side of the hill and up to the end of it. Well,
21 when they get to the end of 621 is where they want to
22 leave the road and go over on my property.

23 MR. JOHNSON: I don't know how best to do this. If you would
24 come around here to where Mr. Wampler is. I'd like to
25 state for the record that the map that I'm showing was

1 used in front of the inspector and was marked. The
2 markings are on there were marked while we were in front
3 of the inspector.

4 Q. (Mr. Johnson continues.) Can you use this map to show --
5 I believe some things have been drawn on there.

6 A. Yes. I've got to familiarize myself with it just a
7 moment here. This is kind of faint. I have the large
8 map if you all would rather get it out and everybody look
9 at it. It takes me just a minute.

10 MR. JOHNSON: Can we do this on the plat that's attached to
11 the permit? We want to show what this aerial
12 photograph -- there's the end of the road up here.

13 MR. CHAIRMAN: Is this an aerial photo that you're showing?

14 MR. JOHNSON: An aerial photo.

15 MR. CHAIRMAN: Is it a recent aerial photo? Do you know the
16 date?

17 MR. JOHNSON: Yes.

18 A. (The witness continues.) This is a smaller version which
19 is easier to read. Right here is 621 going around like
20 that.

21 MR. CHAIRMAN: You members can move around here if you like.

22 A. (The witness continues.) Okay. Right in here is my
23 property and the hills I'm talking about. The house is
24 right there and right up here is where they want to put
25 the well. Okay. There's a hollow going down that way

1 and the spring was there and the spring was right here
2 directly in below that. And Curtis' property --
3 Q. Where are the trees and things? Show them where Curtis'
4 property is.
5 A. It's over on this side right here, right in here. See,
6 it touches right there. And right here is his property
7 and mine is in the little blue -- that's not exact
8 circulation, but it's close, you know, as close as I
9 could get it.
10 Q. Can you figure with this map what these things are on
11 here using this map compared to that one?
12 A. I don't know if I can or not.
13 Q. I think it's converted.
14 A. I bet it is. Okay. Let's see now. This has got so much
15 fading in it, you know. I think it's right here, though.
16 Q. Is the well. Where is your house at?
17 A. It would be right there. Right there.
18 Q. Is this where you think the well is?
19 A. I think so. See, there's the same --
20 MR. COUNTS: Do you have the scale to this map, Mr. Johnson?
21 MR. JOHNSON: No.
22 Q. (Mr. Johnson continues.) Where this dips down?
23 A. Yeah, I think that's correct.
24 Q. Where this road goes off to the left?
25 A. Yeah. I just had it turned around and it sort of

1 confused me there.

2 Q. Can you show where the trees are and where the springs
3 are located that are near the well?

4 A. The springs are right down there and right there. And
5 the trees are in this dark area where it's sort of a
6 hollow like. This is high. It's tall. I do have some
7 pictures.

8 MR. JOHNSON: We've got some pictures to show.

9 Q. (Mr. Johnson continues.) Where is Weaver's Creek on
10 there and where is Alvie Creek?

11 A. Okay. Let me get my bearings here. Okay. This goes
12 right down -- I can see better on this. The well is
13 located over there. Okay. Right there is the way the
14 creek goes. See, down through there. And Alvie Creek
15 comes down on this side and meets right down there.
16 There's where they meet. Right in there is where they
17 meet.

18 Q. Okay. Could you estimate for the Board how far the
19 intersection of Alvie and Weaver's Creek are from this
20 well site?

21 A. Well, it's very close a mile.

22 Q. Okay. And if you would go ahead and come over here and
23 have a seat and we'll leave these up here. With regard
24 to the springs and other problems that you have had on
25 the property itself, would you just briefly explain that

1 to the Board as far as water and the surface itself?

2 A. Yes. Well, they have mined under my property, taken out
3 at least two seams of coal. And the water is gone. They
4 sunk the water. And now there is large breaks in the
5 soil. There is one that just came out beside my barn
6 that -- I don't really know exactly how long it is, but
7 it's longer than the end of the table to the wall, if not
8 longer than that and it's gaped open about that wide way
9 down in the ground.

10 Q. When did you first notice that surface crack?

11 A. That one was in February when I first found it.

12 Q. February of 1991?

13 A. Uh-huh.

14 Q. What other surface cracking have you seen on the proper-
15 ty?

16 A. Right below the spring where we had the water running
17 into our house, just -- I guess it was six feet below it
18 there is a crack back in the side of the creek where it
19 ran down. It's rocky there. So I can't really tell how
20 wide the crack is.

21 Q. When was the last mining done underneath your property as
22 best you can estimate it? I know you weren't there.

23 A. I really don't know. It's not been a long time.

24 Q. When did you first notice loss of water or any problems
25 on your property?

1 A. In 1986.

2 Q. During what month?

3 A. August. That's when the main spring went out to our
4 house. The one that's just about twenty foot away, it
5 comes down from another hill, you know, that's on the
6 side here. It went out in October of the same year.

7 Q. Okay.

8 MR. COUNTS: Mr. Wampler, I'm going to inquire into the
9 relevance of the line of testimony. We're not proposing
10 coal operations on these properties, but oil and gas
11 operations.

12 THE WITNESS: I'm not quite finished with the breaking of the
13 soil.

14 MR. CHAIRMAN: I think we're going to go ahead and hear this
15 because the alligation and the complaint had to do with
16 the casing and some other matters that I think is
17 relevant to this.

18 MR. JOHNSON: I think the fact that we have subsidence on
19 this property which is continuing is a matter of concern.

20 Q. (Mr. Johnson continues.) Would you go ahead and finish
21 telling the Board about the problems you've had?

22 A. Yes. And back -- I guess it's been five years, maybe
23 just four, but anyway, half way up this hill where
24 they're putting the well between my house and where they
25 plan to put the well a crack came sort of slant ways just

1 about half way before you would get to the top of the
2 hill. Well, that crack is not there now. It's sandy
3 soil and it fills up which a lot of this cracks have.
4 And I believe after that -- I can't remember which came
5 first, but over on the highway there was a crack that
6 came from my other brother's property on the other side
7 of the highway down across the road you could see it and
8 down into my field straight over from where the well
9 would be. The well wouldn't be effected by that part-
10 icular crack, but what I'm saying is there is a lot of
11 cracks and we don't know where they are.

12 Q. Who did the coal mining underneath your property, if you
13 know?

14 A. Clinchfield Coal Company, the best I understand.

15 Q. And the most recent problem that you've noticed was in
16 February of 1991, is that correct, with regard to the
17 surface? The most recent thing that you've noticed was
18 February of 1991?

19 A. Yes. And before that, going out our road there is a rock
20 formation and it has given way and pulled apart, too. So
21 there's cracks there, too.

22 Q. With regard to the drainage from the area where the
23 well's being proposed, where would water drain from that
24 location?

25 A. It would drain straight down to where my house is and go

1 on down the creek into the river.
2 Q. Which creek are you talking about?
3 A. Weaver's's Creek.
4 Q. I want to hand you what we would ask to be marked as
5 Musick Exhibit 1, a copy of a letter which is part of the
6 well application of EREX for the well dated November
7 14th, 1990.
8 MR. CHAIRMAN: Do you have a copy of this, Mr. Counts?
9 MR. COUNTS: Yes, sir.
10 Q. (Mr. Johnson continues.) Just for the record, in this
11 matter we regard to the statements in it I would like for
12 you to read for the Board the information paragraph 1 of
13 that letter. If you would read that to the Board and
14 into the record.
15 A. You want me to read it?
16 Q. Yes, ma'am. Paragraph 1.
17 A. "On November 6th, 1990 samples were collected from well
18 SVC-1863. Samples were taken and transported to the
19 laboratory for analysis by Robert Yeary of EMI. The
20 samples were collected inside a radius of 500 feet from
21 the proposed well in order to meet the applicable State
22 guidelines. Samples may have been collected at a greater
23 distance as considered necessary by the field technician
24 in order to insure representative monitor. The following
25 is a list of results from the proposed source water and

1 existing ground water in the area."
2 Q. What does it say then right below there -- immediately
3 below where you just read?
4 A. "Source water spot where Weaver's and Alvie Creeks meet."
5 Q. Right. And what's underneath that?
6 A. VC-1863.
7 Q. Now, this is a letter signed by Mr. R. J. Porter,
8 Chemist, is that correct?
9 A. Right.
10 Q. Would you again for the Board's information state how far
11 away in your estimation the intersection of Alvie and
12 Weaver's Creeks is from the proposed well site, your best
13 estimate of that?
14 A. Well, to the best that I could guess it would be around
15 three-quarters of a mile.
16 Q. Is that more than 500 feet away?
17 A. Yes.
18 Q. Now, with regard to --
19 A. Well, let me point out something. They said my house was
20 1,700 feet away, but it's really not. That's what they
21 stated.
22 MR. JOHNSON: Mrs. Musick has pointed out a question that she
23 wants me to ask.
24 Q. (Mr. Johnson continues.) How far away is your house from
25 the well?

1 A. Well, I would think that it's around 300 feet. That's
2 just roughly guessing.

3 Q. Three hundred feet from the well site?

4 A. Yes. Maybe it could be 400.

5 Q. And that's down a steep hill?

6 A. Yes. Steep hills measure differently to level ground.
7 It looks farther than it is.

8 Q. I want to hand what I will be asking to have marked for
9 identification as Musick Exhibit 2 and would you just
10 read the caption at the top of the first page for the
11 record?

12 A. Operation plan well VC-1863.

13 Q. Now, there are highlighted in yellow on the second page
14 and also on a copy of the excavation well site some
15 information. If you would read that into the record,
16 only the parts that are highlighted on Page 2 and also
17 the part that's highlighted on the proposed well site
18 evaluation. Go ahead and just read that into the record.

19 A. Number 1, vegetation on the well site will be removed
20 prior to grading operations. Number 2, two types of
21 erosion and sediment control structures, vegetative and
22 mechanical will be used to control erosion and sediment.

23 Q. Okay. And on the proposed excavation well site plan
24 which is attached as the last page, if you would read
25 what the proposal is.

1 A. Cleared ground, vegetation to act as run-off control and
2 surface water filter.

3 MR. CHAIRMAN: Mr. Johnson, was this a part of the hearing
4 before the inspector?

5 MR. JOHNSON: Yes. This is part of the application.

6 MR. CHAIRMAN: This is in the application?

7 MR. JOHNSON: Yes, sir. All the information we've handed you,
8 the letter from EMI as well as this operations plan are
9 part of the well record. We're just highlighting certain
10 aspects of the well application so the Board can review
11 those.

12 Q. (Mr. Johnson continues.) Now, you have taken some
13 photographs of your property to help the Board see -- I
14 want the ones just of your property.

15 MR. JOHNSON: And I'd like to have these marked as Musick
16 Exhibits 3, 4 and 5. Mr. Wampler, just a matter for the
17 record, the Court Reporter is going to identify Mrs.
18 Musick's exhibits as plaintiff's exhibits using the
19 stickers she has and I trust that she'll mark anything
20 that Mr. Counts wishes to introduce as a defendant
21 exhibit. Just so that's clear on the record of how we've
22 marked these.

23 MR. CHAIRMAN: That's fine.

24 Q. (Mr. Johnson continues.) Mrs. Musick, if you would come
25 up here, please. I've got what's been marked for

1 identification as Plaintiff's Exhibit or Musick Exhibit
2 4. If you would tell the Board what that depicts.
3 A. Okay. Right here is where my house is. I was standing
4 in the yard when I made this picture.
5 Q. When did you make that photograph?
6 A. Just last week. Well, about Thursday, I guess. Right
7 here is where they plan to put the well. Right there if
8 I'm understanding their maps correctly.
9 MR. CHAIRMAN: This is representing the well's going back here
10 and this is at the top of her house looking back at the
11 top of the ridge.
12 THE WITNESS: It's on top of a ridge. That's steep. See,
13 it's covered with trees and you can't really see the
14 terrain of the land. Now, right in here is where the
15 springs are, two of them. And here is another hill.
16 MR. CHAIRMAN: The springs are located here. She's locating
17 them as here.
18 THE WITNESS: Yeah. I was going to point out the --
19 MR. CHAIRMAN: Are those springs still in existence?
20 THE WITNESS: Well, they would be if there was any water them.
21 There's no water in them. See, Clinchfield sunk the
22 water.
23 MR. CHAIRMAN: So there is no spring there right now? Just a
24 bed?
25 THE WITNESS: Just the spring bed. We have a big square box

1 that held like maybe 500 gallons connected to our house
2 and furnished the water for our house. And there was an
3 overflow pipe half way on it. It was always above that
4 because water flowed out for the cattle and so on. Well,
5 right below that spring in the bank, see, the creek came
6 on down and into Weaver's's Creek. Well, the drain off,
7 when we have those heavy rains -- Sandy Ridge has some
8 very heavy rains and there's quite a bit of drainage and
9 wash out. We've had gullies wash out in our tobacco when
10 we would go tobacco up there and we would have to reset
11 it. So it washes real easy and it comes right on down
12 the hill and down the creek, eventually down into
13 Weaver's's Creek. Right in here is where one grove of
14 the Walnut trees are. There's quite a few in there. I
15 don't know exactly how many. They're not very big.
16 They're not as big as they around on the other side.
17 Q. (Mr. Johnson continues.) I also want to hand you what's
18 been marked as Plaintiff's Exhibit or Musick Exhibit 5.
19 If you show the Board what that photograph shows.
20 A. See, here is this hill. Well, if you came on around --
21 this is made from the public road and it's around in the
22 other hollow. Right there is where they would be going
23 up and out to here to put in the well. Down in here is
24 some very large Walnut trees and this here is in Maple
25 and Oak and all.

1 Q. Let me hand you what's been marked as Plaintiff's Exhibit
2 3. Show the Board that photograph.

3 A. Well, it's the same, but you can almost see both places.

4 Q. What's the building that's shown on there?

5 A. That's the top of our garage. And right here you see the
6 yard and that's a Walnut tree there. It's pretty good
7 sized, not really big, and right in there are the
8 springs and the Walnut timber. And it would be right up
9 there. That's where it would be. You can't quite see
10 it, but you go around that way and it's right down over
11 there where they would be leaving the State highway.

12 Q. Mrs. Musick, is there a well near your property which is
13 a coal bed methane well operated by Equitable or EREX?

14 A. Yes. It's not very far away. I don't know just exactly
15 the milage, but it's the last well they have in closest
16 to me.

17 Q. And is that well #1873?

18 A. Yes, it is.

19 MR. CHAIRMAN: Mr. Johnson, is that something that you
20 discussed with the inspector at the inspector's hearing?

21 MR. JOHNSON: I did not review this particular information.

22 This is information which became available to me with
23 regard to -- we did discuss that we were unhappy with the
24 operations plan and were concerned about run-off and so
25 forth. The purpose of this evidence is to indicate to

1 the Board that there are problems with the way the
2 operations plan has been handled by Equitable on adjoin-
3 ing well locations where the operations plans appear to
4 be similar and we wish to present evidence to the Board
5 which shows that Equitable's operation plan is not
6 adequate and has not been adequate for nearby well
7 locations.

8 MR. COUNTS: Mr. Chairman, this hearing is limited to the
9 record and this matter was not discussed during the
10 informal hearing. It was not raised or put into evidence
11 and as a result I would object to the introduction of
12 this evidence.

13 MR. CHAIRMAN: Sustained.

14 MR. JOHNSON: We would like to vouch the record briefly with
15 regard to what we have planned to propose and I won't get
16 into the details of this, Mr. Counts, but just briefly
17 want to vouch the record. We would attempt to prove to
18 the Board that the operations plan for 1873 was the same
19 or similar to this operations plan. We would also --

20 MR. COUNTS: Objection, Mr. Chairman, to any matters what-
21 soever that are outside the scope of the record with
22 regard to 1863.

23 MR. JOHNSON: I want to put this on the record. If you all
24 want to leave, that's fine with me. I'm just proffering
25 the record.

1 MR. CHAIRMAN: Sure. Go ahead.
2 MR. JOHNSON: And I would also present testimony to the Board
3 through Mrs. Musick that the plan failed with regard to
4 VC-1873 and that we have photographs which we would
5 introduce into the record and would like to have those
6 marked as -- for purposes of identification we'd like to
7 have those photographs marked and put into the record
8 along with the proposed exhibit have them marked and made
9 exhibits to the record but not ask that they be introduc-
10 ed, but made part of the record.
11 MR. COUNTS: I continue my earlier objection.
12 MR. JOHNSON: Just as to proffer into the record, we would
13 state into the record that the photographs that we're
14 marking as exhibits 7, 8, 9 depict well 1873 by photo-
15 graphs taken within the last week. I'd like also to
16 state to the Board the information that we have and the
17 ruling that the Board made with respect to that informa-
18 tion was new information which was not available at the
19 time that the inspector had the informal hearing. This
20 is information that came to light after that time and we
21 believe it is relevant to our objections and would note
22 our objection to the ruling of the Board's chairman not
23 to allow us to present evidence which goes to the issues
24 that were raised, but was not available to us when the
25 informal hearing was held. I believe it's creating

1 prejudicial to our position in this matter and would note
2 our objection.

3 MR. CHAIRMAN: So noted.

4 Q. (Mr. Johnson continues.) Mrs. Musick, if you would,
5 would you tell the Board as best you can what your
6 objections are to this well, what your concerns are, and
7 also offer to the Board any proposal that you have with
8 regard to this well?

9 A. Well, Mr. Johnson, they could easily move the well across
10 the state highway over onto the Buchanan side and it
11 wouldn't bother my property or Weaver's's Creek at all.
12 It would be over on the other side of 621. My objection
13 to it is it's going to be right above my house and the
14 vegetation spots along the way and it will damage the
15 timber, the drain off. They can't fix that sandy soil
16 till it won't drain off. It slips through and it's gone
17 down the hill. And there is so many broken places on my
18 property that I'm not really sure that the well would be
19 safe.

20 Q. With regard to what would happen to any run-off would you
21 just briefly make sure the Board understands where that
22 run-off would eventually lead to from any run-off coming
23 from the well site?

24 A. Well, any well run-off on my side of 621 -- any run-off
25 from the well would be going down the creek by my house

1 on down into Weaver's's Creek and it eventually empties
2 into Clinch River.

3 MR. JOHNSON: I want to call to the Board's attention and then
4 we'll rest hear regulations VR 48005-22 on Page 15 of 38
5 which would be Section 12-C. The requirement there with
6 regard to water testing says acceptable documentation
7 shall include an analysis of water from the closest
8 source, spring or well, within 500 feet of the proposed
9 well bore hole, an analysis of the water to be used or a
10 plan of the treatment of the drilling water prior to use
11 to a level meeting the standards of this section and we
12 would point out to make note of the 500 feet in that
13 particular section of the law. That's all we have to
14 present to the Board. Thank you.

