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VIRGINIA OIL AND GAS CONSERVATION BOARD

HEARING OF OCTOBER 15, 1991

9:00 A. M.

AT THE SOUTHWEST VIRGINIA 4-H CENTER

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October 15, 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 15th day of October, 1991, pursuant to Section 45.1-361.19 B and 45.1-361.23 B.

MR. CHAIRMAN: Good morning. I'm going to call this meeting to order. My name's Benny Wampler. I'm Assistant Director for Mining for the Virginia Department of Mines, Minerals and Energy and this is the October hearing of the Gas and Oil Board. I'll ask the members to introduce themselves, starting to my left please.

(BOARD MEMBERS INTRODUCED.)

ITEM I AND II

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3 MR. CHAIRMAN: The first hearing on today's agenda is the  
4 petition by James H. White, surface owner, for the  
5 establishment of a compulsory pooled drilling unit for  
6 EREX proposed well VC-1934. This was continued from May  
7 and it's Docket Number VGCB-0521-117. Mr. Johnson.

8 MR. JOHNSON: Mr. Chairman, ladies and gentlemen of the Board,  
9 I have been in front of you on a couple of occasions to  
10 argue my position in this matter. And because I have  
11 done that, I won't go through the details at this time as  
12 to why I believe that Mr. White is entitled to a pooling  
13 order from the Board. The objections that were raised --  
14 the last time the Board considered substantively the  
15 application itself. Those are the objections to which I  
16 wish to address and to assist the Board in determining.  
17 In a prior conversation with counsel for Equitable and  
18 the Chairman we determined that I would advise the Board  
19 of what measures I have undertaken to provide more  
20 information, hopefully, in compliance with what the Board  
21 thinks is necessary in order to have a claimant to a  
22 pooling order, attempting to have a unit formed, as far  
23 as what a claimant must to produce in order for the Board  
24 to proceed. I have filed with the application the  
25 standard check list which I understand is no longer



1 standard under the new regulations. But under the  
2 regulations where we initiated this application that  
3 check list is a part of the Board's requirements. If you  
4 will look at the application itself I have provided the  
5 percentage of interest to be escrowed and on schedules  
6 are Exhibit C to the application. That information is  
7 provided. Basically what we are saying is that pursuant  
8 to the plat which was filed by the operator when the  
9 application for the well was made that the operator  
10 indicated that as far as surface acreage involved in the  
11 unit that Mr. White owned 99.81 percent. To the best of  
12 my client's knowledge and ability Pine Mountain Oil and  
13 Gas, as far as oil and gas interest, also would claim 100  
14 percent of the unit and Clinchfield Coal Company would  
15 claim 100 percent as coal owner. Now, that information  
16 is provided. We don't have a plan for escrowing the  
17 proceeds and the Board has established regulations to  
18 handle that matter and we would assume that the funds  
19 will be escrowed pursuant to what the Board is currently  
20 doing with other operators. The formations to be  
21 produced, we have included that information based upon  
22 the application -- or the permit application by Equitable  
23 for drilling the well. We have stated in Paragraph 2.1  
24 at the end where the target formation and other informa-  
25 tion regarding the seams to be included in the pooling

1 order. We don't have a proposed AFE. We assume the  
2 operator does. The certification of notice, we filed  
3 that certification with the Board. I also had to file  
4 with this application the originals of the certified  
5 receipts that were sent with regard to the amended  
6 application and I would like to file them with Mr.  
7 Fulmer at this time. These are the certifieds on the  
8 shipment of the amended applications. We have stated the  
9 relief sought in the application, the type of well --  
10 it's a coalbed methane well -- the permit number which  
11 there is one, the area to be pooled. Now, one thing  
12 that we weren't aware of and perhaps this is negligence  
13 of counsel or perhaps because I -- well, it's just  
14 because I wasn't familiar that this particular area was a  
15 part of what's called the Nora Coalbed Gas Field. We  
16 determined that it was. I consulted with the inspector  
17 with regard to it. The permit application that was filed  
18 is apparently in accordance with -- I'm talking the one  
19 filed by Equitable is in accordance with those field  
20 rules. In other words, the little square that they show  
21 is drawn in accordance with the field rules and we thank  
22 them for that. We took the application itself and  
23 determined -- you'll see a little diagram which I  
24 attached as part of this package which should be the next  
25 to last sheet, the Exhibit B, I suppose. It is a copy of

1 the Nora field rule application from the map file with  
2 the inspector. The larger map is on file in the in-  
3 spector's office and I obtained a copy from him and I've  
4 indicated on here where this particular unit falls  
5 within the Nora field rule map. Unfortunately, and I  
6 don't know if the Board just by a way of a comment and  
7 not by way of anything else, there is not an ABC XYZ 123  
8 grid system here. It's just a grid system, so you have  
9 to find it. And that's what we've attempted to do in the  
10 application. We have described the area to be pooled  
11 with the plat that we've filed. And we have a map  
12 showing the size and shape of the unit, that's enclosed.  
13 Percent of ownership of each acreage to be pooled and  
14 status of ownership, that is what is part of Exhibit C.  
15 Percentage of interest held by the applicant and that is  
16 also shown on Exhibit C. Estimated production of the  
17 well, we don't have that because we didn't drill it and  
18 we're not oil and gas operators. Estimated reserves, the  
19 same situation. The application fee, we have filed the  
20 application fee previously and the signature which is on  
21 there. I believe it's my signature. What I can tell the  
22 Board about this now is that to the best of our ability,  
23 with the exception of certain technical information which  
24 we are not privy to and have not employed a petroleum  
25 engineer or geologist to obtain, we are prepared to

1 proceed to ask the Board to pool this unit. What I have  
2 said to the Board about this before, we're talking about  
3 a situation where a well is -- I believe it's already  
4 been drilled. It's not a situation where we're talking  
5 about something that might happen, could happen. We're  
6 talking about something that has happened. My clients  
7 come here as claimants pursuant to the statute 45.1-  
8 361.22 and ask the Board to consider their application  
9 for pooling for the purpose of establishing a unit under  
10 which they may participate and under which they may be in  
11 a position to have the funds escrowed until it is  
12 determined what their ownership rights are. I think it's  
13 clear under the statute and I've said this many times  
14 that my clients as well as many others who wish to come  
15 forward should be allowed to have a pooling order entered  
16 to protect them. That's what this statute was written  
17 for. The fact that the oil and gas operator in this  
18 instance has determined for whatever reason not to pool  
19 this unit, not to recognize their claim, we can't do  
20 anything about that. But we certainly believe, like  
21 many other surface owner claimants in Virginia that this  
22 Board has recognized, that my clients and I also speak  
23 for the Holbrooks when I say this, Mr. White and Mr. and  
24 Mrs. Holbrook who are here on their claim, that they are  
25 entitled to have a pooling order entered pursuant to the

1 application. I have said also before and I'll say it  
2 again, I don't think they should go through all this. I  
3 don't think they need all this formal stuff, but they  
4 have done it. And we have done the very, very best we  
5 can. I don't know what else we can do to improve upon it  
6 to give the Board more information as to what we are  
7 seeking. And I think we have given enough technical data  
8 that certainly an order could be issued based upon it.  
9 And I'll yield to Mr. Counts so he can make whatever  
10 motion he wished to make.

11 MR. CHAIRMAN: Before that, I'll just ask if any of the Board  
12 members have any questions of Mr. Johnson?

13 MR. MASON: Mr. Chairman, I have one. Who do you wish to be  
14 the operator under this pooling --

15 MR. JOHNSON: Well, Equitable has already drilled the well.  
16 We wish for them to be the operator.

17 MR. MASON: Okay. So you don't object to that?

18 MR. JOHNSON: No, we don't object to that. I think what you  
19 need to understand is that really the whole basis upon  
20 which we apply is to have the Board escrow the funds  
21 until the ownership can be resolved. We are in a  
22 situation where we're talking about an existing permit  
23 and not only is there a permit, they have actually  
24 drilled. So we're not going to ask this Board to name  
25 anyone else and would not propose that.



1 MR. MASON: Okay. I just want it make clear for the record  
2 that you're not objecting to the designation of operator.  
3 MR. JOHNSON: No, certainly not, sir.  
4 MR. MASON: Thank you.  
5 MR. CHAIRMAN: And let me also make it clear here to the Board  
6 and just clarify, what I had asked each counsel to do  
7 before opening the record was for Mr. Johnson to go ahead  
8 with his reminders to the Board of where we were and to  
9 make his statements about what he's done to make this  
10 application complete before the Board and that's what  
11 the Board has to make a determination on first before it  
12 would correct to go forward with anything else, is this  
13 application -- a complete application and proper before  
14 this Board.  
15 MR. JOHNSON: And that issue is being raised by Equitable and  
16 that's why I went ahead and why Mr. Wampler recommended  
17 we proceed this way. It's for me to explain to you as  
18 best I can exactly what we did and what information is  
19 available in the application and what information's not.  
20 MR. CHAIRMAN: Any other questions, members of the Board? Mr.  
21 Counts.  
22 MR. COUNTS: Thank you, Mr. Chairman and members of the Board.  
23 Before proceeding I would only request the opportunity  
24 to review the copies of notice which I think Mr. Johnson  
25 has provided for Mr. Fulmer.

1 MR. JOHNSON: Sure, certainly.  
2 MR. COUNTS: And also the certification of compliance.  
3 MR. JOHNSON: I think the certification was filed with the  
4 amended application.  
5 MR. COUNTS: Do you have a copy of the amended application?  
6 MR. JOHNSON: Yes, sir, I do. I do not have a copy of the  
7 certification of compliance. It was filed with the  
8 application.  
9 MR. COUNTS: Mr. Chairman, if I may, I'd like to ask one  
10 question of Mr. Johnson --  
11 MR. JOHNSON: I'm not here to answer questions, Rick.  
12 MR. COUNTS: -- with regard to your notice. If the Chair  
13 determines that I can't ask Mr. Johnson questions about  
14 his notice then I'll withdraw the question, but I think  
15 it's certainly appropriate.  
16 MR. JOHNSON: You can raise whatever issues you have about  
17 it --  
18 MR. COUNTS: Why don't you raise the issue.  
19 MR. JOHNSON: -- and I'll respond to it.  
20 MR. COUNTS: The notice that I have here with regard to 1935  
21 indicates that the notice was sent to Equitable Resourc-  
22 es, to Pine Mountain Oil and Gas, to Clinchfield Coal and  
23 to Pegasus Resources. I also understand that in addition  
24 to Mr. Holbrook who owns, as I understand it, 45.58  
25 percent of the surface --

1 MR. JOHNSON: No, that's in a different unit.

2 MR. COUNTS: Okay. So this 1934, Mr. James White, and he owns  
3 100 percent of the surface, correct?

4 MR. JOHNSON: According to the plat that we received as far as  
5 we know he owns 99.81 percent and based upon the plat  
6 which we have which Equitable filed Equitable must own  
7 the other .29 percent -- excuse me, .19 percent of the  
8 surface.

9 MR. COUNTS: Well, let the record show that Equitable does not  
10 own the surface to the remaining .19 acre interest in the  
11 surface. And my question would be to Mr. Johnson whether  
12 or not the surface owner of that interest was notified?

13 MR. JOHNSON: I don't believe that that surface owner was  
14 notified. Mr. White says that his brother.

15 MR. COUNT: I would submit then, Mr. Chairman, in regard to  
16 that notification that notification was not proper under  
17 361.9.A. So, Mr. Chairman, I think the first question  
18 would be whether or not the provisions to 631.19.A  
19 require notification of all owners. Mr. Johnson is  
20 asserting that Mr. White is an owner. My question would  
21 be why the remaining .19 acre interest was not notified.

22 MR. JOHNSON: Because it appeared from the plat which I had in  
23 my possession that was prepared by Equitable that that  
24 surface owner must have been Clinchfield Coal Company.

25 MR. COUNTS: Mr. Chairman, I'm not sure how appropriate it is,



1 but Mr. Johnson has signed off on certification as to who  
2 the owners are in this tract and I would anticipate that  
3 he would rely upon Equitable's plat with respect to doing  
4 that. It does appear that notification is defective and  
5 that 361.9.A has not been met.

6 MR. CHAIRMAN: Do you have anything else, Mr. Counts?

7 MR. COUNTS: Yes, sir, I do. And I'd like to come back to  
8 that. Mr. Chairman, Mr. Johnson indicated that Equitable  
9 Resources has already drilled well VC-1934. That is  
10 certainly correct. I think one of the things that the  
11 Board needs to view from a prospective standpoint is Mr.  
12 Johnson's here with a request for a compulsory pooling  
13 application. And if it's a necessity to have this unit  
14 pooled, why did Equitable proceed with operations without  
15 coming to this Board and requesting that this unit be  
16 pooled? I think that's a very valid concern and I would  
17 address that from the standpoint of the fact that any  
18 operator that's operating in the Commonwealth or in any  
19 state outside this Commonwealth is charged with making a  
20 determination of whom the owners are. The owners of the  
21 interest in this case, coalbed methane. And they  
22 basically certify that with regard to the permit applica-  
23 tion that's been submitted with regard to VC-1934. And  
24 in that determination the operator makes the determina-  
25 tion of whom those owners are. The one thing that I can

1 assure this Board is that no prudent operator is going to  
2 proceed with and conduct operations if they have any  
3 concern that there is an interest out there that they  
4 have not pooled that is an owner of an interest underly-  
5 ing that unit. Because if, in fact, that's the case,  
6 that operator may, in fact, be proceeding in the faith of  
7 a willful trespass action and in addition, basically  
8 producing that well for the benefit of that party that  
9 was not pooled to the extent to where they would be  
10 receiving eight eighths of their proportion share of the  
11 production within that unit. So no prudent operator is  
12 going to go out and drill a well without making sure that  
13 they either have all the parties leased or that they come  
14 before this Board requesting a compulsory pooling  
15 application. The reason why that was not done in this  
16 situation is because Mr. Johnson's client, Mr. White,  
17 does not own an interest in this unit. We also categori-  
18 cally reject Mr. Johnson's contention that Mr. White is a  
19 claimant. Mr. Johnson has certified that they are owners  
20 and I would assume that they are going to have title  
21 information to present to this Board to indicate that  
22 that, in fact, is correct. Equitable has title informa-  
23 tion to present to the Board which, in fact, indicates  
24 that his clients are not owners and as a result of not  
25 being owners certainly are not claimants. Now, Mr.

1 Johnson's also suggested to the Board this morning that  
2 he feels like that his clients have done all that they're  
3 capable of "to the best of his clients knowledge and  
4 ability with the exception of certain technical informa-  
5 tion which they're not privileged to." What I would  
6 submit to this Board is that Mr. Johnson's clients in  
7 this matter whom he contends are claimants are applicants  
8 insofar as this application is concerned before this  
9 Board. The burden upon that applicant is exactly the  
10 same whether it be Mr. Johnson's client, whether it be  
11 Equitable Resources, whether it be Pocahontas Gas  
12 Partnership, whether it be Costal Oil and Gas. No matter  
13 whom it is, the burden upon that applicant is the same.  
14 This Board has not promulgated and I suggest that it  
15 probably would not be able to promulgate regulations  
16 which provide for different burdens of proof upon those  
17 applicants coming before this Board. And finally, as  
18 this Board has heard me say on numerous occasions, this  
19 in my opinion -- Equitable's opinion is effectively Mr.  
20 Johnson's means of avoiding or circumventing the Circuit  
21 Court by having this Board adjudicate title which is not  
22 within the jurisdiction of this Board to do. Now, I  
23 would like to go through the application or the cover  
24 sheet which Mr. Johnson has already gone through with  
25 you. But as I did last time, I would also like to submit

1 a copy of the cover sheet which I would like to have  
2 noted as Exhibit A which indicates highlighted in orange  
3 those parts of the application that are incomplete. It's  
4 certainly undisputed that before an applicant can come  
5 before this Board that the applicant is required to have  
6 a completed application under the Board's own procedural  
7 rules. With regard to the first highlighted area I will  
8 stipulate that based upon the application filed by Mr.  
9 Johnson and I am unable to determine the percentage of  
10 interest to be escrowed by the Board under 45.1-361.21.D.  
11 Mr. Johnson has already admitted that he has not provided  
12 notification to all surface owners and that all owners  
13 have not been notified. Secondly, Mr. Johnson states  
14 that he has identified the formations to be produced.  
15 With regard to the application, if you will turn with me  
16 to -- I believe it's the top of the third page, the first  
17 complete sentence of the second amended application, Mr.  
18 Johnson states that applicant desires to pool all coalbed  
19 methane gas from the Pennsylvania coal seam. There is no  
20 Pennsylvania coal seam. This is not a formation. I can  
21 refer you to the permit application which was submitted  
22 by Equitable Resources which indicates that the forma-  
23 tions to be produced include the Jawbone, the Greasy  
24 Creek, the War Creek, unnamed C Formation, the Beckley  
25 Lower Horse Ben and the X Seam and the approximate depths

1 of those formations. Members of the Board, you cannot  
2 have a valid application nor valid notice unless the  
3 notice given is reasonably calculated to put those  
4 interest owners on notice of the pending agency applica-  
5 tion. There may be other owners out there that own an  
6 interest within those formations contained within the  
7 Pennsylvanian Age Lock, not the Pennsylvanian Formation,  
8 but we do not know that unless Mr. Johnson's prepared to  
9 put on evidence that he has basically had a title opinion  
10 rendered or his clients have an opinion rendered which  
11 indicates that there are no owners within those seams.  
12 As a result, not only is the application incomplete, but  
13 the notice is defective. Mr. Johnson also indicates that  
14 there is no proposed AFE attached, but he certainly  
15 assumes that Equitable has an AFE. Well, I'm quite sure  
16 as well that Equitable has an AFE, but Equitable is not  
17 required to submit a copy of its AFE with its permit  
18 application. And as a result, no party who may own an  
19 interest in this unit would again be put on notice of the  
20 anticipated cost in order to be able to make a determina-  
21 tion with regard to participating or nonparticipating  
22 with regard to their particular interest. Again, not  
23 such notice be calculated of parties upon notice. The  
24 next highlighted area is the permit number, if issued.  
25 And I understood Mr. Johnson say the permit number was in



1           here. I can't find it.

