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4 VIRGINIA OIL AND GAS CONSERVATION BOARD
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6
7 HEARING OF SEPTEMBER 24, 1991
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10 9:00 A. M.
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13 AT THE SOUTHWEST VIRGINIA 4-H CENTER
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September 26th, 1991

This matter came on to be heard before the Virginia Gas and Oil Board held at the Southwest Virginia 4-H Center, Abingdon, Virginia, on this the 26th day of September, 1991.

MR. WAMPLER: My name is Sunny Wampler and I'm Assistant President of Mining for the Virginia Department of Mines, Minerals and Energy and this is the Gas and Oil Board hearing for September. I'll ask the Board members to introduce themselves, starting with Mr. Mason.

(BOARD MEMBERS INTRODUCED.)

MR. WAMPLER: Thank you. So that you won't have to listen to my scratchy voice today I'm battling a sinus infection and I've asked Mr. Evans to chair for me today.

MR. EVANS: And I make no claim to the expertise of that position. Thank you very much.

ITEM 1

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3 MR. CHAIRMAN: The first item on the agenda VGOB- 0521-117, a
4 petition by James White, surface owner, for establishment
5 for compulsory pool drilling unit for EXX proposed well
6 VC-1934.

7 MR. FULMER: On this case I have some dockets to hand out to
8 the Board regarding motion for a continuance received by
9 the Division on the 23rd.

10 MR. CHAIRMAN: First of all, let me ask if there is anyone
11 else here that needs to address the Board in this
12 matter?

13 MR. COUNTS: Mr. Evans, I'm Richard Counts on behalf of
14 Equitable Resources (inaudible.) and we'd like to address
15 it in terms of opposing Mr. Johnson's request for a
16 continuance.

17 MR. CHAIRMAN: If I'm not mistaken this has been continued
18 since May, is that correct?

19 MR. JOHNSON: It has been on and off. Mr. Evans, if I might
20 address the Board concerning this motion, as the Board
21 knows, this matter has been pending for several months
22 and what I have been doing on behalf of my clients is
23 struggling with the regulations, struggling with the
24 Board responding to constant motions to clear this which
25 Equitable has always offered at these hearings whenever

1 we have appeared and sought to be heard. At the last
2 hearing the Board again rejected our application and said
3 there were technical reasons why the Board felt that the
4 applications were not adequate and again gave us the
5 opportunity to go back. I have done that. I did go back
6 and I sat with the inspector, reviewed the records in his
7 office, put together a new -- what is now called a second
8 amended application. I was not able to get that completed
9 until last week. I mailed it out on Friday of last
10 week by certified mail as required. And again, as
11 pursuant to Mr. Counts' objections on behalf of Equitable,
12 last time you said, "Well, you guys didn't send
13 this out by certified mail." So yes, we have complied
14 with that. We don't believe that we're in a position to
15 proceed because we haven't complied with those regulations
16 and I ask that the matter be continued for one
17 additional month in order to give Equitable an opportunity
18 to review the amended application, to allow us to
19 proceed. I knew that if I sought to proceed they would
20 object on that grounds. So I felt that the thing to do
21 was move for a continuance, tell my clients to stay home
22 and see what the Board did about it. We have filed a
23 much more detailed request in compliance with what we
24 believe are the Board's regulations and my clients' abilities
25 as mineral claimants and landowners which

1 comply with the detailed regulations of the Board
2 concerning application for pooling. Our second amended
3 application has been sent by certified mail and I'm
4 certified to that, but it was only sent on Friday. We
5 would ask the Board to continue this matter until October
6 so that we can have a full hearing on it and that's the
7 basis upon which we move. Again, I have been struggling
8 with this Board. There is nothing detrimental with
9 regard to the situation. It is not an emergency.
10 Nothing is going to happen other than we are requesting
11 that the Board require the operator to participate in a
12 pool and to escrow all of the funds from the well.
13 That's basically what we are tempting to do by these
14 applications. I told Mr. Counts early on I was going
15 move for continuance to get this stuff filed and he is
16 again here objecting to us trying to get this thing in
17 proper form. That's all I really ask the Board to do, is
18 allow me the opportunity to get the thing in proper form,
19 to serve everybody that needs to be served and to allow
20 the matter to be heard in full next month. And we'll be
21 here. We'll be ready to go. That is also the same
22 motion I would make in James White which is numbered
23 second on the docket.

24 MR. COUNTS: Mr. Evans, members of the Board, this is essen-
25 tially the same matter that Mr. Johnson has been attempt-

1 ing to get in the appropriate form for going on five
2 months now. On May 21st it was originally heard by the
3 Board with regard to the failure to have a completed
4 application which is required by the Board. At that
5 point in time the Board dismissed an application on
6 PC-320 for failure to comply with Board regulations and
7 Mr. Johnson requested additional time to bring his
8 application into compliance with the Board of regula-
9 tions. At that point in time the Board granted not only
10 a one month continuance, but granted a two month continu-
11 ance in order to make sure that Mr. Johnson had ample
12 time to bring his application into compliance. On July
13 11th Mr. Johnson filed a motion, three working days
14 before the hearing, to continue these matters again. And
15 once again the Board indulged Mr. Johnson in terms of his
16 continuance. At the August 21st hearing the Board once
17 again continued Mr. Johnson's application since the
18 applications were still not in compliance with the Board
19 regulations. The Board did, however, take under advisement
20 my motion to dismiss at that time. Now on September
21 20th, one working day before the hearing, Mr. Johnson has
22 again requested this Board to continue this matter in
23 order that his second amended application may meet with
24 those requirements of 361.19. It's Equitable's position
25 that Mr. Johnson's clients have been given every oppor-

1 tunity to bring this application into compliance with the
2 procedural rules set forth by the Board. The granting
3 of an additional continuance would only result in
4 additional delay, expense and administrative inefficien-
5 cy. Due process is envisioned under the Administrative
6 Process Act and also the Board regulations requires that
7 all parties be treated equal. We certainly believe that
8 Mr. Johnson and his clients have been given every
9 opportunity to bring their applications into compliance.
10 That still has not been done. Therefore, we respectfully
11 request that the Board deny Mr. Johnson's request for a
12 continuance and that the Board grant Equitable it's
13 motion to dismiss, with further request that Mr. John-
14 son's motion be dismissed for prejudice.

15 MR. JOHNSON: Let me make one response to what Mr. Counts has
16 said and it's obvious from what he said. We came here
17 one month ago. That is the only time this Board has ever
18 looked at the application and made any decision concern-
19 ing it. We came here one month ago and said, "Look at
20 this new application. We've tried really hard to put it
21 together. And the Board said, "Well, we don't
22 -- after confronting with counsel the Board said, "We
23 don't think it's in compliance. Now, put it in com-
24 pliance." And we have made an effort to do that. It's
25 unfortunate that we were not able to get that job

1 completed until last week. Neither my clients or I have
2 anybody to assist us with this. I had to go and meet
3 with the inspector which I did last week and got his
4 assistance with regard to this particular application.
5 As I have told this Board many times, I don't believe that
6 my clients ought to be obligated to go through the
7 technical compliance with this act, but the Board sees
8 otherwise and we have tried to do that. The Board's
9 only looked at this application one time. That was 30
10 days ago. And they told us "No, it's not adequate. So
11 come back." And we don't think that there is any
12 prejudice here. Mr. Counts has had lots of notice from
13 us by telephone as well as the motion with I filed to the
14 effect that we did not want to hear the matter today.
15 And we ask for a thirty days continuance on the first
16 two matters on the docket, Holbrook and White.

17 MR. COUNTS: Mr. Evans, compliance is not a subjective issue.
18 The Board by its own procedure rules have set forth
19 specifically what's required of each applicant making an
20 application. If Mr. Johnson and his clients are not
21 prepared to make an application then they should actually
22 take this matter to the Circuit Court where the appropriate
23 remedy for which Mr. Johnson ultimately seeks
24 should be adjudicated. But compliance is not subjective.
25 It specifically set forth in terms of the Board procedure

1 rules in terms of what's required of this application.
2 There is no magic involved. Mr. Johnson has had ample
3 notice of this since the May hearing, still not been
4 brought into compliance. And it was my understanding
5 that basically from the Board's ruling at the last
6 hearing that it certainly expected this application, that
7 the substance of the application be complied with and
8 that notice be issued and Mr. Johnson be prepared to
9 proceed on this application of the date of this hearing.

10 MR. CHAIRMAN: Okay. Let's take things in order first. Are
11 there any questions from any other members of the Board?

12 MR. MASON: I don't know whether he asked. I don't recall.
13 Was there anyone else here other than these gentlemen?

14 MR. JOHNSON: No. This is it. And we do have a new applica-
15 tion pending in front of the Board now, but we mailed it
16 Friday. So we are ready to go, but not now. I was
17 afraid that if we proceeded with a late application that
18 Equitable would object to us filing a late application, a
19 late notice and all of that, which they did last time.

20 MR. KELLY: Mr Chairman, I'd just like to ask Mr. Johnson.
21 The second amended application that we were just handed
22 here, is this additional information?

23 MR. JOHNSON: Yes. It's a second amended application. The
24 certified mails on it went out Friday. So we're ready
25 to go, but I'm just afraid procedurally there would be

1 an objection raised because we didn't give adequate
2 notice. So we move for a continuance. That's basically
3 the situation. We have nothing else to present to the
4 Board other than what's already in the Board's hands
5 now, but we don't feel like we should proceed today
6 because Equitable, I would have assumed, would have
7 objected to us proceeding today and so I told my clients
8 to stay home. If the Board feels like that we've got to
9 proceed today I'll call them and we'll go ahead if Mr.
10 Counts is willing to waive all objections to notice on
11 behalf of all of the persons who were identified in the
12 second application.

13 MR. COUNTS: Mr. Evans, I don't have the right to do that.
14 There are other parties that are involved. I couldn't do
15 that even should I desire. And in addition I would still
16 submit to the Board although this I don't think is
17 proper within the preview of the view today that the
18 amended application is still defective. And we would
19 simply request that their motion for continuance be
20 denied and that the motion to dismiss be approved by the
21 Board.

22 MR. CHAIRMAN: Okay. As I said, is there anybody else that
23 has any questions? (Pause.) First of all we have to act
24 on the motion to continue. Is there any more discussion
25 on that?

1 MR. MASON: I think in view of the fact that the notice
2 requirements as to this amendment are not in compliance
3 with the law any by both parties seem to agree on that
4 that we only have one of two choices. We either grant
5 the continuance or dismiss the case. I don't think we
6 can go forward with it.

7 MR. CHAIRMAN: I guess what I'm asking is what's the Board's
8 pleasure on that?

9 MR. WAMPLER: Since we've been in this for many months now
10 I recommend that the Board consider granting -- in fact,
11 I make a motion that the Board grant the continuance for
12 one more month with an absolute not continuance beyond
13 that date and we will decide the case next month.

14 MR. MASON: I second that.

15 MR. CHAIRMAN: I have a motion and a second. All in favor
16 signify by saying yes. (ALL AFFIRM.) All opposed?
17 (NONE.) The Motion carries. We will grant the continu-
18 ance for one month and under no circumstances will it go
19 beyond that.

ITEM II

MR. JOHNSON: Mr. Evans, there is not any intention -- I can assure this Board that I filed this application. I have not intention to delay this matter any longer and I hope we can resolve it next month. I also have the same motion in the Holbrook case. There are two cases there, #1 and #2. They are both identical. In fact, the properties adjoin each another. And I have the same motion in regard to that.

MR. CHAIRMAN: The Holbrook case is VCON-0521-118.

MR. FULMER: Mr. Chairman, I have additional materials.

MR. JOHNSON: I filed the same motion and I also filed the second amended application in that matter. It's the same situation.

MR. CHAIRMAN: Essentially the same arguments, both sides?

MR. COUNTS: Yes, sir. We'd so stipulate, certainly.

MR. WAMPLER: Mr. Chairman, I make the same motion in this case.

MR. MASON: I likewise second it.

MR. CHAIRMAN: All in favor? (ALL AFFIRM.) All opposed?
(NONE.) The motion carries. We will grant the continu-
ance.

MR. JOHNSON: Ladies and gentlemen, we will see you next month. Thank you very much.

1 MR. COUNTS: Mr. Chairman, I also assume that the Board's
2 mandate on the fact that not further continuances will be
3 allowed on this.
4 MR. CHAIRMAN: And will also apply in the event that Mr.
5 Johnson's application is once again found to be defect-
6 ive under the Board procedural rules.
7 MR. JOHNSON: Well, I don't think that was the motion.
8 MR. COUNTS: That's why I'm asking for clarification.
9 MR. WAMPLER: I didn't make that motion. I think the Board
10 can decide all of that next month and makes its decision
11 based on what we hear.
12 MR. HADON: Yeah. I think it would be imprudent of us at this
13 point to so constrict our consideration next month. We
14 certainly bear in mind your concerns and the fact that
15 it's been represented to us that this thing will be
16 ready to go forward next month. I would probably suggest
17 that if it's not it would certainly cast a heavy paw on
18 our consideration of any additional continuances.
19 MR. COUNTS: I'm satisfied with a heavy paw. Thank you, sir.
20 MR. JOHNSON: We are ready to take the heavy paw, but I think
21 for this Board to say that the Board's not going to let
22 this thing go one day down the road past next October, I
23 think that would be a mistake on the Board's part to
24 confine it's deliberations to that extent. But certainly
25 we will be prepared. In fact, we are prepared today, but

1 the service requirements have not been met. Thank you.

2 MR. FULMER: Mr. Chairman, I would like the Board to emphasize
3 the fact that since it's a continued case and we've had
4 several instances that the Board procedural rules be
5 strictly adhered to. We have had problems of not
6 complying to the Board's procedural rules and I would
7 like to hear some emphasis back from the Board on how
8 they would want that carried out.