15 MR. CHAIRMAN: Thank you, Mr. Johnson. Mr. Counts?

16
17
18 CROSS-EXAMINATION

19
20 BY MR. COUNTS:

21 Q. Mrs. Musick, you've indicated that if probably would be
22 acceptable to you if well 1863 were to be moved to the
23 other side of Highway 621, is that correct?

24 A. That's correct.

25 Q. Do you own that land on the other side?

- 1 A. No.
- 2 Q. So you're simply requesting that we move off your
3 property, is that correct?
- 4 A. Right.
- 5 Q. You've indicated on several occasions that you have --
6 with respect to springs on your land, what is your
7 present source of water on your property?
- 8 A. Well, we have no water. If you have drinking water up
9 there you bring it in. You can catch water, rain water,
10 to wash in, but if it doesn't ran you don't have any
11 water.
- 12 Q. Do you have any idea how far the closest source of water
13 would be?
- 14 A. No, I don't. There's quite a few different hollows that
15 the water empties into Weaver's's Creek after you get
16 over onto what they call Sourwood Mountain. It's down
17 that hollow that it would empty into Weaver's's Creek.
18 So I really don't know.
- 19 Q. Approximately how many surface acres do you own?
- 20 A. Twenty-two and a half.
- 21 Q. And are there any other springs on that acreage of which
22 you're aware of that are currently functional of a
23 permanent spring?
- 24 A. There is none functional. There was one out below the
25 barn that we used for the cattle and there was one up

1 around on the other side of the hill as I pointed out
2 that we used for the cattle.

3 Q. And you've indicated that when you really have to have
4 water that essentially you have to haul that water on
5 your property to bring it up domestic uses or whatever
6 purpose you use?

7 A. Right.

8 Q. Where do you essentially get your water from?

9 A. Well, we buy what we take from the store or we get it
10 over on -- there's a water outlet beside the road over on
11 Dump's Creek that comes out of a pipe. It's like maybe
12 -- I don't know. I guess it's fifteen miles away. And
13 we stop there and get gallons of water. We take it along
14 in a plastic jug.

15 Q. So essentially that would be water that you use to cook
16 with or wash with or basically water for domestic
17 purposes?

18 A. That would be what we would take, yes.

19 Q. Now, if you just needed water for some other purpose that
20 wasn't really for a cooking or cleaning purpose, if you
21 were just simply trying to -- do you have cattle on your
22 property?

23 A. Not right now, no. They couldn't survive.

24 Q. Have you previously had cattle?

25 A. When we lived up there we had cattle, we had mules,

1 everything you have on a farm.

2 Q. And where essentially do those cattle -- where do they
3 water at?

4 A. They watered out of the springs that led into a water
5 troth, but it's not there now.

6 Q. So essentially in terms of running water, spring water or
7 creek water, what would be the closest running water to
8 your home now?

9 A. Are you referring to down that creek how far it would be
10 till we got to water?

11 Q. Yes, ma'am. The closest water -- if you were to go find
12 running water --

13 A. I haven't been down in that country for some time. It's
14 rough down through there. But I just know where the
15 creek bed goes and mine led into it.

16 Q. You previously referred to the waters of Weaver's Creek
17 and Alvie Creek. Would that be essentially maybe the
18 closest distance that you would find running water?

19 A. Yes.

20 Q. You indicated that your home is some 300 to 400 feet from
21 the well bore based upon your judgement of distances, is
22 that correct?

23 A. Right.

24 Q. Is that your current residence? Do you live there now?

25 A. No, I don't live there now. I live in Abingdon now. I

1 stated that at the beginning of --
2 Q. I'm sorry. I missed that.
3 Q. Does anyone live in that home now?
4 A. No.
5 Q. So it's not occupied?
6 A. No. It's hard to live at a place without water.
7 Q. Yes, ma'am. I certainly understand and I want you to
8 understand that I do empathize. I have had springs and
9 have lost springs and certainly appreciate that.
10 A. Yes. I'm not the only one that's had that problem on the
11 mountain.
12 Q. Yes, ma'am. I understand. Would you say then that with
13 respect to the drilling of this well on this surface that
14 your major concern would be the run-off going down by
15 your house and eventually making its way down to Weaver's
16 Creek or Alvie Creek or in the junction?
17 A. And the destruction it would do on the way because I'm
18 sure it would damage whatever I have on that property,
19 especially the timber.
20 Q. But your understanding is that that water would be
21 running off the -- assuming there was any run-off from
22 the pits or from the location that that water would come
23 down by your home where you use to live, right?
24 A. Right.
25 Q. Okay.

1 MR. COUNTS: Mr. Chairman, I don't have any further questions.

2 MR. JOHNSON: I've just got one question.

3

4

REDIRECT EXAMINATION

5

6 BY MR. JOHNSON:

7 Q. When there's any rain in the area how does that change
8 the water sources and the statements that you have made
9 to Mr. Counts? He was assuming continual running water,
10 but when it rains what are the water sources that are
11 available?

12 A. When it rains there's plenty of water. It comes down all
13 the hollows and it meets down right where the house is.
14 The creeks come down each way and there's plenty of water
15 up there when it rains, but within hours there's no
16 water.

17 Q. The spring water that is near this well location, what
18 happens there with regard to the spring itself when it
19 rains?

20 A. When it rains water will go in this box.

21 Q. And how long will it stay there?

22 A. Well, it will stay there until it dries up because it
23 can't get out.

24 Q. How big is this spring box?

25 A. It's about this big a square.

- 1 Q. About four feet?
- 2 A. I think it's five feet.
- 3 Q. Five feet.
- 4 A. Tall.
- 5 Q. With regard to your request to relocate the well, when
6 you have requested that the well be put on the other side
7 of 621 what then would happen to any water run-off from
8 the well with regard to your property? Where would the
9 water then go?
- 10 A. It wouldn't effect my property at all. It would go down
11 on the Buchanan side and down that way.
- 12 Q. In other words, what you're talking about is the road is
13 on top of the mountain, is that correct?
- 14 A. Right.
- 15 Q. So you want to put it on the other side of the mountain?
- 16 A. Yeah.
- 17 Q. And of what benefit would that be to your brother's
18 property?
- 19 A. It would be away from his property too because his joins
20 mine at the top of that hill.
- 21 Q. Do you know how close to the road the proposed well site
22 is approximately?
- 23 A. I don't know. It's probably 200 feet. I'm not really
24 sure.
- 25 Q. About 200 feet or less?

1 A. Or less.

2 Q. On the well application that was filed and it part of the
3 permit, the well plat that was filed there shows Route
4 621 and also the well location, is that correct?

5 A. That's correct.

6 Q. And you want to move the well on the other side of Route
7 621?

8 A. Right.

9 (Witness stands aside.)

10 MR. JOHNSON: We rest, Mr. Chairman.

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

12 MR. CHAIRMAN: Yes, sir.

13 MR. EVANS: Mr. Johnson, do you have a US geological topo map
14 of this area?

15 MR. JOHNSON: There is one that was part of the record. I
16 believe I've got that one. I think this is the one. Mr.
17 Evans, this is a map that was introduced and Mr. Counts
18 may introduce it again, I don't know, but this is the map
19 that was introduced by Mr. Counts at the informal
20 hearing.

21 MR. EVANS: Thank you.

22 MR. JOHNSON: One point that I need to make here, I just need
23 to put it on the record. I would move that the exhibits
24 that we've introduced other than the proffered exhibits
25 be made a part of the record.

1 MR. CHAIRMAN: Okay. Mr. Counts?
2 MR. COUNTS: Mr. Chairman, I'd like to call two witnesses, Mr.
3 Avery McCoy with regard to our operations plan and also
4 Mr. Martin Puskar who is a petroleum engineer.
5 MR. CHAIRMAN: Let me first make sure, were there any other
6 questions from members of the Board? Okay. Go ahead.
7 MR. COUNTS: I'd like to call Mr. Avery McCoy.
8 COURT REPORTER: (Swears witness.)
9
10

11 AVERY MCCOY

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

15 DIRECT EXAMINATION
16

17 BY MR. COUNTS:

18 Q. Mr. McCoy, would you state your employment and your job
19 title?
20 A. I'm a land man for Equitable Resources.
21 Q. And approximately how long have you been involved in this
22 type of work?
23 A. Five and a half years.
24 Q. And what are essentially your job responsibilities?
25 A. I design the roads and the site and clear the surface and

1 reclamation plans and so forth.

2 Q. And are you familiar with Equitable Resources application
3 for a well work permit for well #VC-1863?

4 A. Yes.

5 Q. Mrs. Musick has objected on the basis of potential
6 spillage into Weaver's Creek. In your opinion will the
7 operations and drainage plan prevent spillage into
8 Weaver's Creek and by Mrs. Musick's prior homesite?

9 A. Oh, yes.

10 Q. Would you by referring to the operations plan indicate to
11 for Board and refer to the pages in the permit applica-
12 tion how drainage has been designed in order that run-off
13 will not be directed in that fashion?

14 A. In proposed excavation well site location VC-1863 if you
15 will notice that the site is -- when we build them we
16 slope them to drain off at one point and this drainage
17 and this run-off goes off on the Stevens property instead
18 of the Musick property. We have a diversion ditch and
19 we'll have a barrier all the way around on the outside of
20 that side. We have a diversion ditch when you come up
21 the road that goes off the left hand side which goes down
22 to a highway ditch which has a sixteen inch drain where
23 this side road comes off the main highway and then it
24 will go into Weaver's's Creek or Alvie Creek over the
25 Stevens property, not over the Musick property.

1 MR. COUNTS: Mr. Chairman, since we're looking at the opera-
2 tions plan, if any of the Board members have any ques-
3 tions if it would appropriate I would like to go ahead
4 and entertain those now.

5 MR. EVANS: I've got one. How long is your access road?

6 THE WITNESS: Approximately 500 feet. Maybe not, but let me
7 scale it. I can give you the scale distance on it.
8 Well, about 300 feet. If you go clear across the side it
9 will be 500.

10 MR. EVANS: The reason I asked that is just in looking at this
11 particular piece of topographic map in front of me scales
12 1 to 400, one inch equals 400 feet. The well site shown
13 is probably considerably less than that from the road.
14 Does your access road come clear up --

15 THE WITNESS: There's a little point that that well site is
16 sitting on. We have to come right up the middle of that
17 point to get up to it.

18 MR. EVANS: Because what I looked at I see that there's an
19 intersection.

20 THE WITNESS: Yes. If you'll see that little intersection
21 there, that's where the water comes off, in that side
22 road coming off the State road.

23 MR. EVANS: Thank you.

24 Q. (Mr. Counts continues.) Mr. McCoy, would you also
25 indicate how the pits are designed and what the purpose

1 of the design is?

2 A. The pits are designed to hold about 9,000 barrels of
3 water or a little over each pit. And normally we only
4 use about 6,000 barrels of water in the drilling of a
5 well. If you'll notice on the sketch there's an alter-
6 nate pit also. Sometimes with a lot of rain and so
7 forth the rain water will help to fill up one pit so we
8 can dig another pit. And if something should happen that
9 we have to use more water or a tremendous amount of rain
10 we can set tanks on the side and pump the water out of
11 the pits into the tanks until such time that it dries up
12 we can let it back into the pit.

13 Q. In other words, this design is a contingency plan in the
14 event that you encounter more drilling water, more water
15 in the drilling than anticipated in order to prevent
16 spillage, is that correct?

17 A. Yes.

18 Q. Would you also indicate the design of the drainage
19 ditches both from nature and from artificial barriers and
20 what the purpose of those barriers are for?

21 A. The drainage ditches are built three feet deep and sloped
22 on each side and the barrier is put up completely around
23 the site except where the road comes in and then it's
24 sloped to accommodate the barrier on the outside of the
25 pad and then that water all runs to one point and drains

1 off.

2 Q. Now, to the best of your knowledge is any ground water in
3 the area being used for domestic consumption?

4 A. No, not to my knowledge.

5 Q. Are any permanent springs located within 500 feet or any
6 nature water drainage of well VC-18637

7 A. No, not that I can find.

8 Q. Now, Mrs. Rasnick stated that the closest running water
9 would essentially be the intersections of Alvie and
10 Weaver's Creek. Mr. Johnson has previously referred to
11 Section 12-C of Article 3 regulations, VR 480-05-22.1.
12 Paragraph two states the operator shall indicate in the
13 operations plan how they plan to comply with this
14 requirement and acceptable documentation shall include 1;
15 an analysis of water from the closest source, spring or
16 well, within 500 feet of the proposed well or core hole.
17 You've indicated as well as Mrs. Musick that there is no
18 source within 500 feet, is that correct?

19 A. That's correct.

20 Q. And paragraph two says analysis of the water to be used.
21 What is the description? Is that the base water or is
22 that the source water for your documentation?

23 A. State your question again.

24 Q. The analysis of the water to be used, is this water to be
25 used in drilling?

1 A. Yes.

2 Q. And therefore, it would be the source water, is that
3 correct?

4 A. Right.

5 Q. And would you indicate for the Board according to the
6 EMI report where the source water was taken from?

7 A. It was taken at the intersections of Weaver's Creek and
8 Alvie Creek.

9 Q. Thank you, sir. Will Equitable use water in it's
10 drilling operations which meets or exceeds the quality of
11 the water tested from the base line test?

12 MR. JOHNSON: I'm going to object to all these leading
13 questions. He ask him will, does, do. I'm going to
14 object to that. Go ahead.

15 MR. CHAIRMAN: Go ahead, Mr. Counts.

16 Q. (Mr. Counts continues.) Approximately how far from the
17 house will the bore locate? Mrs. Musick has testified
18 about 300 feet from the home which she use to occupy.

19 A. Well, it's over 1,000 feet.

20 Q. Could you indicate that for the Board on the plat
21 attached to the permit application?

22 A. It's not on this plat. Her barn is, but I don't the
23 house on this plat. But I can show you about where it
24 is.

25 Q. We have another tope here which Mr. Johnson has previous-

1 ly made reference to. Can you locate it on that map and
2 then show that to the Board, please, and scale it off to
3 distance, if you would?

4 A. That shows it to be about 1,100 feet scaled on this 400
5 map.

6 Q. Would you take that forward please and show it to the
7 Board members?

8 A. (Witness indicates.)

9 MR. EVANS: What was the scale on that map?

10 THE WITNESS: 1 to 400. By that scale it's around 1,100 feet.

11 MR. COUNTS: Mr. Chairman, I don't believe that's been
12 introduced into evidence previously by Mr. Johnson. I
13 would like to offer that as Exhibit A.

14 MR. JOHNSON: No objection.

15 MR. CHAIRMAN: Okay.

16 MR. COUNTS: These exhibits that you're looking at are
17 exhibits from the IFFH hearing that have already been
18 entered into the record.

19 MR. CHAIRMAN: I still think it would be good to go ahead and
20 mark it as Defendant's Exhibit 1 for the purposes of
21 today. I believe it is 1, isn't it, Mr. Counts?

22 MR. COUNTS: Yes, sir.

23 Q. (Mr. Counts continues.) Mr. McCoy, in your opinion is
24 the operations plan for soil and erosion and sediment
25 control adequate and effective?

1 A. Yes.

2 MR. COUNTS: I have no further questions, Mr. Chairman.

3 MR. JOHNSON: May I cross-examine?

4 MR. CHAIRMAN: Yes.

5

6

7

CROSS-EXAMINATION

8

9 BY MR. JOHNSON:

10 Q. I think you've indicated where the house is. Where is
11 that at on here?

12 A. Just a minute. Let me get a look at it. Yeah, right
13 here is the well. The well site is right against that
14 property line. The well site is right against this
15 property line. It's about three feet off of yours and
16 the Stevens property on you. And you go down this hollow
17 and it levels out and you come to your house right there.

18 MRS. MUSICK: Right here, you say?

19 THE WITNESS: Yes.

20 Q. (Mr. Johnson continues.) Where is the cemetery?

21 A. Right here.

22 MRS. MUSICK: Okay. The cemetery, it's not quite as far away
23 as this, but it's farther away than that. So I would
24 think the house would be on over this way. I can't
25 really be positive because I don't know that much about

1 these maps. I can just judge from the distance of one
2 thing to another thing.

3 THE WITNESS: That's the only house I can find down there.

4 MRS. MUSICK: Well, there's only one house there plus the
5 garage right beside it.

6 MR. EVANS: Mrs. Musick, when was that house built?

7 MRS. MUSICK: I believe it was 1958. I can't really be sure.

8 MR. EVANS: Okay. As long as it was more than ten or fifteen
9 years ago.

10 Q. (Mr. Johnson continues.) I think that you said that the
11 main pit design was for 9,000?

12 A. Yes.

13 Q. What's the alternate pit design, is it the same?

14 A. The same size.

15 Q. Now, if both pits were filled where would the water go?

16 A. We'd pump it in tanks -- set tanks on the side and pump
17 the tanks full until we got the pits dug.

18 Q. All right. How long a time would it take you to set up
19 tanks?

20 A. Thirty minutes.

21 MRS. MUSICK: Are the pumps automatic? Do they come on
22 automatically?

23 THE WITNESS: No, ma'am. They have them in there -- when
24 they're drilling that well there is men there twenty-four
25 hours a day till they get it down and leave.

1 MRS. MUSICK: Because there is some very fast, hard rains on
2 that mountain.

3 Q. (Mr. Johnson continues.) With regard to a rain event,
4 what you're saying is is that during the operation you
5 would anticipate as much as 6,000 gallons coming from
6 this well, is that right?

7 A. Yes.

8 Q. And that water is going to stay in the pit? Is the water
9 ever going to be drained out of that pit?

10 A. As soon as they get through they treat the water and
11 treat the water until such time as is suitable just like
12 the creek water and then they spread it out on the ground
13 and then they reclaim the pit.

14 Q. How long in this operation after the well is built will
15 these pits stay in place?

16 A. Not over three weeks. Maybe less.

17 Q. Do you have operations where the pits stay longer than
18 three weeks?

19 A. Yes. We also have where they stay shorter than three
20 weeks.

21 Q. What provisions for run-off are made after the end of
22 that three week period? What's left there under your
23 operations plan?