2 MR. JOHNSON: I believe it's on the exhibit, Rick.

3 MR. COUNTS: Now, Mr. Johnson, you've taken such great liberty  
4 to copy Equitable's exhibits that I'll take your word for  
5 that one. So please, Board, I'll be happy to withdraw  
6 that if, in fact, it is on the exhibit. Also the  
7 percentage of ownership of each acreage to be pooled in  
8 the status of ownership, Mr. Johnson has again given no  
9 name or individual's name who owns the .19 acre interest  
10 which has still not been notified. So that is not  
11 complete. The estimated production of the well is not  
12 complete, is not attached. The estimated reserves of the  
13 unit are not attached. Members of the Board, this  
14 application simply under no construction whatsoever can  
15 be deemed to be a complete application. Mr. Johnson,  
16 under the Board's rules and regulations, is not entitled  
17 any preferential treatment with regard to a completed  
18 application. An application before this Board for the  
19 promulgation of a compulsory pooling unit is simply a  
20 complete application or is not a complete application.  
21 And I would submit to the Board that this is not a  
22 complete application. I'd also like to read with regard  
23 to notice, as I have also indicated to the Board that not  
24 only is the application not complete, but that notice is  
25 defective as a result of the incomplete application.

1 Obviously that's the reason why the Board has promulgated  
2 these rules with regard to requiring that an application  
3 be completed is to afford to procedural due process to  
4 all those parties out there that are entitled to and  
5 should receive notice of the proposed agency action. A  
6 controlling case with regard to notice are the U. S.  
7 Supreme Court cases of Melaine vs Central Hanover Bank  
8 and Trust Company and Green V. Leasing. Stated quite  
9 succinctly these cases hold that when a property right  
10 will be affected by a judicial or administrative decision  
11 due process requires notice reasonable calculated under  
12 all the circumstances to apprise interested parties of  
13 the pendency of the action and to afford them an oppor-  
14 tunity to present their objection. There is no complete  
15 application. As a result, there is no procedural due  
16 process and as a result this application should be  
17 dismissed.

18 MR. CHAIRMAN: Thank you, Mr. Counts. Any questions, members  
19 of the Board?

20 MR. JOHNSON: Mr. Wampler, I'd certainly like to respond to  
21 that and also make a motion. Mr. Counts comes in here  
22 repeatedly and says a lot of things that he's never said  
23 to me before about these applications. Mr. Counts has  
24 come in here and has raised several objections to the  
25 application. He has not followed the Board's rules with

1 regard to the raising of objections to the application.  
2 The Board's rules require that they be in writing and  
3 that we have notice of them and that we have an oppor-  
4 tunity to try to correct any problems that we have. The  
5 Board's procedural rules issued on September 5, 1990 I  
6 believe are applicable and I don't believe they've ever  
7 been followed by Equitable in this case. Having said  
8 that, if you look at the permit application that Equi-  
9 table filed for the well itself they certified in that  
10 application that they had done all this title work.  
11 They certified that the gas, oil and royalty owners  
12 within the drilling unit established by the Board was  
13 Pine Mountain Oil and Gas. They certified that all coal  
14 and mineral owners on tracts located within 500 feet of  
15 proposed well were Clinchfield Coal Company, Pegasus  
16 Resource Corporation and Pine Mountain Oil and Gas  
17 Company. They certified that all coal operators, coal  
18 owners or mineral owners within 750 feet of the proposed  
19 well were Clinchfield Coal Company, Pegasus Resource  
20 Company and Pine Mountain Oil and Gas Company. They also  
21 filed with their application which was a certified plat  
22 completed by a registered land surveyor, Mr. Glen  
23 Phillips, who I know and respect. Mr. Phillips filed a  
24 plat with the well itself which is attached to our  
25 application. He shows and certifies on the plat the



1 owners of the various tracts, who they are and shows the  
2 percentage of the unit on the plat. We took this  
3 certified engineer's word when we filled this application  
4 out. That's all we had. That's all the information we  
5 had. Without an exhausted title examination that's the  
6 only thing we could do. As far as my client knew he owns  
7 this area where this well is to be drilled and as far as  
8 he knew this plat was correct and as far as I knew when I  
9 was attempting to fill it out. I don't know what else  
10 you can ask surface owners to do. And when we come in  
11 here and work under a statute that says that competing  
12 claims to coalbed methane are to be recognized -- there's  
13 procedures established by the statute which the oil and  
14 gas industry wanted so they wouldn't have to go to  
15 circuit court. They don't want to go to circuit court.  
16 They want a set up here where they can bring in competing  
17 interest to the coalbed methane and get this Board to  
18 pool it and escrow funds and do all those things.  
19 Several companies have come in to this Board and said,  
20 "Here are surface owners. We want them pooled."  
21 Equitable chose not to do that. I don't think the issue  
22 should be whether or not Equitable's a great company and  
23 that since they're a great company which we don't think  
24 is an incorrect statement -- since their a great company  
25 that they're smarter than everybody else and that if

1 there's a competing coalbed methane claimant out there  
2 that they can just disregard them and tell the Board they  
3 would never have drilled the well if they thought there  
4 was any problem. Perhaps that's what they do think and I  
5 assume that's what they think. But the statute was set  
6 up to recognize coalbed methane owners -- claimants and  
7 my clients are claimants. And either this regulations  
8 and statutes were set up to allow claimants to have  
9 forced poolings or they weren't. Any of these operators  
10 that come in here are claimants and they say they're  
11 claimants. They say they hold good title. They don't  
12 dispute that. They say they're claimants. And when  
13 someone comes in here -- one of these operators come in  
14 here and attempt to pool oil and gas interest under the  
15 methane statute they are asserting that there are other  
16 claimants and that they are claimants also. What we have  
17 attempted to do and I can tell you that this is all we  
18 can attempt to do is to take the certifications that the  
19 operator made in his permit application and attempt to  
20 follow as best we can with the information that was  
21 provided to us by the operator and to do the best job we  
22 can to coordinate that with field rules this Board has  
23 adopted and other things and then to go forward with an  
24 application. Equitable doesn't follow the Board's  
25 procedural rules, doesn't file anything in writing and

1 as this Board I file lots of things in writing, hasn't  
2 raised any of the issues in writing with this Board or  
3 with me ever with regard to these applications, comes in  
4 here and tells us all the things that are wrong. All I  
5 can tell you is all the things that are right and of what  
6 we've done and the certifications that the operator made  
7 to get the permit. And if he thinks any of those facts  
8 have changed he can certainly alert us to that. The  
9 operator comes in and files a permit application and  
10 tells us many, many things -- certifies to many, many  
11 things. We clients come in here without a fleet of  
12 lawyers, surveyors and engineers and maybe not even one  
13 good lawyer, but they come in here and say to the Board,  
14 "Here's what the operator has told me about this area. I  
15 have filled out an application consistent with that,  
16 taken the operator's word, done the best job I can. I  
17 come to the Board and I want to pool as a claimant." And  
18 that's where we stand. I feel like we've done all we can  
19 do. This Board should either allow us to go forward. If  
20 the Board thinks that we need to notify one more person  
21 and reschedule this thing, we'll do that.

22 MR. CHAIRMAN: Mr. Johnson, let me ask you a couple of  
23 questions.

24 MR. JOHNSON: Sure.

25 MR. CHAIRMAN: One, on the plat itself that you reference and

1 incorporate into your amended application that was  
2 prepared by Glen F. Phillips, in the corner there's a  
3 designation of a lease to Jesse Wampler tract.

4 MR. JOHNSON: Right.

5 MR. CHAIRMAN: Is that the .19 percent you're referring to?

6 MR. JOHNSON: Yes.

7 MR. CHAIRMAN: Is that Jesse Wampler Mr. White's brother?

8 MR. JOHNSON: No. Mr. White told me just a few minutes ago  
9 standing up here that his brother owned that little  
10 corner up there -- the surface. The plat doesn't show  
11 that.

12 MR. WHITE: In one of the applications that Mr. Johnson made  
13 before I sent my brother certified note. I believe I  
14 have a copy of it with me. I'm not sure it that's  
15 applicable to this particular one or not, but I think I  
16 sent him a certified copy.

17 MR. WAMPLER: For the record, that's Mr. White talking.

18 MR. JOHNSON: Do you have that with you?

19 MR. WHITE: I can check.

20 MR. COUNTS: Mr. Chairman, that would not be applicable  
21 because that was sent with regard to a prior notice, not  
22 the second amended notification.

23 MR. CHAIRMAN: Mr. Johnson, would you tell the Board what you  
24 believe it takes to be a claimant? And Mr. Counts, I  
25 would ask you to do the same.

1 MR. JOHNSON: What it takes to be a claimant?

2 MR. CHAIRMAN: Yes, sir.

3 MR. JOHNSON: To believe that you -- what it takes to be a  
4 claimant, I think what it takes to be a claimant is to  
5 have an interest, to be able to allege and claim an  
6 interest. A claimant is someone who believes that they  
7 have an interest in something. If you claim title to  
8 something you believe you have an interest in it. The  
9 coalbed methane statute which the oil and gas industry  
10 wanted to put in place was to -- contrary to what -- Mr.  
11 Counts talks about staying out of circuit court. The  
12 intent of that statute was to stay out of circuit court.  
13 The intent of that statute was to bring in claimants  
14 which would include surface owners, people who had oil  
15 and gas leases, or some claim under oil and gas severance  
16 deeds, and coal operators and owners, those potential  
17 claimant, those potential claimants. And that's who I  
18 believe under Virginia law -- that's all that could be  
19 potential claimants, would be the surface owner, who has  
20 had to suffer some sort of severance deed to the proper-  
21 ty, whether or not the severance deed is applicable to  
22 this particular resource. The oil and gas owner and the  
23 coal owner, those are the potential claimants. And we  
24 believe that we are claimants and we believe the statute  
25 was enacted to give us an opportunity as claimants to



1 come forward and get pools. In this particular case,  
2 unlike other cases that this Board has heard, the oil and  
3 gas operator comes in here and says, "These surface  
4 owners aren't claimants." That's a legal conclusion that  
5 they have reached. The rule -- the statute was enacted  
6 to stay out of circuit court so the wells could be  
7 drilled. That's the purpose of that statute. I mean,  
8 let's don't kid ourselves about that. That's the purpose  
9 of it. Let's stay out of circuit court. Let's drill  
10 wells. So the methodology that was used in that statute  
11 was to say that any claimant could participate in the  
12 unit and that the money would be escrowed until such time  
13 as the legal ownership of the unit was determined by  
14 court proceeding, agreement, or otherwise. And so we  
15 come here as claimants. I have said to this Board and  
16 this Board is, I'm sure, tired of hearing me say it. I  
17 think there ought to be a special situation here where a  
18 claimant comes in and says I want to pool a unit and  
19 there's already been a well drilled or proposed to be  
20 drilled. I don't think that claimant ought to have to go  
21 through all this. I think it ought to be the operators  
22 that ought to go through all this. I've said that to the  
23 Board many times. It hasn't resolved itself and I will  
24 continue to tell the Board that and continue to take that  
25 position with this Board and anybody else that will

1 listen to me. But at any rate, when a claimant comes in  
2 here as a claimant, they are telling this Board they have  
3 an ownership interest in this unit and in the pool of gas  
4 underlying their property. My clients are claimants to  
5 the coalbed methane which is being extracted at this very  
6 minute.

7 MR. CHAIRMAN: Thank you, Mr. Johnson. Mr. Counts.

8 MR. COUNTS: Mr. Chairman and members of the Board, if I have  
9 not consistently made Mr. Johnson aware of my argument  
10 that his application is an incomplete application and  
11 that the notice is defective, then I certainly stand  
12 corrected. I believe I have done that. I think that's  
13 consistently been Equitable's position over the past six  
14 or seven months. Mr. Johnson indicates that he has  
15 relied upon Equitable's representations as to its survey,  
16 as to its ownership list that were submitted, etcetera,  
17 as being effectively "the gospel". I have a real concern  
18 from the Board's standpoint of whether or not the Board  
19 contemplates the fact that any operator or any applicant  
20 can come before this Board utilizing a survey or utiliz-  
21 ing a plat or certifying as to ownership when that work  
22 has been done by another party and not under the dominion  
23 and control and not under the employee of that applicant  
24 requesting that agency action. If Mr. Johnson's entitled  
25 to come in and use Equitable's permit application plat,

1 use their ownership list, etcetera, we question is where  
2 does that stop from the Board's prospective? Can an  
3 applicant come in and use a tax map to reflect ownership  
4 and reflect ownership accurately? Can a claimant come in  
5 or can an applicant come in and use a well plat that was  
6 done fifteen years ago? I don't think that's what's  
7 contemplated by the regulations. I don't think it's  
8 contemplated by the Board. I think what's contemplated  
9 by the Board is that you will do your own title invest-  
10 igation, that will do your own survey, and frankly, that  
11 you'll do your own application. So I have a concern that  
12 the Board accept that type of information with respect to  
13 an application submitted and that it accept that type of  
14 certification with respect to that type of information.  
15 However, if Mr. Johnson is so prepared to rely upon the  
16 information that we have submitted, I would reference you  
17 to our permit application which states gas, oil, and  
18 royalty owners within the drilling unit established by  
19 the Virginia Gas and Oil Board -- it says, "Pine Mountain  
20 Oil and Gas Company." There's nobody else on there.  
21 There's no Mr. White. There's nobody else.

22 MR. MASON: I don't know what any of this has to do -- he  
23 asked you what is your definition of a claimant. I have  
24 not heard one word from you to respond to that.

25 MR. COUNTS: Well, Mr. Johnson's first response was with



1 respect to whether or not the application was complete.  
2 My first response was to Mr. Johnson's response with  
3 regard to the application.

4 MR. MASON: Well, I wish you would respond to Mr. Wampler.

5 MR. COUNTS: I'm sorry, Mr. Mason. I didn't understand Mr.  
6 Wampler's question at that point in time to be specific-  
7 ally with respect to what my definition of a claimant is.

8 MR. JOHNSON: That's what he asked me.

9 MR. COUNTS: My definition of a claimant is an oil or gas  
10 owner. Just the same as provided in 361.22.A.1. 361.22  
11 states "that when there are conflicting claims". I  
12 helped draft this statute. I'm aware of the legislative  
13 history on it. I know that surface owners were not  
14 intended to be claimants. 361.22.A says when there are  
15 conflicting claims of the ownership, obviously between  
16 the only people who have ever been determined to be  
17 owners of coalbed methane, coal owners and gas owners,  
18 coal lessees, potential gas lessees. This is qualified  
19 in 361.22.A.1 with respect to Paragraph 1. It says,  
20 "Simultaneously with the filing of such application, the  
21 oil or gas owner applying for the order." It doesn't say  
22 the surface owner applying for the order. Mr. Chairman,  
23 I'm prepared to go on with a much lengthier discussion of  
24 why his clients are not claimants, but I understood that  
25 we were addressing the procedural aspects of this first.

1 If, in fact, the application is incomplete, I don't  
2 personally understand how we can get to the merits of  
3 whether or not Mr. Johnson's clients are claimants. I  
4 think it is clear, unequivocally clear, that this  
5 application is blatantly incomplete and there are no  
6 other rules which apply to surface owners irrespective of  
7 what Mr. Johnson may want. Now, Mr. Johnson wants this  
8 Board to promulgate rules with respect to having a lesser  
9 burden on surface owners than this Board certainly has  
10 the authority to be able to do that. But I would  
11 suggest to you, Mr. Chairman and members of the Board,  
12 that to the extent this information is not required, that  
13 due process is not afforded, that notification is not  
14 correct, and that any application or order resulting  
15 would be void.

16 MR. CHAIRMAN: Mr. Johnson, I'll ask you one follow-up  
17 question to your statement. Your application to the  
18 Board is to pool interest based on the surface owner's  
19 interest only or surface owner's interest in the surface  
20 and the coalbed methane?