9 MR. CHAIRMAN: Okay. Since we've heard from staff, I guess
10 for discussion purposes the procedural rules are the pro-
11 cedural rules. Make sure that you get your times and
12 notices and everything else on time. Just comply with
13 them.

14 MR. JOHNSON: To the extent that I need to apologize to the
15 Board, I just want to say the Board gave me both the
16 encouragement and the obligation to proceed to comply
17 with the technical provisions of this act. I don't have
18 any staff to go out and do that. I had to go and meet
19 with Mr. Fulmer and sit down and review the application
20 and then decide what I could do on behalf of my client in
21 completing the application and so that's why it took a
22 little bit longer than I had hoped. And also we wanted
23 to be sure that there notice because that objection was
24 raised as to the first amended application that we filed
25 that we didn't send it out by certified mail. So we try

1 to do our best in complying with these rules and ask the
2 Board's indulgence one more month.

3 MR. CHAIRMAN: I'll just say comply with the rules and
4 regulations.

5 MR. JOHNSON: I understand, sir. Thank you.
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ITEM VII

MR. COURTS: Mr. Chairman, Equitable has one other matter on the docket today which is #7 on the docket, VGOB-91-0924-143. And as a result of a death in the family my understanding is that request for a continuance has been granted. Equitable does not oppose that request for continuance. It is an appeal of a surface owner objection.

MR. CHAIRMAN: Is there anyone else in this matter that would like to address the Board? If not, may I have a motion to grant that continuance?

MR. HASON: So moved.

MR. WAHLER: Second.

MR. CHAIRMAN: All in favor? (ALL AFFIRM.) Opposed? (NONE.)

That case will be continued until next month. Ladies and gentlemen, we are going to take a small break while the next group gets set up.

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

ITEM III

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3 MR. CHAIRMAN: Ladies and gentlemen, we are back on the record
4 now. The next item on the agenda is VOOB-91-0820-127, a
5 petition for the establishment of a production unit known
6 as BUNE #1. We have a request that this application be
7 withdrawn. It was granted on September 9th. Before we
8 go any further is there anyone that would like to address
9 the Board or objects to that withdrawal for the BUNE 17
10 No one in the room.
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3 ITEM IV

4 MR. CHAIRMAN: Next on the agenda is a petition for establish-
5 ment of a compulsory pooled drilling unit, Docket VOCH-
6 91-0024-187. Parties please come forward.

7 MR. SWARTZ: Mr. Chairman, Mark Swartz and Howard Salisbury
8 appearing for OXY. USA. We would like to call Martin
9 Wirth and have him sworn please.

10 COURT REPORTER: (Swears witness.)

11 MARTIN E. WIRTH

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

14
15 DIRECT EXAMINATION

16
17 BY MR. SALISBURY:

18 Q. Would you state your name, please?

19 A. Martin E. Wirth.

20 Q. By whom are you employed?

21 A. OXY. USA.

22 Q. And what is your position?

23 A. Project Land Manager.

24 Q. How long have you been so employed?

25 A. Fourteen years.

1 Q. What are your general duties that you perform?
2 A. I perform acquisitions of leases, title work, supervise
3 personnel in the Land Department underneath me.
4 Q. Have you testified in prior proceedings before this
5 Board?
6 A. Yes, I have.
7 Q. And have your qualifications been accepted by the Board
8 on those occasions?
9 A. Yes, they have.
10 Q. Do your responsibilities with Oxy include the unit that
11 has been designated W-32?
12 A. Yes, it does.
13 Q. And did you prepare an application for the pooling of
14 that unit?
15 A. Yes, we did.
16 Q. And are you aware and familiar with the proposed explora-
17 tion and development of the unit?
18 A. Yes, I am.
19 Q. Was a notice of hearing prepared in connection with this
20 unit?
21 A. Yes, it was.
22 Q. And that was done by you?
23 A. Yes, it was.
24 Q. On what date?
25 A. The notice of hearing was sent out to all parties,

1 respondents and also was published in the Virginia
2 Mountaineer publication. The date of the notice of the
3 hearing was August 5th, 1991 and it was published in the
4 paper August 8th, 1991.

5 Q. The initial application for this unit was amended, is
6 that correct?

7 A. That's correct.

8 Q. For what reason was it amended and what affect did it
9 have?

10 A. The amendment was done because upon finalization of the
11 title we have picked up a conveyance by the Commonwealth
12 Department of Transportation when they had a condemnation
13 suit upon this tract that affected this tract in which
14 during the condemnation proceedings the Commonwealth
15 acquired mineral rights in fee under the highway which
16 traverses this tract.

17 Q. Was notice of the hearing sent to all of the potential
18 claimants identified on Exhibit B of the application?

19 A. Yes, they were.

20 Q. And how was that done?

21 A. By certified return receipt mail.

22 Q. Was there anyone from whom you did not receive a receipt?

23 A. No, there wasn't.

24 Q. And you did also send this notice to the Commonwealth
25 Transportation Board, is that correct?

1 A. That's correct. I served the Secretary of Transporta-
2 tion.
3 Q. The names of the individuals listed on Exhibit B are all
4 of the potential claimants that you are aware of?
5 A. That I'm aware of, yes.
6 Q. Do you wish to amend the application to add anyone at
7 this time?
8 A. At this time we would like to dismiss -- I believe,
9 Equitable Resources is in this if I'm not mistaken. Let
10 me make sure. Yes. Equitable Resources dismiss. We
11 have come to an agreement between the two parties as to
12 this unit.
13 Q. Are there any others you wish to dismiss at this time?
14 A. No, sir.
15 Q. Did you file with this Board proof of mailing of the
16 notice of hearing?
17 A. Yes, I did.
18 Q. And did you also file a certificate of publication?
19 A. Yes. I filed it with the State.
20 Q. What is the extent of OXY's interest in this unit?
21 A. Oxy. USA is a coalbed methane lessee under 64.02 percent
22 of the acrea.
23 Q. I'm going to show you this copy of the plat that was
24 prepared. The area that's shaded in, does that represent
25 the area of the unit under which OXY has coalbed methane

- 1 specific leases?
- 2 A. That's correct.
- 3 Q. What is the total acreage of this unit?
- 4 A. It's 80 acres inside this unit.
- 5 Q. And what relief is being sought today by OXY?
- 6 A. OXY is requesting the Board relief to pool the interest
7 owners that are unleased or haven't come to terms with
8 OXY, USA in this unit in order that we may fully develop
9 the unit.
- 10 Q. What seams are affected by this application or what seams
11 do you seek to have pooled?
- 12 A. The coalbed methane gas within the coal formation below
13 the Tiller to the Pocahontas #2 and all adjacent associ-
14 ated coal seams.
- 15 Q. Have you had any discussions with the correspondents from
16 representatives of the Transportation Board?
- 17 A. Yes. I was contacted and I talked with the Attorney
18 General's office, Mr. Jim Osborne, assistant Attorney
19 General with the Commonwealth who represents the Depart-
20 ment of Transportation.
- 21 Q. Did you also receive correspondence from John Williken,
22 Secretary of Transportation?
- 23 A. Yes, we did.
- 24 Q. And in that he indicated that the Department of Transpor-
25 tation had no objection to the application as filed?

1 A. That's correct.

2 MR. SALISBURY: I would offer at this time as Exhibit G a copy
3 of the letter dated August 20, 1991 from Mr. Milliken to
4 Mr. Wirth. It has just be distributed to the Board.

5 (Letter dated 8/20/91 marked as
6 Exhibit D.)

7 Q. (Mr. Salisbury continues.) Was there a DWE prepared in
8 connection with this application?

9 A. Yes, there was.

10 Q. And who did that?

11 A. That was Mr. Glen VanGolen.

12 Q. And when was that done?

13 A. Prepared on July 17th, 1991.

14 Q. I have just a few more questions. Mr. Wirth, have you
15 had discussions with the Commonwealth concerning what, if
16 any, election they might make in connection with this
17 unit?

18 A. Yes, I did. I discussed it with the Assistant Attorney
19 General and they were basically at a stand still or they
20 were undecided as to the Commonwealth's position to the
21 minor interest involved, the time and expense that would
22 have to go through. They were under the opinion at that
23 time that possibly the best for the Commonwealth was to
24 proceed with the forced pooling and then they would make
25 their elections either to participate or be carried, but

1 probably would take the options of it being leased.

2 Q: In the event that they would be deemed to lease, what
3 their position with respect to consent to frack?

4 A. The consent to stimulate and consent to frack was
5 discussed with them. Again they didn't quite know how
6 to handle -- I don't want to put words in the Assistant
7 Attorney General's office. They didn't know quite which
8 way to go with it, but they were of the opinion that if
9 they participated or if they elected to be carried and
10 if they elected to be leased or be deemed leased it was
11 basically an implied covenant in that such election.

12 Q. What would you recommend be placed in any order to cover
13 that situation?

14 A. Particularly in this case we have tried to go the
15 Commonwealth and ask for a consent to stimulate on this
16 unit plus other units which part of the highway goes
17 through. Again, they didn't quite know how to go
18 through the situation. They were still at that time
19 considering the situation, but by advice of the Attorney
20 General's office being an implied, they feel and we feel
21 that the Board may enter an order saying that the implied
22 covenant of their elections shall be also the consent to
23 stimulate would be in such an election.

24 Q: What are the terms of the leases that you have obtained
25 on this unit as for as their royalty interest and bonus,

1 if any?

2 A. For coalbed methane the bonus consideration is \$1 per
3 acre pro rata share proportionate to each owner's
4 interest in the tracts of the unit. Also we offer a
5 1/8th royalty interest to those parties and a five year
6 primary term. That would be the primary term of the
7 lease.

8 Q. Is that standard for such leases in this area?

9 A. Yes. It's standard throughout the area and other areas.

10 Q. Would you recommend such terms for any order entered by
11 this Board?

12 A. Yes, I would.

13 MR. SALISBURY: No further questions.

14 MR. NASON: Mr. Chairman.

15 MR. CHAIRMAN: Yes, Mr. Nason

16
17 CROSS-EXAMINATION
18

19 BY MR. NASON:

20 Q. Mr. Wirth, does the Commonwealth by virtue of this
21 condemnation refer to owned coal under the road, is that
22 what --

23 A. They own it in fact, Mr. Nason. In 1929, I believe was
24 the date, they condemned through condemnation the -- if
25 you'll look on Exhibit A, the plat, you'll see the John

1 hurt and James M. McGuire kind of in the middle on the
2 east side running through out there. The predecessor to
3 these trusts, they had a condemnation suit in that area
4 and at that time the language in the deed granted to the
5 State and that condemnation said it was in fee. Usually
6 you will see just an easement language in it and it
7 excludes minerals, but this proportion include the
8 minerals.

9 Q. And you all are advocating here an implied consent to
10 stimulate?

11 A. We're advocating. Yes, we are. We approached the
12 Commonwealth a couple of time saying A, does the Board,
13 does the inspectors office, Department of Energy or since
14 the deed was in the Department of Transportation, do they
15 grant the consent? We talked to all -- like I said, the
16 Secretary of Transportation in Richmond and again it was
17 just -- he says he's not telling me -- when I say he I's
18 saying --

19 Q. I understand the difficulty in getting the Commonwealth
20 to agree to anything.

21 MR. FULMER: Sir, I will mention on this one subject there
22 was correspondence between me and Mr. Osborne. And the
23 letter being addressed to me, not exactly to the Board,
24 was to the effect, in his opinion, that it left it up to
25 the Board to protect their interest in this case.

1 Q. (Mr. Mason continues.) My concern here is we have aired
2 in previous hearing the situation of giving the right to
3 stimulate and, in fact, had some considerable impact in a
4 decision as I recall in one case is to who really should
5 go forward as an operator of a well. I'm concerned about
6 here this idea of implicit consent. I understand that
7 with the Commonwealth that there are unique problems. I
8 guess what I'm concerned about is that if we accept that
9 concept as applied to the Commonwealth how could that
10 distinguish that from any other situation in which it
11 could be advocated that there was a compliance consent
12 to stimulate.

13 A. We appreciate the concern of the two parties there and
14 we've discussed. If you look at it, again, we control 54
15 percent of the unit. We've got consent from the majority
16 of the people. Here we have a road that happened to
17 grant --

18 MR. SALISBURY: I understand it. I guess I'm concerned about
19 the presidential value of what it is we're talking about.
20 Mr. Swartz, do you wish to say something?

21 MR. SWARTZ: The problem is that nobody in the AG's office
22 wants to come here and go on record and make a decision.
23 And essentially what Mr. Wirth has been told and we filed
24 a letter indicating that -- at least somebody wrote to us
25 and said they didn't have an objection. I was hoping

1 that Mr. Osborne who indicated in that letter might come
2 this morning so that he could answer questions you might
3 have. Essentially my understanding of the Commonwealth's
4 position as expressed by Mr. Osborne is we do not want to
5 take an official position. But we understand that the
6 Board might choose to enter an order that in the event we
7 elect to do nothing and are deemed to have leased, that
8 could be regarded as an implied agreement to allow this
9 coal to be fracked. And I can't do any better. It's
10 terrible, but I can't get these folks to come over and
11 take a position.

12 MR. HASON: I'm sympathetic. You understand my concern that
13 inherent in that is a principle that goes far beyond
14 anything we done before and, in fact, deals with some
15 areas that we have found to be very controversial in
16 terms of the coal owner's ability to exercise their right
17 to consent to fracking their coal. Basically what I
18 understand what you are saying to me is that you're
19 saying that if they choose not to take a position and if
20 they go beyond that and say we don't object, that we can
21 inherently and further consent from that and that
22 troubles me a little bit.

23 MR. SWARTZ: Well, they're going to have another opportunity
24 in front of -- I'm not happy with it either, but this is
25 what we are stuck with. The Commonwealth is going to

1 have another opportunity at the permit hearing and we are
2 going to have the revisit the consent issue with the
3 Commonwealth when we're looking for a permit.