24 A. You mean after it's reclaimed?

25 Q. Right. After you drain these pits, then what do you do?

1 A. You see these pits that have that silk fence around them
2 there?
3 Q. Uh-huh.
4 A. Now, that will be the only thing that there will be run-off
5 from that side except for what comes into natural earth
6 from your drainage ditch. Now, that silk fence will stay
7 in place after they reclaim those pits and seal them and
8 it will remain in place until the vegetation is well
9 covered and it's just like the earth was to start with.
10 Q. How many tanks will stay on site, if any?
11 A. Normally two is what stays there on a coal well.
12 Q. And what's the purpose of those tanks?
13 A. That's for the water that comes out of the well.
14 Q. What happens to the water from those tanks?
15 A. Well, they've been hauling it and putting in ejection
16 wells. I haven't followed the process all the way
17 through, but it's hauled off the site.
18 Q. Can you show me where this water is going to drain? You
19 said it was going to drain on the Stevens tract. Can you
20 use one of these aerial photos and show us what's going
21 to happen -- on a topo map. Do you have a topo map
22 that's going to show that area?
23 A. Yes. See, here is the Stevens property right here,
24 coming right down through here, and half of the site will
25 be on the Stevens and half on Mrs. Rasnick. And the

1 drainage will come right down through here and hit this
2 ditch on this road and out that ditch and through that
3 drain and into there. That's where the drainage of all
4 the site will come from.

5 Q. Will that go through the Curtis Rasnick property?

6 A. No. I don't think so.

7 MRS. MUSICK: Oh, yes. It comes right on around here into --

8 THE WITNESS: Well, ma'am, I know, but it will be in the
9 creek. Now, if this line goes down the creek it will be.

10 MRS. MUSICK: Yeah. It goes right over his property down on
11 the back side.

12 THE WITNESS: Yeah. That will be in the natural drainage.

13 Q. (Mr. Johnson continues.) Mr. McCoy, with regard to
14 Weaver's Creek, where does the water go below the inter-
15 section of Alvie Creek and Weaver's Creek? Where does
16 that water go?

17 A. Let's see.

18 Q. If you know.

19 A. I'd have to look on the map. I just don't know. I've
20 been all the way up Alvie Creek, but I haven't been
21 beyond Alvie Creek out from the other side.

22 Q. Do you know what uses are made of the water from Weaver's
23 Creek below that intersection from your own knowledge?

24 A. Well, for three miles there's nothing. Not any.

25 Q. And then what happens?

1 A. I don't know. It goes through farm land.
2 Q. When you say for three miles are you talking about going
3 down the mountain itself, is that what you mean?
4 A. I'm talking about in the creek bed down on the creek.
5 There's been a mine down on Alvie Creek and for three and
6 a half or four miles there's not any houses, pasture
7 land, farms or anything.
8 Q. When Weaver's Creek connects with Alvie Creek locally is
9 then referred to as Weaver's Creek or Alvie Creek?
10 A. Alvie Creek.
11 Q. And then Alvie Creek continues on through pasture land or
12 on down the mountain, as you say, for a few miles and
13 then goes into some farm land?
14 A. Yes.
15 MR. COUNTS: Mr. Chairman, can I inquire to the relevance of
16 this line of questioning?
17 MR. JOHNSON: Well, it's relevance is certainly clear. The
18 statement was made by Mr. McCoy on direct examination
19 that this really didn't affect anybody. I want to put on
20 the record that yes, it does effect other land owners and
21 other people in the environment below the location spot.
22 MR. EVANS: Time out here, folks. If you're going to talk
23 about something that's going to affect somebody down-
24 stream the very fact that Mrs. Musick's property is
25 there affects somebody downstream. So let's not get out

1 of bounds here on what we're talking about.

2 MR. JOHNSON: He made the statement that it didn't affect it.

3 I'm asking does it affect it? He says he doesn't know.

4 MR. EVANS: To the point that it makes anything to do with
5 this particular hearing I almost agree with him. No, it
6 doesn't affect them for the purposes of this hearing.
7 Now, I'm not going to sit here and listen to you go clear
8 down to the Mississippi River and on out to the Gulf.

9 MR. JOHNSON: I don't plan to, Mr. Evans, and that's not my
10 purpose for being here or anybody's that here. It's not
11 our purpose. But it is my purpose to indicate that yes,
12 this water does drain, it does affect other people.
13 That's all I wanted to put on the record. He said it
14 didn't. I cross-examined him and he said might do that.

15 MR. CHAIRMAN: Go ahead with your question, Mr. Johnson.

16 MR. JOHNSON: That's all the questions we have.

17 MR. CHAIRMAN: Any other questions, members of the Board? Any
18 follow up, Mr. Counts, or closing statement?

19 MR. COUNTS: No, sir.

20 (Witness stands aside.)

21 MR. JOHNSON: Do you have any more witnesses?

22 MR. COUNTS: Yes, I do. I'd like to call Mr. Martin Puskar.

23 COURT REPORTER: (Swears witness.)
24
25

1 Q. Is it professional opinion that the casing plan will be
2 sufficient to insure that all fresh water aquifers
3 encountered will be protected?

4 A. I believe it is.

5 Q. Would you describe for the Board the casing program for
6 VC-1863 by referring to the casing program as inc-
7 corporated into the operations plan?

8 MR. CHAIRMAN: Mr. Counts, he withdrew any objections of the
9 casing.

10 MR. COUNTS: I'm sorry, Mr. Chairman. Since there was still a
11 question about -- there's been a lot of discussion with
12 regard to ground water contamination and springs,
13 etcetera, as long as there's no confusion from the
14 Board's standpoint I'm happy not to proceed with that
15 line of questioning.

16 MR. CHAIRMAN: I think I would pursue other questions.

17 Q. (Mr. Counts continues.) Mr. Puskar, is it your opinion
18 that the permit or work will constitute a hazard to any
19 individual?

20 A. No. I don't believe it will.

21 MR. JOHNSON: Again, objection to the leading questions.

22 MR. CHAIRMAN: So noted. Continue.

23 Q. (Mr. Counts continues.) And it is your professional
24 opinion based upon these factors that the location shown
25 by the well work permit as submitted by Equitable is

1 necessary to promote the safe and efficient exploration
2 for and development, production, utilization, conserva-
3 tion of the coal bed methane resources underlying this
4 unit?

5 A. Yes.

6 MR. COUNTS: No further questions.

7 MR. CHAIRMAN: Cross-examine?
8
9

10 CROSS-EXAMINATION
11

12 BY MR. JOHNSON:

13 Q. Mr. Puskar, what is the closest coal bed methane well to
14 this well?

15 MR. COUNTS: Objection.

16 MR. CHAIRMAN: I'm going to let him go ahead and answer.

17 A. (The witness continues.) I'm not sure of any exact
18 distances.

19 Q. Is that well #1073?

20 A. I believe it may be, yes.

21 Q. And you say you can't estimate that. Is it less than
22 2,000 feet?

23 A. I don't really know, but I don't believe that it is.

24 Q. I believe I questioned you on that issue at the informal
25 hearing and you did say you thought it was within 2,000

1 feet. Is that right or wrong?

2 MR. COUNTS: Mr. Chairman, the witness has already indicated
3 that he's not sure in terms of what the distances
4 actually are and again, I see no relevance with regard to
5 the testimony.

6 MR. JOHNSON: I'm asking him if he's changed his opinion from
7 the informal hearing.

8 MR. COUNTS: He's already answered you, Mr. Johnson. He does
9 not know.

10 MR. CHAIRMAN: I think we've heard enough on that. If you
11 want to move on to your other questions.

12 Q. (Mr. Johnson continues.) With regard to your casing plan
13 was any special provision made for subsidence itself?

14 A. No, not really. All the casings will be cemented back to
15 surface. So that will be as much protection as we can
16 give.

17 Q. Are you familiar with subsidence in this particular area?
18 Have you examined any affects of subsidence in the area?

19 A. No, I haven't.

20 Q. Have you been to this site?

21 A. This particular site, no.

22 MR. JOHNSON: That's all the questions I have.

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

24 MR. COUNTS: I have one, Mr. Chairman, one redirect.
25

1 feet. Is that right or wrong?

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3 that he's not sure in terms of what the distances
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7 the informal hearing.

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9 not know.

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11 want to move on to your other questions.

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13 was any special provision made for subsidence itself?

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15 surface. So that will be as much protection as we can
16 give.

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18 Have you examined any affects of subsidence in the area?

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20 Q. Have you been to this site?

21 A. This particular site, no.

22 MR. JOHNSON: That's all the questions I have.

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

24 MR. COUNTS: I have one, Mr. Chairman, one redirect.
25

1 REDIRECT EXAMINATION

2
3 BY MR. COUNTS:

4 Q. Mr. Puskar, is it unusual for Equitable to drill wells in
5 areas where active coal mining is taking place?

6 A. No, it's not.

7 MR. COUNTS: Okay.

8 MR. JOHNSON: I've have no further questions.

9 (Witness stands aside.)

10 MR. JOHNSON: When Rick's finished I'd like to put Ms. Musick
11 back on for a second.

12 MR. COUNTS: Mr. Chairman, we've already gone through the
13 process. I'd object to that.

14 MR. CHAIRMAN: I'm going to let him ask a couple of follow-up
15 questions.

16
17
18 THELMA MUSICK

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

21
22 REDIRECT EXAMINATION

23
24 BY MR. JOHNSON:

25 Q. Mrs. Musick, as McCoy says that the water is suppose to

1 go on the Stevens property or at least that he says he
2 thinks it's going to go if there is a problem, where does
3 that water go?

4 A. It goes around --

5 Q. If it does go onto the Stevens tract?

6 A. It goes over the Stevens tract and down over another
7 person's property that probably doesn't even know that it
8 will go down over there. His name is Burt Musick. And
9 right on over from him it will be going over Curtis'
10 which is the same with mine. He's my relative. And then
11 right on Curtis' property is where it meets Weaver's
12 Creek and then it turns into Weaver's Creek and on down
13 over the farming section of what they called Back Valley.
14 And those people down there, tobacco is their main source
15 of income and they do water their tobacco patches,
16 anything they grow, like their gardens. Some of them
17 grow tomatoes for sale. That water serves as a purpose
18 to water their crops.

19 Q. Should the water from this well site not go in the
20 direction that Mr. McCoy said it would but would instead
21 go directly over the hill, then what would the flow of
22 water be that would go due south over your property?

23 A. If it goes over my property?

24 Q. Yes, ma'am.

25 A. It empties into the same.

1 Q. But it goes across your property?

2 A. Right.

3 Q. And if the well is located on the other side of 621 then
4 it wouldn't drain --

5 A. It wouldn't affect anybody. It would go on down through
6 Buchanan County and down where they have mined and into
7 the river on that side.

8 MR. CHAIRMAN: I think we're repeating some of the information
9 on the record.

10 MR. JOHNSON: That's all the questions I've got. Thank you.

11 MR. CHAIRMAN: Any other questions?

12 (Witness stands aside.)

13 MR. CHAIRMAN: Okay. We have the appeal of the inspector's
14 decision as so noted by Mr. Johnson representing Mrs.
15 Musick and others. What's your pleasure? The appeal was
16 amended to withdraw objection #1 which leaves Items 2, 3,
17 4 and 5 as objections. Is that correct, Mr. Johnson?

18 MR. COUNTS: Yes, it is. Mr. Chairman, I am prepared to
19 offer into evidence which I believe has already been
20 offered as part of the permit application the consent to
21 stimulate, I believe being Item 4 or 5 of Mr. Johnson's
22 objections.

23 MR. JOHNSON: I could never get anybody to give me a copy of
24 this. They said come dig it up.

25 MR. CHAIRMAN: Item 4, you say?

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1 MR. COUNTS: Yes, sir. Consent to stimulate.
2 MR. CHAIRMAN: So are you now withdrawing objection #4, Mr.
3 Johnson, for assistance without condition. This will be
4 Defendant's Exhibit 2. Did you give Mr. Johnson a copy?
5 MR. COUNTS: Yes, sir, I did.
6 MR. JOHNSON: This does not -- I can't put these two letters
7 together and say there's a consent to stimulate here and
8 I'll defer that to counsel to find where it says on the
9 August 31th, 1991 letter that Pine Mountain is nominated
10 as their agent or whatever to provide consent to stimu-
11 late. I just don't find that connection. I'm sure Mr.
12 Counts does, but I don't find that connection and for
13 that reason I'd say there is no consent to stimulate
14 that's been made a part of the record from the coal
15 owner.
16 MR. CHAIRMAN: So the objection stays --
17 MR. JOHNSON: The consent is signed by the oil and gas owner.
18 MR. CHAIRMAN: The objection then stays 2, 3, 4 and 5. What's
19 your pleasure?
20 MR. EVANS: Mr. Chairman, I'd like to make a motion in this
21 matter.
22 MR. CHAIRMAN: Okay.
23 MR. EVANS: I move that we affirm the inspector's decision.
24 There's been no showing that the wells to be drilled in
25 any manner other than as in conformity with the Gas and

1 Oil Act and regulations. There has been no showing that
2 the proposed well constitutes a hazard to the safety of
3 any person or any other surface owner objection consis-
4 tent with 45.1-361.35.

5 MR. KELLY: Second.

6 MR. CHAIRMAN: We have a motion and a second. Any further
7 discussion? If there's no further discussion, all in
8 favor signify by saying yes. (ALL AFFIRM.) All opposed
9 say no. (NONE.) The motion carries. Thank you. We
10 will recess for lunch and reconvene at 1:30.

11 (AFTER THE LUNCHEON RECESS, THE PROCEEDINGS CONTINUED AS
12 FOLLOWS:)

1
2 (ITEM 10)
3

4 MR. SWARTZ: Mr. Chairman, my name is Mark Swartz and I
5 represent OXY, USA and I'm here with Tim Scott today. We
6 have what I believe will take ten or fifteen minutes to
7 deal with a proposed amendment to a prior order of this
8 Board. Pocahontas Gas Partnership and their counsel have
9 been kind enough to allow us to proceed on my representa-
10 tion that this will be short and theirs will obviously
11 take some good bit of time this afternoon. And I would
12 request that we might be able to proceed quickly and try
13 and move through this.

14 MR. CHAIRMAN: Any objections to that? Okay. Go ahead.

15 MR. SWARTZ: What we are asking the Board to do today is
16 simply to amend a prior Board order which was entered on
17 March 27th, 1991. There has been a motion filed to amend
18 that order. The amendment that we believe needs to be
19 made to that order is fairly straight forward. There
20 were three folks that were listed in that order as
21 mineral owners and they are, in deed, mineral owners in
22 the unit.

23 MR. CHAIRMAN: Could I stop just one second?

24 MR. SWARTZ: Yes.

25 MR. CHAIRMAN: We're talking about Item 10 on the agenda,

1 Docket #VGOB-91-0820-140, is that correct?

2 MR. SWARTZ: That's correct. In this case which deals with a
3 conventional oil and gas well known as EH-36, this case
4 was heard initially by this Board in October when we were
5 at the library in Bristol. There were two Edward &
6 Harding conventional wells, EH-31 and EH-36. At that
7 hearing the Board ruled that it wanted to consider field
8 rules in advance of granting either of these and both of
9 these got adjourned from month to month and eventually
10 both of these wells had orders entered. On the EH-31
11 well OXY's interest with regard to these three leases was
12 properly shown. With regard to the EH-36 well it was
13 not. What we are asking, the relief that we're seeking,
14 is that the Board order be amended to reflect that OXY
15 has a lease from Mary Francis Selle from Dean and
16 Bridget Cole and from Thurman G. Cooper and his wife.
17 The net interest in the unit represented in the EH-36
18 unit represented by these three lease hold interests
19 which OXY has is a total of .805069 percent. But I
20 believe I have a stipulation from Edwards and Harding
21 with regard to that net interest.

22 MR. RASNICK: That's correct.

23 MR. SWARTZ: Okay. And I don't believe that there is any
24 dispute that OXY, in deed, has releases from these three
25 folks.

1 MR. RASNICK: None.

2 MR. SWARTZ: Okay. The problem that we have had is that
3 Edwards and Harding was not required by the prior order
4 to furnish OXY with a notice stating that they had X
5 amount of time to elect. So the record in this proceed-
6 ing does not reflect OXY's interest at all and OXY has
7 not been afforded it's statutory election right. So the
8 order should be amended to reflect these three leases,
9 the net interest or that OXY has an interest or whether
10 or not the percentage makes it in the order I don't is
11 important and then Edwards and Harding should be directed
12 to afford OXY the statutory notice of it's election
13 options here. And I think since there is a stipulation
14 with regard to the existence of these leases and the net
15 interest of the unit that there's no dispute. Edwards &
16 Harding, in fact, cooperated with us and made some calls
17 and was trying to get this done and taken care of. But
18 they never did bring a motion and we decided that it
19 would be prudent since the well is drilled, I believe, to
20 go ahead and get this thing straightened out as a matter
21 of record. There were two minor issues that arose that
22 you may not want to decide today, but I think you need to
23 think about. When Mr. Wirth and I were drafting the
24 motion to amend and in the process of filing it, I don't
25 think anybody's done this yet in front of you all, we

1 gave some thought to whether or not there should actually
2 be a new case number assigned to this. And it was our
3 view and that apparently was not shared by the division,
4 but it was our view when we filed this that we felt that
5 it should be given the same case number as the prior
6 order so that if someone was trying to reconstruct what
7 happened with regard to this unit there would be a
8 consistent case number or a docket number assigned to
9 this matter. The decision was made to give this case a
10 new number. I don't have a problem with that, but I
11 think it's something you all might want to think about.
12 Are we going to give every motion that might affect a
13 prior order a new number or would it be more prudent to
14 continue on with the same number. In addition, when we
15 sent our application in we did not accompany it with a
16 \$100 check. The Board rules that are currently in force
17 set forth only three circumstances under which a filing
18 fee has to accompany a piece of paper and it's the
19 emergency regulations at 3-C. And it says all complete
20 applications for establishment of units, spacing or
21 pooling shall be accompanied by a fee of \$100. We did
22 not send a \$100 fee when we filed this because we assumed
23 that this provision would control. We were subsequently
24 told we should pay \$100. We didn't. I think, though,
25 that you need to address the question of what papers

1 require a filing fee when they are filed because your
2 rules seem to be inconsistent with the position that was
3 adopted here. And lastly, I think in a situation like
4 this -- I'm not fussing with the Board on this order nor
5 as I fussing with Mike. I mean, this was a very confused
6 record. I think the ultimate responsibility for making
7 sure that an appropriate order is entered is the unit
8 operator. And under this situation I think it's the duty
9 of the unit operator to advise the Board and/or Mike when
10 he's drafting the order as to whose interests need to be
11 reflected in the order. And that clearly didn't happen
12 here. Otherwise we wouldn't have had this order. I
13 think under these circumstances I would suggest you might
14 consider it a policy when a motion has to be amended by
15 someone other than the unit operator because somebody was
16 left off you might consider if we are going to impose a
17 filing fee to making the unit operator pay that fee since
18 it was their obligation in the first instance to make
19 sure that this was done right. So if you're going to
20 collect a fee maybe you want to look at who needs to be
21 paying it. The last issue that I would like to address
22 is Mr. Wirth and OXY would like to enter into a joint
23 operating agreement with regard to this unit and the
24 prior unit EH-31. Mr. Wirth has requested a joint
25 operating agreement from Edwards and Harding on several

1 occasions and has never received one and to the extent
2 that that Board might encourage this to happen because I
3 believe that that was the Board's policy last fall when
4 we sent a lot of time with joint operating agreements
5 that you would encourage operators to furnish them,
6 parties to try and agree, and if there couldn't be an
7 agreement to come back and see you. Here we have a
8 situation where we just don't have one. So, in essence,
9 I would request the specific amendments that I have
10 described to this order for the obvious reasons. And I
11 would suggest to the Board that perhaps not today, but at
12 some time in the future you consider some of the ad-
13 ministrative issues that I have raised which came up in
14 filing this motion. I don't think I need any testimony
15 because we seem to have a stipulation as to the net
16 interest in the unit and the existence of the leases, but
17 if you want to ask any questions Mr. Wirth is here, I'm
18 here.