21 MR. JOHNSON: The surface owner's interest in the coalbed  
22 methane.

23 MR. CHAIRMAN: Okay.

24 MR. JOHNSON: Let me say this. I think for Mr. Counts to come  
25 before this Board, having filed countless applications in

1 which the surface owners were listed as potential  
2 claimants to the oil and gas, and to come up here tell  
3 you that they can't be and they aren't and they never  
4 will be is ridiculous. This Board has ruled on countless  
5 applications in which it was the surface owner as  
6 claimants to the oil and gas who were forced pooled.  
7 That was the purpose for this statute. Don't let anybody  
8 try to fool anybody about that. The purpose of the  
9 statute was to keep people from going to circuit court,  
10 to keep the issue of the ownership of the oil and gas out  
11 of circuit court till the wells could be drilled. Now,  
12 then someone -- a claimant comes in here and says, "We  
13 want the same thing these oil and gas companies want."  
14 And the oil and gas company says, "Oh, no. You can't  
15 have that. You don't know enough. You don't have enough  
16 information." We have relied on what they gave us and  
17 they gave Mr. Fulmer in the filing of their application  
18 to complete the application. If they think there's  
19 something wrong, then they should tell this Board if  
20 there's something wrong. If they think the title work is  
21 wrong, if they think their plat is wrong, then they  
22 should come in here and tell us that. This is not a  
23 situation where they should be trying to keep this from  
24 happening or try to keep the Board from allowing this  
25 pool to be formed. They ought to be helping us if

1           there's something wrong with the application. Instead,  
2           they want to tell us, "No. You can't have your applica-  
3           tion because you haven't spent the thousands of dollars  
4           we have in completing the oil and gas application -- the  
5           permit application."  
6   MR. CHAIRMAN: Thank you, Mr. Johnson.  
7   MR. COUNTS: Just a brief rebuttal, Mr. Chairman.  
8   MR. CHAIRMAN: Excuse me. I'm just going to ask if the Board  
9           members have any other questions at this point in time?  
10   MR. MASON: I do.  
11   MR. CHAIRMAN: Mr. Mason.  
12   MR. MASON: I'd like to ask Mr. Counts, does your client know  
13           the formation to be produced by this well?  
14   MR. COUNTS: Yes, sir.  
15   MR. MASON: So whether he tells you in the application or not,  
16           you already know it?  
17   MR. COUNTS: That would be correct. Yes, sir.  
18   MR. MASON: How about the proposed cost of the well?  
19   MR. COUNTS: Yes, sir.  
20   MR. MASON: How about the permit number?  
21   MR. COUNTS: Yes, sir.  
22   MR. MASON: How about the estimated production?  
23   MR. COUNTS: Yes, sir.  
24   MR. MASON: And the estimated reserves?  
25   MR. COUNTS: Yes, sir.

1 MR. MASON: So the lack of that being included in the applica-  
2 tion doesn't deny notice of those things to your client  
3 at all, does it?  
4 MR. COUNTS: Not to my client, no, sir.  
5 MR. MASON: Okay. Thank you.  
6 MR. COUNTS: But my client, of course, is not the only  
7 affected or potentially effected party in this applica-  
8 tion.  
9 MR. MASON: I understand.  
10 MR. JOHNSON: Let me respond to just one --  
11 MR. MASON: I didn't ask you a question, Mr. Johnson.  
12 MR. JOHNSON: I'd love to answer it.  
13 MR. MASON: But I didn't ask you the question.  
14 MR. JOHNSON: Okay. I understand what you're saying.  
15 MR. CHAIRMAN: Mr. Counts, how is your client prejudiced by  
16 the applicant's failure to notice this .19 percent  
17 surface owner?  
18 MR. COUNTS: Well, I don't believe that my client is prejudic-  
19 ed by failure to notify the .19 percent interest. I  
20 think again, Mr. Chairman, it's a question of whether the  
21 application was complete and whether notice was proper.  
22 MR. CHAIRMAN: Any other questions, members of the Board?  
23 MR. MCGLOTHLIN: No, sir.  
24 MR. COUNTS: Sir, I would like to respond just thirty seconds  
25 to Mr. Johnson's allegations that he made.

1 MR. CHAIRMAN: I'll give you thirty seconds.

2 MR. COUNTS: Thank you, sir. That's all I need. I know I've  
3 violated that time frame before, haven't I, Mr. Mason?  
4 Basically a claimant from a surface owner, sometimes  
5 that's used interchangeably in terms of what a residue  
6 mineral owner is and often times a residue mineral owner  
7 is referred to as a surface owner. A residue mineral  
8 owner being a person who as a result of interpretation of  
9 a deed because of deed construction problems or am-  
10 biguities a "surface owner may end up with oil and gas  
11 or coal or certain other minerals in addition to their  
12 surface estate." So there could be what's usually  
13 referred to as a surface owner who also ends up with an  
14 ownership in minerals.

15 MR. CHAIRMAN: Excuse me, Mr. Counts. I'm going to cut you  
16 off there because I believe we are getting into arguing  
17 merits of the issue rather than the application.

18 MR. COUNTS: I think so, too.

19 MR. CHAIRMAN: And I was trying to simply ask enough questions  
20 to get before this Board of what this application  
21 constituted in what we were being asked to consider it  
22 as a complete application. What's your pleasure, Board?  
23 We're dealing now with whether or not we have an applica-  
24 tion proper before this Board?

25 MR. MCGLOTHLIN: I'd like to say that I feel that the legisla-



1           ture in drafting the Oil and Gas Act of 1990 -- first,  
2           I'm sure the wise ladies and gentlemen of the legislature  
3           neglected to define claimant for a particular reason.  
4           One that I am unaware of, but I'm sure they had good  
5           reasons behind it. I feel that a claimant is a claimant.  
6           I mean, there is no definition in the statute. If Mr.  
7           White feels he's a claimant, he certainly has every right  
8           to come before this Board and state his position. I also  
9           think that is it also Mr. White's responsibility to  
10          follow the procedures of this Board in that an applica-  
11          tion must be correct. I think it's his financial  
12          responsibility to have his own title search done. And if  
13          anybody's going to come before this Board I think they  
14          need to have their research and their figures before us  
15          and not rely on somebody elses. I guess that's all I'd  
16          like to say.

17       MR. MASON: I'd like to make a motion.

18       MR. CHAIRMAN: Okay.

19       MR. MASON: In accordance with the provisions of Section 2.1-  
20               344.A, Code of Virginia, I move that the Virginia Gas and  
21               Oil Board convene in executive session for the purpose of  
22               consultation with legal counsel pertaining to the  
23               interpretation of the Virginia Gas and Oil Act which  
24               requires legal advice by counsel.

25       MR. CHAIRMAN: Okay. You've heard the motion.

1 MR. MASON: Second.

2 MR. CHAIRMAN: Motion and a second. All in favor signify by  
3 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)  
4 We're in executive session.

5 (THEREUPON, THE BOARD WENT INTO EXECUTIVE SESSION AND  
6 AFTER DELIBERATING RETURNED TO OPEN SESSION:)

7 MR. EVANS: I move that the Board reconvene in open session  
8 and affirm that only matters exempt from the opening  
9 meeting requirement and only matters within the scope of  
10 the motion declaring the close session were discussed  
11 during the executive meeting and the members of the Board  
12 here so state.

13 MR. CHAIRMAN: Do I have a second?

14 MR. HARRIS: Second.

15 MR. CHAIRMAN: Motion and a second. All in favor signify by  
16 saying yes. (ALL AFFIRM.) All opposed say no. (NONE.)  
17 The motion carries. Whereas the Virginia Gas and Oil  
18 Board has convened in executive meeting on the State  
19 pursuant to an affirmative recorded vote in accordance  
20 with the provisions of the Virginia Freedom of Informa-  
21 tion Act and whereas Section 2.1-344.1 of the Code of  
22 Virginia requires required certification of the Virginia  
23 Gas and Oil Board that such executive meeting was  
24 conducted in conformity with Virginia law. Now therefore  
25 let it be resolved that the Virginia Gas and Oil Board



1 hereby certifies that to the best of each members  
2 knowledge only public business matters lawfully exempted  
3 from the open meeting requirements by Virginia law were  
4 discussed in the executive meeting to which this certifi-  
5 cation resolution applies and only such public business  
6 matters as were identified in the motion convening the  
7 executive meeting were heard, discussed, or considered by  
8 the Virginia Gas and Oil Board.

9 (ROLE CALLED.)

10 MR. CHAIRMAN: The record will show that there was affirmative  
11 vote from all members present. Board, what's your  
12 pleasure?

13 MR. MASON: Mr. Chairman, having considered this, discussed it  
14 with our counsel, I believe that the procedural rules  
15 that we've adopted are the rules that we should live by.  
16 Those rules are specific and require individual items to  
17 be included in each application. I think based upon that  
18 that the information included in this application is not  
19 complete. I believe that the information to complete  
20 this application is reasonable available to the petition-  
21 er and for that reason I move that we dismiss this  
22 petition without prejudice.

23 MR. EVANS: Second.

24 MR. CHAIRMAN: We have a motion and a second. All in favor  
25 signify by saying yes. (ALL AFFIRM.) All opposed say

1        no. (NONE.) The motion carries.

2 MR. JOHNSON: I note my objection to the Board's ruling for  
3 the record and I would also request in lieu of going  
4 through this again and reiterating again, that the Board  
5 undertake the motion with regard to the Holbrook matter  
6 which is next on the docket.

7 MR. CHAIRMAN: What's your motion, Mr. Johnson?

8 MR. JOHNSON: All I'm saying is I certainly note my  
9 objection for the record with regard to the ruling of the  
10 Board. Other than that, I would ask that the Board  
11 undertake to consider the next matter and I would assume  
12 you would make the same ruling, but I would ask the  
13 Board to proceed on the Holbrook matter likewise.

14 MR. CHAIRMAN: Mr. Johnson, I don't think we're prepared,  
15 unless the Board members correct me, to do that on  
16 Holbrook without examining the application.

17 MR. JOHNSON: Okay.

18 MR. CHAIRMAN: If you want to continue that or if you want to  
19 make some decision on your own, but we're prepared to  
20 exam the application on the Holbrook matter.

21 MR. JOHNSON: I'd move to continue the Holbrook application.

22 MR. COUNTS: Mr. Chairman, I object to the continuance of the  
23 Holbrook application. It's already been -- you don't  
24 need to go through the arguments again, but it's already  
25 been continued on numerous occasions. Mr. Johnson and

1        his client have had more than adequate opportunity to  
2        comply with Board requires and as result I would object  
3        to any continuance of the Holbrook application.

4        MR. CHAIRMAN: We have a motion to continue with opposition.  
5        What's your pleasure?

6        MR. EVANS: I move that this Board go forward and hear  
7        whatever the parties present have to present on this  
8        matter.

9        MR. KELLY: Second.

10       MR. CHAIRMAN: Motion and a second. All in favor signify  
11       by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)  
12       Then we will hear this case.

13       MR. JOHNSON: I think counsel is in a position in order to  
14       allow the Board to proceed to other the matters that the  
15       Board wishes to consider that we would stipulate, and I  
16       believe that Mr. Counts on behalf of Equitable who's the  
17       only other party present here would stipulate, that the  
18       arguments and information contained in the application  
19       and the information are the arguments that Mr. Count's  
20       made with respect to the other application are identical.  
21       The sources of the information that -- and I can certain-  
22       ly state for my client the sources of the information  
23       that we used in order to accumulate and prepare the  
24       application, those are identical. The assumptions that  
25       we made with regard to the application are identical.

1 The arguments that we would make with regard to our  
2 position as claimants are identical. The objections on  
3 the record that we made with regard to the failure of  
4 Equitable to follow procedural rules are identical. Do  
5 you have anything you want to state, Rick, with regard to  
6 the stipulation?

7 MR. CHAIRMAN: I'll get into that with him. Let me deal just  
8 with what you wish to put before the Board.

9 MR. JOHNSON: If the Board will accept the stipulation that we  
10 would have the same statements to make on the record with  
11 regard to what's in the application, the methodology we  
12 used to prepare the application -- we also want to put  
13 into the record the -- we do want to file with the  
14 inspector, and let Mr. Counts look at this, the cer-  
15 tifications that we filed and we also filed a similar  
16 statement with regard to the service of the certificate  
17 of notice. We also have a similar certificate, Mr.  
18 Counts, in this file. We would want to put in the record  
19 the green card certifies with regard to notice.

20 MR. CHAIRMAN: Is there any objection to that?

21 MR. COUNTS: I have no objection to putting it into the  
22 record. I would also note that the service is defective.

23 MR. CHAIRMAN: I'm going to give you a chance to do that. Do  
24 you have anything else, Mr. Johnson?

25 MR. JOHNSON: No. And if there's anything that the Board

1       wants to ask me I'd be glad to respond.

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

3   MR. MASON: I was going to ask one question. I was looking at

4       the survey and I don't know whether it's properly

5       directed to -- as I understand it Mr. Holbrook is a

6       surface owner, is that correct?

7   MR. JOHNSON: He owns a surface and claims as an owner in the

8       coalbed methane, that's right.

9   MR. MASON: I understand. Does he know whether State Route

10       660 is a right-of-way or just a State owned fee there,

11       do you know?

12   MR. HOLBROOK: They've got a right-of-way.

13   MR. MASON: It's a right-of-way. In other words, you are the

14       surface owner under the road?

15   MR. HOLBROOK: Yes, sir.

16   MR. MASON: Thank you.

17   MR. CHAIRMAN: Any other questions for Mr. Johnson and Mr.

18       Holbrook? If not, Mr. Counts.

19   MR. COUNTS: Mr. Chairman, only that our response would be

20       essentially in agreement with Mr. Johnson in that we

21       perceive that this application is incomplete and that the

22       notice is therefore defective.

23   MR. CHAIRMAN: Any questions of Mr. Counts?

24   MR. MASON: I just want to know , there is no allegation that

25       there are any un-notified surface owners here?



1 MR. COUNTS: That's correct.

2 MR. CHAIRMAN: Other questions? What's your pleasure?

3 MR. COUNTS: Excuse me. I think I misunderstood Mr. Mason's  
4 question.

5 MR. CHAIRMAN: He asked is there any challenge that the  
6 surface owners of this tract have been notified?

7 MR. COUNTS: Yes, sir, there is. I apologize. I misunder-  
8 stood the question. With regard to this tract, which is  
9 1935 in this matter and is a petition by Mr. Harold  
10 Holbrook, there is also another surface owner of Mr.  
11 Charles White whom according to the notice that I have  
12 reviewed was not notified.

13 MR. WAMPLER: Again, to clean up the record, this is Docket  
14 Number VGOB-0521-118.

15 MR. MASON: On the Exhibit C it notes Harold Holbrook as  
16 owning 45.58 percent. Is Mr. White the surface owner of  
17 the balance of that 60 acre unit?

18 MR. COUNTS: That is my understanding, yes, sir.

19 MR. MASON: If I may, Mr. Johnson, direct the question to you.  
20 Is that correct?

21 MR. JOHNSON: I believe that's correct. Mr. Holbrook did  
22 notify Mr. White, but not in sending a certified when he  
23 initially undertook this matter. I was unaware of that.  
24 And Mr. Holbrook has a green card where he sent him the  
25 notification, but as far as that other percentage



1           according to my client now, that is Mr. Charlie White?

2 MR. HOLBROOK: Yes.

3 MR. MASON: They're the only two surface owners, is that

4           correct?

5 MR. JOHNSON: Uh-huh. Is that the only one?

6 MR. HOLBROOK: Yes. Charlie joins me there and then Herbert

7           -- or James and all of them together own that one.

8 MR. MASON: But those two surface owners together would

9           constitute 100 percent of the unit?

10 MR. JOHNSON: Uh-huh.

11 MR. MASON: Thank you.

12 MR. JOHNSON: As far as we know, yes, sir.

13 MR. COUNTS: Mr. Mason, I'd like to stipulate that for

14           purposes of our title research that that's been done with

15           regard to what's required to file a permit application

16           with regard to surface owners. I don't mean to convey to

17           the Board that we have undertaken a title examination

18           with regard to the entire surface underlying this unit

19           nor represent that these may be the only surface owners

20           underlying this unit.

21 MR. MASON: Thank you.

22 MR. CHAIRMAN: Other questions? Do we have a motion?

23 MR. EVANS: Mr. Chairman, I'd like to make a motion to dismiss

24           this application as incomplete and noting Mr. Mason's

25           motion -- the same comments made prior to his motion in

1        the last case.

2 MR. CHAIRMAN: And I assume that's also to be deemed  
3        incomplete without prejudice to be dismissed?

4 MR. EVANS: That's right.

5 MR. KELLY: Second.

6 MR. CHAIRMAN: A motion and a second. All in favor signify by  
7        saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)  
8        Thank you.

9 MR. JOHNSON: I note my objection on the record to the motion  
10        made and the ruling of the Board.

11 MR. CHAIRMAN: So noted.

ITEM III

1  
2  
3 MR. CHAIRMAN: The next item on the Board's agenda is the  
4 petition for the appeal the Inspector's decision under  
5 45.1- 361.23 concerning proposed well V-2001 of Equitable  
6 Resources Exploration located in Prater Quadrangle.  
7 This is Docket Number VGOB-91-0924-145. Would any of the  
8 parties that wish to address the Board regarding this  
9 please step forward. (Pause.) Are any other parties  
10 that appealed this to the Board present?

11 MR. COUNTS: No, Mr. Chairman. Some of the parties requested  
12 at the last hearing that this matter be continued until  
13 this hearing based upon a death in the family and as a  
14 result there was notice provided by the DMD with regard  
15 to the continuance.

16 MR. CHAIRMAN: Mr. Fulmer, will you tell the Board what you've  
17 done in respect to notification to the parties?

18 MR. FULMER: Mr. Chairman, we at the Department listed this  
19 item among the agenda which was published in the Bristol,  
20 Bluefield and Kingsport papers and in all the general  
21 circulation in the area in which this agenda item  
22 appears. We also talked to a member of one of the  
23 parties on the day prior to the last hearing date and at  
24 that time they had requested for a continuance. We  
25 informed them of the Board's decision to continue the

1 matter to today's hearing and that's the extent of what  
2 we have done at the Department.