4 MR. MASON: I understand that. I understand, all jokes
5 aside, that it is extremely difficult to get people to
6 consent to something they don't understand.

7 MR. WIRTH: Well, some parts of the Commonwealth's officials
8 understand.

9 MR. MASON: Well, I'm talking about the Highway Department.

10 A. (The witness continues.) If I may, again, at the very
11 minimum it is our opinion -- so the deed is in the
12 Department of Transportation. That doesn't mean -- to
13 me, the Commonwealth is vested and who in the Common-
14 wealth is the arm of the Energy Department of Minerals.
15 That's why we approached the director. I said we believe
16 he had the authority. And again, they left it up the
17 Board to grant them the authority to protect their
18 interest.

19 Q. I have found the Virginia Department of Highway in the
20 past to be extremely jealous of anyone and zealous in
21 protecting their control of the Department's right of
22 way.

23 A. The only thing they asked, Mr. Mason, is they were
24 concerned about that same thing. That we make sure our
25 equipment wasn't damaged and we showed them the plat and

1 everything like that. Again, the revenue will go to the
2 Commonwealth.

3 Q. I understand that. I just -- I'm not really very
4 concerned about it in this case as much as I am of this
5 concept of some sort of inferred approval or even the
6 fact that we can within the power of this compulsory
7 pooling basically compulsory or create a pulse right to
8 stimulate. If we could do it here why could we do it
9 against any coal owner? And I would imagine that there
10 are a lot of other coal owners who would find that power
11 to be somewhat offensive.

12 MR. WAMPLER: Mr. Chairman, in the application itself under
13 Item D Oxy, USA, Inc. has stipulated designating the
14 applicant Oxy, USA incorporated as unit operator provid-
15 ing that the operator shall have the right to drill,
16 develop, produce, market and sell coalbed methane gas
17 produced from the subject drilling unit. I'll stop there
18 and note that that continues on. But then we have an
19 acknowledgement by John Milliken dated August 20th that
20 says, "The Department has no objection to your companies
21 application as filed." That application does then
22 stipulate that this will be drilled, developed. It does
23 grant -- it does not address the specific issue of
24 consent to stimulate. But certainly we have adequate
25 record here to say that that item has been discussed and

1 I think the Board has the authority to even direct the
2 Department of Transportation to take a specific position
3 on consent to stimulate as part of it's election and
4 would recommend that we do so on anything we do.

5 Q. (Mr. Mason continues.) I think that if we as a Board can
6 conclude that the Department of Transportation's essen-
7 tial consent to the terms of this application, that
8 being a concurrent consent, not -- see, here again, which
9 was involved before, in some old lease language being
10 construed to be consent if, in fact, we have concurrent
11 knowledge consent as to specifically what's going on. I
12 think rather than inferring consent we can conclude there
13 is active concurrent consent as reflected in this letter
14 and I would suggest that our motion, if we decide to
15 approve it, include that. That will get us beyond the
16 hurdle if there is no objection to that. Would that be
17 of satisfaction, Mr. Wirth?

18 A. That's great with us. We'd like to see the issue some
19 way be settled. It will come before you again.

20 Q. I understand that, but you understand my concern.

21 A. Yes, sir.

22 MR. MASON: If we can find something to hang our hats on that
23 is a concurrent or present time consent by them to this
24 rather than trying to find some power to do it for them,
25 I am much more comfortable with that. Thank you.

1 MR. CHAIRMAN: I have one question. Why wasn't the Common-
2 wealth listed on Exhibit B?
3 MR. WIRTH: We filed an amended Exhibit B, Mr. Evans.
4 MR. FULMER: You don't have it, do you?
5 MR. CHAIRMAN: Which I don't have.
6 MR. WIRTH: It's a complete amended exhibits with you all just
7 a few days after the application went in because the
8 title was completed and we had a question as to the deeds
9 interpretation. The amended application will show the
10 Commonwealth and the total aggregate interest is the
11 same, but it had to take away from one party to --
12 MR. HASON: I might suggest if it's at all possible that in
13 your all's dealings with these people -- if I may, I
14 mean, just take over and dominate this, that even if
15 something more direct from the Department of Transporta-
16 tion granting to this Board the power to do that or to
17 make those decisions on behalf of the Commonwealth would
18 be very helpful if something like that could be obtained.
19 I would certainly feel more comfortable.
20 MR. WIRTH: Again, specifically we even sent the stimulate
21 form to them not only in this one, but for other units
22 that will be before you and they took no action. So we
23 understand the situation.
24 MR. CHAIRMAN: Any other questions?
25 MS. SALISBURY: Thank you, sir.

(Witness stands aside.)

MR. SALISBURY: I would ask that Mr. VanGolen be sworn in.

COURT REPORTER: (Swears witness.)

OLEN VANGOLEN

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

DIRECT EXAMINATION

BY MR. SALISBURY:

Q. Would you state your name, please?

A. Olen VanGolen.

Q. By whom are you employed?

A. OXY, USA.

Q. And in what capacity?

A. I'm the project manager for the coalbed methane project.

Q. How long have you been so employed?

A. Ten years with OXY, USA.

Q. What are your general duties in that occupation?

A. My duties are to supervise the entire drilling project for OXY, USA here in Buchanan County.

Q. Have you testified before this Board on prior occasions?

A. Yes, I have.

Q. And have your qualifications been accepted on those

1 occasions?

2 A. Yes, they have.

3 Q. As part of your duties did you prepare the detailed well

4 estimates submitted as Exhibit C to the application?

5 A. Yes, I did.

6 Q. When did you prepare that?

7 A. July 17th.

8 Q. Of 1991?

9 A. 1991.

10 Q. What is the projected depth of this well?

11 A. 1,426 feet.

12 Q. Has this well been drilled?

13 A. No, it hasn't.

14 Q. So that is a projected depth?

15 A. Yes.

16 Q. Not an accurate?

17 A. That is a projected depth.

18 Q. What is the target formation for this well?

19 A. The Pechonotae #3.

20 Q. And is the projected depth sufficient to produce from

21 that formation?

22 A. Yes, it is.

23 Q. How many coal seams are expected to be stimulated?

24 A. We anticipate that three seams or three groups of seams

25 will be stimulated. In other words, three frack jobs may

1 encompass more than three seams, but three stimulations
2 for the well.

3 Q. Is the total cost reflected on the DWE a reasonable
4 estimate of the probably cost to drill and complete this
5 well as proposed?

6 A. Yes, it is.

7 Q. Is OXY's plan of development a reasonable plan for the
8 development of coalbed methane resource within and under
9 this unit for the benefit of the owners of the resource?

10 A. Yeah, we think it is.

11 Q. And in your opinion will the proposed well contribute to
12 the protection of correlative rights of the owners of the
13 methane in and under the unit and lessen the likelihood
14 of physical and economic waste?

15 A. Yes.

16 MR. SALISBURY: No further questions.

17 MR. CHAIRMAN: Any questions from the Board?

18 MR. MASON: I have a question.

19
20 CROSS-EXAMINATION

21
22 BY MR. MASON:

23 Q. Mr. VanGolen, it's unrelated to that but it relates to
24 your application. If I say, with no objection. Para-
25 graph F, did you prepare the estimated production and

1 the estimated amount of reserves with regard to this
2 application?

3 A. Mr. Mason, those numbers there were done by several
4 parties but under my direction, yes.

5 Q. What I am interested in is the fact that you estimate the
6 production and the estimate of reserve to be the same
7 number. By that I am to infer that you all expect to
8 recover 100 percent of the reserves?

9 A. Well, reserves is kind of an ambiguous term. Let me kind
10 of explain that a little bit. You have two kinds of
11 reserves. Gas in place or recoverable reserve.

12 Q. This doesn't say recoverable reserves.

13 A. I believe under the Board regs it just say reserves and
14 that's the number that is incorporated there.

15 Q. Okay. Do you have any idea what percentage of the
16 reserves you expect to recover?

17 A. Yes. Right now we're estimating somewhere around 55 to
18 60 percent of the gas in place. Other basins have seen -
19 - just for example, a short lived history that we've seen
20 in coalbed methane. For example, Black Warrior Basin
21 are seen now in the order of 70 percent reserves.

22 Q. The reason that I would suggest, subject to Mr. Fulmer
23 and other people here, that you all might want to
24 clarify the difference between these. Particularly with
25 regard as this is a single well and if you're telling me

1 you can recover 100 percent of the reserves from a single
2 well in here that may not be something you would be
3 terribly interested in at a later date.

4 A. Well, there's a number of factors that really affect
5 that and obviously, mining is one of them.

6 Q. You know, I'm just curious about it.

7 A. I understand your concern.

8 Q. I do think it's a mistake to give the idea that there is
9 a pool there and that you expect to recover it all.

10 MR. SWARTZ: I might suggest that paragraph F in our view
11 having participated in drafting this was intentionally
12 designed, at least we felt, to not convey any particular
13 message. The intent was to say there is a broad range
14 of reserves, there is a broad range of what might be
15 recovered and to give a range and the fact that the
16 range happens to be the same number, it was not intended
17 to imply that those two numbers were going to wind up
18 equal. We'll take a look at this. But that certainly
19 was not the message we were trying to send in Paragraph
20 F.

21 A. (The witness continues.) Mr. Mason, one of our concerns
22 is that reserves are determined by economics. Production
23 life is determined by economics. And our economics may
24 be different than another corporations that come in here
25 or an individual who may or may not be able to utilize a

1 tax credit.

2 Q. Right.

3 A. Which would determine the extent of how long you can
4 produce this well.

5 Q. Well, I understand that. As I understand, what these
6 numbers are supposed to be -- I mean, I realize that you
7 all have certain election that you make with respect to
8 production which are not necessarily what could be
9 produced or what is, in fact, in place. As I would
10 understand that there are actually three numbers. One is
11 what's there, what could be produced and then the facts
12 and circumstances of the market and whatever, what
13 probably will be produced what no doubt you have no idea
14 of what it is.

15 A. Correct.

16 Q. I guess my only concern is an understanding of what, in
17 fact, is there as a resource which we are concerned with
18 and interested in and what you all expect to recover.
19 Perhaps the law or the regs don't make that clear, but I
20 am interested in what you all expect to recover in terms
21 of that resource. Obviously this type of production and
22 what we are doing here, if you say 30 to 55 percent is in
23 my mind over what conventional recovery rates are.
24 That's extremely good, isn't that correct?

25 A. Most clean gas reservoirs can produce more than that.

1 Q- Can they really?

2 A. Yes. In a period of time, yeah.

3 MR. HASON: That's it.

4 MR. CHAIRMAN: Any other questions? Okay. What's your
5 pleasure?

6 MR. WAMPLER: I'm sorry. I have one other question. Do you
7 have a copy of the amended Exhibit B with you that the
8 board could review?

9 MR. VANCOLEN: Yes, sir.

10 MR. WAMPLER: And is that an extra copy?

11 MR. VANCOLEN: Yes, it is.

12 MR. WAMPLER: I'd like to have that presented as part of the
13 record.

14 (Witness stands aside.)

15 MR. CHAIRMAN: Any other questions or comments? What's your
16 pleasure?

17 MR. KELLY: I make a motion that the application be approved.

18 MR. HASON: Second.

19 MR. CHAIRMAN: I have a motion and a second. All in favor?
20 All in favor? (ALL AFFIRM.) OPPOSED? (NONE.) The
21 motion carries.

22 MR. CHAIRMAN: The next item on the agenda?

23 MR. MORGAN: Mr. Chairman, I'm Claude Morgan from Consolida-
24 tion Coal Company. In the matter that was just present-
25 ed, I have no objection as the letter was read and it was

1 agreed that the letter of no objection be tarsed consent
2 to stimulate and I think that probably was the intent
3 from the State. But I would like to go on record as a
4 coal owner as having a problem, as Mr. Mason pointed out,
5 with some implied consent based on a failure to select
6 one of the alternatives in the forced pooling. As a coal
7 owner, without something in writing -- some positive move
8 in writing which I think was the intent in the regula-
9 tions, that the Board not (Inaudible.) consent to
10 stimulate.

11 MR. CHAIRMAN: Anyone else?

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ITEM V

MR. CHAIRMAN: The next item on the agenda is a petition for establishment of a compulsory pooled drilling unit, Docket VGOB-91-0924-143. All parties wishing to speak come forward, please.

MR. SALISBURY: Mr. Chairman, Howard Salisbury and Mark Swartz here today on behalf of OXY, USA.

MARTIN E. WIRTH

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

DIRECT EXAMINATION

BY MR. SALISBURY:

Q. Would you state your name, please?

A. Martin E. Wirth.

Q. And you remember that are still under oath, Mr. Wirth?

A. Yes, I do.

Q. What is your occupation?

A. I'm the project land Manager for OXY, USA.

Q. In that capacity have you testified before this Board on previous occasions?

A. Yes, I have.

1 Q. And have your qualifications been accepted on those
2 occasions?
3 A. Yes, they have.
4 Q. OKY, USA is the applicant in this matter?
5 A. That's correct.
6 Q. Do you know if they are authorized to do business in
7 Virginia?
8 A. Yes, they are.
9 Q. Do you know whether they have registered with DMCB and
10 have a blanket bond on file?
11 A. Yes, they do.
12 Q. Did you as part of your duties prepare the application
13 for the unit which is designated as S-77?
14 A. Yes, I have.
15 Q. Did you prepare also a notice of hearing?
16 A. Yes, I did.
17 Q. Did that notice of hearing contain the names of any other
18 claimants with whom you have not been able to come to
19 terms or potential claimants?
20 A. That's correct.
21 Q. And those parties are listed in Exhibit B to the applica-
22 tion?
23 A. That is correct.
24 Q. Are there any amendments you would wish to make at this
25 time either to add possible respondents or to dismiss any

1 respondent's name?

2 A. No, not at this time.

3 Q. The notice of hearing was mailed to all of those parties

4 listed on Exhibit B?