19 MR. CHAIRMAN: Would you state your name for the record,
20 please?

21 MR. RASNICK: James Rasnick of Edwards & Harding Petroleum
22 Company. I'd like to state that Edwards & Harding
23 Petroleum Company did make a diligent effort to have the
24 order amended and that for various reasons we were -- it
25 was indicated to us that a new motion would have to be

1 filed in which we didn't feel at that time that it was
2 our obligation to make that motion.

3 MR. CHAIRMAN: But you do stipulate to the facts as presented
4 by Mr. Swartz, is that correct?

5 MR. RASNICK: That is correct.

6 MR. SWARTZ: One last thing from a note of standpoint, it's on
7 record with Mr. Fulmer's office, but we did notify our
8 lessors of this hearing and we have so advised you. So
9 that in addition to notifying Edwards & Harding we have
10 notified our lessors. It does not change any percentage
11 line up. It just changes it from one column to another.
12 But the percentages in the unit remain the same.

13 MR. CHAIRMAN: Any questions, members of the Board. A motion?

14 MR. EVANS: Mr. Chairman, I'd like to make a motion that we
15 accept OXY's petition and direct that the order be
16 amended as prescribed by OXY.

17 MR. CHAIRMAN: He have a motion.

18 MR. HARRIS: Second.

19 MR. CHAIRMAN: A motion and a second. Any further discussion?

20 If not, all in favor signify by saying yes. (ALL
21 AFFIRM.) Opposed say no. (NONE.) The motion carries.

22 Thank you. When we have some items for the Board that we
23 do housekeeping on we'll put these other issues on the
24 agenda as well. Thank you.

25

1
2 (ITEM 5)
3

4 MR. CHAIRMAN: We're going to go to Item 5, the petition for
5 the establishment of a compulsory pooled drilling unit
6 under 45.1-361.22 from Pocahontas Gas Partnerships. This
7 is Docket #VGOB-0716-135. We'd like all the parties that
8 want to address the Board in this matter to come forward,
9 please. Mr. Fulmer, would you get a list of all the
10 people if we can't seat everyone that wants to address
11 the Board, please, of who wants to address the Board so
12 I'll have that available.

13 MR. FULMER: Yes, sir.

14 MR. CHAIRMAN: We'll take a five minute recess.

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

17 MR. CHAIRMAN: While you're getting ready I'll tell you that
18 if you do any presentations where you're standing up or
19 anything like that or with any of your witnesses or what
20 have you please make sure that they're near a microphone
21 or take one with them or something so that we can
22 maintain a good recording.

23 MS. McCLANAHAN: Jim Jones and I represent Pocahontas Gas
24 Partnership and we're here for the application to pool a
25 sealed coal bed methane gob interest underlying the

1 proposed unit for BUN-1 which was approved by the Board
2 in June of this year. Just for the record, what we have
3 stipulated to the Board members prior to beginning the
4 hearing were new exhibits C and D for the applications.
5 So those would be amended exhibits C and D for the
6 application as well as the page of the application which
7 indicates the amount of interests that we have leased.
8 Also a designation of operator and power of attorney
9 from Consol to Pocahontas Gas Partnership for the
10 property interest in this unit, consent to stimulation
11 from the coal owner on the property which is also Consol,
12 and new detailed well estimates for exhibits E through J.
13 Those just indicate some changes that have been made
14 since the date that we filed the actual application. The
15 first witness that we would like to call is Les Arring-
16 ton.

17 COURT REPORTER: (Sweats witness.)

18
19 LESLEY ARRINGTON

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

22 DIRECT EXAMINATION

23
24 BY MS. McCLANAHAN:

25 Q. Mr. Arrington, who are you employed by?

- 1 A. Consolidation Coal.
- 2 Q. And what is your position with Consolidation?
- 3 A. Permit specialist.
- 4 Q. And your responsibilities and duties there?
- 5 A. Assembling the gas and oil information in the well
- 6 permits and applications and land mapping and gathering
- 7 title information from titled opinions.
- 8 Q. And what is your educational background?
- 9 A. I have an Associate of Science degree in mechanical
- 10 engineering and a Bachelor of Science in civil engineer-
- 11 ing technology.
- 12 Q. Have you given notice as required by Virginia Code
- 13 Annotated Section 45.1361.19 to each person or entity
- 14 that's identified on Exhibit C of the force pooling
- 15 application as a potential owner of the sealed coal bed
- 16 methane gob gas underlying the unit?
- 17 A. Yes.
- 18 Q. Do you have a copy of the notice that was mailed to the
- 19 parties that are listed on Exhibit C?
- 20 A. Yes, I do.
- 21 MS. McCLANAHAN: We would present that as our Exhibit A.
- 22 Q. (Ms. McClanahan continues.) How were these notices
- 23 mailed?
- 24 A. By certified mail, return receipt requested.
- 25 Q. And have you submitted those returned receipts to the

1 oil and gas inspector?

2 A. Yes.

3 Q. How were the persons whose names or addresses that are
4 listed as unknown on the application notified?

5 A. By returned certified mail.

6 Q. The people who are listed as unknown, did you publish
7 them in the paper?

8 A. I published them in the paper. I'm sorry.

9 Q. In what papers did you publish notices?

10 A. Okay. The Virginia Mountaineer, Bluefield Daily Tele-
11 graph and Bristol Herald.

12 Q. Do you know what the dates of those publications were?

13 A. The Virginia Mountaineer was July 25th. The Bristol
14 Herald was July 21st and the Bluefield Daily Telegraph
15 was July 20th.

16 Q. Do you have proofs of publication?

17 A. Yes.

18 MS. McCLANAHAN: These we would submit as Exhibits B, C and D.

19 Q. (Ms. McClanahan continues.) Mr. Arrington, have you
20 filed permits to convert the wells that are located
21 within the BUN-1 unit?

22 A. Yes, we have.

23 Q. Were any objections to the permit applications made by
24 coal owners or operators?

25 A. No.

- 1 Q. Has a drilling permit been previously refused to Pocahon-
2 tas Gas Partnership on any of the tracts that make up
3 this unit?
- 4 A. No.
- 5 Q. What percentage of the gas and oil rights in the tracts
6 that comprise the BUN-1 has Pocahontas Gas Partnership
7 leased to date?
- 8 A. Lease to date is 1.966 percent.
- 9 Q. And what percentage of the oil and gas rights in the
10 tracts that comprise BUN-1 does Pocahontas Gas Partner-
11 ship own?
- 12 A. 89.309 percent.
- 13 Q. And how much of the coal estate do you own or lease on
14 the tract within the unit?
- 15 A. Well, we own or lease 100 percent of the P-3 seam.
- 16 Q. And all other seams besides the Pocahontas 37
- 17 A. It's -- I can't remember. 99.6 percent.
- 18 Q. And the unleased owners and their percentages of owner-
19 ship in the respective tracts for the BUN-1, are those
20 listed on Exhibit D of the application?
- 21 A. Yes, ma'am.
- 22 Q. And the amended exhibit which we submitted to the Board
23 today, is that accurate as to who the unleased owners
24 are?
- 25 A. Yes.

1 MS. McCLANAHAN: I don't have any further questions for this
2 witness.

3 MR. CHAIRMAN: Any questions, members of the Board? I have a
4 list of people that wanted to address the Board. As we
5 go through these witnesses if you have questions that
6 would be the time to ask it. Do you have a question that
7 you would ask the witness? If not, you may call your
8 next witness.

9 (Witness stands aside.)

10 MS. McCLANAHAN: Gil Gillenwater.

11 COURT REPORTER: (Swears witness.)

12

13

14

WILLIAM GILLENWATER

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

17

18

DIRECT EXAMINATION

19

20 BY MS. McCLANAHAN:

21 Q. Gil, would you please state your full name for the
22 record, please?

23 A. William Gillenwater.

24 Q. And your address?

25 A. Box 1364, Old Athens Road, Princeton, West Virginia.

1 Q. And by whom are you employed?
2 A. Consolidation Coal Company.
3 Q. What is your position with Consolidation Coal?
4 A. District land manager.
5 Q. And what is your employment history prior to Consolida-
6 tion?
7 A. Prior to Consolidation?
8 Q. Have you worked for Consolidation --
9 A. My whole life.
10 Q. -- your whole life? Okay.
11 A. I have thirteen years with Consolidation Coal entirely in
12 their land department, eight years in the capacity of
13 district land manager.
14 Q. Where has your experience in obtaining mineral leases
15 been concentrated?
16 A. Coal lease.
17 Q. In what geographic area?
18 A. Southern Appalachia.
19 Q. In your experience in obtaining leases in Southern
20 Appalachia are you familiar with the fair market value of
21 coal leases, oil and gas leases, and coal bed methane
22 leases in the unit area proposed for the BUN-17
23 A. Yes, ma'am.
24 Q. And approximately how many acres have you leased in
25 Buchanan County in the last year?

1 A. Approximately 5,000 acres.
2 Q. In the Appalachian Basin how many acres would you say
3 you've leased?
4 A. 7,000 acre range.
5 Q. What do you believe to be the fair market value terms for
6 a coal bed methane lease in this area?
7 A. \$1 per acre per year as a rental and one-eighth royalty.
8 Q. What would be the primary term?
9 A. Five years.
10 Q. With regard to the unleased owners that are listed on the
11 BUN-1 application in Exhibit D have you contacted those
12 land owners or tried to contact them to obtain a lease
13 from them?
14 A. Yes.
15 Q. And what kind of lease have you offered each of them?
16 Did the lease contain the terms as you've outlined them
17 for coal bed methane leases in this area?
18 A. Yes.
19 Q. By what method did you contact each of --
20 A. I misstated one thing. If I could back up.
21 Q. Okay.
22 A. The standard term was a ten year term instead of a five
23 year term.
24 Q. Okay. And the leases that you have offered to the
25 individuals listed on Exhibit D have contained a ten year

1 primary term?
2 A. Yes.
3 Q. By what method did you contact the individuals listed on
4 Exhibit D and offer them a lease?
5 A. Without the exhibit in front of me -- was Exhibit D the
6 parties that --
7 Q. Those were the unleased owners.
8 A. The ones that are left, most of them even though we do
9 some certified mail with return receipt request the
10 biggest part of the deals have been handled in person or
11 by the telephone.
12 Q. And were those individuals who are listed on Exhibit D
13 willing to execute a lease to you?
14 A. Not up to this point.
15 MS. McCLANAHAN: All right. I have no further questions.
16 MR. CHAIRMAN: Any questions, members of the Board? (Pause.)
17 Do any of you who asked to address the Board have
18 questions?
19 (Witness stands aside.)
20 MR. CHAIRMAN: Okay. Call your next witness.
21 MS. McCLANAHAN: Randy Albert.
22 COURT REPORTER: (Swears witness.)
23
24
25

1 RANDALL M. ALBERT

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

5 DIRECT EXAMINATION
6

7 BY MS. MCCLANAHAN:

8 Q. Mr. Albert, have you ever been qualified as an expert
9 witness before the Virginia Gas and Oil Board?

10 A. Yes, I have.

11 MS. MCCLANAHAN: I would submit him as an expert in the field
12 of engineering.

13 Q. (Ms. McClanahan continues.) Randy, would you please give
14 us your full name for the record?

15 A. My full name is Randall M. Albert.

16 Q. Have the well work permits that Consolidation Coal
17 Company or Pocahontas Gas Partnership has applied for
18 within the BUN1 been issued?

19 A. Yes, they have. We do not have those permits in hand.
20 But I understand from Mr. Foreman's office this morning
21 that they have been issued and we will be receiving them
22 in the next day or so.

23 Q. And the issue date on those permits was?

24 A. If I understood the conversation correctly, it was August
25 16th. There was a computer problem in their division

1 that caused them not to be sent out.

2 Q. For what type of wells were those permits issued?

3 A. Convert vertical ventilation holds to sealed called Bed

4 Methane Gob wells.

5 Q. Is Pocahontas Gas Partnership the owner of the drilling

6 rights underlying the mineral tracts that are to be

7 encompassed by the unit?

8 A. Yes.

9 Q. Is the map attached to the force pooling application

10 filed by Pocahontas Gas Partnership indicate the acreage

11 that's to be embraced within the BUN1 as approved by the

12 Board June 18, 1991 hearing?

13 A. Yes, it does.

14 Q. Does the map attached to the force pooling application

15 filed by Pocahontas indicate the shape of the acreage

16 that is to be embraced within the BUN1 unit?

17 A. Yes, it does.

18 Q. Does it also follow the boundary lines of the sealed area

19 for the mine that comprises the BUN1?

20 A. Yes, it does.

21 Q. Does this drilling unit, BUN1, embrace two or more

22 separately owned tracts?

23 A. Yes, it does.

24 Q. Does the map that's also attached to the force pooling

25 application filed by Pocahontas indicate the area which

1 the wells will be converted on the BUN1?

2 A. Yes, it does.

3 Q. Are the costs and expenses for the wells set forth on the
4 detailed well estimates as amended that we've attached
5 to the force pooling application Exhibits E-J? Those
6 unamended would be K-L, is that correct?

7 A. That's correct.

8 Q. Do these amended Exhibits and the original Exhibits
9 filed reflect the cost of drilling each well to total
10 that and completed for production costs?

11 A. Yes, they do.

12 Q. Generally, how did you calculate the costs that are
13 listed in the DWE's?

14 A. For every cost that we could identify and find an invoice
15 on is an actual cost -- costs that we could not identify
16 to an invoice or estimated cost.

17 Q. Are you requesting on behalf of Pocahontas Gas Partner-
18 ship that the Board pool the interest of the mineral
19 owners in the drilling unit that are designated on
20 Exhibit D for the BUN1?

21 A. Yes, we are.

22 Q. And that Pocahontas Gas Partnership be designated as the
23 well operator?

24 A. Yes.

25 Q. Are you also requesting that the Board prescribe the time

1 and manner in which other mineral owners may elect to
2 participate in the operation of the wells?
3 A. Yes, we are.
4 Q. And requesting that the Board give instructions as to how
5 participating mineral owners will bear reasonable costs
6 and expenses connected to the wells in the proportion
7 which the acreage they own has to the total acreage in
8 the BUN1 in accordance with the DWE's as submitted?
9 A. Yes.
10 Q. You are requesting that the Board make provisions for the
11 payment of all reasonable costs of the operation includ-
12 ing a reasonable supervision fee by all mineral owners
13 who elect to be participating owners?
14 A. Yes, we are.
15 MS. MCCLANAHAN: Those are all of the questions I have of this
16 witness.
17 MR. MCGLOTHLIN: I would like to ask Mr. Albert about the
18 DWE's. My question is -- could you start with Exhibit E,
19 Well #3 TCH VG3.
20 MR. ALBERT: Yes, sir.
21 MR. MCGLOTHLIN: Could we go through these line item at a time
22 and the cost of them.
23 MR. ALBERT: Do you want to ask about anything in particular
24 or do you want me to explain line by line?
25 MR. MCGLOTHLIN: I want to know how you come up with half a

1 million dollars to drill a well when wells have been
2 drilled cheaper in Buchanan County.

3 MR. ALBERT: Well, the first thing I would explain is that the
4 entire half a million dollars is not all for drilling of
5 the well. As you will see at the bottom, if you will
6 direct your attention to the bottom two lines. We've
7 included a production and compression costs which is an
8 estimate to get our well -- the production from the well
9 head to the compressor station as well as the sealing of
10 the gob costs. And that is approximately \$170,000 as you
11 can see. So the entire cost as you see is not for the
12 drilling of the well, but rather more accurately reflects
13 the total cost that we have incurred to get this well
14 into production.

15 MR. MCGLOTHLIN: All right, you say you have invoices reflect-
16 ing the cost of material and labor at the time? Do you
17 have those available?

18 MR. ALBERT: For well #3, I'm not going to have very many
19 invoices. This well is seven years old. At the time
20 this well was done, we were not doing well by well
21 accounting. However, I could go to a later well and
22 show you typical invoices --

23 MR. MCGLOTHLIN: I want to know on this well #3. I want to
24 know how you come up with the figure.

25 MR. ALBERT: Okay. I'll go down line by line, but I do not

1 have invoices for well #3 to submit as an exhibit. The
2 first item is a sixteen inch conductor pipe. It's \$20 a
3 foot. Anyone who is in the drilling business would
4 substantiate that number.

5 MR. MCGLOTHLIN: Is that what it costs today or seven years
6 ago?

7 MR. ALBERT: That's what it cost seven years -- the cost today
8 and seven years ago for materials like pipe and such are
9 very similar. There hasn't been a big drilling boom
10 going on, so the prices have not changed much over the
11 past seven years.

12 MR. MCGLOTHLIN: Okay.

13 MR. ALBERT: 356 feet of 13 3/8 inch casing. It's \$18 a foot
14 material cost, \$2 a foot to run it into the ground.
15 1,384 feet of 9 5/8 an inch casing. It was \$9.10 a foot
16 at that time. \$1.50 for the contractor to put it in the
17 ground. 1,521 foot of 4 1/2 inch casing. The next item
18 -- our form, I'll explain why there are blanks. We fixed
19 one form to cover all wells and naturally if something
20 wasn't used in one well we left it blank on each form.