3 MR. MCGLOTHLIN: Who requested the -- who's the other party?

4 MR. FULMER: Lucy Rasnick.

5 MR. CHAIRMAN: Well, since this has come up, the other party  
6 is -- there's a letter in our file that says, "Please be  
7 advised that we wish to appeal the decision of the  
8 hearing on 7/18/91 on proposed well site V-2001." Yours  
9 truly, Lucy Rasnick, George Rasnick, Stafford Rasnick.  
10 And it is signed by all those three parties. I'll ask  
11 again, for the record, are any of those that appealed  
12 this decision present hear today? And the record will  
13 show that none are present.

14 MR. MASON: I would move that we dismiss this appeal for the  
15 failure to prosecute the claim.

16 MR. CHAIRMAN: Mr. Fulmer, when you discussed or had conver-  
17 sation with Lucy Rasnick did you tell her the date of  
18 today's hearing and it had been continued?

19 MR. MASON: No, sir, not at that time. Did I tell this  
20 specific date, 10/15. I told her that it would on the  
21 next docket in October.

22 MR. CHAIRMAN: Was she then notified of this docket?

23 MR. FULMER: Through the publication, not directly.

24 MR. CHAIRMAN: Okay.

25 MR. MASON: Mr. Chairman, I'm just curious -- I mean, if

1 proper notification of the hearing and so forth -- I  
2 mean, I'm sensitive to the fact that we want to make sure  
3 these people have had ample opportunity to prosecute  
4 their claim, but if we've gone forward in accordance with  
5 our rules and notice has been given --

6 MR. FULMER: One point I would like to interject about this,  
7 too, for the Board's information is as far as I know --  
8 maybe I'm out of bounds here, but as far as I know that  
9 same notice by the Department was also given to those  
10 named in the appeal by the same methods.

11 MR. MASON: I understand. I mean, I just don't see that the  
12 Board has any choice if someone files an appeal and then  
13 fails to appear in pursuant, I don't know that we have  
14 any choice.

15 MR. CHAIRMAN: Okay. We have a motion by Mr. Mason.

16 MR. MCLOTHLIN: Second.

17 MR. CHAIRMAN: A motion and a second. All in favor signify  
18 by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)  
19 Thank you.  
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ITEM IV

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3 MR. CHAIRMAN: The next item on the agenda is Docket Number  
4 VGOB-91-0924-150 and this is a petition for the estab-  
5 lishment of a production unit known as BUS2 for the  
6 production of coalbed methane gas from Pocahontas Gas  
7 Partnerships.

8 MR. FULMER: Mr. Chairman, I have a transmittal letter to my  
9 attention on --

10 MR. CHAIRMAN: Would the parties that want to address the  
11 Board in this come forward please.

12 MR. FULMER: -- the 11th day of October concerning this  
13 particular agenda item.

14 MS. McCLANNAHAN: I'm Elizabeth McClannahan and I represent  
15 Pocahontas Gas Partnership. I think Mr. Fulmer is giving  
16 you a copy of our request for a continuance on the BUS2  
17 application and that would be our request.

18 MR. CHAIRMAN: Are there any other parties present that wish  
19 to address the Board with this request for a continuance?

20 MS. McCLANNAHAN: We did file a notification to each of the  
21 parties last month as requested by the Board about it  
22 being continued and we did not give any specific date as  
23 to the date that it would be heard. So proper notice has  
24 been given to everyone who was an ownership interest in  
25 the unit.



1 MR. CHAIRMAN: Would you tell the Board why you request a  
2 continuance, please?

3 MS. McCLANNAHAN: I suppose the best way to explain this is  
4 that we are considering our operational situation at this  
5 time and trying to make sure that this is exactly or not  
6 exactly what we would request in connection with our mine  
7 development.

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

9 MR. MASON: Is that by way of saying that you're not sure you  
10 want to go forward on this basis, is that what you mean,  
11 you're reconsidering this?

12 MS. McCLANNAHAN: That's correct.

13 MR. McGLOTHLIN: When it was continued last month -- and I beg  
14 you for a little lieu way here since I was absent-- was  
15 the next monthly meeting stipulated as the continuance  
16 date?

17 MR. CHAIRMAN: I don't recall whether there was any stipula-  
18 tion as to when. It was just requested timely last time  
19 prior to the Board hearing and the request was granted  
20 and it was scheduled then for this hearing. The reason  
21 this request comes before you is because it was received  
22 by the Inspector's office on the 11th and in keeping with  
23 the Board's stipulation that a minimum of ten days notice  
24 prior to the hearing that we wouldn't consider that  
25 without coming before the Board and that's what they've

1 done. They've noticed the parties and they are now  
2 coming before the Board asking for a continuance of this  
3 hearing. And it says here in this continuance that it's  
4 continued to the November docket. So I would assume  
5 you'd be prepared to bring this back before the Board at  
6 the November hearing, is that a correct assumption?

7 MS. McCLANAHAN: At this particular time we believe that we  
8 will be prepared at the November docket to either go  
9 forward with the application as it's filed or we will  
10 withdraw it and file a different application at that  
11 time.

12 MR. MASON: Mr. Chairman, I think there's been of this  
13 petition and the subject matter of it and some of the  
14 issues involved are peculiarly difficult and somewhat of  
15 a first impression in regard to our activities here.  
16 And I'm certainly sympathetic to the difficulty in trying  
17 to bring a petition to deal with those issues and I think  
18 the Board should grant the broadest possible latitude in  
19 allowing a petitioner or an applicant to go forward in  
20 this in the best possible way and I would move that we  
21 grant the continuance.

22 MR. CHAIRMAN: We have a motion to grant the continuance.

23 MR. HARRIS: Second.

24 MR. CHAIRMAN: A motion and a second. All in favor signify by  
25 saying yes. (ALL AFFIRM.) All opposed say no. (NONE.)

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The continuance is granted.

MS. McCLANNAHAN: Thank you.

MR. CHAIRMAN: The Board will take a five minute recess.

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

ITEM V

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2  
3 MR. CHAIRMAN: The next item on the Board's agenda is a  
4 petition for the establishment of a compulsory pooled  
5 drilling unit under 45.1-361.22 from Equitable Resources  
6 Exploration for proposed well V-1942, Docket Number VGOB-  
7 91-1015-153. Would all the parties that wish to address  
8 the Board in this matter please come forward.

9 MR. COUNTS: Thank you, Mr. Chairman. First off, I would like  
10 to submit, if I may, a copy of the original affidavit of  
11 publication. This was sent out last week with our  
12 certificate of compliance. In here we had attached an  
13 original when, in fact, it was a copy and I do want to  
14 provide the Board with that. And in addition, in the  
15 mean time we've also received one additional return  
16 receipt. I'd also like to submit that so that the Oil  
17 and Gas Inspector's office will have that. The affidavit  
18 of compliance was submitted in a timely fashion.

19 MR. FULMER: Mr. Chairman, before we proceed any further I do  
20 have copies for the Board. On the petition you will see  
21 the dates involved when it was submitted to the Division.

22 MR. COUNTS: Mr. Chairman, I prepared to proceed at the  
23 leisure of the Board.

24 MR. CHAIRMAN: Do you have a copy of that?

25 MR. COUNTS: Yes, sir, I do.

1 MR. CHAIRMAN: Proceed.

2 MR. COUNTS: Mr. Chairman, this is a request for a compulsory  
3 pooling of a conventional well. Equitable has under  
4 lease in this unit, to put things in a proper prospect-  
5 ive, 97.86 percent of the acreage under lease. So we're  
6 only seeking actually to force pool approximately 2.2  
7 percent of those parties that we have not been able to  
8 contact with respect to this matter. I'd first like to  
9 call Mr. Dennis Baker.

10 COURT REPORTER: (Swears witness.)

11  
12 DENNIS BAKER

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

15  
16 DIRECT EXAMINATION

17  
18 BY MR. COUNTS:

19 Q. Mr. Baker, would you state your full name and your job  
20 title and responsibilities, please?

21 A. Dennis Baker. I work for Equitable Resources as a staff  
22 land man. My responsibilities include the supervision  
23 and acquisition of agents for areas in Virginia and  
24 Kentucky.

25 Q. And are you familiar with this application?

1 A. Yes.

2 Q. And has notification been made to all persons required  
3 under 361.319?

4 A. Yes.

5 Q. Does Equitable own drilling rights involved in the units  
6 herein?

7 A. Yes, they do.

8 Q. The Board has a copy of the application filed by Equit-  
9 able. Does the proposed unit depicted in Exhibit A  
10 include all the acreage within a 1,320 foot radius of  
11 well V-1942?

12 A. Yes, it does.

13 Q. And would you state for the record the interest of  
14 Equitable in this unit?

15 A. Yes.

16 Q. Would you state what the amount of interest is, what  
17 percentage of the unit does Equitable have?

18 A. Approximately 97.8 percent.

19 Q. And are you familiar with the ownership or the drilling  
20 rights of parties other than Equitable underlying this  
21 unit?

22 A. Yes, I am.

23 Q. And would you indicate the percentage of unleased  
24 interest?

25 A. Approximately 2.2 percent.



1 Q. And are all those unleased respondents set out in Exhibit  
2 B to the application filed on behalf of Equitable for V-  
3 14927  
4 A. Yes, sir.  
5 Q. Subsequent to the filing of the application have you  
6 continued to reach an agreement with the respondents  
7 listed in Exhibit B?  
8 A. Yes, we have.  
9 Q. As a result of those efforts do you wish to dismiss any  
10 of these respondents?  
11 A. No, sir.  
12 Q. Do you have any revisions to make to Exhibit B?  
13 A. Yes. We have two revisions. On Page 5 of the Exhibit B  
14 we have the name of a Cecil Childress we have listed as  
15 being leased and he needs to be indicated as unleased.  
16 The second revision is on Page 6, Jerry and Ann Trimble,  
17 they are listed as being leased and they are not leased.  
18 Q. Has notification been sent to each of these parties?  
19 A. To the best of my knowledge yes, it has.  
20 Q. Have you made efforts to determine the whereabouts of  
21 deceased individuals and if deceased, the names and  
22 addresses of their heirs, successors or assigns?  
23 A. Yes, sir.  
24 Q. And in so doing, what types of sources have you checked  
25 and what efforts have you made?

1 A. We have checked deed sources, probate records, assessors  
2 records. We have contacted individuals, family, friends  
3 that may have known of anyone that we could, telephone  
4 directory, city directory.

5 Q. Mr. Baker, in your opinion was due diligence exercised to  
6 locate each of these respondents named herein?

7 A. Yes, it was?

8 Q. And are the addresses set out in Exhibit B to the  
9 application the last known addresses of these respond-  
10 ents?

11 A. Yes, it has, with a couple of revisions whereby the post  
12 office has sent us forwarding addressed and we have since  
13 remailed notification.

14 Q. And have you attempted to contact each of the respondents  
15 and obtain a lease from those respondents?

16 A. Yes, we have.

17 Q. And are you requesting the Board to force pool all  
18 interest listed at Exhibit B that are stated as -- other  
19 than those that are stated as leased?

20 A. Yes, sir.

21 Q. Subject to the revisions which you've made today in the  
22 record?

23 A. Yes, that is correct.

24 Q. Does Equitable seek to force pool drilling rights of each  
25 individual respondent, if living, and if deceased, the

1 unknown successor or successors to any deceased in-  
2 dividual respondent?

3 A. Yes, sir.

4 Q. Does Equitable seek to force pool the drilling rights of  
5 any person designated as a trustee acting in that  
6 capacity and if not acting in such a capacity, is  
7 Equitable seeking to force pool the drilling rights of  
8 the successor of such trustee?

9 A. Yes, that is correct.

10 Q. Mr. Baker, are you familiar with the fair market value of  
11 drilling rights in these units in the surrounding area?

12 A. Yes, I am.

13 Q. Would you advise this Board as to what those values are?

14 A. The term of the oil and gas leases are five years. It  
15 provides for a one-eighth royalty with a bonus payment of  
16 \$5 per acre.

17 Q. And did you gain your familiarity with these terms by  
18 acquiring other oil and gas leases and other agreements  
19 involved in the acquisition of drilling rights in the  
20 surrounding area?

21 A. Yes, I did.

22 Q. And the land that's involved herein?

23 A. Yes, sir.

24 Q. In your opinion do the terms you've testified to re-  
25 present the fair market value of and a fair and reason-

1       able compensation to be paid for the drilling rights  
2       within this unit?

3       A.    Yes, sir.

4       Q.    Based upon your testimony with regard to the fair market  
5       value do you recommend that those parties not dispensed  
6       at this hearing be allowed the following options with  
7       respect to their ownership interest within the unit?  
8       First off, the option to participate. Secondly, the  
9       option to elect a cash bonus of \$5 per net mineral acre  
10      plus a one-eighth of eight-eighths royalty. Thirdly, an  
11      option that in lieu of a cash bonus and a one-eighth of  
12      eight-eighths royalty they share in the operation of the  
13      well on a carried basis as a carried operator under the  
14      following conditions; that such carried operator be  
15      entitled to the share of production from the tracts  
16      pooled accruing to his interest, exclusive of any royalty  
17      or overriding royalty reserved in any leases assignments  
18      thereof or agreements relating thereto, but only after  
19      the proceeds allocable to his share equal 300 percent of  
20      the share cost in the interest of a carried operator of a  
21      leased tract and 200 percent share of the cost allocable  
22      to the interest of an unleased tract?

23      A.    Yes, that is correct.

24      Q.    Do you recommend that the order provide that elections by  
25      respondent be in writing and sent to the applicant at the

1 address stated in the application?

2 A. Yes, with the provision.

3 Q. Do you recommend that the force pooling order provide

4 that if no written election is properly made by respon-

5 dent then such respondent shall be deemed to have

6 elected the cash and royalty option in lieu of participa-

7 tion?

8 A. Yes, sir.

9 Q. How much time from the date of the order should the

10 respondent have to file a written election?

11 A. Twenty days from receipt of the order -- or from the date

12 of the order.

13 Q. If the respondent elects to participate how much time

14 from the date of the order should the respondent have to

15 pay applicant in response for proportion of a share of

16 the well cost?

17 A. Twenty days.

18 Q. Does the applicant expect the party electing to par-

19 ticipate to pay in advance that party's share of the

20 completed well cost?

21 A. Yes.

22 Q. How much time from the date of the order should the

23 applicant have to pay or tender any cash bonus becoming

24 due under option one under the forced pooling order?

25 A. Twenty days.

1 Q. Do you recommend that the forced pooling provide that if  
2 the respondent elects to participate but fails to pay the  
3 respondent's proportion share of well cost satisfactory  
4 to applicant for payment of the well cost, then respondent's  
5 election to participate should be treated as  
6 having been withdrawn and void and such respondent should  
7 be treated as if no election had been made under the  
8 forced pooling order?

9 A. Yes, sir.

10 Q. Do you recommend further that the forced pooling order  
11 provide that where a respondent elects to participate but  
12 defaults in regard to the payment of well cost any cash  
13 sums becoming dueable or payable to such respondent  
14 within thirty days after the last date on which respondent  
15 could have paid or made satisfactory arrangement for  
16 the payment of well cost?

17 A. Yes.

18 Q. Do you recommend that the forced pooling order provide  
19 that if a respondent refuses to accept the cash bonus or  
20 the cash bonus cannot be paid to a party for any reason  
21 or there is a title defect in respondent's interest that  
22 the operator create an escrow account for the respondent's  
23 benefit until the money can be paid to the operator  
24 or until the title defect is cured to the operator's  
25 satisfaction?



1 A. Yes.

2 Q. And who do you request be designated as the operator  
3 under the forced pooling order?

4 A. Equitable Resources Exploration.

5 MR. COUNTS: I have no further questions of Mr. Baker. Mr  
6 Chairman.

7 MR. CHAIRMAN: Does the Board have questions?

8 MR. MCGLOTHLIN: Mr. Baker, with the two names that we changed  
9 to Cecil Childress and Jerry Trimble, does that change  
10 your percentage of unit leased or unleased or change the  
11 figures in it?

12 MR. BAKER: Yes, slightly.

13 MR. MCGLOTHLIN: Could we have the corrected figure?

14 MR. BAKER: Pardon? I'd sorry.

15 MR. MCGLOTHLIN: Could you supply us with the corrected  
16 figure?

17 MR. BAKER: The correct percentage under lease now is 97.8310  
18 percent. The unleased portion is 2.1688 percent.

19 MR. MCGLOTHLIN: Thank you.

20 MR. CHAIRMAN: Would you tell us what the total acreage for  
21 this tract is, please, for this proposed area?

22 MR. BAKER: I believe it's 5.95 acres.

23 MR. CHAIRMAN: No, for the entire well tract -- for the unit  
24 that you're establishing.

25 MR. BAKER: 125.66 acres.

1 MR. CHAIRMAN: Thank you. Other questions, members of the  
2 Board? On Exhibit A where you've identified the acreage  
3 306.78, would you clarify what that acreage is as opposed  
4 to the unit which you've stipulated to be 125.66 acres?

5 MR. BAKER: The acreage 306.78 acres is the acreage that is  
6 within the tract where the well is actually located. As  
7 you can see, the dotted line -- the 1,320 foot radius  
8 circle only takes in a portion of that 306 acres.

9 MR. COUNTS: Mr. Baker, would that be the mineral tract  
10 underlying the well location?

11 MR. BAKER: Yes.

12 MR. CHAIRMAN: Are there any other field rules, any orders of  
13 the Board, that this unit affects in any way? Is this  
14 out and away from all field rules? It's hard to tell by  
15 just looking at this where it's located.

16 MR. COUNTS: Mr. Chairman, this well is proposed in the area  
17 which is subject to statewide spacing rules.

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

19 MR. MCGLOTHLIN: This is probably not the right time to ask  
20 this, but -- Equitable Resources, would it be possible or  
21 feasible for you to bring a map of southwest Virginia  
22 substantive of the county that you're proposing a well in  
23 that would kind of show us the location on that?