5 A. Yes, it was.

6 Q. And how was that accomplished?

7 A. The notice and application was mailed via certified

8 return receipt mail to the respondent in the application

9 and also as a matter of doing business as which we do

10 we've also published in the Virginia Mountaineer the

11 notice of hearing of the affected unit.

12 Q. Did you receive return receipts on the mailing?

13 A. Yes, we did.

14 Q. Did you file with this Board two copies of the proof of

15 mailing?

16 A. Yes. That would be Exhibit F.

17 Q. And as Exhibit E did you file two copies of the certifi-

18 cate of publication?

19 A. Yes, we did.

20 Q. What is the interest of OXY in this unit?

21 A. OXY, USA has coalbed methane rights as to 97.11 percent

22 of the unit.

23 Q. I'm going to show you a copy of the plat that was

24 attached to the application as Exhibit A and the small

25 area on there that has been shaded. Does that represent

- 1 the area which OXY does not have under lease?
- 2 A. That's correct.
- 3 Q. OXY has coalbed methane specific leases for the remainder
4 of the unit?
- 5 A. That is correct.
- 6 Q. What are the royalty and/or bonus terms in those leases?
- 7 A. Bonus terms, bonus consideration is \$1.00 an acre pro
8 rata. We have a 1/8th royalty interest with a five year
9 primary term.
- 10 Q. Is that standard for such leases in this area?
- 11 A. That's correct, for coalbed methane leases.
- 12 Q. Would you recommend such terms be placed in any order
13 entered by the Board on this unit?
- 14 A. Yes, I would.
- 15 Q. OXY is seeking to have this unit pooled, is that correct?
- 16 A. That's correct.
- 17 Q. What formation or formations are sought to be pooled?
- 18 A. As prescribed in the Oakwood Field of the coalbed
19 methane gas field order we'd like to pool from the base
20 of the Tiller formation to the base of the Pocahontas #2
21 seams with all adjacent associated coal seams.
- 22 Q. And this unit is comprised of 80 acres?
- 23 A. That is correct.
- 24 MR. SALISBURY: No further questions.
- 25 MR. CHAIRMAN: Any questions from the Board?

1 MR. MASON: Mr. Chairman?

2 MR. CHAIRMAN: Yes, Mr. Mason.

3 MR. MASON: Just going back to the same area. Does the
4 Buchanan County School Board own part of this coal?

5 THE WITNESS: They own the tract in question in fact, yes,
6 sir.

7 MR. DALISBURY: Mr. Mason, if you would look at the plat on
8 Exhibit A, the circle in which the consent to stimulate
9 does not include -- that is plotted on that map does not
10 include that acreage.

11 MR. CHAIRMAN: Any other questions?

12 (Witness stands aside.)

13
14 GLEN VANGOLEN

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

17
18 DIRECT EXAMINATION

19
20 BY MR. DALISBURY:

21 Q. Mr. VanGolen, would you state your name?

22 A. Glen VanGolen.

23 Q. And you recall that you are still under oath?

24 A. Yes, I do.

25 Q. What is your occupation?

1 A. I'm Project Land Manager for OXY, USA.
2 Q. Have you've testified in previous proceedings before this
3 Board?
4 A. Yes, I have.
5 Q. And were your qualifications accepted at that time?
6 A. Yes, they were.
7 Q. As part of your duties did you prepare a detailed well
8 estimate for the unit that's designated as B-77
9 A. Yes, I did.
10 Q. What is the date on which that is prepared?
11 A. August 14th, 1991.
12 Q. What is the projected depth of the well?
13 A. 1,671 feet.
14 Q. Has that well been drilled?
15 A. Yes, it has.
16 Q. When was that done?
17 A. It was drilled last week.
18 Q. Are you in a position to give an actual depth for the
19 well?
20 A. It was in the vicinity. There was nothing unusual that
21 would determine a well bore, but no, I'm not.
22 Q. What is the target formation for this well?
23 A. The Pechonteras #3.
24 Q. And is the projected depth sufficient to produce from
25 that formation?

1 A. Yes, it is. The Wocahontee was penetrated and drilled
2 approximately 30 feet below.
3 Q. How many stimulations are proposed in connect with this
4 unit?
5 A. We will expect to do three stimulations in this well
6 bore.
7 Q. What is the total cost shown on the estimate for this
8 unit?
9 A. \$230,740.
10 Q. Is that a reasonable estimate of the probable cost to
11 drill and complete the proposed well?
12 A. Yes, it is.
13 Q. Is the plan of development in you opinion a reasonable
14 plan for the development of the coalbed methane resource
15 in this unit?
16 A. Yes, it is.
17 Q. Is it you opinion that the proposed well will contribute
18 to protection of correlative rights of the owners of the
19 resource and lessen the likelihood of physical and
20 economic waste?
21 A. Yes, it would.
22 MR. BALISBURY: I have no further questions.
23 MR. CHAIRMAN: Any questions from members of the Board?
24 MR. HASON: Well, only my earlier comment about that Para-
25 graph F.

1 MR. WIRTH: Let me state one thing in reference to that. In
2 the last unit if the Commonwealth were to participate in
3 that instance as a non tax payer their recoverable
4 reserves might be different, just in the same line of
5 thinking.
6 MR. MASON: You mean their recoverable dollars?
7 MR. WIRTH: No. If they were operator of the well bore the
8 economic life for that well would be different than if
9 OXY, USA was operator of the well bore.
10 MR. SALISBURY: Meaning shorter, because there is no tax
11 benefits there.
12 MR. WIRTH: So that's why we are hesitant to put down numbers
13 and allow people to participate.
14 MR. MASON: I understand that. My only concern is that the
15 production estimates and the reserve estimates are
16 basically reflected to be the same. I understand that
17 they are the same areas. I'm just saying that that
18 conveys the idea that you intend to recover what the
19 reserves are and I'm not sure that's what you mean to do
20 and Mr. Swartz has indicated that is correct. I'm not
21 saying that necessarily there's anything wrong with that.
22 I guess in sitting here thinking about things, that at
23 some point that may become more relevant.
24 MR. CHAIRMAN: Any other questions? Is there anyone else that
25 wishes to speak to this matter?

(Witness stands aside.)

MR. CHAIRMAN: If not, what is the Board's pleasure?

MR. NASH: I move we approve.

MR. KELLY: Second.

MR. CHAIRMAN: I have a motion to approve and a second. All
in favor? (ALL AFFIRM) All opposed? (NONE) The
motion carries.

ITEM VI

MR. CHAIRMAN: The next item on the agenda is item number 6, a petition for the establishment of a compulsory pooled drilling unit, Docket VDCB-91-0924-144. Parties please step forward.

MR. SALISBURY: Howard Salisbury and Mark Swartz on behalf of OXY, USA.

MR. CHAIRMAN: Proceed.

MARTIN E. WIRTH

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

DIRECT EXAMINATION

BY MR. SALISBURY:

Q. Mr. Wirth, would you state your name please?

A. Martin E. Wirth.

Q. And what is your occupation?

A. My occupation is project land manager.

Q. For OXY, USA?

A. That's correct.

Q. Have you testified in any previous proceedings before this Board?

1 A. Yes, I have.
2 Q. Have your qualifications been accepted on those occa-
3 sions?
4 A. Yes, they have.
5 Q. OXY, USA is the applicant with respect to the unit that
6 is designated T-77
7 A. That is correct.
8 Q. Is OXY, to your knowledge, authorized to do business in
9 Virginia?
10 A. Yes, they are.
11 Q. To your knowledge is OXY registered with DOME and does it
12 have a blanket bond on file?
13 A. Yes, we do.
14 Q. As part of your duties did you prepare the application
15 and notice of hearing in this proceeding?
16 A. Yes. Both notice and application was performed by me.
17 Q. What parties respondent were named on Exhibit B of the
18 application?
19 A. Again, this is the Buchanan County School Board, Buchanan
20 County, Virginia, that same tract. This well -- the
21 previous well, this lies just right directly below where
22 that same tract comes in this 66 acres.
23 Q. Do you wish to amend the application at this time to add
24 or dismiss any possible respondents?
25 A. No, not at this time.

1 Q. Was the School Board served notice of the hearing?
2 A. Yes, they were, via certified return receipt mail.
3 Q. And did you receive a return from them?
4 A. Yes, we did.
5 Q. This notice of the hearing was also published in the
6 Virginia Mountaineer?
7 A. That is correct.
8 Q. Did you file with the Board proof of publication as
9 Exhibit E and proof of mailing as Exhibit F?
10 A. That is correct.
11 Q. What is the interest that OXY has in this unit?
12 A. In this 80 acre unit OXY has 95.85 percent of the coalbed
13 methane under lease.
14 Q. I'm going to show you a copy of the tract that was filed
15 as Exhibit A to the application on which a small corner
16 of the unit has been shaven. Does that reflect the
17 acreage under which OXY does not have lease?
18 A. We do not have a specific coalbed methane lease.
19 Q. And the remainder of that unit is under coalbed methane
20 specific leases?
21 A. That's correct.
22 Q. And what are the royalty and/or bonus terms of those
23 leases?
24 A. OXY requests again a \$1.00 an acre bonus, a 1/8th
25 royalty with a five year primary term.

1 Q. And would it be your recommendation that those terms be
2 placed in any order entered by this Board with respect to
3 the unit?

4 A. Yes, it would.

5 Q. Are those terms standard for such leases in this area?

6 A. Standard for coalbed methane.

7 Q. What is the relief being sought by OXY today at this
8 hearing?

9 A. Again OXY, USA asks to be the operator, requested to the
10 Board to issue an order allowing us to drill, complete,
11 produce and sell any and all gases that may be found in
12 pooling and oil interests and the estate that may be
13 named respondents in this unit.

14 Q. In what formation or formations?

15 A. Again, in the Oakwood Field rules it's the base of the
16 Tiller formation down to the base of the Pocahontas #2
17 coal seam and any adjacent associated coal seams thereof.

18 Q. And this unit which has been designated as T-7 consists
19 of 80 acres?

20 A. Yes, it does.

21 MR. SALISBURY: No further questions.

22 MR. WANPLER: Mr. Wirth, would you tell us why you chose the
23 location of the well?

24 MR. WIRTH: I would, but I'd allow the operations and if you
25 don't mind I'll defer that to Mr. VanGolen.

1 MR. CHAIRMAN: Any other questions of Mr. Wirth?

2 (Witness stands aside.)

3 MR. CHAIRMAN: You may proceed.

4
5 GLEN VANGOLEN

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

8
9 DIRECT EXAMINATION

10
11 BY MR. SALISBURY:

12 Q. Mr. VanGolen, would you state your name please?

13 A. Glen VanGolen.

14 Q. And your occupation?

15 A. Project Manager for OXY, USA.

16 Q. And you have testified before this Board in prior
17 proceedings?

18 A. Yes, I have.

19 Q. Have your qualifications been accepted on those occasions?
20

21 A. Yes, they have.

22 Q. Did you prepare the detailed well estimate that was filed
23 with this application?

24 A. Yes, I did.

25 Q. When was that done?

- 1 A. On August 18th, 1991.
- 2 Q. And what is the projected depth of the well?
- 3 A. 1,510 feet.
- 4 Q. And the projected cost?
- 5 A. \$224,766.
- 6 Q. Has this well been drilled?
- 7 A. No. The permit has been granted, but it has not been
8 drilled.
- 9 Q. What is the target formation for the well?
- 10 A. The Pocahontas #3 seam.
- 11 Q. Is the projected depth sufficient to produce from that
12 formation?
- 13 A. Yes, it is.
- 14 Q. And how many stimulations are anticipated?
- 15 A. As usual we anticipate three stimulations per well bore.
- 16 Q. In your opinion is the projected cost listed on the DWE a
17 reasonable estimate of the probable cost of drilling and
18 completing the proposed well?
- 19 A. Yes, it is.
- 20 Q. Is it your opinion the plan for developments are reason-
21 able plans for development of the coalbed methane
22 resources?
- 23 A. Yes, it is.
- 24 Q. It is your opinion that the plan will protect the
25 correlative rights of the owners of the resource from

1 physical and economical waste?

2 A. Yes.

3 Q. Would you please tell the Board why the location of the
4 well was selected and where?

5 A. There is number of reason in this particular well. If
6 the Board would refer to the plat on Exhibit A you notice
7 there is a surface tract right to the north that's
8 currently under dispute and litigation between Georgia
9 Pacific and the Baldwin. OXY did not want to get in
10 the middle of that law suit for either service location
11 or road access. Just to the north east of that tract
12 there is a DMLR big reclamation area on that surface
13 bings which also prohibited us from getting in that area.
14 As you move to the northern part of the unit it's very
15 steep and rugged terrain with no possible locations in
16 that area. We were restricted basically to this very
17 bottom corner within the unit for any locations.

18 MR. WIRTH: If I may add, we have an oral agreement with the
19 school Board. That's where their garage or barn for the
20 school buses are and they utilize that surface through-
21 out. We made an oral agreement that we would not
22 encroach their operations up there. So again I put a
23 burden on the operations department and then I informed
24 them of a chancery action that's been pending over 50
25 years and has not been resolved and that we did not want

1 to get in the middle of it, who owns the surface or who
2 do we pay. So we moved it just adjacent to the tract
3 and that put us outside the drilling window and we have
4 requested an inspector for our variance.
5 MR. MASON: Excuse me, Mr. Chairman, has the inspector ruled
6 on that?
7 MR. WIRTH: Yes, the permit has.
8 MR. FULMER: The permit has been issued and the location
9 excepted.
10 MR. CHAIRMAN: Any other questions?
11 MR. WAMPLER: You have consent to stimulate from Island
12 Creek. Do you need a consent to stimulate from Jewel
13 Smokeless and Permaco Incorporated?
14 MR. WIRTH: No, sir. Those seams are above the Tiller
15 formation and we do not plan to stimulate those seams.
16 MR. CHAIRMAN: Any other questions? Anyone wishing to speak?
17 (Witness stands aside.)
18 MR. CHAIRMAN: What's your pleasure?
19 MR. KELLY: I move the application be approved.
20 MR. MASON: Second.
21 MR. CHAIRMAN: I have a motion and a second. All in favor?
22 (ALL AFFIRM) All opposed? (NONE) The motion is
23 granted. We are going to go off the record. We'll take
24 a five minute break.
25 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS.)