21 MR. MCGLOTHLIN: Okay. Fine.

22 MR. ALBERT: The 1,521 foot of 4 1/2 inch, 10 1/2 pound casing
23 is \$3.70 a foot for material, \$1.00 a foot for the
24 running of the casing in the well. 1,620 feet of 2 7/8
25 inch tubing, \$2.00 a foot, \$600 labor charge for putting

1 it in the ground. 1,620 feet of 3/4 inch rods for a rod
2 pump. It's \$.65 a foot, \$600 labor to put it in the
3 ground. Meter run to meter the gas production, even
4 though we were not producing this gas, we run meter runs
5 on each well to accurately measure the production. The
6 material cost for it was \$1,500, \$1,000 labor to set the
7 pumping unit. The same for running the down hole pump.
8 \$5,000 in material costs, \$1,000 labor for it to be set.
9 MR. EVANS: Randy, excuse me. I need to find out if that's a
10 new item on your DWE submitted before? Is that partic-
11 ular pump unit listed?
12 MR. ALBERT: No, it's not.
13 MR. EVANS: Okay.
14 MR. ALBERT: On Exhibit E the original DWE pumping unit was
15 not -- I made a mistake and left it out of the original
16 DWE.
17 MR. EVANS: All right.
18 MR. ALBERT: Subsurface casing equipment which consists of
19 insert flows for the 13 3/8 inch casing, 9 5/8 inch
20 formation packer collars, 5 1/2 inch formation packer
21 shoes, casing centralizers a lump sum total of \$2,800.
22 Miscellaneous fittings and piping of miscellaneous valves
23 and fittings for the well head, \$200 for material, \$100
24 for labor for installation. 9 5/8 by 5 1/2 casing head,
25 material cost of \$570. 1 1/2 inch Harvest and Fisher

1 pump, a type of down hole pump that we use was \$600.
2 Cement, cement surfaces, the contracted price for
3 cementing our casing into the ground as required by law
4 is \$7,800. Completion of the well which mainly consists
5 of a surface rig to swab the fluid after the well was
6 frugged and put it on production was \$6,800. Wire line
7 services which consisted of, in this particular well, we
8 ran a down hole camera, we ran a cement ??????. The cost
9 as we're showing there was \$8,100. The bulk of that cost
10 being for that down hole camera. We lost a -- didn't
11 lose, we lodged a probe, a logging instrument in the hole
12 that had to be retrieved. We encouraged significant
13 costs in doing that and it is reflected only if you will
14 notice in this well estimate it has the highest misce-
15 llaneous cost of any of the well estimates and it's
16 primarily a reflection of those costs to retrieve that
17 probe. And as well, the wire line services are high
18 because we did have to run a camera in this hole. The
19 fracture stimulation which included the fracture job
20 itself, the hydro-jetting of the coal, mini frack prior
21 to the fracture job, \$16,200.

22 MR. EVANS: Randy, again, that's considerably less than your
23 initial estimate. Is that single seam versus two seam?

24 MR. ALBERT: That was a single seam fracture. The early wells
25 when I first put the estimates together --

1 MR. EVANS: You thought you might have to do two?

2 MR. ALBERT: No. When I first put the estimates together I
3 was using costs that were based on what frack jobs were
4 costing us today. We have a frack consultant that did
5 most of the fracture work for us. We went back through
6 some of his records and we were able to come up with a
7 more accurate cost for the frack job even though we
8 couldn't find the original invoice, we were better able
9 to get that 1984 cost.

10 MR. EVANS: Okay.

11 MR. ALBERT: Rental equipment, this consists of frack tanks,
12 dozer for moving in and out of sight, a generator, wire
13 lines, boom truck, miscellaneous trucks for the drilling
14 contractors that were not in the contract drilling cost,
15 contract hauling, this included hauling of the frack
16 tanks, hauling of water for drilling, hauling of water
17 for the frack job, hauling of pipe to and from or to
18 location. Again items that were not included in the
19 contract drilling price. Contract services. As I said,
20 we use a consultant for our frack work. Contract
21 services include the cost of our consultant, the cost of
22 any type of miscellaneous welding, the roust about type
23 services associated with well work. Contract drilling,
24 of course, is a contract price per foot for drilling the
25 well. A logging charge is simply our deviation logging,

1 our gamma resistivity logging for our coal exploration by
2 our coal exploration group, again done on a per foot
3 basis. Location, title includes the site preparation,
4 culverts, clearing of the timber, gravel for the loca-
5 tion, hydro-seeding, your erosion sediment control type
6 materials, land acquisition if needed for drilling and
7 legal fees. Miscellaneous again on this well in par-
8 ticular included a large charge for retrieval for the
9 probe that was lodged in the hole. It was about a two
10 week process. It was very time consuming work. Power,
11 the charge for the power is the installation of a 13.8 KV
12 power line and transformers to get that power down to 480
13 volt for the operation of the pumping unit. That
14 includes the poles, the wire, the transformers, and so
15 forth.

16 MR. MCGLOTHLIN: Okay.

17 MR. ALBERT: The 4 1/2 by 2 3/8 casing head, simply is a \$60
18 item. 2 3/8 by 1 1/8 jack box. It's a box used on a
19 pumping unit, \$40. And the last two items production,
20 compression, again those are -- production and compress-
21 ion are estimate based on current bids we have in for
22 putting in our collection system which will include the
23 piping and the well compression as well as the --
24 essentially getting the gas from the well head to the
25 compressor station. Ceiling of the gob which is an item

1 necessary to have a pure product. The cost incurred, we
2 simply took the total cost and divided it up amongst the
3 wells for the sealing of the north unit.

4 MR. MCGLOTHLIN: How much of the cost of this well seven years
5 old that's been depreciated by Consolidated Coal Company?

6 MR. ALBERT: None of this cost has been depreciated by Consol.
7 The wells in the formation of Pocahontas Gas Partnership
8 -- Consol made a capital contribution of thirty-one wells
9 of which this well was one of would be connected to the
10 system --

11 MR. MCGLOTHLIN: Let me ask you this. How much of CCH DG3 has
12 been depreciated?

13 MR. ALBERT: I don't have exact figures on what has been
14 depreciated and what has not been depreciated.

15 MR. MCGLOTHLIN: It was an expensive mining operation, right?

16 MR. ALBERT: Yes, it was.

17 MR. MCGLOTHLIN: And that has been depreciated by the mining
18 company as an expense?

19 MR. ALBERT: Only a portion of this well would have been
20 depreciated as an expense.

21 MR. MCGLOTHLIN: How much of it has been depreciated?

22 MR. ALBERT: I do not know.

23 MR. MCGLOTHLIN: I'd like to know that figure.

24 MR. ALBERT: If it would please the Board, if you want that
25 figure today, I'll have to make a phone call and come up

1 with that figure.

2 MR. CHAIRMAN: I think one of the few questions that Kevin is
3 getting at is, is it appropriate to charge for the same
4 hole and I think that's an obvious question. Are you
5 proposing to charge again for the same hole that was in
6 the ground to begin with? What was done different to
7 this hole to make it a productive coal bed methane gas
8 producer?

9 MS. MCCLANAHAN: If I may just ask a question.

10
11 DIRECT EXAMINATION

12
13 BY MS. MCCLANAHAN:

14 Q. Randy, could you explain though to the Board what the
15 value of the well was as it was contributed to the
16 partnership?

17 A. Yes. Consol, as I stated, made a capital contribution of
18 which this well was a part of to the partnership. This
19 well was a part of Consol's capital contribution. Though
20 it was a cost that Consol incurred, the partnership is
21 formed between Consol and Conoco -- received this well
22 onto its books. And therefore as a part of our cost of
23 putting this field into production, we're submitting this
24 estimate to recoup our cost. The partnership has
25 incurred the cost based on the contribution from Consol.

1 MR. MCGLOTHLIN: Well, another question dealing with the DWE
2 is, how much of the sealing process is mine related and
3 how much of it is well related?
4 MR. ALBERT: Mr. McGlothlin, we could argue that point the
5 rest of the day.
6 MR. MCGLOTHLIN: I've got all day.
7 MR. ALBERT: I mean, I could provide arguments that would say
8 it was 100% related to the mine. I could provide you
9 arguments that would say it was 100% related to the well.
10 The true fact of the matter would be that both sides
11 benefit from that. I could say this, that without this
12 project Consolidation Coal Company would not be sealing
13 that gob. So on that basis we view that the entire cost
14 of the sealing be born by the partnership rather than the
15 coal company.
16 MR. MCGLOTHLIN: Wouldn't Consol not seal the gob, at least,
17 how much the expense would be in pretty near or around
18 the gob area?
19 MR. ALBERT: Per year, per month? The life of the mine?
20 MR. MCGLOTHLIN: Yes, sir.
21 MR. ALBERT: It would be considerable expense. But I would
22 submit to you that this is the first gob area that has
23 been sealed in the state of Virginia. As a matter of
24 routine in our region, or Consolidation Coal Company
25 southern Appalachian region, it's the first gob area that

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1 Consol has ever sealed. It's not something that we have
2 had a practice of doing. Again, I would submit, without
3 the partnership, without the production of the sealed gob
4 gas, the gob area would not have been sealed or at least
5 would not have been sealed this year. Any maybe never.
6 MR. MCGLOTHLIN: But there would be some expense incurred by
7 the coal company to -- if not seal it, at least for the
8 safety and protection of the mine?
9 MR. ALBERT: Yes. That is correct. Federal law says you
10 either seal it or you ventilate it. You would ventilate
11 it and you would incur the cost of ventilating that area.
12 MR. MCGLOTHLIN: What would that cost?
13 MR. ALBERT: I really don't know to be honest with you.
14 Again, we could try to provide you with that figure, but
15 I do not have it with me. One other thing I would like
16 to add, we could not produce this sealed gob wells
17 without sealing of the gobs.
18 MR. MCGLOTHLIN: I understand that.
19 MR. EVANS: Randy, I do also have another question or just a
20 question. Drilling costs on a per foot basis, do you
21 know what that would work out to be?
22 MR. ALBERT: No, I don't. At that point and time we were
23 probably playing around the \$40 a foot total, but the way
24 I've done these estimates, I've took the casing costs
25 out, so I don't have it.

ave
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1 MR. EVANS: Well, that's \$800. It still works out to \$40 a
2 foot under contract drilling so do you have it still in
3 there twice or you've taken the casing out of it?
4 MR. ALBERT: No. I took the casing out of it. I will submit
5 to you that we were drilling, you know, these holes were
6 drilled very large. We set 13 3/8 casing from the
7 surface. They're drilled 12 1/4. They're not cheap
8 holes by any means.
9 MR. EVANS: Yeah, I know what you're saying. I guess what you
10 just stated is if you took -- if it cost you \$40 a foot
11 to drill a mile, I believe you on that. But if you took
12 the casing cost back out and this still works out to \$40
13 a foot, are we doing a double dip here or not?
14 MR. ALBERT: No, sir. I can submit to you -- it's not an
15 invoice for this particular well, but it's an invoice for
16 a well that is included in here. The actual drilling
17 invoice from that period if that would help at all.
18 MR. EVANS: We'll probably be getting that. But it doesn't
19 pertain particularly to this well that we are talking
20 about?
21 MR. ALBERT: Right.
22 MR. EVANS: Well #3.
23 MR. ALBERT: I do not have the invoice, but I will say that
24 for the invoices that we could find for that period,
25 those numbers are certainly in line.

1 Q. (Ms. McClanahan continues.) Randy, why did you say you
2 didn't have an invoice for this particular well?
3 A. We did not in 1984 when we were beginning the degasi-
4 tation project, we were not doing well by well counting
5 and as a matter of record we do not maintain hard copies
6 of invoices for seven years.
7 Q. For which well do you have an actual invoice?
8 A. I do have an actual invoice for well #8.
9 Q. And what date is that invoice?
10 A. July 2nd, 1986.
11 Q. From who is that invoice?
12 A. The invoice is from Noah Horn Well Drilling in Vansant,
13 Virginia.
14 Q. And what are the costs on it?
15 A. The costs on it are -- the total cost is \$80,772 for
16 1,538 feet of hole. That price does include casing, but
17 the casing cost would be much the same as you would see
18 on #3. They're reasonably close in depth.
19 MR. EVANS: \$80,000?
20 MR. ALBERT: \$80,772.79
21 MR. EVANS: For 1,500 plus feet?
22 MR. ALBERT: For roughly 1,550 feet.
23 MR. MCGLOTHLIN: Let me ask one more question about the DWE's
24 and I'll group them all together.
25 MR. ALBERT: Okay.

1 MR. MCGLOTHLIN: Same question as on E. How much of it is a
2 mine expense? How much of it has been depreciated?

3 MR. ALBERT: Again, I will answer that Consol --

4 MR. MCGLOTHLIN: And that's for exhibits F-J included.

5 MR. ALBERT: We are of the opinion that it's not a mine
6 expense. The numbers as we have submitted today are an
7 expense that were incurred by the partnership because of
8 Consol's contribution. These are capitol items to the
9 partnership and therefore my answer is \$0 of our total
10 expense is a mine expense.

11 MR. CHAIRMAN: Would you explain a little bit more about it.
12 Maybe we don't understand everything that you're talking
13 about the expense of the partnership, you know, obviously
14 if the partnership were to undertake this they would have
15 to drill these on their own and I understand what you're
16 saying. Are you carrying this full value on the books?

17 MR. ALBERT: Yes, we are.

18 MR. CHAIRMAN: So that full value is carried on the books of
19 the partnership?

20 MR. ALBERT: Yeah. One thing I did fail to mention, our
21 contribution was matched by Conoco. How the partnership
22 was put together was Conoco, a sister company, had to
23 match our capitol contribution. And Conoco did that.
24 That was based on the number of wells that were comm-
25 itted. So we are carrying the capitol contributions of

1 both partners on the books.

2 MR. CHAIRMAN: And they total this figure? Like for well 3,
3 \$547,999.10, is that what you're saying? Don't let me
4 mislead you.

5 MR. ALBERT: No. I'm not saying that. The total contribution
6 -- because some of these items are, like production of
7 the gob, production and compression weren't naturally
8 part of the contribution, so we're not going to be able
9 to --

10 MS. MCCLANAHAN: They haven't been incurred.

11 MR. CHAIRMAN: Okay.

12 MR. ALBERT: -- but to the extent of what was expended, what
13 was actual expenditures expended to the formation of the
14 partnership, yes, it would total the capitol contri-
15 bution.

16 MR. CHAIRMAN: And things like sealing the gob and those other
17 things are in addition?

18 MR. ALBERT: In addition, that's correct.

19 MR. CHAIRMAN: Putting the power in? But the power is already
20 there though.

21 MR. ALBERT: The power is already there.

22 MR. CHAIRMAN: Did you distribute the production and compress-
23 ion the same way you did the sealing of the gob?

24 MR. ALBERT: Yes.

25 MR. CHAIRMAN: Across, equally across all the way?

1 MR. ALBERT: Equally across. And while we are on these, one
2 question I'm sure you have is why it is less in the north
3 and more in the south? Simply we're running a bigger
4 line in the south and it's further away from the com-
5 pressor station. This may help answer Mr. McGlothlin's
6 question. When our capitol contribution was made, it was
7 not made net of depreciation. The depreciation was not
8 taken out of that capitol contribution.

9 MR. MCGLOTHLIN: Mr. Chairman, just one other question for Mr.
10 Albert. How much of the money expended or that you plan
11 to expend on these wells with Consol or Pocahontas
12 Partnership, how much of a tax credit do you anticipate
13 receiving?

14 MR. ALBERT: Well, the tax credit we anticipate receiving is
15 the section 29 credit as allowed by Federal Law altern-
16 ative fuels.

17 MR. MCGLOTHLIN: What's the percentage on that?

18 MR. ALBERT: I do not know, Mr. McGlothlin. To the best of my
19 knowledge, it's not calculated on a percentage method.
20 What little bit I know about it, it's tied to the cost of
21 a barrel of oil and it begins to phase out when the
22 barrel of oil reaches a certain level. I do not know
23 what it calculates to on a percentage basis or even a
24 ????? at the present time.

25 MR. MCGLOTHLIN: Will that tax credit be passed on to anybody

1 participating?

2 MR. ALBERT: I do not know.

3 MR. CHAIRMAN: Other questions?

4 MS. MCCLANAHAN: We don't have any other questions.

5 MR. CHAIRMAN: Okay. I'll ask the folks that wanted to
6 address us, do you have any questions for Mr. Albert?
7 Okay. Call your next witness.

8 MS. MCCLANAHAN: We don't have any other witnesses. We would
9 just move that the Board force pool the interest of those
10 individuals listed on our Exhibit B in the application
11 for the BUN1 unit.

12 MR. CHAIRMAN: We'll need to make room, one place, one chair
13 for the parties as I call them to come forward and
14 address the Board on this case.

15 MS. MCCLANAHAN: Okay. Mr. Wampler, before you do that, I
16 think those all were on the BUS1. Those people only
17 have interest in the south unit. I mean, I don't know.
18 Maybe we should look --

19 MR. JONES: That's possible that they only have interest in
20 the next unit that we tend to take up, the next item on
21 the Board's docket.

22 MR. CHAIRMAN: Okay. You might want to address them and see.

23 MS. MCCLANAHAN: That's fine.

24 MR. CHAIRMAN: They've signed up under BUN1 is how I had it
25 listed.

1 MR. FULMER: They just signed up being as BUS1.
2 MR. CHAIRMAN: Okay.
3 MR. JONES: I think we determined that they're all interested
4 in the next unit which is BUS1.
5 MR. CHAIRMAN: How do you intend to allocate this cost per
6 acre?
7 MS. MCCLANAHAN: According to surface acreage as it's shown on
8 their percentage interest listed on the exhibit also.
9 MR. CHAIRMAN: Is this per well or per unit?
10 MS. MCCLANAHAN: By unit, right.
11 MR. CHAIRMAN: Total unit. So it will be the percentage of
12 surface ownership anywhere in that unit?
13 MS. MCCLANAHAN: Correct.
14 MR. CHAIRMAN: So you would take these total costs? Let me
15 make sure we understand what the plan would be. These
16 total costs, accumulative costs of all these wells, say
17 2.6 for \$3,000,000 -- you know, whatever the actual
18 number is and you'd distribute that by the total number
19 of acres in that unit and then further distribute it by
20 the percentage of surface ownership, is that correct?
21 MR. JONES: That's correct.
22 MR. CHAIRMAN: Okay.
23 MR. MCGLOTHLIN: Mr. Chairman?
24 MR. CHAIRMAN: Mr. McGlothlin?
25 MR. MCGLOTHLIN: Some figures that were not made to me or the

1 Board -- before we decide on this force pooling, I would
2 like to see those figures.

3 MR. CHAIRMAN: Is that on the request for how much of it had
4 been written off?

5 MR. MCGLOTHLIN: Yes, sir, and how much it would have cost the
6 coal operation and then in the gob area.

7 MR. JONES: I'm sorry. I'm not sure I follow -- so we can get
8 you the exact information.

9 MR. MCGLOTHLIN: I want to know how much of the wells were
10 depreciated and I want to know how much it would cost the
11 Consolidation Coal Company to vent the gob area if it
12 were not sealed. For the entire deal or for each
13 individual well.