24 MR. COUNTS: I would think, Mr. McGlothlin, that we'd be more  
25 than happy to provide basically a map that shows the

1 magistral district or the county that it's located in.  
2 We can state that it's not -- and frankly, I should have  
3 stated in my application and had Mr. Baker state that it  
4 was not subject to existing field rules. Of course,  
5 that map would not, except as necessary, reflect any  
6 surrounding wells, etcetera, for proprietary reasons.

7 MR. McGLOTHLIN: Right. I mean, just kind of a location to --

8 MR. COUNTS: For some orientation for the Board, I assume?

9 MR. McGLOTHLIN: Yes, sir.

10 MR. COUNTS: Thank you, Mr. Baker.

11 MR. CHAIRMAN: Any other questions?

12 (Witness stands aside.)

13 MR. CHAIRMAN: Call your next witness.

14 MR. COUNTS: Thank you, sir. I'd like to call Mr. Martin  
15 Puskar.

16 COURT REPORTER: (Swears witness.)

17  
18 MARTIN PUSKAR

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

21  
22 DIRECT EXAMINATION

23  
24 BY MR. COUNTS

25 Q. Mr. Puskar, would you state your full name for the record

1 and who you're employed by?

2 A. Martin Puskar. I'm employed by Equitable Resources and

3 I'm a petroleum engineer.

4 Q. And have you ever testified before this Board and have

5 your qualifications as an expert witness previously been

6 accepted by the Board?

7 A. Yes.

8 Q. And do your responsibilities include this lands and the

9 surrounding lands?

10 A. Yes.

11 Q. And are you familiar with the application?

12 A. Yes.

13 Q. What's the total depth of proposed initial well under

14 Equitable's plan of development?

15 A. 4,665 feet.

16 Q. And will this be sufficient to penetrate and test the

17 common sources supply and the subject formation substan-

18 tive to the application?

19 A. Yes, it will.

20 Q. And will the initial well be the legal location?

21 A. Yes.

22 Q. What is the estimated production over the life of the

23 well?

24 A. 300,000,000 standard cubic feet of gas.

25 Q. And I assume that's the estimated economic production?

1 A. Yes, it is.

2 Q. What are the estimated reserves of the unit?

3 A. We estimated 400,000,000 standard cubic feet.

4 Q. Mr. Puskar, just for clarification purposes, I think this

5 issue was gone into at the last Board meeting, these are

6 reserves which would be similar to an original oil in

7 place but in this case would be original gas in place,

8 but they're not the reserves that you're suggesting to

9 the Board that you will be able to recover as a result of

10 the production of this well in the economic life of this

11 well?

12 A. Right.

13 Q. Are you familiar with the well cost for the proposed

14 initial unit well under applicant's plan of development?

15 A. Yes, I am.

16 Q. And has an AFE been prepared and reviewed and revised

17 within the last forty-five days and submitted to the

18 Board?

19 A. Yes, it has.

20 Q. Was the AFE prepared by an engineer knowledgeable in the

21 preparation of AFEs and knowledgeable in regard to well

22 costs in this area?

23 A. Yes.

24 Q. And does this AFE represent a reasonable estimate of the

25 reasonable well cost of the proposed initial well under

1 your plan of development?

2 A. Yes, it does.

3 Q. Would you state for the Board what the dry hole costs of

4 this well are?

5 A. The dry hole cost we estimate to be \$131,085.

6 Q. And the estimated completed well cost?

7 A. The completed cost is \$259,885.

8 Q. Do these cost anticipate a multiple completion?

9 A. Yes, they do.

10 Q. And does your AFE include a reasonable charge for

11 supervision?

12 A. Yes.

13 Q. In your professional opinion, Mr. Puskar, will granting

14 this application be in the best interest of conservation,

15 prevention of waste and a protection of correlative

16 right?

17 A. Yes.

18 MR. COUNTS: Mr. Chairman, members of the Board, I have no

19 further questions.

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

21 MR. MASON: Sir, I'm curious, do you estimate this well will

22 produce any water?

23 MR. PUSKAR: Being a conventional well, no, we don't.

24 MR. MASON: I was just curious because among the equipment

25 list on here there's nothing on here for capturing any



1 fluids.

2 MR. PUSKAR: The conventional wells normally will not produce

3 any water.

4 MR. MASON: Okay. You've got separators on here, but nothing

5 else.

6 MR. PUSKAR: Well, you'll come back with a completion fluid,

7 the frack water or whatever the well was completed with,

8 and for a time after you initially start production

9 you'll still get some of that back, but there's no

10 anticipated formation waters that will be produced.

11 MR. MASON: I was just curious that since that you had the

12 separators in here it would seem to indicate that there

13 be some water produced and yet there was nothing on here

14 to dispose of or capture that water.

15 MR. PUSKAR: In normal cases if there is any kind of fluid

16 we'll put a tank on the location and store it in the

17 tank.

18 MR. MASON: But you all have anticipated to have a procedure

19 in mind for taking care of that problem?

20 MR. PUSKAR: Yes.

21 MR. MASON: Thank you.

22 MR. CHAIRMAN: Other questions?

23 (Witness stands aside.)

24 MR. CHAIRMAN: Any other witnesses?

25 MR. COUNTS: No, sir, Mr. Chairman.

1 MR. CHAIRMAN: I would just call the Board's attention, I've  
2 identified at least one unlocatable owner in here and an  
3 unknown address. Is that correct, that there may be  
4 others?

5 MR. COUNTS: Yes, sir.

6 MR. CHAIRMAN: The Department's been working with this --  
7 We've talked a little bit about it before and I'll just  
8 insert this into the record here -- with the Department  
9 of Treasury to set up a system that gas and oil companies  
10 operating in Virginia would use to deal with these un-  
11 locatable owners and pay this amount into Treasury and  
12 Treasury would manage and disperse those funds in  
13 accordance to the rules and regulations that the State  
14 has promulgated. Since there's at least one in this case  
15 I would recommend that any order that we issue would  
16 require the company to comply with those standards as set  
17 by the Treasury. They're trying to test a system right  
18 now and may, in fact, provide at a reasonable cost a PC  
19 diskette that you could report by use of that diskette  
20 the information necessary for them to do their proper  
21 filings and management of the unknown un-locatable  
22 owners. So we're going to do everything possible to make  
23 it as convenient to the companies as is possible, but  
24 it's important for us to have the system in place. And I  
25 would recommend that any order so stipulate. What's your

1 pleasure?

2 MR. EVANS: Mr. Chairman, I make a motion that we grant the  
3 establishment of compulsory pooled drilling unit in the  
4 case of VGOB-91-1015-153 as requested by Equitable  
5 Resources Exploration.

6 MR. KELLY: Second.

7 MR. CHAIRMAN: All in favor signify by saying yes. (ALL  
8 AFFIRM. All opposed say no. (NONE.) The motion  
9 carries. Thank you.

1  
2  
3 ITEM VI

4 MR. CHAIRMAN: The next item on the Board's agenda is a  
5 petition for the establishment of a compulsory pooled  
6 drilling unit under 45.1-361.22 from OXY, USA, In-  
7 corporated for proposed well CBM T-32. This is Docket  
8 Number VGOB-91-1015-154. Would all parties that wish to  
9 address the Board in this matter please come forward.

10 MR. SWARTZ: Good morning. Mark Swartz and Harold Salisbury  
11 appearing for OXY, USA with regard to coalbed methane  
12 unit T-32. This will be a forced pooling application. I  
13 think Mr. McQuire is also here this morning.

14 MR. McQUIRE: Grant McQuire for Ashland Exploration.

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

16 MR. SWARTZ: I'd like to call Marty Wirth as my first witness.

17 COURT REPORTER: (Swears witness.)

18 MARTIN E. WIRTH

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

21  
22 DIRECT EXAMINATION

23  
24 BY MR. SWARTZ:

25 Q. Would you state your name for the record, please?

1 A. Martin E. Wirth.  
2 Q. And your employment?  
3 A. OXY, USA as project land manager.  
4 Q. And do you duties as project land manager, Mr. Wirth,  
5 include duties to get out notices of hearings and forced  
6 pooling applications?  
7 A. That's correct.  
8 Q. Did you prepare both the notice of hearing and the  
9 application to force pool unit T-32?  
10 A. That is correct.  
11 Q. Would you tell the Board what you did in general in terms  
12 of identifying the persons who would be entitled to  
13 notice of this hearing?  
14 A. OXY, USA checks the county records and also checks the  
15 county tax assessments. In the case it performed title  
16 opinion and it was returned. So therefore, we have from  
17 an attorney a certified title opinion as to the owners  
18 under this tract?  
19 Q. And have you provided a list to the Board of persons with  
20 whom OXY has not entered a voluntary agreement with  
21 regard to this unit and that OXY seeks to force pool as a  
22 result of this application?  
23 A. That is correct. and it's submitted as Exhibit B.  
24 Q. Okay. And on Exhibit B have you listed all of the  
25 persons that you seek to force pool and all of the

1 persons, based on the title opinion that you have, having  
2 an interest in this unit with whom OXY does not have a  
3 lease or other written agreement?

4 A. That is correct.

5 Q. What have you done to notify the people on Exhibit B of  
6 this hearing?

7 A. All parties were notified by certified return receipt  
8 mail through the United States Post Office. Also we have  
9 published in the Virginia Mountaineer the notice of  
10 hearing as to the T-32 unit.

11 Q. With regard to the certified mailing that went out, have  
12 you filed two copies of that before this hearing with Mr.  
13 Fulmer's office?

14 A. That is correct. Proof of mailing was filed with the  
15 Department and it should be marked as Exhibit F.

16 Q. Have you also before today filed two copies of proof of  
17 publication in the Virginia Mountaineer?

18 A. That is correct. OXY filed with the Department on  
19 October 7th certificate of publication from the Virginia  
20 Mountaineer that the notice was published in the news-  
21 paper on September 19th, 1991 and we have marked that as  
22 Exhibit E.

23 Q. And the notice that was published in the newspaper, was  
24 that a copy of the notice of hearing which is a part of  
25 this application today?



1 A. That is correct. And also we have the system of publish-  
2 ing a map of the area in which this unit's located.  
3 Q. There is an exhibit attached to your application package  
4 called Exhibit A-1 which is a map.  
5 A. That is correct.  
6 Q. Is that the map that was published in the newspaper?  
7 A. That is correct.  
8 Q. With regard to OXY's interest in this unit and interest  
9 as a claimant filing this application I would direct  
10 your attention to the plat map, Exhibit A. If you could  
11 take a moment to find that.  
12 A. Yes, sir.  
13 Q. Could you describe OXY's interest or interests in this 80  
14 acre coalbed methane unit?  
15 A. Yes, sir, I can. This is an 80 acre square, as I said,  
16 composed of 80 acres inside the Oakwood coalbed methane  
17 gas field. OXY has leased coalbed methane specific  
18 rights from 100 percent of the owners under this tract.  
19 We have the outstanding interest shown -- I should say as  
20 to the Alpha Stickley tract. There is an outstanding  
21 interest, as you'll notice, a small interest as to the  
22 Richard Deskin heirs that have a small portion of the  
23 minerals located to the northwest corner of this unit.  
24 Q. And the Deskin heirs tract is, in fact, shown and then  
25 there's an identification at the northwest corner of the

1 unit showing 7.81 percent 6.25 acres and the Deskins are  
2 identified on the plat map, correct?

3 A. That is correct.

4 Q. What interest or position, if any, does Ashland Explora-  
5 tion have in this unit?

6 A. Ashland has a lease from the oil and gas owners under the  
7 Alpha Stickley tract which is the tract from the center  
8 and from northwest. It's identified as Alpha Stickley  
9 minerals which compose of 76.03 percent or 60.82 acres.

10 Q. If you look at the plat map Clifton Fork is depicted as  
11 kind of running at a diagonal through the unit, do you  
12 see that?

13 A. That's correct.

14 Q. Would it be fair to say that acreage subject to a  
15 conventional oil and gas lease that Ashland holds is  
16 essentially to the right of Clifton Fork in the unit?

17 A. There's a little portion on the left hand side and you'll  
18 see it's marked at the boundary lines, but basically yes,  
19 the majority of their interest is.

20 Q. With regard to the balance of the acreage -- the balance  
21 of the 80 acre unit to the left of Clifton Fork and to  
22 the left of the property lines that you show or that  
23 you've plotted on the plat, to your knowledge does  
24 Ashland Exploration have that acreage under any kind of  
25 lease at all?

1 A. OXY, USA has the leases from the majority of the Richard  
2 Deskin heirs except for those named as respondents. And  
3 also we have a coalbed specific methane lease from Yukon  
4 Pocahontas, et al, partnership.  
5 Q. My question also goes, in addition to OXY's interest  
6 lease, to your knowledge does Ashland Exploration have  
7 any of that acreage other than the acreage with regard to  
8 the Stickley folks that you've already talked about?  
9 A. Not to my knowledge.  
10 Q. So a portion of this 80 acre unit is not subject to any  
11 Ashland Exploration lease as far as you know?  
12 A. That's correct.  
13 Q. Is OXY, USA a Delaware Corporation?  
14 A. Yes, it is.  
15 Q. Is OXY, USA authorized to do business in the Common-  
16 wealth?  
17 A. That is correct.  
18 Q. And has OXY, USA registered with the Department of Mines,  
19 Minerals and Energy and does OXY, USA have a blanket bond  
20 on file with regard to it's operations?  
21 A. Yes, it does.  
22 Q. Do you wish to amend the application, Mr. Wirth, to  
23 either add or subtract any of the respondents?  
24 A. Yes. At this time I'd like to dismiss the respondent on  
25 Exhibit B shown as respondent #4, Lida G. VanDyke. She

owns the oil, gas and coal. She is executed and delivered a lease to OXY, USA.

Q. So you've reached an agreement with her and your asking the Board to dismiss her as a respondent and to not provide any relief against her in it's order, correct?

A. That's correct.

Q. Okay. You've indicated you want to dismiss Ms. Lida G. VanDyke. Do you wish to add anyone at this time?

A. No, we do not. Again, in the previous Richard Deskin tracts that have come before you, there is a minor involved that does not have a legal guardian awarded by a court and we have tried to request someone in that family to do so, but at this time they have not. So there is an interest out there as to a minor.

MR. CHAIRMAN: In the absence of that, how do you propose to handle this interest?

MR. WIRTH: In our application and in our notices as to relief sought we would like to escrow the State -- the Commonwealth to be escrowed because -- and help me out as to the legality of them making an election until he reaches a lawful age.

MR. SWARTZ: Well, essentially I think what is likely to happen here is to the extent that under current rules we have to file a statement with regard to elections that people may or may not have made and a statement with

1 regard to the escrow that we've proposed. My assumption  
2 would be that the minor child would be -- there would be  
3 an escrow for that child's benefit regardless of anything  
4 that we did. I mean, to the extent that he has a royalty  
5 interest we will be recommending that a portion of the  
6 royalty interest be escrowed.

7 MR. WIRTH: That's correct.

8 MR. SWARTZ: So I think it's kind of a self executing thing,  
9 Mr. Chairman. I mean, we would do this whether or not  
10 this person was an adult or a child. I mean, the funds  
11 would be escrowed and would be available. Obviously  
12 before the Board -- I assume that before the Board would  
13 order a disbursement out of escrow this child would  
14 either have to become an adult or the family would have  
15 to act appropriately to appoint a guardian for the child.  
16 So my answer in sort of a long way is the funds will be  
17 escrowed to the extent that there's a royalty interest  
18 and they will be available. And I think that is probably  
19 all we need to concern ourselves with at this point.

20 MR. MASON: Are either of this child's parents surviving?

21 MR. WIRTH: Not to my knowledge. The mother may be alive, but  
22 no one's heard of her. And I have advised our lessor to  
23 the Barbara L. Deskins that it's in care of that I would  
24 try to do the best I can to protect his interest and  
25 notify the Board of that fact.

1 MR. MASON: How did you all give notice to the minor?  
2 MR. WIRTH: Well, we sent it in care of Barbara, but we sent  
3 it at attention and a certified returned and Barbara did  
4 execute the --  
5 MR. MASON: Is that the person with whom the minor resides?  
6 MR. WIRTH: That's correct. He resides in that house.  
7 MR. CHAIRMAN: I guess what I was trying to probe and I'll  
8 just state what's on my mind is why you haven't, as  
9 operator, taken steps to get a guardian appointed for  
10 this person in the management of any financial interest  
11 that they may have now or will have in the future?  
12 MR. SWARTZ: Well, I can give you two answers. One, I don't  
13 think we have an obligation to do that and I'm willing to  
14 discuss that with you if you would have some feelings  
15 contrary to that position. Secondly, I'm just guessing,  
16 but I would suspect and I would ask Glen or Marty to  
17 comment on that, the cost of appointing and paying a  
18 guardian may exceed this child's royalty interest for a  
19 number of years.  
20 MR. WIRTH: That is correct. First of all, OXY, USA did not  
21 want to get into the family affairs because we may come  
22 into what you call a family feud. Second of all, the  
23 Richard Deskin heirs at last count and provided to the  
24 Assistant Attorney General on previous things ran up to  
25 approximately over 108 heirships and his interest is a



1 very, very small interest. I've asked them to seek legal  
2 counsel in the best way possible of doing that, but  
3 again, cost prohibiting probably anything toward Matthew  
4 would exceed the amount of royalties that he may get.