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ITEM VII

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3 MR. CHAIRMAN: Item VII on the agenda has been granted a
4 continuance.
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3 ITEM VIII

4 MR. CHAIRMAN: We will go to Item VIII which is the petition
5 for the establishment of a compulsory pooled drilling
6 unit, Docket VQCB-81-0924-146. Will those parties please
7 step forward?

8 MR. SALISBURY: Howard Salisbury and Mark Swartz on behalf of
9 OXY, USA, Inc.

10 MR. MCQUIRE: I'm Grant McQuire on behalf of Ashland Explora-
11 tion.

12 MARTIN E. WIRTH

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

15
16 DIRECT EXAMINATION

17
18 BY MR. SALISBURY:

19 Q. Mr. Wirth, would you state your name please?

20 A. Martin E. Wirth.

21 Q. I will remind you that you are still under oath.

22 A. Yes.

23 Q. What is your occupation, Mr. Wirth?

24 A. Project Land Manager for the coalbed methane project.

25 Q. For OXY, USA, Inc.?

1 A. That's correct.
2 Q. How long have you been so employed?
3 A. Fourteen years.
4 Q. Have you testified before this Board in prior proceed-
5 ings?
6 A. Yes, I have.
7 Q. Have your qualifications been accepted by the Board on
8 those occasions?
9 A. Yes, they have.
10 Q. As part of your duties with OXY did you prepare the
11 notice of hearing and the application for the unit
12 designated as B-337?
13 A. That's correct.
14 Q. And OXY, USA is the applicant in that matter?
15 A. That is correct.
16 Q. Do you know whether OXY is authorized to do business in
17 Virginia.
18 A. Yes, they are.
19 Q. And is OXY registered with the DOME?
20 A. Yes, we are.
21 Q. And do they have a blanket bond on file?
22 A. Yes, we do.
23 Q. Who are the respondent or respondents named in the notice
24 of hearing?
25 A. Ashland Exploration, Inc.

1 Q. And that is the only respondent?
2 A. That is correct.
3 Q. And the name and address appears on Exhibit E to the
4 application?
5 A. That's correct.
6 Q. At this point would you want to amend the application to
7 add or dismiss any respondents?
8 A. No, not at this point.
9 Q. Was the application and notice of hearing sent to
10 Ashland?
11 A. Yes, it was, via certified return receipt mail.
12 Q. You did receive a return receipt on it?
13 A. That is correct.
14 Q. Was notice also published?
15 A. Yes. OXY also published in the Virginia Mountaineer on
16 August 15th, 1991.
17 Q. And did you file with the Board proof of publication as
18 Exhibit E to the application and proof of mailing as
19 Exhibit F?
20 A. That is correct.
21 Q. What is interest of OXY in this unit?
22 A. This is an 80 acre unit in which OXY, USA has 100
23 percent of the coalbed methane leases and Ashland
24 Exploration has a conventional oil and gas lease under
25 the Alpha Stickley which is 100 percent of this unit.

- 1 Q. So OXY has coalbed methane specific leases for 100
2 percent of this 80 acre unit?
- 3 A. That is correct.
- 4 Q. What is the relief sought today by OXY?
- 5 A. Again OXY, USA would request the relief that it be deemed
6 the operator in this unit and offer any and all respon-
7 dents the rights as prescribed under law.
- 8 Q. For what formation or formations?
- 9 A. Again, this is in the Oakwood coalbed methane gas field
10 which is below the Tiller formation to the base of the
11 Pocahontas #2 and any adjacent or associated coal seams
12 therein.
- 13 Q. What are the terms of the leases offered to the owners in
14 this unit by OXY?
- 15 A. 1/8th royalty, \$1.00 an acre bonus with a five year
16 primary term.
- 17 Q. And is that standard for such leases in this area?
- 18 A. It's a standard offer throughout the area for coalbed
19 methane lease. Yes, it is.
- 20 Q. Would it be your recommendation that such terms be placed
21 in any order issued by the Board for this unit?
- 22 A. That's correct.
- 23 Q. Now, the well on this unit is outside the drilling window
24 according to the plat that was submitted. Would you want
25 to address the reasons for the location or would you

1 defer it to Mr. VanGolen?

2 A. Again I would like to defer the operations to Mr.
3 VanGolen at that time.

4 MR. SALISBURY: I have no further questions.

5
6 CROSS-EXAMINATION

7
8 BY MR. MCGUIRE:

9 Q. Mr. Wirth, by what right do you claim to be an applicant?

10 A. As a lessee from coalbed methane leases from Yukon
11 Pocahontas, et al and also the Alpha Stickley heirs we
12 have a coalbed methane specific lease.

13 Q. Do you have a coalbed methane lease on from Yukon
14 Pocahontas?

15 A. The Yukon Pocahontas is -- Alpha Stickley is 100 percent
16 of this unit. The plat, Exhibit A I was looking at,
17 shows Yukon-Pocahontas as falling to the north of this
18 unit.

19 Q. So your lease for Yukon doesn't have any application to
20 this unit?

21 A. That's correct. You're correct.

22 Q. What are the terms of your coalbed methane lease from
23 the Stickleys?

24 A. The terms for Alpha Stickley are 1/8th royalties, a
25 bonus consideration again was -- I can't remember if this

1 is a paid up lease or not. This was \$1.00 an acre bonus
2 consideration taken by Island Creek and assigned into
3 OXY, USA by assignment.

4 Q. And when was it taken by Island Creek?

5 A. In 1988. I'm not sure of the date there. I would have
6 to look that up.

7 Q. When was it assigned from Island Creek to OXY?

8 A. Again, I believe that was 1989 or 1990. I can't remem-
9 ber. It's a matter of record in the Court House.

10 Q. That was next question. These are matters of record, is
11 that correct?

12 A. That's correct.

13 Q. Are you claiming any right to be an applicant by way of
14 Island Creek's lease of the coal?

15 A. Island Creek has a claim under any of these units, as you
16 say be well aware. They say be a claimant, but we have
17 an agreement with Island Creek. Therefore, they weren't
18 named in this unit.

19 Q. And what is that agreement?

20 A. That agreement is a mutual contract between the two
21 parties.

22 Q. What are the terms of that contract? How are they
23 relevant to this issue?

24 MR. SALISBURY: I object to this line of questioning. I don't
25 think this is relevant to the proceeding before the Board

1 in terms of the contract.

2 MR. MCQUIRE: Well, I understand that it's relevant to this
3 unit.

4 MR. SALISBURY: OXY is claiming by virtue of coalbed methane
5 specific leases. I don't think the contractual relationship
6 with Island Creek has anything to do with it.

7 MR. MCQUIRE: Let me clear that up then.

8 Q. (Mr. McQuire continues.) Are you claiming at all your
9 right to be an applicant by way of Island Creek's
10 position?

11 A. No. As I have stated, we are under a coalbed methane
12 specific lease as the lessors in this unit.

13 Q. What is the term of the lease between the Stickleys and
14 Island Creek that has been assigned to OXY?

15 A. I believe that's a twenty year or possibly a ten year
16 term. Island Creek required that.

17 MR. MCQUIRE: No further questions.

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

19 MR. MASON: I just want to clarify something. You have stated
20 that you are claiming your coalbed methane rights
21 through the lease with the oil and gas owner, not through
22 Island Creek?

23 MR. WIRTH: Oil and gas and coal owner. Yes, sir.

24 MR. MASON: Is that to say that if at some point in time a
25 court would rule that the coal owner owned the coalbed

methane and not the oil and gas owner that you wouldn't claim under that?

MR. WIRTH: Like I say, Alpha Stickley owns the oil and gas. They own the coal. Island Creek is the claimant as a coal lessee. Should they be deemed the owner we have contractual arrangements, voluntary agreement with them.

MR. NASON: Yes. But it's my understanding by virtue of the agreement that no matter who ends up being the ultimate owner of this coalbed methane, be it the coal owner or the oil and gas owner, you have agreements with both. Is that correct?

MR. WIRTH: Except for the oil and gas lessee.

MR. NASON: Correct.

MR. WIRTH: And if they're deemed to be on it, we do not.

MR. McGUIRE: May I follow up with one question on that?

Q. [Mr. McGuire continues.] Have you filed these coalbed methane leases as part of your application today?

A. No. That is a matter of public record that we haven't by affidavit swore that we do have a lease.

MR. McGUIRE: No questions.

MR. CHAIRMAN: Any other questions?

(Witness stands aside.)

MR. CHAIRMAN: You may proceed.

GLEN VANCOLEN

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

DIRECT EXAMINATION

BY MR. SALISBURY:

Q. Mr. VanGolen, would you state your name?

A. Glen VanGolen.

Q. And you acknowledge that you are still under oath?

A. Yes.

Q. What is your occupation?

A. Project Manager for OXY. USA.

Q. How long have you been so employed?

A. Ten years.

Q. And have you testified in prior proceedings before this
Board?

A. Yes, I have.

Q. And have your qualifications been accepted by the Board on
those occasions?

A. Yes, they have.

Q. As part of your duties did you prepare the detailed well
estimate that was filed along with the application for
S-33?

A. Yes, I did.

- 1 Q. On what date was that prepared?
- 2 A. August 9th, 1991.
- 3 Q. What is the projected depth of the well as shown on that
- 4 document?
- 5 A. 1,685 feet.
- 6 Q. Has this well been drilled?
- 7 A. No, it has not. The permit has been granted and the
- 8 location is currently being built.
- 9 Q. What is the projected cost of the build?
- 10 A. \$230,200.
- 11 Q. What is the target formation?
- 12 A. The Pocahontas #3 seam.
- 13 Q. Is the projected depth sufficient to produce from that
- 14 formation?
- 15 A. Yes, it is.
- 16 Q. How many stimulations are proposed in connection with
- 17 this operation?
- 18 A. We still anticipate three stimulations in this well bore.
- 19 Q. Is the estimated cost on the DWE in your opinion a
- 20 reasonable estimate of the probable cost to drill and
- 21 complete this unit?
- 22 A. Yes, it is.
- 23 Q. Is the applicant's plan of development in your opinion a
- 24 reasonable plan for the development of the coalbed
- 25 methane resource?

1 A. Yes, it is.

2 Q. And would this well, as proposed, contribute to the
3 protection of correlative rights and prevent the likeli-
4 hood of physical and economical waste?

5 A. Yes, it does.

6 Q. Earlier we discussed the fact with Mr. Wirth that the
7 proposed well location is outside the drilling window as
8 indicated on the plat that was filed as Exhibit A to the
9 application. Would you tell us please how that location
10 was selected and why it is outside the window?

11 A. Prior to picking each of our locations we visit with all
12 of the coal owners and this happens to be -- most of the
13 unit is under Jewel Smokeless. Jewel has the Rhonda #7
14 mine in the area and they had pushed us to this location
15 for the unit. It was either here or nowhere in the unit.

16 MR. SALISBURY: No further questions.

17
18 CROSS-EXAMINATION
19

20 BY MR. MCQUIRE:

21 Q. Mr. VanGolen, what is the status of the drilling on this
22 unit?

23 A. I believe I have already said that the permit has been
24 granted and the location is being built right now.

25 Q. When do you plan to drill?

1 A. Within the next two weeks.

2 Q. What is the status of your plans for transporting the gas
3 out of the field?

4 A. We are currently working on the right of ways in the
5 area for both our gathering system and the main pipeline
6 system out of the area.

7 Q. When you say working on the right of way, that means you
8 are trying to acquire them, is that correct?

9 A. Trying to acquire right of ways. Gathering lines have
10 been purchased, the pipe has been purchased, compressors
11 have been ordered for both our lines and the main gather
12 line. And as soon as permits and right of ways are in
13 place we will begin construction.

14 MR. MCQUIRE: That's all I have.

15 MR. CHAIRMAN: Any questions from the Board?

16 MR. MASON: I have none for Mr. VanGolen.

17 (Witness stands aside.)

18 MR. MASON: I would like to ask a couple of Ashland's repre-
19 sentatives.

20 MR. CHAIRMAN: Go ahead.

21 MR. MASON: In all of your objection you reserve the right to
22 cross-examine the applicant's witnesses with regard to
23 the survey information reserved. What are those reserva-
24 tions?

25 MR. MCQUIRE: I'm satisfied with the survey.

1 MR. MASON: Do you waive those?
2 MR. MCGUIRE: For the purpose of this one I have no objection
3 to the survey information.
4 MR. MASON: In #9 who are the owners that have failed to have
5 been listed?
6 MR. MCGUIRE: I have heard none today.
7 MR. MASON: Do you know of any?
8 MR. MCGUIRE: I don't know of any.
9 MR. MASON: On #10, Ashland reserves the right to submit
10 evidence and cross examine witnesses as to such data when
11 presented. What are those reservations?
12 MR. MCGUIRE: I do not plan to submit any data today.
13 MR. MASON: #11, same question?
14 MR. MCGUIRE: We have not seen the documentation with regard
15 to the Stickley lease, the coalbed methane lease or the
16 contract.
17 MR. MASON: Now, Mr. Wirth testified that the Stickley lease
18 and the coalbed methane lease are a matter of public
19 record. Is that correct?
20 MR. MCGUIRE: That's correct, sir.
21 MR. MASON: And you have not looked at those?
22 MR. MCGUIRE: I have not seen them.
23 MR. MASON: But they are there and have been there?
24 MR. MCGUIRE: I understand.
25 MR. MASON: As to the evidence with regard to any agreements

1 with Island Creek -- I guess my whole point here is you
2 all reserve all of these things yet we are going to
3 conclude this hearing today. And I guess what I am
4 saying to you is I want you to either tell us what these
5 reservations are --

6 MR. MCGUIRE: I'll be happy to. Ashland is taking the
7 position and it took it up long ago that with Lon Rogers
8 that we needed to make certain objections in order to
9 preserve our rights before the Board.