14 MS. MCCLANAHAN: We just need a minute to determine how we can
15 get this information. We don't have it with us. Mr.
16 McGlothlin?

17 MR. MCGLOTHLIN: Yes.

18 MS. MCCLANAHAN: With regard to the cost of ventilation, what
19 time period -- we would obviously incur ventilation costs
20 for the life of the mine if we don't seal any area.

21 MR. MCGLOTHLIN: For the life of the well. The anticipated
22 life of the wells. Ms. McClanahan, would you all like a
23 five minute recess or something?

24 MR. JONES: That would be great.

25 MR. CHAIRMAN: Okay.

1 MR. JONES: Appreciate it.

2 (AFTER A BRIEF RECESS, THE PROCEEDINGS CONTINUED AS
3 FOLLOWS:)

4 MR. CHAIRMAN: One other question. Are these costs that are
5 shown here only for the wells that are being converted?

6 MR. ALBERT: Yes.

7 MR. JONES: That's correct.

8 MR. CHAIRMAN: Okay.

9 MR. JONES: Mr. Chairman, we've gotten some additional
10 information and we'll try to answer Mr. McGlothlin's
11 questions. I would like to say, though, before we get
12 into that some more and our answers may obviously provoke
13 some more questions which we'll be glad to answer. We
14 certainly appreciate the questions Mr. McGlothlin had,
15 and you, Mr. Chairman had concerning the fact, as
16 obvious, these are wells which serve the mining purposes
17 of Consol which is one of the partners in the partner-
18 ship. There's no question about that. Obviously these
19 were ventilation wells and so some of the costs in the
20 past has already been incurred for that purpose. I
21 guess the fundamental position that we have is that under
22 the statutes the obligation of the Board is to determine
23 what the reasonable cost is and whether or not those
24 costs were incurred in terms of the well that benefited
25 mining purposes. And certainly, it is our position that

1 it is still a reasonable cost for drilling the well, for
2 production of gas purposes. And we don't see any basis,
3 logic or fairness or in the statute which would permit
4 some sort of deduction of those costs because of the fact
5 that they were used -- that well in the past was used to
6 ventilate the mine. Moreover, I guess, as we've tried to
7 explain and Mr. Albert can testify further, the fact is,
8 this is a new entity, Pocahontas Gas Partnership that is
9 the applicant here and is going to engage in this
10 production and it is not the entity that incurred these
11 costs, but these costs as we have testified were a part
12 of the contribution to the partnership matched by cash.
13 So for that additional reason also, we think what is
14 significant is whether or not these are, in fact,
15 reasonable drilling costs. Obviously the Board may have
16 questions about individual items and we're glad to answer
17 questions. It's obviously, ultimately the responsibility
18 of the Board to determine these reasonable costs and
19 we're trying to do the best we can. Obviously some of
20 them are estimates, but again, as a fundamental idea, the
21 fact that drilling of the well at one time was convenient
22 to the mining process, does not in our mind make a
23 difference as far as the Board's determination of the
24 reasonable cost. And I guess Mr. Albert may be able to
25 answer again specific questions that Mr. McGlothlin has.

1 MR. ALBERT: Mr. McGlothlin, your question on depreciation, as
2 I stated earlier in my testimony, we didn't do well by
3 well accounting, so we do not have well be well deprec-
4 iation. I cannot and never will be able to provide you
5 with depreciation on a per well basis for these wells.
6 However, after consultation with our accounting people,
7 we have determined as I stated earlier, the contribution
8 was based on net book value. Consol's contribution to
9 the partnership was on net book value. And really that's
10 all the information that we have on it. To ventilate the
11 gob area, took a look at that and talked to some of our
12 mining people that happen to be along with us here today.
13 What we see there is we're still going to have to
14 ventilate these seals because of fluctuations in baromet-
15 ric pressure. There may a tendency for gas to come to
16 the mine at times, so we're going to have to ventilate
17 the seals with a isolated and separate split of air. So
18 we don't think we're going to incur any significant
19 savings underground ventilation. The fact of the matter
20 is we've sealed this area now. We did not take out any
21 ventilation fans. We've seen no net reduction in horse
22 power required to ventilate the mine. The one area that
23 would actually be a savings to the mining operation would
24 be where we're currently venting the wells with blowers
25 now. When we put the wells on production we would see a

1 net reduction in the horse power required to operate
2 those blowers. So there would be that cost benefit to
3 the mine that was neglected. The one thing I would tell
4 you that alternative to this scenario is for us to
5 continue to ventilate the gob and to vent the gas to
6 atmosphere which would leave no one, not the members of
7 the Board, not us and not the members of mineral owners
8 as winners in this situation. So we think -- what we're
9 trying to do is to the benefit of the Commonwealth and
10 the benefit of the public.

11 MR. MCGLOTHLIN: Mr. Albert, you might have misunderstood my
12 question on the venting process. It was not how much did
13 you expect to save, but how much it would cost you to
14 ventilate it as it is without sealing the gob.

15 MR. ALBERT: I don't think I understood your question, but
16 there are costs -- what I'm saying is the cost that we
17 were seeing to ventilate the gob as is, the mine is going
18 to continue to see because those seals will have to be
19 ventilated by a separate split of air. So essentially
20 what has happened is the split of air that had been taken
21 to ventilate the gob, is now being used to ventilate the
22 seals. So at least our mining experts are telling me
23 that it is a wash in cost. That they're not seeing any
24 additional or more to ventilate the seals than was to
25 ventilate the gobs.

1 MR. MCGLOTHLIN: So it would cost you \$170,000 if you sealed
2 it or if you didn't seal it?

3 MR. ALBERT: Exactly. If we want to use a figure, whatever
4 that figure is it's going to be the same -- the cost of
5 ventilation is going to be the same after the sealing as
6 prior to the sealing.

7 MS. MCCLANAHAN: And would it also take at least the same
8 number of well that you proposed to convert for produc-
9 tion to vent the mine?

10 MR. ALBERT: Yes.

11 MR. CHAIRMAN: What if in the future you convert other wells
12 in this unit? What will be your procedure to do that and
13 distributing costs?

14 MS. MCCLANAHAN: Well, what we would propose is that the Board
15 -- obviously the Board has already entered for the BUN1
16 unit which says that we can convert or drill additional
17 wells in that particular unit if mine safety dictates or
18 requires that. What we would request today is that if we
19 drill additional that whatever election, any of the
20 force poolies make at this time would be their election
21 for all time within the unit. Then obviously, if we
22 drill additional we would need to submit those DWE's.
23 Hopefully, we would suggest just have that administrative
24 procedure and submit those to Mr. Fulmer, the inspector
25 to have approved and that would be an additional cost if

1 someone was participating then put up there share of the
2 money for the well at that time.

3 MR. HARRIS: If you open vent areas that are now closed that
4 were not included in the computation here then how would
5 you redistribute the cost or would you redistribute the
6 cost?

7 MS. MCCLANAHAN: In the same percentage that we've distributed
8 the costs in all --

9 MR. HARRIS: Well, but would that reduce the cost of this one
10 if you opened two more for instance? Wouldn't that
11 reduce the cost of this?

12 MS. MCCLANAHAN: Well, okay, for example, on sealing of the
13 gob where we've divided that between eight wells, we
14 would put no sealing of the gob cost on the ninth well
15 because obviously the entire sealing cost has been
16 allocated to the eight wells.

17 MR. JONES: For costs that has been shared across each well,
18 we wouldn't add any more costs because we've done it a
19 hundred percent for these wells.

20 MR. KELLY: Mr. Chairman, does that also apply to the product-
21 ion and gathering costs?

22 MS. MCCLANAHAN: I think it does, is that right?

23 MR. ALBERT: Well, there would still be some well head
24 compressing that would have to be included in the -- but
25 to the extent that the gathering line is already in there

1 would be just that portion from the well head to the
2 gathering line that would be included.

3 MR. KELLY: So this includes the well head compression as well
4 as the main compression or just the well head
5 compression?

6 MR. ALBERT: Just the well head compression.

7 MR. KELLY: So this is just the gathering line out to the
8 well and the well head compression?

9 MR. ALBERT: Right.

10 MR. KELLY: Does not include any main line compression or any
11 main gathering line compression into the transmission
12 line?

13 MR. ALBERT: That's correct.

14 MR. KELLY: That's coming along later sometime?

15 MR. ALBERT: We're not going to include that as a cost of
16 operation.

17 MR. KELLY: Or as a capitol cost?

18 MR. ALBERT: Right.

19 MR. KELLY: To be allocated?

20 MS. MCCLANAHAN: Between new owners, right.

21 MR. HARRIS: Well, that prompts another question. How did you
22 all decide how many to convert, I guess that's a proper
23 term, for which ones to convert?

24 MR. ALBERT: It's simply, as I testified at the last hearing,
25 we're taking pretty much a guess right now that one well

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1 per panel will be enough. That's a starting point. We
2 actually don't know. It could be more. But we're taking
3 the guess that one well per panel will do it so that's
4 how we arrived at the number.

5 MR. HARRIS: Has this not been done before elsewhere?

6 MR. ALBERT: No, sir, it has not.

7 MR. JONES: I guess rather than guess, we might say our best -

8 MR. ALBERT: Our best engineering estimate.

9 MR. JONES: I.e., our best guess.

10 MR. CHAIRMAN: And the reason you wouldn't distribute those
11 costs is here again because you're actually pooling
12 everything in there with that distribution by surface
13 acreage as we talked about early on.

14 MR. JONES: That's right.

15 MS. MCCLANAHAN: Right.

16 MR. CHAIRMAN: With your proposal of how to make this election
17 work, that once elected, always elected for that unit,
18 what would you do if, in fact, I did elect to participate
19 and pay in my share and then you add a couple others on
20 and I'd decide not to do it there. What would you
21 propose?

22 MR. JONES: I guess our proposal is that you have to elect --

23 MR. CHAIRMAN: Up front?

24 MS. MCCLANAHAN: Right.

25 MR. JONES: -- this is an additional cost and as a partici-

1 pating -- if you elect to participate you have to bear
2 that additional cost.

3 MR. CHAIRMAN: For that entire --

4 MS. MCCLANAHAN: Unit.

5 MR. CHAIRMAN: -- unit.

6 MR. JONES: The entire unit, that's right.

7 MS. MCCLANAHAN: You're making a unit election.

8 MR. EVANS: In other words, one time in that you've got your
9 chance in for all time or out for all time.

10 MS. MCCLANAHAN: Right. I think it's the only way it can be
11 administered.

12 MR. KELLY: For a single well?

13 MS. MCCLANAHAN: Exactly.

14 MR. MCGLOTHLIN: How many wells under the coal bed methane --
15 the fields, how many 80 acres is in this boundary?

16 MS. MCCLANAHAN: In the field unit?

17 MR. MCGLOTHLIN: Yes. You know it doesn't follow --

18 MR. MCGLOTHLIN: I know that.

19 MS. MCCLANAHAN: Okay.

20 MR. MCGLOTHLIN: Approximately?

21 MR. FULMER: 780 some acres in the unit divided by 80.

22 MS. MCCLANAHAN: That's right.

23 MR. ALBERT: It's parts of 11 units.

24 MR. MCGLOTHLIN: Okay. Since you have your little adding
25 machine, could you total up these figures for me?

1 MS. MCCLANAHAN: Of all the DWE's?
2 MR. MCGLOTHLIN: Yes, of all the DWE's.
3 MR. ALBERT: Is round numbers okay?
4 MR. MCGLOTHLIN: Yes.
5 MR. ALBERT: Approximately 3.26 million.
6 MR. MCGLOTHLIN: So in essence, you're talking about average
7 320,000 per 80 acre unit?
8 MR. ALBERT: In essence.
9 MR. CHAIRMAN: Still the dealing of this issue a new well
10 going in and the whole business. I don't think that one
11 is a 100% worked out.
12 MR. JONES: We've tried to think about this a lot too, Mr.
13 Chairman and that was our best thinking. Obviously we'd
14 be happy to hear any other suggestions.
15 MR. CHAIRMAN: I don't know we'd have any other suggestions.
16 I think the thinking is rational, the concern is though
17 the parties that you do have, you know if I elect to
18 participate and pay in initially on these six or eight
19 wells or whatever number on a particular unit and then I
20 hit a financial crunch at some point and time when you
21 add two more in and can't participate, what happens?
22 And do we have adequate -- does that mean I'm out? Does
23 that mean I'm in provisionally or what does it mean and I
24 think we have to decide that up front before we do some
25 of these kinds of things. I think we need to have some

1 further information on how to do that and the we'll work
2 with you and the Board will continue to entertain that.
3 I don't think we have to particularly resolve that part
4 today.

5 MR. JONES: Right.

6 MS. MCCLANAHAN: Right.

7 MR. CHAIRMAN: I don't think the question is answered, you
8 know, --

9 MR. JONES: Sure.

10 MR. CHAIRMAN: -- adequately there on how we protect that
11 other interest once -- it's fine to say once in on????
12 but then what do we do if something happens?

13 MR. MCGLOTHLIN: Since this approximate figure of \$170,000
14 for production and compression sealing the gob cost is a
15 wash anyway, it would sure help me out a lot if you just
16 did away with that \$170,000 and let's just subtract that
17 right off the top and then just come up with the \$370,000
18 since it's a wash, Mr. Albert.

19 MR. ALBERT: I'm not sure I follow your line of --

20 MR. MCGLOTHLIN: Well, since you said the sealing of the gob
21 is \$61,000?

22 MR. ALBERT: That's right.

23 MR. MCGLOTHLIN: I mean, let's just throw the \$61,000. Either
24 way you go with it the cost is there.

25 MS. MCCLANAHAN: You just want to call it something else?

1 MR. MCGLOTHLIN: I want to see you reduce these DWE's by a lot
2 of money. Now, I was thinking more like about \$300,000.

3 MS. MCCLANAHAN: Well, we just have the facts, Mr. McGlothlin,
4 and we can't change them.

5 MR. MCGLOTHLIN: My major concern is these costs seem to be --
6 compared to what we've seen in the past, these are
7 exceptionally high and that's where my concern is. And
8 that's not to say in the past from Consol's drilling or
9 just the industry wide figures.

10 MS. MCCLANAHAN: But these are also the first coal bed
11 methane gob gas well figures that you've seen. So they
12 shouldn't be compared to any other kinds of conventional
13 wells or coal bed methane wells.

14 MR. MCGLOTHLIN: I know that.

15 MR. ALBERT: You've got to understand one thing from the types
16 of wells you've seen were drilled, I assume, primarily
17 drilled for gas production. These wells were drilled not
18 only for gas production but for gob production as well.
19 So they were a bigger well board than you probably
20 normally seen. So the cost naturally, the cost of
21 drilling goes up in width.

22 MR. MCGLOTHLIN: Let me ask you this. Could you supply the
23 Board with a written estimate from a drilling company on
24 what it would cost to drill that well today?

25 MR. ALBERT: I can supply the Board with invoices for some of

1 these wells.

2 MR. MCGLOTHLIN: No, I mean just today's cost, what it would
3 cost to drill that type of well for production of gas.

4 MS. MCCLANAHAN: He's going to check his records, but I think
5 we even have an invoice from 1990.

6 MR. MCGLOTHLIN: Okay.

7 MS. MCCLANAHAN: Is that reasonable enough?

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

9 MR. CHAIRMAN: If it's the Board's pleasure, why don't we just
10 take this case under advisement and let's hear the next
11 case. Because we've got some things we've got to work
12 out. We've all agreed, I think, to those and go ahead
13 and hear the next case. Is that okay with everybody?
14 Well, let's do that because these folks have traveled
15 here and let's here the case that they're interested in
16 and we'll all work to resolve these outstanding questions
17 we have. Okay. Any problems with that? All right, so
18 done.

1
2 (ITEM 6)
3

4 MR. CHAIRMAN: The next item on the agenda is the petition for
5 the establishment of a compulsory pooled drilling unit
6 under 45.1-361.22 for proposed BUS1. It's docket number
7 VGOB-0716-136.

8 MS. MCCLANAHAN: Mr. Chairman, it'll take us just a few
9 minutes to again hand out the additional information.

10 MR. CHAIRMAN: Okay. We'll break for about five minutes.

11 MS. MCCLANAHAN: Okay. Thank you.

12 (AFTER A BRIEF RECESS, THE PROCEEDINGS CONTINUED AS
13 FOLLOWS:)

14 MR. CHAIRMAN: Okay. We're back on record.

15 MS. MCCLANAHAN: I think Mr. Albert just wanted to clarify one
16 of his statements earlier about the ventilation in regard
17 to the BUN1 before we go on to BUS1.

18 MR. ALBERT: I made a statement that we would be ventilating
19 the seals by a separate split of air. I'd like to
20 clarify that and say that we will be ventilating the
21 seals. It may or may not be a separate split of air.
22 It's a technicality, but I wanted to set the record
23 straight on that.

24 MS. MCCLANAHAN: All right. With regard to our BUS1 force
25 pooling application that's been submitted, again, the

1 Board has designated this unit in June of 1990 and we're
2 requesting that the Board now force pool the unleased
3 owners that are in that particular unit. I have sub-
4 mitted to you amended Exhibits C and D to the appli-
5 cation and an amended application page which outlines
6 the percentage of ownership interest as well as any
7 amended DWE's, consents to stimulate for this particular
8 unit and then our designation of operator was for both
9 units. The first witness that I would like to call is
10 Mr. Lesley Arrington.

11 MR. CHAIRMAN: Just reminded you're still under oath.

12
13
14 LESLEY K. ARRINGTON

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

17
18 DIRECT EXAMINATION

19
20 BY MS. MCCLANAHAN:

21 Q. Mr. Arrington, could you again state your full name for
22 the record?

23 A. Lesley K. Arrington.

24 Q. And you're employed by Pocahontas Gas Partnership?

25 A. And Consolidation Coal Company.

1 Q. Okay. As the permit specialist?

2 A. Yes, ma'am.

3 Q. With regard to the BUS1 unit, have you given notice as
4 required by Virginia Code annotated section 45.1-361.19
5 to each person or entity identified on amended Exhibit C
6 of the force pooling application as the potential owner
7 of the sealed coal bed gob gas underlying the unit?