5 MR. CHAIRMAN: Well, obviously, my concern that I'm raising is  
6 the -- from every provision of forced pooling -- from the  
7 very elections to everything that has to do with decision  
8 making -- I understand. Your statement -- you gave two  
9 answers -- one, we don't believe it's our obligation and  
10 then two, in addition to that or different from that,  
11 either way, that the amount of money involved here is not  
12 such that it would be advantageous to go the expense of  
13 the guardian for this individual.

14 MR. SWARTZ: I don't mean to interrupt you, Mr. Chairman, but  
15 let me explore two things with you. It is my view that  
16 you can give notice to a minor in spite of the fact that  
17 you can't enter into a contract with a minor. And one of  
18 our problems here is we'd love to sign a lease with him.  
19 I mean, it would be the most expeditious -- like we've  
20 tried to lease everybody else in the family. We cannot  
21 enter into a contract with a minor child absent of a  
22 guardian being appointed. But my assumption and I'm  
23 operating under this assumption is that we can give  
24 notice to a minor and we have and we've certainly given  
25 notice to the people with whom he resides and other

1 family members. And having given notice, I think that's  
2 the extent of our obligation. I may be wrong. You may  
3 disagree with me, but that is the approach that we have  
4 adopted.

5 MR. CHAIRMAN: Well, you know, I'm just thinking this thing  
6 through. If there's more money involved -- let's say  
7 there was a lot of money involved here. I'm trying to  
8 get beyond the money situation and just say what are we  
9 asking and what are we dealing with here, truly?

10 MR. MASON: I'd like to ask Mike this, if I may. Mike, is  
11 there any provision in the Administrative Procedure Act  
12 dealing with Guardian Ad Litem for administrative  
13 proceedings?

14 MR. LEPCHITZ: There is a provision to appoint, yes.

15 MR. MASON: There is a provision. Do you --

16 MR. LEPCHITZ: Not within the act. It would be under 801.

17 MR. MASON: Under the statute generally?

18 MR. LEPCHITZ: Yes.

19 MR. MASON: But there's no particular provision dealing with  
20 the administrative remedy?

21 MR. LEPCHITZ: No.

22 MR. CHAIRMAN: I'm exploring more the obligation of this Board  
23 in this kind of situation. We're obviously going to  
24 be -- let's assume we issue an order of some sort and if  
25 we do issue an order and we do approve the application,

1 then we're asking certain elections to be made. What do  
2 we do? How do we handle all this -- how do we protect  
3 interest of this minor child? If it shifts from you to  
4 us, then how do we do it?

5 MR. MASON: Mike, do we have any responsibility under the  
6 applicable provisions of 801 to have a guardian Ad Litem  
7 appointed for the purposes of this proceeding?

8 MR. LEPCHITZ: That's a good question. My feeling is yes,  
9 that one should be appointed.

10 MR. MASON: I mean, I don't know. I'm not that familiar with  
11 the area.

12 MR. LEPCHITZ: I'm not sure that we can adjudicate anything  
13 with respect to this minor without a guardian Ad Litem.

14 MR. MULLINS: 45.1-361.21.E does concern the appointment of a  
15 guardian Ad Litem. It's not in concern of the notice,  
16 but it is in concern of the elections.

17 MR. LEPCHITZ: That's clearly available to the applicant.

18 MR. MASON: What was that cite again?

19 MR. MULLINS: 21.E.

20 MR. CHAIRMAN: It's on Page 21. I'm not trying to divert you  
21 away from the hearing. I just felt like we need to  
22 address this situation either now or later. And you've  
23 already stipulated to the Board in your opinion that it's  
24 not your obligation to deal with that. Then if that's  
25 the --

1 MR. SWARTZ: Well, at this point, okay?

2 MR. CHAIRMAN: If that shifts then to the Board then my  
3 concern was then what do we do and are we prepared to  
4 deal with that.

5 MR. SWARTZ: Well, I think to follow this the whole distance,  
6 Mr. Chairman, as I said earlier, I think that you can  
7 give notice to a minor. The problem is once you have  
8 done that what happens? And I think it does shift to you  
9 all and it is something that you and your counsel need to  
10 consider when you address the elections issue in the  
11 Board's order here. And the problem, again, is that OXY  
12 cannot enter into a contract with a minor who doesn't  
13 have a guardian and in order to make this Board's order  
14 eventually effective you need to address the question  
15 when you are addressing elections for this minor child in  
16 this order what provision, if any, are you going to make  
17 for a guardian to make the election on behalf of the  
18 minor. But I think it does shift to you all and I wasn't  
19 being smart about that. I mean, I think the notice is  
20 all we need to do at this stage, but now we do have to  
21 address that issue and there are several mechanisms that  
22 you can accomplish to satisfy yourselves that the child  
23 has someone who can elect for him or her.

24 MR. CHAIRMAN: Anything else on this, members of the Board?  
25 Okay. Continue your questioning.

1 Q. (Mr. Swartz continues.) Mr. Wirth, have you filed with  
2 the Board in advance of this hearing a sufficient number  
3 of copies of a consent to frack?  
4 A. Yes, we have. It's marked as Exhibit D, Page 1, and  
5 Exhibit D, Page 2. Exhibit D, Page 1, is the signed  
6 consent of stimulation statement of no objection and  
7 Page 2 as previously required by the Board is that the  
8 client that signed this has the authority to sign that  
9 consent.  
10 Q. You've indicated that you have some coalbed specific  
11 methane leases with regard to this particular unit. Can  
12 I assume that you have also entered into many other  
13 coalbed methane specific lease?  
14 A. That's correct.  
15 Q. What is your opinion with regard to the market value or  
16 the fair market value of coalbed specific leases in the  
17 area within which this unit is located?  
18 A. The coalbed specific leases are \$1 an acre bonus, one-  
19 eighth royalty interest and a five year primary term.  
20 Q. And would you recommend to the Board that in providing  
21 for election options in its order that those terms be  
22 incorporated as one of the election options?  
23 A. Yes, I do so.  
24 Q. This unit contains how many acres?  
25 A. This is an 80 acre unit within the Oakwood field.



1 Q. And which coal seams are you seeking to pool by this  
2 order?  
3 A. We're seeking to pool all seams below the Tiller Forma-  
4 tion down to and through the Pocahontas #3 and any  
5 associated unnamed coal seams that we may encounter.  
6 MR. SWARTZ: I don't have any more questions for Mr. Wirth at  
7 this point?  
8 MR. MCGLOTHLIN: Mr. Wirth, under the assumption that Howard  
9 hopefully is a valid employee of Island Creek and has not  
10 been fired or resigned his position there, do we have  
11 maybe on a quarterly basis his right to sign these  
12 stipulations -- to update it?  
13 MR. WIRTH: If the Board so desire or I may certify right here  
14 before you that not only he's in the same position, but  
15 has been promoted into a higher level that gives him  
16 authority.  
17 MR. MCGLOTHLIN: I was just looking at Mr. Price's affidavit  
18 and it's dated the 21st day of November, 1990.  
19 MR. WIRTH: That's correct.  
20 MR. MCGLOTHLIN: And it's coming on a year old -- is there an  
21 update on that affidavit?  
22 MR. WIRTH: We'd more than happy to go to the coal company and  
23 ask that.  
24 MR. MCGLOTHLIN: Thank you.  
25 MR. CHAIRMAN: Mr. Wirth, is any part of the interest of the



1       minor, Matthew Deskin, within 750 feet of this proposed  
2       well?

3   MR. WIRTH:   Yes, it is, sir.

4   MR. CHAIRMAN: Is that interest in coal, etcetera?

5   MR. WIRTH:   That is correct. And it's under a lease by Island  
6       Creek who has given us consent.

7   MR. CHAIRMAN: Is the lease of the minor then valid? The  
8       obvious question is is the consent to stimulate, in fact,  
9       valid in the interest of the minor is --

10  MR. SWARTZ:   The problem is the lease was probably entered  
11       into before the minor child was born. So it's not -- the  
12       Island Creek lease probably predated the birth of this  
13       child by a good many years.

14  MR. WIRTH:   That's correct.

15  MR. SWARTZ:   And Island Creek is consenting under the statute  
16       as the coal operator.

17  MR. CHAIRMAN: As the coal operator?

18  MR. SWARTZ:   Under it's lease.

19  MR. CHAIRMAN: Not the coal owner, as coal operator?

20  MR. SWARTZ:   Right.

21  MR. CHAIRMAN: Do you have any problem certifying for the  
22       record, and I'll ask you to put it in your words however  
23       you want to reply to it, to say that you believe Island  
24       Creek, in fact, has the authority to grant the right to  
25       stimulate given the interest of this minor child?

1 MR. SWARTZ: Well, let me tell you where I'm coming from and  
2 I'd rather give you an explanation than a yes or no. If  
3 my parents entered into a coal lease with Island Creek  
4 and that lease term was such that it continued for sixty  
5 years and after they entered into it I was born, years  
6 passed and they died, the lease was still in effect, the  
7 passing and coming and going of my parents or me or my  
8 children would have no affect on the obligations under  
9 that lease as long as it continued in effect. And maybe  
10 I don't understand the question that the Chairman is  
11 asking.

12 MR. CHAIRMAN: Well, I think would you stipulate for the  
13 record that, because we don't have anything in here  
14 showing that that, in fact, occurred that I heard.

15 MR. MASON: If I may interject, I think the problem is that  
16 you're talking about a coal owner and you're referring to  
17 a lease, but as the lessee they are the coal owner.

18 MR. SWARTZ: And they have the right under the statute to  
19 consent. I guess I'm just kind of missing --

20 MR. MASON: I think Benny's just saying that Island Creek's a  
21 coal owner by virtue of --

22 MR. SWARTZ: I think to ease his mind that I would say yes,  
23 that Island Creek has a coal lease and that lease was  
24 executed prior to the birth of Matthew, the respondent in  
25 question. Therefore -- and the lease does say it shall

1 go to the successors or assigned of the parties that  
2 executed the lease at that time and it is a matter of  
3 public record in Buchanan County.

4 MR. CHAIRMAN: Thank you. That's what I was looking for.

5 MR. COUNTS: We'll work through it. If there are no more  
6 questions of Mr. Wirth I would like to call Mr. VanGolen.

7 MR. McQUIRE: I have a few questions.

8  
9 CROSS-EXAMINATION

10  
11 BY MR. McQUIRE:

12 Q. Mr. Wirth, you're not disputing that Ashland gas and oil  
13 lease is prior to your coalbed specific leases, are you  
14 -- prior in date?

15 A. No. The acquisition that you've filed of record that  
16 you've acquired it from your successors said it was prior  
17 to the date of the coalbed specific methane lease.

18 Q. So you're agreeing that Ashland's oil and gas lease is  
19 prior to your coalbed specific methane leases?

20 A. That is correct.

21 Q. Why is the well not located in the center of the unit?

22 A. I believe Mr. VanGolen will answer that question unless  
23 you would like me to answer it at this time.

24 Q. No. If he's going to answer on behalf of OXY I will not.  
25 Do you know of any reservations in the Stickley lease to

1 Ashland which would carve out coalbed methane?

2 A. There's no reservations in the lease that specifically  
3 carves out anything or none to the effect that reference,  
4 per say, as all to the coalbed methane.

5 MR. MCQUIRE: I have no other questions.

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

7 (Witness stands aside.)

8 MR. CHAIRMAN: You may call your next witness.

9 MR. SWARTZ: I'd like to call Mr. VanGolen.

10 COURT REPORTER: (Swears witness.)

11  
12 GLEN VANGOLEN

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

15  
16 DIRECT EXAMINATION

17  
18 BY MR. SWARTZ:

19 Q. State your name for us, please.

20 A. Glen VanGolen.

21 Q. Your employment and your title?

22 A. OXY, USA. I'm project manager for the coalbed methane  
23 project.

24 Q. In the course of your duties as project manager did you  
25 prepare or cause to be prepared a DWE Exhibit C that's

1           been filed with this application?

2   A.    Yes, I did.

3   Q.    And what date was that prepared on?

4   A.    September 13th, 1991.

5   Q.    And it says it was prepared by you. Is that true?

6   A.    That's true.

7   Q.    It indicates a proposed total depth of what?

8   A.    1,632 feet.

9   Q.    And this well has not been drilled as of today?

10  A.    No, it hasn't.

11  Q.    Has a permit been issued?

12  A.    Yes, it has.

13  Q.    And what is the target formation or target seam of this

14       well?

15  A.    To drill through the Pocahontas #3 seam.

16  Q.    And is this proposed depth sufficient to drill through

17       that seam and produce from the Pocahontas #3 coal seam?

18  A.    Yes, it is.

19  Q.    Is it your current intention and have you made provision

20       for that intention in the DWE to stimulate more than one

21       seam?

22  A.    Yes. As always, it's anticipated that we would do three

23       stimulations in this well bore and the cost for stimula-

24       tions are reflected in the DWE.

25  Q.    Okay. What is the total cost that you are projecting for

1 the items listed in the DWE?

2 A. The total cost is \$228,554.

3 Q. And is that sum your reasonable estimate of the probable

4 cost to drill and complete this proposed well?

5 A. Yes, it is.

6 Q. With regard to the location of this well, if you would

7 turn to the map, Mr. VanGolen, you'll notice that the CBM

8 well T-32 is without the drilling window in this unit or

9 outside of it, correct?

10 A. That is correct.

11 Q. Could you tell the Board the reason or reasons why the

12 well is located where it has been located and is shown

13 on Exhibit A?

14 A. This well has been previously approved by -- there's

15 three shallow coal operators in the area, PerMac, Jewel

16 Smokeless and Coke, all with operation plans in the area.

17 Each were approached and this was the placed within the

18 unit that all three coal companies have agreed to.

19 Q. One of the shallow coal seams is fairly thick. Which

20 seam is that?

21 A. That's Jawbone 20. It's 3.6 feet thick.

22 Q. And the other seams that the shallow coal owners were

23 concerned about are what thicknesses?

24 A. Mr. Swartz, I don't have that in front of me. One's the

25 Kennedy seam and -- Marty, do you know the other seam?



1 Q. So it's leased to Kennedy and the Jawbone that you're  
2 familiar with?  
3 A. Yes.  
4 MR. WIRTH: There's two separate coal lessees on the same seam  
5 also.  
6 Q. (Mr. Swartz continues.) Is there also a deep mine under  
7 this unit?  
8 A. Yes, the Virginia Pocahontas #2 mine.  
9 Q. And did you locate this T-32 well in consultation with  
10 all of those coal companies?  
11 A. Yes, I did.  
12 Q. And have they all consented to it's location at that  
13 point?  
14 A. Yes, they have.  
15 MR. CHAIRMAN: Mr. VanGolen, was the only location that the  
16 consent could be obtained?  
17 MR. VANGOLEN: This was the only location that we can get  
18 among all three parties.  
19 Q. (Mr. Swartz continues.) Is there also topography  
20 problems with regard to this unit in terms of mountains  
21 to avoid?  
22 A. Yes. There's -- actually there are several other  
23 locations we have approached them with. However, this is  
24 the only one we can get them to agree to.  
25 Q. Is it your opinion that the plan of development that you

1 have submitted here to develop the coalbed methane  
2 resource under and within unit T-32 will benefit the  
3 owners of that resource and is a reasonable plan of  
4 development?

5 A. Yes, it is.

6 Q. And is it your opinion that the proposed well will  
7 contribute to the protection of correlative rights of the  
8 owners of the methane within and under the unit in  
9 question and lessen the likelihood of both physical waste  
10 and economic waste?

11 A. Yes, it is.

12 MR. SWARTZ: That's all I have of this witness.

13 MR. WAMPLER: Mr. VanGolen, were there any objections by any  
14 party to the drilling application?

15 MR. VANGOLEN: Yes. In fact, we had an informal fact finding  
16 hearing on this, Mr. Wampler. There was a surface owner  
17 objection. Mr. Boyd -- I can't remember his first name.

18 MR. SWARTZ: Cloyd.

19 MR. VANGOLEN: Cloyd Boyd. And the Inspector has ruled in  
20 our favor on that decision.

21 MR. CHAIRMAN: Is that the only objection?

22 MR. VANGOLEN: Yes, it was.

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

24 MR. MCGLOTHLIN: I have a question, if you would just clarify.  
25 Other than the testimony given by the witnesses, is there

1 any documented proof that we would require on the  
2 location exceptions and also the dismissal of a party?

3 MR. CHAIRMAN: Do you have a copy of the lease that you could  
4 tender?

5 MR. WIRTH: At this time it's submitted to Buchanan County  
6 for recordation. They can give me a book and page  
7 number, but they cannot give me the lease back because it  
8 would take some time to get it on the micro-fuse system.  
9 But we have an executed lease that did arrive prior to  
10 the hearing and therefore, I have dismissed them to that  
11 part.

12 MR. McGLOTHLIN: I've just been thinking here and I'm --

13 MR. CHAIRMAN: Do you have any objection to providing that for  
14 the record?

15 MR. WIRTH: It's a matter of public record. As soon as it's  
16 recorded and I get it -- I do have a copy of the sign,  
17 but it's not a recorded copy.

18 MR. McGLOTHLIN: That's for the location exception from the  
19 coal companies?

20 MR. WIRTH: It was issued by the State Inspector.

21 MR. MASON: Along the same line, it's your opinion that this  
22 location comports with all the mining plans of all the  
23 underlying coal seams as you know them?