10 MR. MASON: I understand that. But this is a hearing and you
11 have an opportunity to present evidence and express those
12 objectives in a substantive way. I for one do not
13 believe you have the right to reserve the right to do
14 that at any time in the future. Today is the hearing.
15 You have the right to put on your evidence and mount your
16 objections. Once we conclude this hearing other than
17 the appellant rights that you may preserve as a result of
18 this hearing I don't think you have the right to reserve
19 any additional ability to present evidence other than by
20 an application at some point in the future within the
21 authority of the law.

22 MR. MCGUIRE: Your understanding is the same as mine. I do
23 wish to present some evidence today and to make some
24 argument.

25 MR. MASON: Thank you.

1 MR. MCQUIRE: My understanding is the same as yours. I
2 reserve the right to make it before this Board. I don't
3 plan to come in after the fact. I don't believe I have
4 the right to come in after the fact.

5 MR. MASON: I just want you to understand that I don't believe
6 that I don't believe that by presenting these reserve-
7 tions that you can somehow postpone forever the right to
8 come in and deal with what we have concluded here today.

9 MR. MCQUIRE: I do not plan to. As I understand it I do have
10 the right at a later time if for some reason Ashland and
11 OXY fail to agree or have a difference on the contract
12 that they are working on that we may come before the
13 Board to resolve those difference.

14 MR. MASON: No question about that. I think you are right.
15 The law applied, but that's on the petition and the
16 hearing and so forth. It doesn't relate back to this
17 hearing today. It's on a new application and in going
18 through the procedures in doing that. Thank you.

19 MR. CHAIRMAN: Any other questions?

20 MR. MCQUIRE: For the record, Ashland would like to give the
21 Board ten copies of it's Stickley lease.

22 MR. CHAIRMAN: It will be marked as Ashland's Exhibit A.

23 MR. MCQUIRE: If the Board would please take note of this,
24 the lease is Ashland's ownership interest and Ashland's
25 position as it has been all along. As Ashland owns the

1 coalbed methane within this unit. I believe that this
2 Board has decided the major issues in these applications
3 long ago. I will again refresh the Board's memory as to
4 Ashland's objections. Ashland had an oil and gas lease
5 from the Stickleys and Ashland's position is that gas is
6 gas and this includes coalbed methane. We do not
7 believe that OXY is a proper applicant before this
8 Board. It is Ashland who owns the gas. OXY is not the
9 gas or oil owner. I believe that this Board is determin-
10 ing ownership when it determines that OXY is the proper
11 applicant and that this is not a proper function of the
12 Board. I also believe that this proceeding interferes
13 with Ashland's contract rights. Those rights are before
14 you in this lease and that what this Board is doing under
15 this statute interferes with that lease. It also con-
16 stitutes a taking of Ashland's property without just
17 compensation. And Ashland does not believe that it
18 receives due process when it's property is taken upon
19 twenty days notice. With this said, I have nothing
20 further.

21 MR. SALISBURY: Mr. Chairman, the standing issue raised by
22 Ashland has been ruled upon many times -- I'm sorry.
23 Harold Salisbury for Oxy. The standing issue raised by
24 Ashland has been addressed by this Board on numerous
25 occasions. The statute requires that in order to bring

1 an application that one be a claimant. By virtue of the
2 coalbed methane specific leases held by OXY, OXY is a
3 claimant. In order to give effect to Mr. McGuire's
4 objections on the basis of this lease the Board would
5 have to make decisions on ownership questions which are
6 not properly before the Board. The other objections
7 listed in here apparently are being abandon at this
8 point since they are not being raised by Mr. McGuire.
9 Also with respect to the constitutional arguments,
10 interference with contract rights, taking without just
11 compensation, failure to due process, all that we are
12 hearing from Mr. McGuire are very vague, general state-
13 ments without any specifics. He doesn't tell us how his
14 clients property is being taken without just compensa-
15 tion, how his due process rights are being violated. The
16 only issue he raises with respect to interference of
17 contract is the lease provision which again goes towards
18 the ownership issue that's not before the Board. And
19 they have introduced no evidence concerning the propriety
20 or fairness of the terms set forth by Mr. Wirth in his
21 testimony concerning the bonus or royalty that's being
22 offered by OXY and recommended for inclusion in the
23 Board's orders. Finally, we would note that Ashland has
24 opportunity to elect to participate or not participate as
25 they see fit under this Board's order.

1 MR. MCGUIRE: No response.

2 MR. CHAIRMAN: Questions? In that case, what's the Board's
3 pleasure? (Pause.) Before we do that I do have one
4 question. Mr. McGuire, can you specifically go through
5 with us for your objections any and all that would
6 applicable?

7 MR. MCGUIRE: One, Oxy is not a principal lessee within the
8 meaning of the act and #2, Ashland is the oil and gas
9 owner. OXY is not a proper applicant. #3, the con-
10 stitutional arguments that I previously raised. Those
11 are the three that I plan to take this up on appeal.

12 MR. WAMPLER: Mr. Chairman, I would just clarify that you can
13 take exceptions back to the Board --

14 MR. MCGUIRE: That's all right, unless you all rule my way.

15 MR. WAMPLER: Mr. McGuire said the Board is deciding owner-
16 ship. The Board doesn't have a petition for ownership
17 before it. The Board has a petition to designate OXY as
18 claimant and to force pool those interests and I think
19 without debating that that's just offered for clarifi-
20 cation of what we are acting on today.

21 MR. CHAIRMAN: Any other comments? Questions from the Board?
22 What is your pleasure?

23 MR. KELLY: I move the application be approved.

24 MR. HADON: Second.

25 MR. CHAIRMAN: I have a motion and a second that the applica

1 tion be approved. All those in favor? (ALL AFFIRM)

2 All opposed? (NONE) The motion is carried.

3 MR. SALISBURY: Mr. Chairman, I'm Howard Salisbury. I would
4 respectfully request that the Board also take action to
5 deny the motion previously filed by Ashland to dismiss
6 this application.

7 MR. MCQUIRE: I think Ashland will recognize on the record
8 that if the Board has granted approval that it's not
9 granted our motion to dismiss.
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ITEM IX

MR. CHAIRMAN: The next item on the agenda is Item IX, a petition for the establishment of a well location exception under Edwards & Harding, Docket VGOB-91-0514-147. Will those parties please step forward?

MR. MULLINS: Member of the Board, by introduction my name is Tom Mullins. I'm with the law firm of Street, Street, Street, Scott and Bowman in Grundy, Virginia. We are here today on an application filed by Edwards & Harding Petroleum Company for a well location variance under the Code Provision 45.1-361.17A. As soon as Mr. Mueller finishes taking up some of our exhibits we will proceed.

MR. CHAIRMAN: Before we go too much further is there anyone else who would like to address the Board on this issue? (Pause.) You may proceed.

MR. MULLINS: I'd like to call Mr. Mueller as a witness and have him sworn.

COURT REPORTER: (Swears witness.)

ALLEN M. MUELLER

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

DIRECT EXAMINATION

1
2 BY MR. MULLINS:

3 Q. Sir, would you please state your name?

4 A. My name is Allen W. Mueller.

5 Q. And what do you do for a living?

6 A. I am a field engineer employed by Edwards & Harding.

7 Q. Have you testified before this Board on prior occasions?

8 A. Yes, I have.

9 Q. Have your qualifications been accepted by the Board?

10 A. Yes, they have.

11 Q. Are you familiar with the well location designated by
12 well EH-537?

13 A. Yes, I am.

14 Q. Are you also familiar with the area surrounding the well
15 EH-537?

16 A. Yes, I am.

17 Q. How did you become familiar with that well in that area?

18 A. Part of my duties include a selection site inspection
19 whenever we permit a well.

20 (Russell Fork Fault Zone marked as Exhibit 1.)

21 Q. (Mr. Mullins continues.) As far as the exhibit which we
22 have marked as Exhibit 1 is the area I'm pointing to the
23 well location EH-537?

24 A. Yes, it is.

25 Q. Are you here today seeking a location variance for well

1 EH-53 from well EH-54?

2 A. Yes, we are.

3 Q. What is the distance between EH-53 from the EH-54 well?

4 A. The distance is 2,289 feet.

5 Q. How far is the distance from the well EH-40 which is also

6 designated on Exhibit 1?

7 A. That well is 2,717 feet.

8 Q. And there's this area in yellow that is on Exhibit 1,

9 what does that designate?

10 A. The center of that area is the Russell Fork Fault and

11 the yellow area outlines the fault zone which is sur-

12 rounding that fault.

13 Q. What is the Russell Fork Fault?

14 A. It is just the area of the slippage between the rocks on

15 the Pine Mountain over-thrust block and this basically

16 marks the eastern boundary of that fault block.

17 Q. In layman's terms what does that mean?

18 A. What you have slippage of rocks where the rocks have

19 sheared and moved laterally and it varies from one to two

20 to three miles.

21 Q. Are you familiar with the geological structure of the

22 eastern portion of the area east of the fault zone?

23 A. Yes, I am.

24 Q. Are you also familiar with the geological structure of

25 the area west of the fault zone?

1 A. Yes.

2 Q. What is the structure of the east side as opposed to the
3 west side?

4 A. The eastern side of that fault zone is much more complex.
5 When we drilled the KH-54 we found out it contained some
6 unique geologic structures which due to intense faulting
7 -- not only did --

8 Q. When you drilled this well?

9 A. Yes. That is the well. Due to the fact that this fault
10 not only moved laterally, it also rotated to some degree
11 and created intense fracturing and folding on the eastern
12 side of that fault.

13 Q. So what did that mean for that well?

14 A. As I stated it has unique geological structures which are
15 only found on that side of the fault.

16 Q. Did it make the well better or worse?

17 A. It created a good well.

18 Q. What about the area on this side of the fault zone?

19 A. You don't have the complex geology. You have your
20 normal geological section down to the lower Devonian --
21 middle to lower Devonian and you don't have the same
22 structural traps as you would on the eastern side.

23 Q. In layman's terms does that mean that it is a better
24 geological structure than this side or worse?

25 A. The eastern side would be better.

- 1 Q. Gas comes out easier, is that basically it?
- 2 A. That's correct.
- 3 Q. Do you have any experience with drilling in the zone
- 4 itself?
- 5 A. Yes, we do.
- 6 Q. What was that experience?
- 7 A. We drilled the EH-30 well.
- 8 Q. Is that the well located here?
- 9 A. Yes, it is. That was drilled in March of this year.
- 10 Q. What happened?
- 11 A. Large flows of water were encountered which resulted in
- 12 the construction of several additional pits and addi-
- 13 tional land disturbance.
- 14 Q. Do you have any idea why there was a large volume of
- 15 water found in the fault zone?
- 16 A. The natural fracture is associated with the Russell Fork
- 17 Fault to create a natural conduit for ground water to
- 18 move along that main fracture and we encountered large
- 19 volumes of water in close proximity.
- 20 Q. Would you expect to have that same finding throughout
- 21 this area of the fault zone?
- 22 A. Yes, we would.
- 23 Q. What problems with the water, you touched on it briefly,
- 24 did you encounter with the EH-30 well?
- 25 A. Briefly, we had to construct three additional pits and

1 additional ground disturbance. Also you face the
2 possibility of losing the well because you had to raise
3 off each additional water zone as it was encountered.
4 And in addition to that you have the disposal problem of
5 the water once it is in the pits.

6 Q. Are you required to dispose of the water in any par-
7 ticular way?

8 A. Land application of the water once it meets a certain
9 criteria set forth by the Oil and Gas Regulations.

10 Q. Of course, if you move over this way you would be in the
11 fault zone, is that correct?

12 A. That's correct.

13 Q. What happens if you move over beyond the fault zone to
14 this other side of the fault zone away from the well EH-
15 547?

16 A. You get out of the unique geological structures which
17 are just inherent to the eastern side of that fault zone.

18 Q. Would this area be drained as adequately as it would be
19 if you moved the well over here?

20 A. No, it wouldn't. The fault creates a discontinuous sort
21 of structure and what happens is if you put a well on the
22 western side you would leave large areas of gas reserves
23 untrained on the eastern side.

24 Q. I don't know if I made this clear. Is this a convention-
25 al well?

1 A. Yes, it is.
2 Q. Who has the lease hold gas interest in this area through
3 here?
4 A. Edwards & Harding.
5 Q. So Edwards & Harding has the lease interest of all this
6 area?
7 A. Off all the area.
8 Q. And, of course, the gas lessees would get paid if the
9 well is drilled to here as well as anywhere else?
10 A. That's correct.
11 MR. MULLINS: I don't believe I have any other questions for
12 Mr. Mueller.
13 MR. CHAIRMAN: Any questions from members of the Board?
14 MR. WAHLER: Mr. Mueller, the Russell Fork, does it have any
15 special protections as to the rivers as far as any set
16 back limits?
17 MR. MUELLER: The Russell Fork is approximately -- the Russell
18 Fork River is quite a bit lower there. It's approximate-
19 ly a mile and a half in the Russell Fork River.
20 Q. (Mr. Mullins continues.) If you would just direct me, is
21 this the river?
22 A. Yes, that is the river. Correct.
23 Q. And this is the well location?
24 A. Yes.
25 Q. What scale is this?