8 A. Yes, I have.

9 Q. Do you have a copy of that notice?

10 A. Yes.

11 MS. MCCLANAHAN: We would submit this as Exhibit A.

12 Q. (Ms. McClanahan continues.) By what method did you mail
13 the notices of hearing?

14 A. Certified mail, return receipt requested.

15 Q. And have you submitted those return receipts to the Oil
16 and Gas inspectors office?

17 A. Yes, I have.

18 Q. The persons whose names and/or addresses are listed on
19 Exhibit C as "Unknown", did you publish a notice in the
20 paper for those?

21 A. Yes, I did. In the Virginia Mountaineer, Bristol Herald
22 and the Bluefield Daily Telegraph. Those were published
23 in the Bristol Herald, on July 21st, the Virginia
24 Mountaineer on July 25th and the Bluefield Daily Tele-
25 graph on July 20th.

1 Q. Do you have proofs of publication for those notices?
2 A. Yes, I do.
3 MS. MCCLANAHAN: We would submit those as Exhibits B, C and D.
4 MR. CHAIRMAN: Are you numbering these as Exhibits 1, 2 and 3
5 to keep them distinguished?
6 MR. JONES: It's A, B, C and D.
7 MR. CHAIRMAN: But you're putting a label on them so they're
8 distinguished from the Exhibits that are in the appli-
9 cation? Please do that. You have a reason I would ask
10 because you have in your application C and D.
11 MR. JONES: Would you prefer us -- would it be easier for the
12 Board in the future if we number the Exhibits 1, 2 and 3
13 or different ways.
14 MR. CHAIRMAN: Certainly in some distinguishing way. And I
15 know you've tried to do that. It depends what's in the
16 application. If the application is using A, B and C,
17 it's probably better to go --
18 MR. JONES: 1, 2, 3.
19 MR. CHAIRMAN: 1, 2, 3. And if it's amended to A it would be
20 A1 or AA or someway like that so that it shows amended A
21 or something like that. When you're sitting here
22 listening to it it makes sense and then when you leave
23 and look at it you wonder what happened.
24 Q. (Ms. McClanahan continues.) Mr. Arrington, have you
25 filed permits to convert the wells that are located in

1 the BUS1 unit?

2 A. Yes, I have.

3 Q. Were any objections to the permit applications made by

4 coal owners or operators?

5 A. No.

6 Q. Has the drilling permit been previously refused to

7 Pocahontas Gas Partnership on any of the tracts that make

8 up this unit?

9 A. No.

10 Q. What percentage of the oil and gas rights in the tracts

11 that comprise BUS1 has Pocahontas Gas Partnership leased

12 today?

13 A. 70.4313.

14 Q. And what percentage of the oil and gas rights in the

15 tracts that comprise BUS1 does Pocahontas Gas Partnership

16 own?

17 A. 23.8699 percent.

18 Q. And what percentage of the coal rights in the tracts that

19 comprise BUS1 does Pocahontas Gas Partnership control?

20 The coal estate?

21 A. Oh, the coal estate. We control 100 percent of the coal

22 estate.

23 Q. Can you state, are the unleased owners and their percen-

24 tages of ownership in the respective tracts for the BUS1

25 as indicated on amended Exhibit D as submitted to the

1 application?

2 A. Yes.

3 MS. MCCLANAHAN: Those are all the questions I have for this
4 witness.

5 MR. CHAIRMAN: Any questions from the members of the Board?
6 Let me go back to my list. If you folks have questions,
7 now as they have witnesses this is the time to ask them.
8 Okay. Next witness.

9 MS. MCCLANAHAN: Our second witness is Mr. William Gillen-
10 water.

11

12

13

WILLIAM GILLENWATER

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

16

17

DIRECT EXAMINATION

18

19 BY MS. MCCLANAHAN:

20 Q. Mr. Gillenwater, would you please state your full name
21 for the record?

22 A. William Gillenwater.

23 MR. CHAIRMAN: Let me just remind you that you are still under
24 oath.

25 MR. GILLENWATER: Yes, sir.

1 Q. (Ms. McClanahan continues.) You are employed by Pocahon-
2 tes Gas Partnership or Consolidation Coal Company.
3 A. Consolidation Coal.
4 Q. And your position with them?
5 A. District land manager.
6 MS. MCCLANAHAN: Could we just use the record from before as
7 to his experience in obtaining leases in Buchanan County
8 on the BUN1?
9 MR. CHAIRMAN: I'm sorry. I didn't hear the question.
10 MS. MCCLANAHAN: Could we use the testimony from before as to
11 his experience in obtaining leases in the Appalachian
12 basin from his testimony on the BUN1?
13 MR. CHAIRMAN: To qualify his as a witness?
14 MS. MCCLANAHAN: Yes.
15 MR. CHAIRMAN: Yes, ma'am.
16 MS. MCCLANAHAN: Thank you.
17 Q. (Ms. McClanahan continues.) With regard to the unleased
18 owners that are listed on the BUS1 application, have you
19 contacted those land owners or tried to contact them to
20 obtain a lease?
21 A. Yes, ma'am.
22 Q. And what form of lease have you offered each of those
23 individuals that are listed on the amended Exhibit D7
24 A. We've offered -- those owners on the most part are oil
25 and gas owners and we've offered a ten year term lease.

1 I think we were going to submit the lease form.

2 Q. Could you just tell us what the royalty rate would be?

3 A. It was a 1/8 royalty.

4 Q. And what is the delay rental?

5 A. It was \$5 per acre, per year, prepaying a ten year term.

6 Q. Is that for a coal bed methane lease?

7 A. No, ma'am. That was for oil and gas and any claim to

8 coal bed methane that they had.

9 Q. Okay. And for coal bed methane lease, what are the

10 terms?

11 A. \$1 per acre, per year, with a 1/8 royalty.

12 Q. And what is the primary term?

13 A. Ten years.

14 Q. With regard to the people who are listed on Exhibit D of

15 the application as "Unknown" or those listed who don't

16 have addresses, have you attempted to contact those

17 owners and obtain their addresses?

18 A. Yes, ma'am.

19 Q. By what methods? How did you try to contact them?

20 A. Mostly by asking other family members, checking court

21 house records, trying to get addresses. Maybe I mis-

22 understood you.

23 Q. No, that's correct.

24 A. And the complexity of the tracts that are involved,

25 mainly what we've had to depend upon is other family

1 owners. And trying to get a lead and then checking
2 through telephone records and through court house
3 records.

4 Q. And you have checked all the public records that are in
5 the Buchanan County Court House, is that correct?

6 A. Yes, ma'am.

7 Q. With regard to the individuals who are listed as "Un-
8 leased" on Exhibit D, were those individuals willing to
9 execute leases, coal bed methane leases to you?

10 A. No, ma'am.

11 MS. MCCLANAHAN: Those are all the questions I have for Mr.
12 Gillenwater.

13 MR. CHAIRMAN: Questions from the Board? You folks? Yes,
14 ma'am?

15 MS. MARTIN: The 1/8 marketed value. Does that mean at the
16 well top or where?

17 MS. MCCLANAHAN: Mr. Gillenwater, would you answer? The 1/8
18 royalty is calculated under the terms of the lease that's
19 been offered as.

20 MR. GILLENWATER: Let me just read from the form if I could
21 the exact terminology.

22 MS. MCCLANAHAN: Maybe for the record this is Ms. Martin, is
23 that correct?

24 MS. MARTIN: Yes.

25 MS. MCCLANAHAN: Okay. Ms. Mavis Martin is the person who

1 asked the question.

2 MR. GILLENWATER: It is 1/8 of the field price of all gas
3 produced, marketed and transported.

4 MS. MARTIN: So that does mean at the well top?

5 MR. GILLENWATER: That would be my understanding.

6 MS. MARTIN: All right. If it's a \$1 per acre -- is a fair
7 price. I don't understand this \$5 per acre. Explain
8 that to me.

9 MR. GILLENWATER: What is misleading there is we're finding
10 ourselves in situations where we have parties out there
11 that have a claim only to methane and we also have
12 parties that we're dealing with that are definitely a oil
13 and gas owner and also we're recognizing them as having a
14 claim to methane. And those parties we are offering --
15 since we do know they have an oil and gas estate, we're
16 offering \$5 per acre per year and as another advantage to
17 them to try to make it adventurous for them to sign, we
18 will go ahead and pay a ten year term. Some of the
19 interest that these parties own is so small that the more
20 money you could offer up front would be of a benefit.

21 MS. MCCLANAHAN: And Ms. Martin owns the oil and gas on her
22 particular interest?

23 MR. GILLENWATER: Yes, and so hers is not a methane only lease
24 so her offer was \$5 per acre, per year, prepaying the ten
25 year term.

1 MS. MARTIN: Okay. That's not individual hours, that is to be
2 divided among all of the hours?
3 MR. GILLENWATER: That is to be paid on your portion.
4 MS. MARTIN: I'm one 910 hour and I get that out of the \$5, is
5 that what we're saying?
6 MR. GILLENWATER: We would do the calculation of the total
7 acres which was 46. --
8 MS. MARTIN: 32.5
9 MR. GILLENWATER: $32.5 \times \$50$ and divide it by the 910.
10 MS. MARTIN: \$910.15 or there about.
11 MR. GILLENWATER: Yes, ma'am. We had some real low figures
12 on this property.
13 MS. MARTIN: Well, you said about (inaudible.) That brought
14 the other question. You asked us to sign this for this
15 amount of money and return it to you and have it nota-
16 rized. You didn't even send a self-addressed envelope.
17 Do you realize how far some of these people have to go to
18 even find a notary public? That's \$2 or \$3 to have it
19 done. I think that's just a little ridiculous. I mean,
20 Mr. Wood has gone to Harlan Blankenship's house. He
21 knows how far he lives.
22 MS. MCCLANAHAN: In defense of the company as you will note
23 seeing that Ms. Martin is here with the one over 910.
24 That's her fractional interest. The company has obvi-
25 ously gone to great lengths that they identified as many

1 of the owners in this particular unit as possible.
2 Obviously we have and have tried to offer a lease in
3 accordance with the force pooling provisions which would
4 require us to offer them a lease at the fair market value
5 rate which is exactly what we've done. Unfortunately,
6 some of the people who are in the unit -- some people
7 have won over, I think, as much as --

8 MR. GILLENWATER: 2,000.

9 MS. MCCLANAHAN: 2,000 and something interest, but obviously
10 we still are obligated to offer them a lease under the
11 same fair market terms that we offer a lease to everyone
12 else. And that's exactly what we've done.

13 MS. MARTIN: But wouldn't it have been more simpler though had
14 you just come to the house and had it all done. I
15 wouldn't have minded. But I'm not going to the extent of
16 getting out and find a notary and paying that and all of
17 that. And then mailing it back for \$1.79 plus --

18 MS. MCCLANAHAN: Well, I'm certain that they would have done
19 that had you called them. The problem with us -- there
20 are in excess, how many people have we contacted with
21 regard to this Mr. Wood?

22 MR. WOOD: We've contacted about 150 people.

23 MS. MCCLANAHAN: 150 people.

24 MR. CHAIRMAN: Are there other questions? Really, these kinds
25 of things, I think, if you get with the folks after the

1 hearing or some other time. I'm not trying to cut you
2 off ma'am, but we really do need to get with what we can
3 decide. And that's not something we can decide. Any
4 other questions?

5 MS. MCCLANAHAN: I'd like to call Mr. Albert.

6
7
8 RANDALL M. ALBERT

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

11
12 DIRECT EXAMINATION

13
14 BY MS. MCCLANAHAN:

15 Q. Mr. Albert, would you please state your full name for the
16 record?

17 A. My name is Randall M. Albert.

18 Q. And have you ever been qualified as an expert witness
19 before the Virginia Gas and Oil Board?

20 A. Yes, I have.

21 Q. Have any well work permits been issued for the BUS1 unit?

22 A. Yes, there have been well work permits issued for the
23 BUS1 unit. Basically, the same situation as with the
24 BUN1. Permits are issued, but the copies are not out yet
25 due to a problem with the computer in the division

1 office.

2 Q. But those have been issued?

3 A. They have been issued.

4 MR. CHAIRMAN: Excuse me. Clarify the record that he has been
5 qualified in engineering, right?

6 MS. MCCLANAHAN: That's correct.

7 MR. CHAIRMAN: Okay.

8 Q. (Ms. McClanahan continues.) For what type of wells were
9 the permits issued?

10 A. Conversion of VVH holes to sealed coal bed methane gob
11 wells.

12 Q. You've indicated in the force pooling application that
13 the unleased mineral owners for the BUS1 are those that
14 are listed on amended Exhibit D submitted, is that
15 correct?

16 A. No. The unleased --

17 Q. The amended exhibit?

18 A. Yes, that is correct.

19 Q. Is Pocahontas Gas Partnership the owner of the drilling
20 rights underlying the mineral tracts that are to be
21 encompassed by the unit?

22 A. Yes.

23 Q. That is as evidence by the designation of operator
24 agreement that we've submitted?

25 A. Yes.

- 1 Q. Does the map that's attached to the force pooling
2 application filed by Pocahontas Gas Partnership indicate
3 the acreage to be embraced within the BUS1 unit as
4 approved by the Board at its June 18, '91 hearing?
- 5 A. Yes, it does.
- 6 Q. Does the map attached to the force pooling application
7 filed by Pocahontas Gas Partnership indicate the shape of
8 the acreage to be embraced within the BUS1 unit?
- 9 A. Yes, it does.
- 10 Q. Does the unit follow the boundary lines of the sealed
11 area for the mine that comprises the BUS1?
- 12 A. Yes, it does.
- 13 Q. Does the map attached to the force pooling application
14 filed by Pocahontas Gas Partnership indicate the area
15 within which the wells will be converted on the BUS1?
- 16 A. Yes, it does.
- 17 Q. Does the drilling unit designated as BUS1 embrace two or
18 more separately owned tracts?
- 19 A. Yes, it does.
- 20 Q. Are the costs and expenses for the wells set forth on
21 detailed well estimates as amended and submitted to the
22 Board J-M, do those reflect the cost of drilling each
23 well to total depth and completed for production cost?
- 24 A. Yes, they do.
- 25 Q. Generally, could you indicate to the Board how you

1 calculated those costs that are listed on the DWE's?
2 A. Actual costs were available by invoice and for work
3 that's anticipated for the future, they were estimated
4 costs.
5 Q. The detailed well estimates that were submitted as
6 Exhibits E-G, there were no changes to those, is that
7 correct? Entry G.
8 A. That's correct.
9 Q. And were the costs that are listed on those Exhibits
10 calculated in the same manner as those on the amended
11 Exhibits J-M?
12 A. Yes, that is correct.
13 Q. Are you requesting that the Board pool the interest of
14 the mineral owners in the drilling unit designated on the
15 plat for the BUS17
16 A. Yes.
17 Q. Those mineral owners that are listed on Exhibit D, is
18 that correct?
19 A. That's correct.
20 Q. Who would you request to designate as the well operator
21 for the unit?
22 A. Pocahontas Gas Partnership.
23 Q. Are you also requesting that the Board prescribe the time
24 and manner in which other mineral owners can elect to
25 participate in the operation if the wells?

1 A. Yes, we are.

2 Q. Are you also requesting that the Board require partici-
3 participating mineral owners to bear reasonable costs and
4 expenses connected to the wells in the proportions in
5 which the acreage they own has to the total acreage in
6 the BUS1?

7 A. Yes, we are.

8 Q. According to their surface acreage?

9 A. That is correct.

10 Q. And that the Board make provision for the payment of all
11 reasonable costs of the operation including a reasonable
12 supervision fee by all mineral owners who elect to be
13 participating owners?

14 A. Yes.

15 MS. MCCLANAHAN: Those are all the questions I have of Mr.
16 Albert.

17 MR. CHAIRMAN: Let me ask you one clarifying question on just
18 the Exhibit numbers. You mentioned E-G, I believe, and I
19 have an H and I in the original application. And you
20 amended J-M.

21 MS. MCCLANAHAN: It should be E-I that --

22 MR. CHAIRMAN: Okay.

23 MS. MCCLANAHAN: -- were not amended. I apologize for that.

24 MR. CHAIRMAN: Okay. I wanted to make sure.

25 MR. MCGLOTHLIN: Mr. Chairman?

1 MR. CHAIRMAN: Mr. McGlothlin?

2 MR. MCGLOTHLIN: Mr. Albert, could you explain why production
3 and compression costs and sealing of the gob is on the
4 DWE and is not a operating expense?

5 MR. ALBERT: Yes, I can. The production and compression is a
6 capitol outlay just as the well would be. The sealing of
7 the gob is a one time cost and would probably not, I'm no
8 tax attorney, but would probably not meet the criteria of
9 a capitol cost as such. But it is a one time cost that
10 was included for the reason that it was a one time cost.

11 MR. MCGLOTHLIN: I don't see that to the practices in the
12 industry that production and compression -- I find that
13 other gas companies have deemed that as an operational
14 expense.

15 MR. ALBERT: Well, again I guess that would be to the prefer-
16 ence of each individual company, but certainly is a huge
17 capitol outlay for well head compression and gathering
18 lines to get the gas to a central facility.

19 MR. MCGLOTHLIN: But what does that have to do with drilling?
20 We have a detailed well estimate. We're talking about a
21 hole in the ground, not a pipe line from the well head to
22 the compression station.

23 MR. ALBERT: I guess, Mr. McGlothlin, we look at the well
24 estimate to include all the costs of getting that well to
25 production. If completed and to produce it. We can't

1 produce it without compressing the gas. If we compress
2 the gas, we've got to have some means to get it to a
3 central collection point and those are costs that we have
4 to bear. As part of this unit, anyone that participates,
5 we feel should have to bear proportionally. We are not,
6 as I made clear in my earlier testimony, we are not
7 including any of our main compression or our compression
8 to get it to a main line facility or any transmission
9 costs in there. It's simply the capitol outlay for well
10 head compression and the lines to the central compression
11 facility. The wells again, I would point out, the wells
12 that this Board is used to dealing with are wells that
13 are fractured into a reservoir that has pressure of its
14 own. This is a highly fractured reservoir created by
15 mining. It has no reservoir pressure to speak of.
16 Certainly when people talk about low reservoir pressure,
17 this would be the ultimate low pressure reservoir. We
18 will have to not only compress the gas at the surface, we
19 may have to assist the gas out of the ground. It will be
20 very low, so it is unlike most wells that would normally
21 be, you would just put it on to production and slow it
22 in to a line. We cannot do that with these wells. We
23 will have to compress it at the well head to get it to
24 the station. That's a cost we have to bear.