24 MR. VANGOLEN: Yes, it is. It was here or not in this unit.

25 MR. MASON: As a matter for my own identification, how

1 procedurally -- when you apply for your permit and you  
2 have those coal operators, how do they formulate their  
3 consent to these well locations? Is that done by letter?

4 MR. VANGOLEN: It differs in every coal operator, Mr. Mason.  
5 We have weekly meetings with each of the operators  
6 whereby we present -- just as in the case of Jewel  
7 Smokeless, we provide them with ten locations and  
8 coordinates. They take it back into their drawing room,  
9 put it on maps.

10 MR. MASON: I mean, when you arrive at an agreed  
11 location, how is that done?

12 MR. VANGOLEN: They'll either tell us verbally or if it's an  
13 inactive mining plan they'll come back with a letter that  
14 requires certain things to happen. Either that we may  
15 plug the well when they're -- or temporarily plug the  
16 well.

17 MR. MASON: They may condition their approval?

18 MR. VANGOLEN: They do, yes.

19 MR. MASON: And that's all taken care of in the permitting  
20 process, is that correct?

21 MR. SWARTZ: Those are just letter agreements between us and  
22 the coal operators. Those are not --

23 MR. WIRTH: Sometimes we're lucky enough to get statement of  
24 no objection has been filed with the permit, but usually  
25 during the permitting procedures we're in communications

1 with these coal operators. We submit the permit and they  
2 have a certain amount of days to object should they not  
3 object and then --

4 MR. MASON: So sometimes their consent is really obtained by  
5 just virtue of their not doing anything?

6 MR. WIRTH: That's correct. The less work they can do, the  
7 better off.

8 MR. SWARTZ: In fact, that's probably the more common thing  
9 that occurs. Obviously, there's no point in filing a  
10 permit if you know you're going to have trouble with the  
11 coal company. So you try to file a location that they'll  
12 agree to. But then don't have anything in writing. They  
13 just don't object within their statutory time period.

14 MR. MASON: But in response to Kevin's question, the process  
15 itself constitutes a virtue of documentation of the  
16 comportment with the mining plans by virtue of the permit  
17 being issued without objection or with some letter of  
18 consent, is that correct?

19 MR. SWARTZ: A waiver, basically.

20 MR. VANGOLEN: A waiver.

21 MR. SWARTZ: A waiver of objection.

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

23 MR. McQUIRE: I have just a few questions.  
24  
25

CROSS-EXAMINATION

BY MR. McQUIRE:

Q. What is the status of the drilling on the unit? When do you plan to drill?

A. I don't think we've scheduled it yet, Mr. McQuire.

Q. Do you have plans to drill?

A. Yes.

Q. What are your plans to get the gas out of the area?

A. We have a pipe line and gathering system being constructed or in the process of being permitted and some stages are in construction. The equipment was been ordered. We will gather the gas and move it to market.

MR. McQUIRE: That's all I have.

(Witness stands aside.)

MR. CHAIRMAN: Any other witnesses?

MR. SWARTZ: No.

MR. McQUIRE: I realize the issues that I raise are identical to the ones I've raised before and I realize that I haven't been very persuasive in my arguments to the Board, but I still am going to raise those issues for the Board. I do want to narrow the issues which I'm challenging this application. I have listed a number in my objection and motion to dismiss, but the ones that I'd like to stand on today is one; OXY has no standing to



1       apply because it's not the gas and oil owner and two;  
2       that this process violates Ashland's state and constitu-  
3       tional rights because it constitutes an on and off for  
4       taking of Ashland's property and an impairment of  
5       Ashland's lease contract with the Stickleys. Other than  
6       that I have nothing further to add.

7   MR. CHAIRMAN: Any questions from members of the Board for Mr.  
8       McQuire? If not, let me just -- Mr. Swartz.

9   MR. SWARTZ: Grant, are you withdrawing the other objections?  
10       Is that what we're being told today?

11   MR. McQUIRE: I'm making no issue of the ones that I raised.  
12       I raised those just for the purpose of allowing me to  
13       have the flexibility here at this hearing. But only the  
14       issues that I have raised here today are the ones that I  
15       plan to stand upon. I just want to make that clear to  
16       the Board.

17   MR. SWARTZ: So what you're saying is we're revisiting the  
18       standing issue --

19   MR. McQUIRE: That's correct.

20   MR. SWARTZ: -- and then you're making two constitutional  
21       arguments, one on an impairment of contract rights and  
22       the other one is what, an unlawful taking?

23   MR. McQUIRE: That is correct.

24   MR. SWARTZ: And that's what we're talking about today?

25   MR. McQUIRE: It is.

1 MR. SWARTZ: Okay. If I may, the standing issue, I would like  
2 to remind the Board that OXY does have coalbed specific  
3 methane leases here that Ashland's oil and gases does not  
4 cover 100 percent of the acreage. Their interest is  
5 stated in Exhibit B. So we're dealing with a situation  
6 where OXY actually has leases. Ashland does not have the  
7 entire unit under lease. You'll notice that the first  
8 page of their objection says that they have a lease from  
9 the Stickley heirs of 80 acres within the unit. Well,  
10 that's not true. They have some seventy some percent of  
11 the unit. The well, I might also point out to the Board,  
12 is not located on the acreage that Ashland Exploration  
13 has under lease if you look at the boundary lines and the  
14 notations on the map. Lastly, I would simply indicate  
15 that there has been no evidence or effort to indicate to  
16 this Board that any act or act on the part of this Board  
17 is likely to impair their contract rights. They'll be  
18 offered the same statutory options that everybody else  
19 gets. So I just frankly do not understand the impairment  
20 of contract argument that we're getting or the unlawful  
21 taking argument. That's all I have to say today on this  
22 issue.

23 MR. CHAIRMAN: Any questions? Mr. McQuire, any response?  
24 Questions, members of the Board?

25 MR. MASON: I don't want to beat this to death, but first of

1 all, does the Board feel like it's necessary that we  
2 decide this question -- Mr. Swartz has advocated that  
3 notice as given to this minor child is adequate for  
4 purposes of the Board's action. I guess my question is  
5 is the Board comfortable with that and if so, do we feel  
6 competent to make a decision based on the current state  
7 of the interest? Other than that I have no objection to  
8 what they're doing. I guess I'm looking for some comfort  
9 that if we do this it's okay. Mike?

10 MR. LEPCHITZ: I don't have a lot of solace for you just yet.  
11 I'm thinking this one through.

12 MR. MASON: I don't know. I mean, is it something we have to  
13 address in order to make a decision? Do we make a  
14 decision subject to a resolution of it or do we ignore it  
15 and go forward? I guess I pose that to the Board. I  
16 don't know the answer to it. I'm not that -- my personal  
17 experience has never been particularly in behalf of  
18 defending innocent children.

19 MR. CHAIRMAN: I'm still troubled by it. I think first we've  
20 got the issue of is the burden on the Board or is the  
21 burden on the applicant. I'll allow you to respond to  
22 that. You said you believe it does shift to the Board.

23 MR. MASON: If I may interrupt, it's interesting to me that  
24 under the section that the gentleman in the rear from  
25 Grundy pointed out to us very kindly --

1 MR. CHAIRMAN: It says applicant.

2 MR. MASON: -- it says applicant. In other words, it seems to  
3 indicate that any action to appoint a guardian -- the  
4 applicant should an oil and gas owner be -- this says may  
5 petition the appropriate circuit court. And, of course,  
6 it makes reference to the election itself. I guess what  
7 I'm concerned about is the threshold issue of what about  
8 the notice and then the effect of the Board's order as to  
9 that person and what happens thereafter. I'm not  
10 familiar with any situation in which any tribunal or  
11 administrative body is charged with the duty of appoint-  
12 ing something like this. I think most often it's in the  
13 normal course of events that the parties appearing  
14 before the tribunal have the burden of establishing  
15 whatever pieces of the pie are necessary for the Board to  
16 render a decision.

17 MR. EVANS: I'd like to make a motion.

18 MR. CHAIRMAN: Go ahead.

19 MR. EVANS: In accordance with the provisions of Section 2.1-  
20 344.A of the Code of Virginia I move that the Virginia  
21 Gas and Oil Board convene in executive session for the  
22 purpose of consultation with legal counsel pertaining to  
23 the interpretation of the Virginia Gas and Oil Act which  
24 requires legal advice by counsel.

25 MR. CHAIRMAN: We have a motion. Do we have a second?

1 MS. ZANDER: Second.

2 MR. CHAIRMAN: Motion and a second. All in favor signify  
3 by saying yes. (ALL AFFIRM.) All opposed say no.  
4 (NONE.) We're in executive session.

5  
6 (THEREUPON, THE BOARD WENT INTO EXECUTIVE SESSION AND  
7 AFTER DELIBERATING RETURNED TO OPEN SESSION:)

8 MR. EVANS: I move that the Board reconvene in open session  
9 and affirm that only matters exempt from the opening  
10 meeting requirement and only matters within the scope of  
11 the motion declaring the closed session were discussed  
12 during the executive meeting and members of the Board  
13 hereby so state.

14 MR. CHAIRMAN: I have a motion. Do I have a second?

15 MR. MCGLOTHLIN: Second.

16 MR. CHAIRMAN: All in favor signify by saying yes. (ALL  
17 AFFIRM.) And opposed say no. (NONE.) The motion  
18 carries. This is certification of the executive meeting  
19 whereas the Virginia Gas and Oil Board has convened in  
20 executive meeting on this date pursuant to an affirmative  
21 recorded vote in accordance with the provisions of the  
22 Virginia Freedom of Information Act and whereas Section  
23 2.1-344.1 of the Code of Virginia requires certification  
24 by the Virginia Gas and Oil Board that such executive  
25 meeting was conducted in conformity with the Virginia



1 law. Now therefore be it resolved that the Virginia Gas  
2 and Oil Board hereby certifies that to the best of each  
3 members knowledge that only public business matters  
4 lawfully exempted from the open meeting requirements by  
5 Virginia law were discussed in the executive meeting to  
6 which this certification resolution applies and only such  
7 public business matters as were identified in the motion  
8 convening the executive meeting were heard, discussed or  
9 considered by the Virginia Gas and Oil Board. We will  
10 now vote as I call the role.

11 (ROLE CALLED.)

12 MR. CHAIRMAN: What's your pleasure, Board?

13 MR. MASON: I think that myself and the Board members have  
14 very serious concerns about whether the minor in this  
15 matter is properly before Board. We also believe that  
16 the burden of curing that concern and taking care of this  
17 minor problem is upon the applicant. And based thereon,  
18 I move that we continue this hearing on this application  
19 until the January meeting of the Board or sooner if it  
20 can be cured for the applicant to establish to the  
21 Board's satisfaction that appropriate has been taken for  
22 the minor's interest.

23 MR. EVANS: Second.

24 MR. CHAIRMAN: We have a motion and a second. All in favor  
25 signify by saying yes. (ALL AFFIRM.) All opposed say



1           no. (NONE.) The motion carries.

2 MR. CHAIRMAN: We will recess for lunch.

3 MR. WIRTH: I have a problem and this is informal or whatever,  
4 but he may become an adult soon. If we go through the  
5 expense on a one-thousandth and eighth percent it was my  
6 hand shake in saying that I would bring this to the  
7 attention to the Board which it's gone before the Board  
8 before and you have issued orders. Now, I have to take  
9 this under effect with my management as to the cost of  
10 this because it is not cheap.

11 MR. SWARTZ: Let's find out when he's going to be 18, Marty,  
12 and that may be a means of dealing with this one. I  
13 mean, if he's going to be 18 within six months we may  
14 come back and ask you to continue this until that happens  
15 or issue it subject to some provision that -- but let's  
16 find out when his birthday is going to be. I understand  
17 the order that you've entered and we'll live with that.  
18 If we need some modification we'll come back.

19 MR. MASON: I realize in this case because of the minuteness  
20 of his interest, but we feel like that the problem  
21 related to the protection to his interest and his share,  
22 no matter how small in the correlative rights, imposes a  
23 burden upon us that we can only discharge in this  
24 fashion.

25 MR. WIRTH: I understand that and I didn't mean to refer as

1 the percent, but as to any -- not only OXY, USA, but how  
2 many times before it has been brought to your attention  
3 -- that is I could have named it Matthew C. Deskin and  
4 not brought it to your attention as a minor.

5 MR. MASON: Well, we discussed this, in fact, with out  
6 attorney and we're unaware of anybody previously that --  
7 in instance in which we've had this situation in which  
8 there was not a guardian Ad Litem appointed. And I would  
9 go so far to say that me personally, and you can rely on  
10 this, that if I found out that an applicant has done so  
11 and not told us I would not be very happy about it.

12 MR. CHAIRMAN: And I think certainly that we feel the burden  
13 is on the applicant to identify just what you did, that  
14 it is a minor and that also as stated and approved by the  
15 Board that we feel the burden is on the applicant to  
16 afford the protections and we've tried to leave how you  
17 do that as open as we possibly could, but that we be  
18 shown protection. We'll reconvene at 1:45.

19 (AFTER A LUNCHEON RECESS, THE HEARING CONTINUED AS  
20 FOLLOWS:)

1  
2  
3 ITEM VII

4 MR. CHAIRMAN: The next item on the Board's agenda is Item  
5 VII, a petition for the establishment of a compulsory  
6 pooled drilling unit under 45.1361.22 from OXY, USA,  
7 Incorporated for proposed well CBM W-12, Docket Number  
8 VGOB-91-1015-155. Would any of the parties that wish to  
address the Board please come forward.

9 MR. SWARTZ: Appearing for OXY, USA Mark Swartz and Howard  
10 Salisbury.

11 MR. CHAIRMAN: Proceed, Mr. Swartz.

12 MR. SWARTZ: This is a petition seeking an order for forced  
13 pooling certain respondents that have been named in the  
14 petition and in the notice of hearing. If I could call  
15 Mr. Wirth as my first witness.

16 MR. CHAIRMAN: Mr. Wirth, you're reminded that you're under  
17 oath.  
18

19 MARTIN E. WIRTH

20 a witness who, after having been previously sworn, was  
21 examined and testified as follows:  
22

23 DIRECT EXAMINATION  
24

25 BY MR. SWARTZ:

1 Q. State your name again and your employment, please.  
2 A. Martin E. Wirth, OXY, USA, Incorporated.  
3 Q. And what is your job title or job description with OXY?  
4 A. I'm a project land manager.  
5 Q. Mr. Wirth, as project land manager were you responsible  
6 for and did you participate in preparing the notice of  
7 hearing and the application that is before the Board  
8 today?  
9 A. Yes, I was.  
10 Q. And in the course of your duties were you one of the  
11 people that was responsible for identifying the folks  
12 that would be entitled to notice under the 1990 Gas and  
13 Oil Act?  
14 A. Yes, I was.  
15 Q. Could you describe for the Board generally what you did  
16 to address the question of who might be entitled to  
17 notice?  
18 A. We checked all county records. In this case again, we  
19 also had title opinions on to each and all tracts in the  
20 unit giving to us by an attorney. We also would check  
21 any surrounding counties as to any other conveyances or  
22 anything that might be pertinent to these units. We  
23 check directories and we also check the county Treasur-  
24 er's Office for who's paying taxes on what.  
25 Q. You said that you do a title search or have an attorney

1 do a title search. Did you have an attorney a title  
2 opinion or a title abstract for you with regard to the  
3 interest in this particular unit?  
4 A. Yes. A title opinion was performed on each and every  
5 tract in this unit.  
6 Q. And have you yourself reviewed some of these records in  
7 that chain of title?  
8 A. That is correct. I have.  
9 Q. Have you reached an agreement -- a voluntary agreement  
10 with some of the people in this unit?  
11 A. Yes, we have.  
12 Q. Are the three parties that are named in the notice of  
13 hearing the only people that you believe are entitled to  
14 notice of this application with whom OXY has not already  
15 reached some sort of voluntary agreement?  
16 A. That is correct.  
17 Q. So the respondents that are you are seeking to force pool  
18 are Garden Reality, Consolidation Coal and Columbia  
19 Natural Resources?  
20 A. That is correct.  
21 Q. Do you wish to add any additional parties today or  
22 dismiss any of these three parties today?  
23 A. No, not at this time.  
24 Q. Okay. Tell the Board what you did in terms of notifying  
25 the respondents and notifying people generally with

1           regard to this hearing.

2   A.   All respondents were sent a copy of the notice and  
3       application, the certified receipt mail and OXY did  
4       receive receipts that they had received the said notices  
5       and applications.

6   Q.   Did you file two copies of the proofs of mailing with the  
7       Board in advance of this hearing?

8   A.   That is correct. We did. That would be Exhibit F before  
9       the Board.

10   Q.   In addition did you cause a notice of this hearing to be  
11       published?

12   A.   Yes. OXY, USA caused a notice of the hearing to be  
13       published in the Virginia Mountaineer which was certified  
14       and hand published on September 19th, 1991 and certifi-  
15       cate of that publication was provided to the Board in two  
16       copies.

17   Q.   And that would be Exhibit E?

18   A.   That's correct.

19   HR. MASON: I was just going to ask, on the notice to Colum-  
20       bia, this part of the Columbia Natural Resources, is that  
21       part of Columbia Gas?

22   HR. WIRTH: Columbia Natural Resources is their exploration  
23       and production side of Columbia Transmission Corporation.