1 A. That's a 1 to 2,000 scale.
2 Q. One inch is equal to 2,000 feet?
3 A. Yes, on the eight and a half by 11.
4 Q. I didn't ask you any questions concerning this Exhibit 2,
5 but this well location EH-53, this is from a northern
6 prospective if you were standing up here and looking down
7 in cross sections, is that right?
8 A. Yes.
9 Q. And this is the location of the well itself from the
10 fault zone?
11 A. Yes.
12 Q. About how wide is the fault zone?
13 A. It's totally approximately 1,500 feet wide.
14 MR. MULLINS: I don't believe I have anything else.
15 MR. HASON: You've explain to us why this well would not be
16 satisfactory moved to the west of the fault or drilled in
17 the fault. Why can't you just move it north 400 feet? I
18 guess that would be northwest.
19 MR. MUELLER: This way, northwest?
20 MR. HASON: Yes, straight up the fault.
21 MR. MUELLER: It would be closer to EH-54.
22 MR. HASON: What about further west then?
23 MR. MUELLER: Further west would put it within that fault zone
24 and we are trying to stay away from that due to the
25 water problems.

1 MR. MASON: Excuse me. I meant east.
2 MR. MUELLER: This direction?
3 MR. MASON: Yeah.
4 MR. MUELLER: Presently we've applied for permits and are in
5 process of permitting wells in that direction also. We
6 also have the EH-52. It's not on that map. There is a
7 well permitted east of that.
8 MR. MASON: And if you moved further east it would be
9 within --
10 MR. MUELLER: Yes, it would.
11 MR. MASON: Thank you.
12 MR. CHAIRMAN: Any other questions? I have one question. The
13 width of that fault zone, how did you determine it?
14 MR. MUELLER: A lot of it come from geologic quad maps. Some
15 of it came from site inspection. I've been out there.
16 Normally your rocks dip in that area at the site about 15
17 to 17 degrees, the lower part of the mountain 8 to 9, the
18 upper part around 30 degrees. They dip into the north or
19 the southeast. The area which is disturbed you can go
20 out there visually see it. The rocks are tilted differ-
21 ent ways and there is no conformity within that area.
22 Roughly it is around 700 to 800 feet. I mean, you can
23 walk out and see the rocks that are dipping.
24 MR. CHAIRMAN: You mean 700 feet on each side of the fault?
25 MR. MUELLER: Yes.

1 MR. CHAIRMAN: My question being is EH-51 is pretty close on
2 the edge of that zone.

3 MR. MUELLER: Right.

4 MR. CHAIRMAN: And what I was getting at is how much variability in that 750 feet is there and do you expect to
5 have problems similar to those that you had drilling EH-
6 50 with this well?

7
8 MR. MUELLER: We think we are outside the problem area right
9 now. There is never any guarantee what you drill, but
10 where we are at now topographically it's a good area.
11 If you move it further either you begin to get into --
12 topography starts to come into play. And if you move it
13 to the west there is a small ravine or a small ravine and
14 hollow and you would have to cross that and you would be
15 a lot further into the fault zone than itself.

16 MR. CHAIRMAN: Since you are close to a -- do you plan to take
17 any additional measure than what you would normally?
18 You said that you had to construct three extra pits, i.e.,
19 some extra expense with EH-50.

20 MR. MUELLER: Correct.

21 MR. CHAIRMAN: What contingency plans do you have for this
22 well if you do end up intercepting the large quantities
23 of water?

24 MR. MUELLER: Normally you would start out -- then you would
25 start a large diameter casing and that is what we'll

1 probably have to do in this case. You start with a large
2 diameter casing so if you hit water you can start setting
3 smaller --

4 MR. CHAIRMAN: So you do plan to take some action initially to
5 make sure that you have the situation covered should it
6 occur?

7 MR. MUELLER: Yes.

8 MR. CHAIRMAN: Thank you. Any other questions?

9 (Witness stands aside.)

10 MR. CHAIRMAN: What's your pleasure?

11 MR. KELLY: Mr. Chairman, I would make a motion that the
12 application of Edwards & Harding for a variance from
13 statewide minimum spacing be approved.

14 MR. MASON: Second.

15 MR. CHAIRMAN: I have a motion and a second. All in favor?
16 (ALL AFFIRM) All opposed? (NONE) The motion carries.
17 Ladies and gentlemen, we are going to break for lunch.
18 We can all be back here at 1:00 and continue.

19 MR. MCQUIRE: My evidence is going to be exactly the same on
20 this next one as it was before. If the Board would like
21 to incorporate by reference what my arguments and my
22 evidence were before I will not say anything. Assuming
23 that their application is the same and it appears to be.

24 MR. CHAIRMAN: Since we're still on the record that will be in
25 reference to Docket VGOB91-0924-146, is that correct, Mr.

McQuire?

MR. MCQUIRE: That's right. It appears to be exactly the same as the -- the issues and the evidence appear to be exactly the same as Item XIII and I don't plan to put in any evidence or make any arguments except a duplicate of evidence and arguments and I would not propose to make them if you would like to incorporate my evidence and arguments by reference.

MR. CHAIRMAN: OXY?

MR. SWARTZ: The trouble I have is we keep seeing these word processor objections and then we show up and nothing happens. I think we ought to hold their feet to the fire. I don't want to incorporate anymore. We have been down that road. If they want to object to a well they need to stay for the hearing and participate in the hearing and they need to tell us what their objections are. If they want to offer evidence, fine. I would object to incorporating from one well into the other to facilitate these continuing these objections.

MR. CHAIRMAN: We will hear it after lunch.

MR. McCLANNAHAN: Item XI on the docket, Elizabeth McClannahan representing Pocahontas Gas Partnership for the BUSE application. In order to free up some of our people could we go ahead and make our statement about that particular application because we have a voluntary

1 agreement on it. So we just want it continues until the
2 next time because we may need to amend the application
3 for other relief, but we have a voluntary agreement so.
4 MR. CHAIRMAN: Is there anybody else here that wants to talk
5 about Item XI on the docket? (Pause.) So you're
6 requesting a continuance of that?

7 MS. McCLANAHAN: Right. And I want to make sure it's on the
8 record that we have a voluntary agreement as to the
9 establishment of the unit.

10 MR. CHAIRMAN: Okay. You have a voluntary agreement?

11 MR. SWARTZ: Then we would have something to say, if that's
12 what said.

13 MR. CHAIRMAN: We'll hear it after lunch then.

14 (AFTER A LUNCHEON RECESS, THE HEARING CONTINUED AS
15 FOLLOWS:)

ITEM X

MR. CHAIRMAN: The next item is item X, a petition for the establishment of a compulsory pooled drilling unit, Docket VGOB-91-0924-148.

MR. SWARTZ: Mark Swartz and Harold Salisbury appearing for OXY, USA.

MR. MCQUIRE: Grant McQuire appearing for Ashland Exploration.

MR. SWARTZ: We'll start with Mr. Wirth.

MARTIN E. WIRTH

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

DIRECT EXAMINATION

BY MR. SWARTZ:

Q- Would you state your name, please?

A. Martin E. Wirth.

Q- I will remind you that you are still under oath.

A. Yes, sir.

Q- By whom are you employed?

A. OXY, USA, Inc.

Q- What is your title?

A- Project Land Manager.

1 Q. What duties, if any, in general do you have with regard
2 to coalbed methane as project land manager?
3 A. Acquisition on lease title, regulatory affairs and
4 miscellaneous other duties relating to land functions.
5 Q. Did you prepare both the notice and application with
6 regard to unit T-347?
7 A. Yes, I did.
8 Q. After you prepared the notice and application did you
9 cause those documents to be mailed to anyone?
10 A. Yes, we did.
11 Q. Was there just one party that was named as a respondent
12 in this proceeding to whom you had to mail?
13 A. That is correct. Ashland Exploration, Inc.
14 Q. And I assume that you do not wish to amend or do you wish
15 to amend the list of respondents by either adding or
16 deleting anyone today?
17 A. No, not at this time.
18 Q. You want to continued forward with Ashland Explorations?
19 A. That's correct.
20 Q. Have you filed proofs of mailing and return receipt
21 evidence with the Board with regard to your mailing to
22 Ashland Exploration?
23 A. Yes, I have.
24 Q. Did you also publish a notice in any newspaper with
25 regard to this hearing?

- 1 A. Yes. We published in the Virginia Mountaineer on August
2 23rd, 1991 the notice of hearing.
- 3 Q. And has proofs of notice of publications been previously
4 been filed with the Board?
- 5 A. Yes, it has. And we have the signed receipts of certifi-
6 cated mail.
- 7 Q. With regard to this unit that we are talking about, could
8 you describe OXY's interest in the unit and could you
9 describe Ashland's interest in the unit?
- 10 A. This is an 80 acre unit falling within the Oakwood
11 coalbed methane gas field that OXY, USA has 100 percent
12 coalbed methane gas lease. Ashland Exploration, Inc.
13 has an oil and gas lease in this unit.
- 14 Q. Does Ashland as you understand it have 100 percent of the
15 oil and gas under lease for the entire 80 acres or is
16 there someone else who might have part of the 80 acres?
- 17 A. It is my understanding that Ashland has 100 percent under
18 the conventional oil and gas lease.
- 19 Q. And with regard to the coalbed methane lease OXY has 100
20 percent of the entire 80 acres under a coalbed methane
21 specific lease for this unit?
- 22 A. That is correct.
- 23 Q. Are the Ashland and OXY leases entered into with the same
24 lessor, the same people as lessors?
- 25 A. The same heirship, yes, sir.

1 Q. And the heirs, is there a name that we could use to talk
2 about them?
3 A. We refer to them as the Alpha Stickley heirs.
4 Q. And do the Alpha Stickley heirs own both coal and oil and
5 gas and coalbed methane -- or all three of those things
6 within this unit?
7 A. And also surface, yes. They own all four.
8 Q. So they own feet?
9 A. Basically in feet.
10 Q. And under what agreement or agreements does GUY claim
11 standing as a claimant with statutory standing to file
12 this pooling application?
13 A. Under our coalbed methane specific gas lease with the
14 Alpha Stickley heirs.
15 Q. This unit contains how many acres?
16 A. This is an 80 acre unit.
17 Q. And is that stated on the Exhibit A that it is 80 acres?
18 A. I believe so. Yes. 80 acres, 100 percent.
19 Q. And this unit is in the Oakwood Field?
20 A. That's correct.
21 Q. And you are seeking to pool which seams or formations?
22 A. Again, we are seeking to pool any and all interest from
23 the base of the Tiller formation to the base of the
24 Pocahontas #2 coal seam and any adjacent and associated
25 coal seam.

1 Q. With regard to the lease that you have indicated that
2 OXY has with the Stickleys and with regard to other
3 coalbed methane leases that you have entered into on
4 behalf of OXY, could you tell the Board what you believe
5 to be a reasonable bonus and royalty term and lease term
6 are?

7 A. \$1.00 and acre with a five year primary term with a 1/8th
8 royalty interest.

9 Q. And has OXY actually entered into leases that contain
10 exactly those terms?

11 A. Oh, yes. Yes, we have.

12 Q. And would you recommend to the Board that in any order
13 that might issue with regard to this unit that where
14 appropriate the terms expressed in the order would be
15 \$1.00 bonus, a 1/8th royalty and a five year primary
16 term?

17 A. Yes, I would.

18 MR. SWARTZ: That's all I have of Mr. Wirth at this point.

19
20 CROSS-EXAMINATION

21
22 BY MR. HOGGINS:

23 Q. Mr. Wirth, are you familiar with the Stickley lease by
24 which Ashland received its oil and gas rights?

25 A. Yes, I am.

1 Q. Was that lease executed prior to your coalbed methane
2 lease?
3 A. Yes, it was.
4 Q. Did you claim any right to drill for coalbed methane
5 based upon Island Creek's position?
6 A. No. We're claiming under our coalbed methane gas lease.
7 Q. Do you have consents to stimulate from all of the coal
8 owners within the unit?
9 A. Yes, we do.

10 MR. MCQUIRE: No further questions.

11 MR. CHAIRMAN: Does the Board have any questions?

12 (Witness stands aside.)

13 MR. CHAIRMAN: You may proceed.

14 MR. SWARTZ: I would like to call Mr. VanGolen.

15 GLEN VANGOLEN

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

18 DIRECT EXAMINATION

19 BY MR. SWARTZ:

20 Q. Mr. VanGolen, would state your name, please?

21 A. Glen VanGolen.

22 Q. I will remind you that you are under oath. Do you

1 understand that?

2 A- Yes.

3 Q- By whom are you employed?

4 A. OXY, USA as project manager.

5 Q- Of what project?

6 A. The coalbed methane project in Richlands, Virginia.

7 Q- Did you in the course of your duties as project manager

8 prepare a detailed well estimate with regard to unit T-

9 347

10 A. Yes, I did.

11 Q- And has that been filed with the Board as Exhibit C?

12 A. Yes.

13 Q- When did you prepare Exhibit C?

14 A. August 16th, 1991.

15 Q- What is the proposed depth of this coalbed methane well?

16 A. 1,684 feet.

17 Q- What's the status of the well as this point?

18 A. We have filed a permit with the State and we're currently

19 awaiting an informal fact finding --

20 Q- This Thursday, as a matter of fact?

21 A. This Thursday.

22 Q- And since you don't have a well work permit you haven't

23 done anything with regard to this well, I assume?

24 A. Operations have not been started.

25 Q- This Exhibit C shows a total projected cost, does it not?

- 1 A. Yes, it does.
- 2 Q. And what is the cost?
- 3 A. \$230,100.
- 4 Q. Is it your opinion that the sum of \$230,100 is a reason-
5 able estimate of the probable cost which would be
6 incurred in drilling and completing this proposed well?
- 7 A. Yes, it is.
- 8 Q. What is the target formation or the lowest target
9 formation of this well?
- 10 A. The Pocahontas #3.
- 11 Q. And is this well deep enough at the proposed total depth
12 to produce from that seam?
- 13 A. Yes, it is.
- 14 Q. Is it your opinion that OXY's plan of development is a
15 reasonable plan for the development of the coalbed
16 methane within and under unit T-38 which would benefit
17 the owners of the coalbed methane resource?
- 18 A. Yes, it is.
- 19 Q. Is it your opinion that the proposed well will indeed
20 contribute to protect the correlative rights of owners of
21 the methane within and under the unit and will tend to
22 lessen the likelihood of both physical waste and economic
23 waste?
- 24 A. Yes.
- 25 Q. There is an entry on Exhibit C with regard to stimula-

- 1 tion, correct?
- 2 A. Correct.
- 3 Q. Again, I realize we have heard this before, but could you
- 4 generally detail what the projections or plans at this
- 5 point are for stimulating this well?
- 6 A. Yes. We plan on stimulating three groups of wells within
- 7 the well bore.
- 8 Q. Depending on what you find?
- 9 A. Depending on what we find.
- 10 MR. SWARTZ: That's all I have of Mr. VanGolen at this point.