25 MR. KELLY: Mr. Chairman?

1 MR. CHAIRMAN: Mr. Kelly?

2 MR. KELLY: Let me interject here. Mr. Albert, perhaps the
3 problem here may be related out of the items that are
4 described on the DWE's.

5 MR. ALBERT: Where it says production and compression?

6 MR. KELLY: Yeah. It might be more appropriate to describe
7 these items as gathering line and well head compressor
8 costs or something along those lines. Might serve to
9 distinguish these costs from operating costs which are
10 incurred later in the operation of the pipe line and the
11 compression on the production side.

12 MR. ALBERT: Okay. We can do that.

13 MR. KELLY: What you've said here is that these costs,
14 essentially is your well head compressor is a piece of
15 production equipment. It's going to be installed on the
16 well location like the meter and the tank and any other
17 piece of production equipment. And the gathering line is
18 the actual individual gathering line for that well?

19 MR. ALBERT: Yes, sir.

20 MR. KELLY: Which also is correctly charged under the indi-
21 vidual well A and D or DWE in this case. And production
22 costs are incurred on the production side after the gas
23 starts flowing. That will be billed as an operating
24 expense?

25 MR. ALBERT: Exactly.

1 MR. KELLY: Thank you, Mr. Albert.

2 MR. MCGLOTHLIN: Mr. Chairman?

3 MR. CHAIRMAN: Mr. McGlothlin?

4 MR. MCGLOTHLIN: Without going through the questions previously,
5 I would like to ask that my concerns on the
6 previous well of BUN1 also be consolidated in the BUS1
7 well dealing with the DWE's.

8 MR. ALBERT: One thing I would like to mention, Mr. Chairman,
9 if I could, back on BUN1 since Mr. McGlothlin did bring
10 it up, the very first DWE that we have in was for
11 \$500,000. I want to make sure that I made it clear to
12 the Board and everyone else concerned -- that was an
13 extraordinary charge in that well for a probe retrieval
14 that we had to do. Also you go through the other DWE's,
15 you will see that's it's one of the highest, if not the
16 highest costs. I did want to point that out. I know
17 it's the first one on top that you look at, but as you
18 look at the others, you'll see that they're proportion-
19 ally lower in most instances. I just wanted to point
20 that out to the Board.

21 MS. MCCLANAHAN: Mr. Albert, I assume that your answers to any
22 of Mr. McGlothlin's questions with regard to the DWE's on
23 the BUN1 would be essentially the same on the BUS1 in
24 terms of how you made the calculations?

25 MR. ALBERT: Yes.

1 MS. MCCLANAHAN: So if it's okay with the Board, then, our
2 responses to your inquiries would also be the same if we
3 could just stipulate to that.

4 MR. MCGLOTHLIN: It's fine with me, if it's okay with Mr.
5 Chairman.

6 MS. MCCLANAHAN: We would just move that the Board just force
7 pool the interest of those individuals listed on Exhibit
8 D under the terms that we've proposed.

9 MR. CHAIRMAN: Do you have any other witnesses?

10 MS. MCCLANAHAN: No, sir.

11 MR. CHAIRMAN: I would just reiterate concerning ours to about
12 dealing with parties after they elect up front and later
13 you decide to add a well.

14 MS. MCCLANAHAN: We do have one suggestion in that regard, in
15 which we would indicate at this time. If someone elects
16 to participate in the beginning and then later they have
17 a financial problem which would not allow them to
18 participate in the tenth well, for example, then it seems
19 to us what the Board could do in that situation is give
20 them the election of being a carry operator at that
21 particular time so that they wouldn't have to put up any
22 money, but they would be penalized under the statutory
23 penalty for a carried operator. On the other hand, for a
24 person who elects out in the beginning of the unit, that
25 person obviously should never be allowed to elect in on

1 any given well, because it would be unfair to give them
2 production from ten wells when they only put up money on
3 the tenth well. So we would just suggest that as a
4 proposal for handling anybody who -- but again, our first
5 proposal would be that if they elect to participate in
6 the number one well or number 1-9 in the unit essentially,
7 that it's their business risk, I mean, they
8 understand the terms of participating in a unit means
9 that we may drill additional wells. It's just like
10 electing into a unit where one well is and a operator
11 may come back and ask for an increased (inaudible)
12 drilling an additional well in that unit and your
13 election in the unit on one well would have deemed you an
14 election on the second increased incidy well. That's
15 just a risk that you take when you say, I want to
16 participate in this unit it seems to us.

17 MR. CHAIRMAN: In that case, would you come back before the
18 Board each time that you added wells?

19 MS. MCCLANAHAN: Well, I think we certainly feel like we would
20 have to submit a DWE to be approved at that particular
21 time. I don't think we would need to go through an
22 entire procedure to have the force pooling approved,
23 because we would have all the rules for how the unit was
24 to operate, but what we would need is some sort of either
25 staff approval or Board approval on the additional DWE.

1 MR. MCGLOTHLIN: Mr. Chairman?
2 MR. CHAIRMAN: Mr. McGlothlin?
3 MR. MCGLOTHLIN: In concern on your tenth well, being able to
4 elect to participate and be carried --
5 MS. MCCLANAHAN: Right.
6 MR. MCGLOTHLIN: -- would that also mean that you'd be carried
7 on the first nine wells as well?
8 MS. MCCLANAHAN: Well, you have that election anyway under
9 the statute.
10 MR. MCGLOTHLIN: Okay. I just wanted that clear in the
11 record.
12 MS. MCCLANAHAN: Right. Mr. Kelly, just to clarify one thing
13 with regard to our explanation of production and com-
14 pression. Does the Board want us to resubmit these
15 DWE's with the same numbers, just a different description
16 for that or are you just indicating that maybe we need
17 to be more clear from this point on?
18 MR. KELLY: I think maybe my suggestion was from this point
19 on.
20 MS. MCCLANAHAN: Okay.
21 MR. KELLY: It might be helpful.
22 MR. MCGLOTHLIN: Mr. Chairman?
23 MR. CHAIRMAN: Mr. McGlothlin?
24 MR. MCGLOTHLIN: Mr. Albert, go over production and compress-
25 ion once again what that includes.

1 MR. ALBERT: That includes your well head compression, your
2 gathering lines to the main facility prior to going into
3 the transmission line or what we term our main gathering
4 line.

5 MR. CHAIRMAN: Okay. We have others that, of course, Ms.
6 Martin, do you have another question?

7 MS. MARTIN: I just want to ask where is this well being
8 located that they're going to drill now?

9 MS. MCCLANAHAN: These wells have already been drilled.
10 They're vertical ventilation holes that were drilled for
11 the mine and they're just being converted to production
12 wells.

13 MR. CHAIRMAN: But you have a map in the application that
14 indicates which ones are being converted?

15 MS. MCCLANAHAN: Do you have a copy of your application?

16 MS. MARTIN: Yes, I have one.

17 MS. MCCLANAHAN: They're shown on the map.

18 MS. MARTIN: Oh, are they? Oh, okay.

19 MR. CHAIRMAN: Ilean Sanders. I'm calling names. If you
20 have questions or anything you want to address the Board
21 with.

22 MS. SANDERS: No, I guess not.

23 MR. CHAIRMAN: Della Cardona. Okay. Harlan Blankenship.
24 Okay. Granville Blankenship.

25 MR. BLANKENSHIP: Who gives them permission to drill these

1 wells that begin on this --

2 MR. CHAIRMAN: I'm sorry. We're going to need you to please
3 come up. She can't pick up your voice from back there.

4 MR. BLANKENSHIP: I want to know who gives them permission to
5 go ahead and drill those wells on this heirship land
6 where we're an heir in?

7 MR. CHAIRMAN: Okay. Do you all want to answer that?

8 MR. GILLENWATER: The particular areas of concern right here,
9 the property that he's involved in, all that was retained
10 in that tract in the late 1880's the gas estate was
11 reserved in a severance of -- coal had been sold off and
12 then the surface was sold from the father to the son and
13 by a funny language in a deed, the oil and gas estate
14 stopped and that's why it's fell heirship for these
15 years. We have dealt with the current surface owners and
16 now parts of the surface around these wells and we went
17 out and dealt with current surface owners at the time
18 when we're drilling the wells. But the oil and gas
19 estate has just been passing heirship all these years,
20 but we didn't request any permission from the oil and gas
21 owners to do VVH's.

22 MS. MCCLANAHAN: The vertical ventilation holes are approved
23 by the Department of Mines, Minerals and Energy and those
24 permits were issued by them and me. And then the
25 conversion permits were issued by the gas and oil

1 inspectors.

2 MR. BLANKENSHIP: Well, what I'm getting at, if we were an
3 heirship in this land, we should have been contacted
4 before it was drilled, right?

5 MR. HARRIS: I'm not sure that the question was ever answered.
6 I think, or partially answered. When the coal is mined,
7 these holes, the vertical ventilation holes are drilled
8 as a process of mining the coal. That's to ventilate the
9 methane gas. That's part of the coal mining operation.
10 So when permission is granted to mine the coal, permis-
11 sion is -- I'm not sure if that's necessarily follows, but
12 permission is usually granted to drill these holes that
13 vent the methane so it won't be dangerous to mine the
14 coal. So that's how the holes got there to begin with.
15 They were drilled during the mining operation.

16 MR. BLANKENSHIP: Well, could I ask another question?

17 MR. HARRIS: Yes.

18 MR. BLANKENSHIP: Does the coal come under mineral rights?

19 MR. HARRIS: It normally does, unless it's specified as coal
20 being --

21 MR. BLANKENSHIP: Well, in one deed I (inaudible) back to one
22 deed that all mineral rights were reserved.

23 MS. MCCLANAHAN: The coal had been previously conveyed from
24 Mr. Blankenship's estate.

25 MR. BLANKENSHIP: That was my grandfather's, you know, my

1 great grandfather, the one we're talking about.

2 MR. CHAIRMAN: That's an issue of the mineral right that we
3 really, as the Board can't get in to. I understand your
4 dilemma and certainly that's one that the attorneys will
5 have to resolve somewhere. As the Board, we can't decide
6 the mineral right.

7 MR. BLANKENSHIP: Well, one more question I'd like if the
8 Board would take their rights until we find out more
9 details about it. Get down to more details about it.

10 MR. CHAIRMAN: Okay.

11 MS. MCCLANAHAN: Also, I think we've spelled your name
12 incorrectly on the application, isn't that right?

13 MR. BLANKENSHIP: That's right.

14 MS. MCCLANAHAN: And it should be just for the record, G-r-a-
15 n-v-i-l-l-e Blankenship.

16 MR. BLANKENSHIP: Middle initial "E".

17 MS. MCCLANAHAN: I apologize for that.

18 MS. MARTIN: Well, let me ask this. What about the taxes on
19 it? Who's paying the taxes?

20 MR. CHAIRMAN: This is Ms. Martin speaking.

21 MS. MARTIN: Yes, I'm sorry.

22 MR. CHAIRMAN: I'm just trying to keep it clear for the
23 record.

24 MS. MCCLANAHAN: Mr. Gillenwater has indicated that the oil
25 and gas estate is not assessed separately in Buchanan

1 County and therefore no taxes have been paid by the heirs
2 for oil and gas estate interest in the property.

3 MR. CHAIRMAN: Mr., is it Cory Blankenship? Do you have
4 anything to say? Mr. Hale, I believe you said you had
5 some written comments you wanted to submit to the Board?

6 MR. HALE: Yes, sir, I do. Who do I give these to?

7 MR. CHAIRMAN: Mr. Fulmer. Tom, would you pass that to me and
8 I'll read that in for the record if everyone will bear
9 with me. In trying to reach a fair judgment in dispute
10 over the coal bed methane gas ownership, could and can be
11 a very hard and tiresome decision. As an heir named in
12 this dispute, I feel in a judgment handed down, that if
13 the judgment handed down were to be that the coal owners
14 own the methane gas, in my opinion, that would be a very
15 unfair and unjust decision. Because back in those days
16 they only knew nothing about gas. If they did then they
17 would have surely bargained over them. But still my
18 great grandfather reserved the right and as an heir to my
19 great grandfather, a decision like that would surely take
20 away my right. And also would take away my great
21 grandpa's belief of a better day in the future for his
22 heirs to come. I arrive with this feeling because of
23 many wonderful stories that were told and passed down to
24 me about great grandpa of his great love and care that he
25 had and took for his family. But again, the coal owners

1 might argue that since there was no knowledge about gases
2 that's why there wasn't any bargaining. But then I would
3 add if great grandpa would have known that the coal would
4 have been as valuable as it is today, then he surely
5 would have bargained for a lot more. Perhaps it would
6 have kept and passed it one down to his heirs. Sincere-
7 ly, Curtis Hale.

8 MS. MCCLANAHAN: Just for the record, I would like to state
9 that Mr. Curtis Hale is a lessor of Pocahontas Gas
10 Partnership. He's leased oil, gas and coal bed methane
11 to us. In addition, one other matter of administration,
12 we are currently negotiating with another of the parties
13 that's listed on Exhibit D for a lease on their property
14 and if we are able to finalize those negotiations we
15 would like the ability to submit that to the Board prior
16 to the time the force pooling order gets entered. We
17 have given that party two days, so we'll be submitting
18 that to you within two days if that's acceptable.

19 MR. CHAIRMAN: That will be fine. I believe some of the folks
20 here, or at least one indicated they may be willing to
21 sign if you will notarize their statement and do some
22 things for them while they are here.

23 MS. MCCLANAHAN: Okay.

24 MR. CHAIRMAN: That's up to you folks, not me. It's their
25 concern.

1 MS. MCCLANAHAN: We'll be willing, I'm certain, meet with
2 anybody after the hearing.

3 MR. CHAIRMAN: Did you folks hear that? That they'll be
4 willing to meet with you after the hearing to talk
5 further about that. Any other questions, members of the
6 Board? What's your pleasure?

7 MR. MCGLOTHLIN: Mr. Chairman?

8 MR. CHAIRMAN: Mr. McGlothlin?

9 MR. MCGLOTHLIN: I move that this meeting be recessed and that
10 the Board immediately reconvene in an executive closed
11 meeting for the purpose of consultation with legal
12 counsel and/or briefing by staff members and attorneys
13 pertaining to actual and/or potential litigation in other
14 legal matters within the jurisdiction of the Board as
15 committed by section A, paragraph 7 of section 2.1-344 of
16 the code of Virginia. This motion is made in respect of
17 matters identified as agenda item #6.

18 MR. CHAIRMAN: What about five?

19 MR. MCGLOTHLIN: Five, six.

20 MR. CHAIRMAN: Five and six. Motion?

21 MR. EVANS: Second.

22 MR. CHAIRMAN: Motion and a second. All in favor signify by
23 saying yes. (All affirm.) Opposed say no? (None.) We
24 are in Executive Session.

25

1 (THEREUPON, THE BOARD WENT INTO EXECUTIVE SESSION AND
2 AFTER HAVING DELIBERATED, RETURNED TO OPEN PROCEEDINGS.)
3 MR. CHAIRMAN: Whereas the Gas and Oil Board has convened in
4 Executive Session on this date pursuant to the affirm-
5 ative reported vote in accordance with the provisions of
6 the Virginia Freedom Information Act and whereas section
7 2.1-344.1 of the proposed in Virginia requires certifi-
8 cation of this Virginia Gas and Oil Board that such
9 executive meeting was conducted in conformity with
10 Virginia law. Therefore, be it resolved that the
11 Virginia Gas and Oil Board hereby certifies that to the
12 best of each members knowledge only public business
13 matters lawfully exempted from open meeting requirement
14 from Virginia law were discussed in this executive
15 meeting which this certification resolution applies. And
16 only such public business matters as were identified in
17 the motion convening the executive meeting were heard and
18 discussed or considered by the Virginia Gas and Oil
19 Board. I'll ask in roll call and give your vote,
20 please.
21 MR. MCGLOTHLIN: Kevin McGlothlin, yes.
22 MR. HARRIS: Bill Harris, yes.
23 MR. WAMPLER: Benny Wampler, yes.
24 MR. EVANS: Ken Evans, yes.
25 MR. KELLY: Bill Kelly, yes.

1 MR. CHAIRMAN: Okay. We're ready.

2 MR. MCGLOTHLIN: Mr. Chairman?

3 MR. CHAIRMAN: Mr. McGlothlin?

4 MR. MCGLOTHLIN: I'd like to make a motion to conditionally
5 approve pooling of all interests in units BUS1, BUM1,
6 subject to approval of language effecting elections of
7 participation with respect to wells drilled or converted
8 after August 20th, 1991.

9 MR. KELLY: Second.

10 MR. CHAIRMAN: Motion and second. Any further discussion? No
11 further discussion. All in favor signify by saying yes.

12 (All affirm.) Opposed, say no. (None.) Motion carries.

13 Thank you.

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(ITEM 7)

MR. CHAIRMAN: Item #7 of the agenda -- item #7 docket #VGOB-91-0820-137 has been continued to the next meeting.

MR. MCGLOTHLIN: Item which one, #7?

MR. CHAIRMAN: Number 7.

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(ITEM 11)

MR. CHAIRMAN: And the final item on the Board's agenda is a motion by Donald R. Johnson, attorney regarding requests of surface owners and mineral owners for pooling of existing or proposed wells. Docket # VGOB-91-0820-141, that's item #11 on the agenda. That motion was dealt with this morning when we approved the response to public comment and unless the Board members have anything further to do we've dealt with that. Any further comments? Is that suitable to the Board members? Okay. This hearing is closed. Thank you.

(End of proceedings for
August 20, 1991.)

1
2
3 **CERTIFICATE**

4
5 **COMMONWEALTH OF VIRGINIA**
6 **COUNTY OF WASHINGTON**

7
8 I, Cleadys D. Griffin, Notary Public in and for the
9 Commonwealth of Virginia, at Large, do hereby certify that the
10 foregoing is a true transcript of the proceedings had in the
11 matters heard before the Virginia Gas and Oil Board on August
12 20, 1991; that all of said proceedings were recorded electron-
13 ically by Tamara L. White, Notary Public, in and for the
14 Commonwealth of Virginia, at Large, and have been reduced to
15 writing by me from said electronic recordings, and that to the
16 best of my knowledge and ability, said transcript accurately
17 reflects the proceedings had.

18
19 GIVEN under my hand this 9th day of September, 1991.

20
21 
22 CLEADYS D. GRIFFIN
23 NOTARY PUBLIC
24
25

My commission expires March 19, 1993.