24   HR. SWARTZ: I'm not sure they're in Chapter 11.

25   HR. MASON: That's what I was going to ask.



1 MR. SWARTZ: They were spun off. It's their operating  
2 company or drilling company.  
3 MR. WIRTH: That's correct.  
4 MR. SWARTZ: And I don't think they're in 11.  
5 MR. MASON: Okay. I just wondered whether R. Edwards was the  
6 trustee or --  
7 MR. WIRTH: No. Mr. Edwards is a local in-house counsel and  
8 he was the one that sent us a letter asking that all  
9 notices go to him.  
10 MR. MASON: Okay. But you're satisfied, Mr. Swartz, that  
11 there is no requirement of notification to any trustee or  
12 any problems with any automatic stays or anything issued  
13 by --  
14 MR. SWARTZ: I have done work for CNR and my understanding is  
15 that they are not in --  
16 MR. MASON: Well, I just don't want this Board to be in  
17 violation, particularly of any Federal Court, of stays  
18 in bankruptcy court.  
19 MR. SWARTZ: My understanding is that they did not go into  
20 11, but their parent is clearly 11.  
21 MR. MASON: I understand that.  
22 MR. SWARTZ: And I don't think that there is any stay that we  
23 would be subject to or you as a board would be subject  
24 to. I do not believe Columbia Natural Resources is in  
25 the Chapter 11 matter.

1 MR. MASON: Okay. Thank you.

2 MR. EVANS: Do you have a copy of Exhibits E and F?

3 MR. SWARTZ: Yes, sir.

4 MR. WIRTH: I have extra copies also.

5 MR. SWARTZ: We filed two sets with the Board in advance of  
6 the hearing because the rules were changed from ten to  
7 two which is probably why you all don't have them. But I  
8 lend you mine if you want to take a look at it. (Pause.)

9 Q. (Mr. Swartz continues.) Mr. Wirth, turning to the  
10 interest of the respondents and OXY, I would like to  
11 direct your attention to Exhibit A which is the plat map  
12 that's filed as part of the application package.

13 A. Okay.

14 Q. And also to the next page which is Exhibit A, Page 2,  
15 which sets forth OXY's right. Let me show you a copy of  
16 the plat which I have colored a portion yellow and if you  
17 could explain to the Board with reference to this map  
18 what OXY's interests in the unit are and what the  
19 respondents interests in the unit might be.

20 A. OXY has oil and gas and/or coalbed methane leases under  
21 97.70 percent of the unit. The respondent #1 is Garden  
22 Reality Corporation. They own the oil, gas and coal in  
23 that tract which is --

24 Q. Is that the portion that's been colored yellow on the  
25 plat?

1 A. That's colored yellow. -- is an undivided interest in  
2 that tract. They do not have 100 percent interest in  
3 that tract. They own an undivided interest. Consolidat-  
4 ed Coal Company is the oil and gas lessee from Garden  
5 Reality. Columbia Natural Resources has a conventional  
6 oil and gas lease from Buchanan Reality also under that  
7 same tract that we're talking about that's shaded in  
8 yellow.

9 Q. And with regard to the balance of the unit is not colored  
10 yellow, does OXY have coalbed specific leases with regard  
11 to the balance of the unit -- covering the balance of the  
12 unit?

13 A. Yes, we do.

14 Q. And that would be your standing as claimant here?

15 A. That is correct. And we also have coalbed specific  
16 leases from Buchanan Reality in that tract that's shown  
17 in yellow.

18 Q. That's shaded yellow?

19 A. Yes.

20 Q. Okay. Have you undertaken to file in advance of this  
21 hearing with the Board a consent to frack?

22 A. Yes, we have. We filed it as Exhibit D, Page 1 and 2.  
23 Again, that's taken from Island Creek Coal Company and  
24 Page 1 is the statement of no objection to consent to  
25 stimulate and Page 2 is the affidavit stating that the

- 1 person who signed the said consent has a right to do so.
- 2 Q. Within the 753 foot radius of the proposed well bore is
- 3 Island Creek the only deep coal lessees?
- 4 A. That is correct. Island Creek has a coal lease below the
- 5 Tiller Formation to the deepest coal seam.
- 6 Q. So within the notification circle the 753 foot radius
- 7 Island Creek would be the only coal lessee or coal owner
- 8 for purposes of a consent to frack requirement?
- 9 A. That is correct.
- 10 Q. The coalbed methane leases that you have indicate that
- 11 you have obtained in this particular unit, Mr. Wirth, and
- 12 I assume you've also leased coalbed methane elsewhere in
- 13 this area?
- 14 A. That is correct.
- 15 Q. Could you tell the Board what you believe the competitive
- 16 terms for coalbed methane lease is that you have entered
- 17 into and that have entered into by others in this area
- 18 are in terms of dollars and cents and term?
- 19 A. For coalbed methane specific we offer \$1 an acre with a
- 20 one-eighth royalty with a five year primary term.
- 21 Q. Do you believe that those terms, the one-eighth royalty
- 22 and the \$1 bonus, represent the fair market value of
- 23 coalbed methane leases in this unit and in the area
- 24 immediately surrounding this unit?
- 25 A. That is correct.

1 Q. And would you recommend to the Board that in fixing the  
2 statutory options they take into consideration and use  
3 those lease terms for the lease options?

4 A. Yes, I would.

5 Q. And this unit is an 80 acre unit in the Oakwood coalbed  
6 gas field, correct?

7 A. That is correct.

8 Q. And the seams that are proposed to be developed by this  
9 coalbed methane well in this unit are which seams?

10 A. Below the Tiller Formation to the Pokie 3 or Pokie 2 and  
11 any associated coal seams in the adjacent strata.

12 MR. SWARTZ: That's all the questions I have of Mr. Wirth.

13 MR. EVANS: I have one question. Mr. Wirth, on the plat  
14 shown, the acreage shown as 325, that's the acreage of  
15 the tract where the well bore is located?

16 MR. WIRTH: That is correct. That is the farm or what they  
17 refer to as the mineral tract in which it's drilled upon.

18 MR. SWARTZ: What we have done at the request of the Board,  
19 there was an oral order of the Board some months ago that  
20 we needed to note somewhere on this plat that it was an  
21 80 acre tract because the farm units are a problem. If  
22 you look at the very bottom of that legend you will see  
23 that it's reported to be a 1,866.76 foot square block  
24 equalling 80 acres. And somewhere on these plats that  
25 representation appears because you had told us to do

1           that. You need to look for it sometimes. Sometimes it's  
2           in the (Inaudible.)

3   MR. MCGLOTHLIN: This sounds like I'm nit picking again, but  
4           on your certification from your engineer, "I the under-  
5           signed hereby certify that this plat is correct to the  
6           best of my knowledge and belief and it shows all the  
7           information required by law and regulations of the  
8           Virginia Well Review Board." Would it not be appropriate  
9           to maybe make some amendments to some prior wells as the  
10          future ones?

11   MR. SWARTZ: Some of these guys are just living in the past,  
12          you know.

13   MR. WIRTH: It's due noted and -- yes, you picked up and we  
14          will inform Mr. Baldrige.

15   MR. SWARTZ: It will be corrected.

16   MR. FULMER: I don't want to mention anything, but when the  
17          plats change they have to be registered with the regist-  
18          erer of the State and as they go in they're changed.  
19          This just happened to be an old plat that's outdated.

20   MR. MASON: See, you're reading it and I don't believe I've  
21          ever read it before.

22   MR. SWARTZ: Another thing that we're doing and we started  
23          doing recently which I'll just point out to you is the  
24          new rules which go into effect, I think, on the 25th of  
25          this month or at the end of this month require a tie in



1 to the State planning coordinate system and we have  
2 started, you will see here, reporting that although it  
3 doesn't phase in for a year. Hopefully we'll still  
4 remember to do it a year from now, but we are doing it at  
5 this point.

6 MR. MASON: You're talking mining report in that little block  
7 that this plat is?

8 MR. SWARTZ: Well, we're always tying it in the Island Creek  
9 coordinates and for some time now we've been tying it  
10 into the State planning coordinate system as well because  
11 we knew that rule was coming.

12 MR. CHAIRMAN: That is the location of the well here?

13 MR. SWARTZ: Yes.

14 MR. WIRTH: Yes. That's correct.

15 MR. CHAIRMAN: Thank you.

16 MR. SWARTZ: Anything further of Mr. Wirth?

17 (Witness stands aside.)

18 MR. CHAIRMAN: Okay. Call your next witness.

19 MR. SWARTZ: I would call Mr. VanGolen. Mr. VanGolen, you are  
20 still under oath.

21  
22 GLEN VANGOLEN

23 a witness who, after having been previously sworn, was  
24 examined and testified as follows:  
25

DIRECT EXAMINATION

BY MR. SWARTZ:

Q. State your name again, please.

A. Glen VanGolen with OXY, USA.

Q. And your title?

A. Project manager.

Q. As project manager have you had an occasion to become involved with this unit and the proposed well to be drilled on this unit?

A. Yes, I have.

Q. There's a DWE which is Exhibit C that's in the application package. Let me show it to you. Is that something which you prepared?

A. Yes, it is.

Q. And it bears your name?

A. Yes, it does.

Q. When did you prepare it?

A. On September 13th, 1991.

Q. It reports a proposed total depth of what?

A. 2,203 feet.

Q. Has this well been drilled yet?

A. No, it has not.

Q. Has a permit been applied for?

A. Yes. A permit has been applied for. It has not been

1 issued. It's pending a surface owner objection.  
2 Q. And there has been a hearing set on the surface owner  
3 objection?  
4 A. Yes, for October 23rd.  
5 Q. So we haven't gotten to that point yet?  
6 A. Right.  
7 Q. And the well has not been drilled as yet?  
8 A. Correct.  
9 Q. But the surface, I believe, probably hasn't been prepared  
10 either?  
11 A. Correct.  
12 Q. The location of this well is again outside the drilling  
13 window, correct?  
14 A. Yes, it is.  
15 Q. And could you tell the Board why that has happened here  
16 with regard to this particular unit?  
17 A. This is another well bore that's underlain by the  
18 Dominion #6 mine of PerMac. Once again, PerMac has put  
19 us into an area where it wouldn't interfere with our  
20 mining process.  
21 Q. Looking at the DWE you have it looks like a water  
22 protection stream of about 500 feet.  
23 A. That's right.  
24 Q. Is there something mine related or otherwise to account  
25 for the additional water protection stream here that we

1 normally don't see?

2 A. Yeah. The Dominion #6 mine is at 429 feet, I believe.

3 Q. Again, this DWE contemplates three stimulations?

4 A. Yes, it does.

5 Q. And is the target seam or target formation to penetrate

6 the Pocahontas #3 seam?

7 A. Yes, it is.

8 Q. And is this well at a proposed total depth of 2,203

9 sufficiently deep to produce from the Pocahontas #3?

10 A. Yes, it is.

11 Q. And what is the total amount shown on the DWE to drill

12 and complete this well?

13 A. The total cost is \$249,209.

14 Q. In your opinion is that cost a reasonable estimate of

15 the probable cost to both drill and complete this well?

16 A. Yes, it is.

17 Q. Is it your opinion that OXY's plan of development is a

18 reasonable plan to develop the coalbed methane in this

19 unit?

20 A. Yes, it is.

21 Q. Is it your opinion that this proposed well will con-

22 tribute to the production of correlative rights of the

23 owners of the methane within and under the unit in

24 question and lessen the likelihood of both physical waste

25 and economic waste?

1 A. Yes, it is.

2 MR. SWARTZ: That's all I have of this witness.

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

4 VanGolen, can you summarize the surface owner objection?

5 I realize that's not -- I'm just concerned to whether or

6 not any decision this Board may have impact on that?

7 MR. VANGOLEN: There's a laundry list here, Mr. Wampler.

8 MR. CHAIRMAN: Does it have anything to do with the location

9 of the well?

10 MR. VANGOLEN: Basically the objections are to using private

11 driveways, traveling across lawns, free ride without

12 payment, no contract with the land owner, destruction of

13 timber, any discharges from such wells can damage and

14 destroy surrounding vegetation, reduce the value of real

15 estate, damage of my land for exploratory purposes or any

16 other reason.

17 MR. SWARTZ: Why don't you just read the last one.

18 MR. VANGOLEN: I'm entitled to a claim of methane within my

19 property boundaries. Those are a summary there.

20 MR. CHAIRMAN: Thank you.

21 MR. MASON: I'm just going to ask, that's a surface owner,

22 correct?

23 MR. VANGOLEN: Yes, it is.

24 MR. SWARTZ: Yes, Mr. Coleman. Boyd Coleman.

25 MR. MASON: Where is that on this --

1 MR. FULMER: It's right below there.  
2 MR. MASON: It's not actually within this unit?  
3 MR. WIRTH: Yes, it is.  
4 MR. SWARTZ: Oh, yes. He owns the surface where the well is  
5 located.  
6 MR. MCGLOTHLIN: A three acre tract?  
7 MR. MASON: It's up there, the Boyd Coleman surface. Do you  
8 see it right underneath the --  
9 MR. WIRTH: Do you see the longitude 82 027  
10 MR. MCGLOTHLIN: Okay. I'm with you now.  
11 MR. WIRTH: And the dash line is a surface identification  
12 tract. So he owns --  
13 MR. SWARTZ: The access road.  
14 MR. WIRTH: I can color it in for you, if you'd like.  
15 MR. MCGLOTHLIN: Is it just this tract right here?  
16 MR. SWARTZ: A portion of the access road.  
17 MR. WIRTH: I have measured it out and it's 3.3 acres.  
18 MR. SWARTZ: Yes, it is.  
19 MR. MCGLOTHLIN: Just this part right here?  
20 MR. WIRTH: Yes. That's correct.  
21 MR. SWARTZ: So it's a small portion of that access road.  
22 MR. MCGLOTHLIN: Okay. It's not the well bore itself?  
23 MR. SWARTZ: No.  
24 MR. CHAIRMAN: Thank you. Any other questions, members of the  
25 Board?



1 (Witness stands aside.)

2 MR. CHAIRMAN: Do you have any other witnesses, Mr. Swartz?

3 MR. SWARTZ: No. That's it.

4 MR. CHAIRMAN: What's your pleasure, members of the Board?

5 MR. EVANS: I make a motion to grant OXY's petition for  
6 establishment of a compulsory pooled drilling unit on  
7 this map.

8 MR. CHAIRMAN: I have a motion to grant the petition.

9 MR. MASON: Second.

10 MR. CHAIRMAN: A motion and a second. All in favor signify  
11 by saying yes. (ALL AFFIRM.) All opposed say no.  
12 (NONE.) The motion carries. Thank you.

ITEM VIII

MR. CHAIRMAN: The next item on the agenda a petition for the establishment of a compulsory pooled drilling unit under 45.1-361.22 from Edwards & Harding Petroleum Company for proposed well EH-86, Docket Number VGOB-91-1015-156. Would those parties that wish to address the Board in this case please come forward.

MR. MULLINS: Mr. Chairman, my name's Tom Mullins and I represent Edwards & Harding Petroleum Company. At this time we'd like to move for a continuance of our application. In reviewing it, it appears that we haven't sent appropriate notice to some of the parties and we're not in the position to go forward today and we'd like to continue it until the next docket so we can provide the appropriate notice to all parties.

MR. CHAIRMAN: Is there anyone here present today that objects to this? Is that acceptable to the Board?

MR. MASON: I move the acceptance and the continuance.

MS. ZANDER: Second.

MR. CHAIRMAN: A motion and second. All in favor signify by saying yes. (ALL AFFIRM.) All opposed say no. (NONE.)  
The motion carries. Thank you. I'd like to just brief the Board on something and continue the hearing in open discussion. In our discussions with Treasury in dealing

1 with the unclaimed property issue the Department, myself  
2 and Kathy Reynolds met with three people from Treasury  
3 two weeks ago and I told them that I wanted to bring  
4 before the Board today the issues that I've discussed  
5 with you previously and I'd ask that you permit us, the  
6 Department of Oil and Gas, to submit to Treasury on a  
7 test basis some cases from the conventional gas and oil  
8 rulings in the past where there have been unknown owners  
9 to get a system set up to make sure that we do everything  
10 we can with working out any kind of bugs with the system  
11 so that future orders of this Board may incorporate a  
12 system and make available to the operators a diskette in  
13 as simple fashion as possibly can be crafted a procedure  
14 to follow in dealing with unclaimed unknown owners --  
15 unclaimed properties in the State. So I'm specifically  
16 asking your authorization to go back to some previous  
17 orders and work with Treasury to set up a system with  
18 your understanding that if there was any amendment to  
19 that order we would come back through the Gas and Oil  
20 Office to ask that that be amended with proper notification.  
21

22 MR. MASON: Mr. Chairman, this deals -- actually there are two  
23 things concurrently going on as to the escrow issue, but  
24 this solely relates to the unclaimed --

25 MR. CHAIRMAN: This is unclaimed property.

1 MR. EVANS: Well, I make a motion that we so give the  
2 necessary approval to do exactly that.

3 MR. HASON: Second.

4 MR. CHAIRMAN: Motion and a second. Any further discussion?  
5 If not, all in favor signify by saying yes. (ALL  
6 AFFIRM.) All opposed say no. (NONE.) Thank you very  
7 much. Our tour will begin in the morning at the Gas and  
8 Oil Office at 8:30. I'll see you there. Thank you.

9  
10 (End of Proceedings for  
11 October 15, 1991.)  
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1  
2 CERTIFICATE  
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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 October 15, 1991 at the Southwest Virginia 4-H  
11 Center, Abingdon, Virginia, were taken by me and that the  
12 foregoing is a true and correct transcript of the proceedings  
13 had 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 5th day of November, 1991.  
19

20 Tamara L. White  
21 TAMARA L. WHITE  
22 NOTARY PUBLIC  
23

24 My commission expires January 21, 1992.  
25