11

12 CROSS-EXAMINATION

13

14 BY MR. MCGUIRE:

- 15 Q. Mr. VanGolen, what's the status of your plans to trans-
- 16 port the gas out of the field?
- 17 A. We've currently acquired right of way. We've purchased
- 18 line pipe compressors. We're in the process of filing
- 19 permits for both our gathering system and the line
- 20 that's coming out of the area.
- 21 Q. When do you project the pipes be laid and you readiness
- 22 to move the gas out of the field?
- 23 A. We are currently anticipating right now in between March
- 24 1st and April 1st.
- 25 Q. Of what year?

1 A. 1992.

2 MR. MCGUIRE: No further questions.

3 (Witness stands aside.)

4 MR. CHAIRMAN: Members of the Board?

5 MR. MASON: Yes, Mr. Chairman. Mr. McGuire, with regard to
6 your written objections, where are we with these items?

7 MR. MCGUIRE: If you let me give my argument I will tell you
8 exactly what I plan to raise before this Board today and
9 anything that I don't raise is mere surplusage.

10 MR. MASON: Thank you. That's all I wanted.

11 MR. MCGUIRE: I'd like to present to the Board for evidence
12 the stickley lease by which Ashland claims its rights.
13 Board members, you've heard these issues before and I'm
14 going to restate the issues again. Ashland takes the
15 position that it owns the gas and oil under its lease
16 and that gas is gas and that OXY has no standing to apply
17 before this Board under the Virginia Gas and Oil Act.
18 OXY is not a gas and oil owner under Sections 21 and 22
19 of the Act. You would be determining ownership by
20 determining that OXY is a proper applicant. I do not
21 believe that is a proper function of this Board.
22 Furthermore, the granting of OXY's application interferes
23 with Ashland's constitutional rights of contract. It has
24 a prior lease. It constitutes a taking of Ashland's
25 property without just compensation. And in Ashland's

1 opinion there is a lack of due process having to come
2 before this Board on twenty days notice and have it
3 determined that its property is going to be taken and the
4 proceeds put into escrow. With that, that is all I have.

5 MR. SWARTZ: I would like to have Mr. McGuire sworn as a
6 witness and I would like to ask him some questions if he
7 would consent to have that occur since he seems to be the
8 only Ashland representative here.

9 MR. CHAIRMAN: No.

10 MR. SWARTZ: Well, then I would move to strike anything that
11 he has offered that would resemble evidence. I'm kind
12 of in an untenable position here. If he makes any
13 factual representation with regard to what Ashland's
14 positions is he is talking as an attorney and there is
15 nothing in the record.

16 MR. MCGUIRE: May I respond, please?

17 MR. CHAIRMAN: Mr. Swartz, are you objecting to what --
18 specifically are you objecting to? Are you objecting to
19 Mr. McGuire's exhibits or what?

20 MR. SWARTZ: Well, he had told us four things as I have kind
21 of made my notes and one is he says he has told us that
22 Ashland owns the gas. And if he is telling us that
23 that's a fact as opposed to an argument advanced by a
24 lawyer I would like to cross-examine him because I have
25 some questions that I think are interesting as to the

1 basis or premise why Ashland might make that. So if
2 he's saying that Ashland owns the gas and advancing that
3 as if it is a fact for you to consider in this hearing I
4 think he is a witness and I have a right to cross-examine
5 him. If he tells us he is just making that as an
6 argument as a lawyer derived from a lease which he has
7 offered well, then I'll argue the lease. He's indicated
8 that he believes because -- and I don't know again if
9 this is as a lawyer or as a witness. He has indicated
10 that in his opinion apparently because the TXO lease --
11 we're not talking about Ashland here. We are talking
12 about a TXO lease that was assigned to Ashland at some
13 point in time. That is the Exhibit he is talking about.
14 He seems to be arguing that because that is prior in time
15 to the lease without Island Creek which was then assigned
16 to OXY that it's a better lease or a better claim to the
17 coalbed methane. I would like to cross-examine him with
18 regard to that assertion if he is asserting that as a
19 witness as if it's a fact. He has asserted as another
20 reason today that Ashland's property is being taken
21 without just compensation. Well, that's a legal argument
22 and I would like to cross-examine him as if there is any
23 factual basis for that. Because if that is all he is
24 going to put in front of you it's just a legal argument
25 and I don't think you have to consider it at all.

1 Lastly, and my notes may be wrong, but the last thing I
2 wrote down that I think he's advanced as a position to is
3 that twenty days notice isn't enough notice and con-
4 stitutes a lack of due process. And I am somewhat
5 troubled by that since we start law suits in most states
6 and the defendant has twenty days to answer and there are
7 all sorts of things that happen on ten days notice or
8 twenty days notice and so forth. And if this is a
9 factual assertion that Ashland is such a large elephant
10 that it can't move out of the way in twenty days I'd like
11 to know why. What is it about this that has caused
12 Ashland a problem. So I'm not advancing my position that
13 I want to cross-examine him as a witness factiously.
14 What I'm saying is if he is not going to testify as a
15 witness most of what he has told us today is legal
16 argument. There's no factual basis for it and you ought
17 to disregard it. If he is asserting it as factual then I
18 have a right to cross-examine him, I think, and that's
19 kind of where I'm coming from here.

20 MR. CHAIRMAN: Let me ask. Mr. McGuire, could you state for
21 the record what your position is here today?

22 MR. MCGUIRE: The facts are in evidence. There are facts that
23 have been presented before the Board on the direct
24 examination of OXY and upon my cross-examination of OXY
25 and there are, I guess, other facts of which this Board

1 can take notice. The fact that Ashland has the lease.
2 Anything else that I argue is simply argument. I am not
3 here to testify on behalf of Ashland. Does that answer
4 your question? But as an attorney I certainly can make
5 constitutional arguments. I can make legal argument
6 before this Board without being pulled up and put in a
7 witness chair and being forced to answer questions by the
8 other side.

9 MR. CHAIRMAN: Mr. McGuire, are you here today as a represent-
10 ative of Ashland?

11 MR. MCGUIRE: I'm here as legal counsel.

12 MR. CHAIRMAN: That's sufficient then, advancing a legal
13 argument.

14 MR. SWARTZ: I understand. That will do it. If I could
15 suggest a question. You might consider asking Mr.
16 McGuire because he is not a witness and I can't question
17 him, but you might consider asking him whether or not --

18 MR. MCGUIRE: I object. I don't know where he is going with
19 this, but I object to the whole line of questioning --

20 MR. SWARTZ: Well, I haven't questioned you yet.

21 MR. MCGUIRE: -- that he is attempting to raise.

22 MR. CHAIRMAN: Gentlemen, I think we have heard enough on
23 this.

24 MR. SWARTZ: If I could close or I could make an argument
25 since I can't cross-examine him. It will be real short.

1 MR. MCGUIRE: But don't testify or I'll call you as a witness.
2 MR. SWARTZ: Well, I have witnesses here. Some of the things
3 that I think are interesting that I think I would like to
4 know the answers to and the Board might want to consider
5 in reaching a decision here. First of all, I start with
6 the premise and you may not agree with me, but this is
7 where I come from that an objecting party has some burden
8 of proof and has to come forward with some proof. I have
9 moved forward with my application and I have offered
10 evidence and now he has asserted some grounds and I think
11 he has the burden of proof and you can think about that
12 whether or not you agree with me. The document that
13 he's furnished you with today is a lease that was taken
14 by TXL. The lease doesn't not mention the words coalbed
15 methane anywhere. There is an assignment that's attached
16 to the lease from TXO to Ashland. The assignment from
17 TXO to Ashland does not mention the words coalbed
18 methane. I would be curious if I had my hands on a
19 witness to know what allocations of the purchase price
20 for the TXO assets, if any, was made for coalbed methane
21 because if nothing was allocated for coalbed methane in
22 the purchase I think it would be persuasive evidence that
23 they weren't buying coalbed methane. I would like to
24 have an Ashland witness that I could ask whether or they
25 have on their books any dollars associated with coalbed

1 methane reserves. I would like to know if they've ever
2 drilled a well in Virginia. I don't a coalbed methane
3 well. I don't think they have. I would like to know
4 what their plans are to take advantage of the tax credits
5 by drilling coalbed methane wells before the period
6 expires. I'd like to know if they're here because they
7 are interested in being an operator of any of these
8 units. I would like to know what their future plans are.
9 Do they ever plan on drilling coalbed methane wells at
10 all. I think it is a fair question and I think you all
11 might want to be interested in that. I would like to
12 know how they explain the fact that their lessor sub-
13 sequently entered into a lease with us of leasing
14 specific coalbed methane rights. Obviously their lessor
15 thinks they didn't lease them to them. And I would be
16 interested in their views on that. Lastly, I think what
17 is most important to me, unless they can demonstrate some
18 allocations of purchase price, something of their books
19 to indicate that they felt they were getting CBM when
20 they paid TXO -- any assertion that we're taking some-
21 thing without just compensation. I mean, it's possible
22 that if we could get our hands on some witnesses they
23 paid zero for this asset that they are now claiming they
24 took an assignment for. And if they paid zero for it
25 what are we taking without just compensation? There is

1 no evidence in the record that the terms of any lease or
2 bonus arrangement

3 -- there is nothing to contradict Mr. Wirth's testimony
4 that these terms are common in the area. It is just sort
5 of a summary of my view that they have the burden and
6 that these are the kinds of things they need to come
7 before you with. Thank you.

8 MR. CHAIRMAN: Do we have any other questions? What's your
9 pleasure?

10 MR. KELLY: I make a motion that the application be approved.

11 MR. MASON: Second.

12 MR. CHAIRMAN: I have a motion and a second. All those in
13 favor? (ALL AFFIRM) All opposed? (NONE) The motion
14 carries. But let me make clear also that since this
15 motion is passed Mr. McGuire, will you so stipulate that
16 your objections, as noted, have been overruled, have been
17 rejected?

18 MR. MCGUIRE: Right. And my motion to dismiss has not been
19 granted. I will recognize that.

20 MR. CHAIRMAN: Thank you.
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ITEM XI

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3 MR. CHAIRMAN: The next item on the agenda is item XI. It's
4 the petition for the establishment of a production unit
5 known as the BUSZ, Docket VGOB-91-0924-150.
6 MR. McCLANNAHAN: Elizabeth McClannahan. I represent Poca-
7 hontas Gas Partnership in the application that's been
8 filed under that docket number and we would request a
9 continuance for the October Board docket.
10 MR. CHAIRMAN: Is there anyone else in attendance that wishes
11 to speak on this matter?
12 MR. MASON: Mr. Chairman, I'd move that we grant it.
13 MR. KELLY: Second.
14 MR. CHAIRMAN: All those in favor? (ALL AFFIRM) All opposed?
15 (NONE) Item XI, Docket VGOB 91-0924-150 is continued to
16 next month's docket.
17 MR. FULMER: Mr. Chairman, before we leave, regarding the
18 docket number, there is some concern about on the
19 continuance that those people be notified of the continu-
20 ance by the operator -- by the petitioner. I just
21 wanted to mention that. We had a problem the other day
22 where people were not being notified of continuance by
23 the petitioner. I wanted to make that point.
24 MR. CHAIRMAN: Will you so notified?
25 MR. McCLANNAHAN: Yes, we will.

1 MR. WAMPLER: Mr. Chairman, the next Board meeting is schedul-
2 ed for Tuesday, October 15th and I would propose if the
3 Board could schedule it that we have a two day session
4 and on the 16th plan that for a field tour of gas sites
5 in Dickenson and Buchanan County to look at some of these
6 applications, etcetera, that we've been approving. Mr.
7 Chairman, also as a way of update to the Board, the RFP
8 for escrow agent is in treasury for final review con-
9 sidering the bonding issues for some last minute advice
10 and should be published sometime this week and available
11 for people to make bid.

12 MR. FULMER: As far as the matter of information on the Board,
13 with the continuance of four agenda items today we have a
14 total of ten scheduled for the October meeting.

15 MR. WAMPLER: I move we adjourn.

16 MS. ZANDER: Second.

17 MR. CHAIRMAN: We have a motion and a second. All those in
18 favor? (ALL AFFIRM.) Opposed? (NONE.)

19
20 (End of Proceedings for
21 September 24th, 1991.)
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1
2 CERTIFICATE
3

4 COMMONWEALTH OF VIRGINIA

5 COUNTY OF WASHINGTON
6

7 I, Tamara L. White, Notary Public in and for the Common-
8 wealth of Virginia, at Large, do hereby certify that the
9 foregoing proceedings of the Virginia Gas and Oil Board
10 meeting held on September 24, 1991 at the Southwest Virginia
11 4-H Center, Abingdon, Virginia, were taken by me and that the
12 foregoing is a true and correct transcript of the Deposition
13 so given by her as aforesaid to the best of my ability.

14 I further certify that I am not a relative, counsel, or
15 attorney for either party, or otherwise interested in the
16 outcome of this action.
17

18 GIVEN under my hand this 17th day of October, 1991,
19

20
21 TAMARA L. WHITE
22 NOTARY PUBLIC
23

24 My commission expires January 31, 1993.
25