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4 VIRGINIA OIL AND GAS CONSERVATION BOARD
5

6 HEARING OF DECEMBER 17, 1991
7

8 9:00 A. M.
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10 AT THE SOUTHWEST VIRGINIA 4-H CENTER
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12 ABINGDON, VIRGINIA
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December 17th, 1991

This matter came on to be heard on this the 17th of December, 1991 before the Virginia Gas and Oil Board at the Southwest Virginia 4-H Center, Abingdon, Virginia pursuant to Section 45.1-361.19.B and 45.1-361.23.B.

MR. CHAIRMAN: My name is Benny Waspler, Assistant Director for mining for the Virginia Department of Mining, Minerals and Energy. I'll ask the Board members to introduce themselves.

(MEMBERS INTRODUCED.)

ITEM 1

MR. CHAIRMAN: The first item on the today's agenda, the Board will review and discuss amendments to the public participation guidelines established for the Department of Mines, Minerals and Energy. This is Docket Number 5177. I handed out the draft public participation for the Board members to review and I will go over this. The law requires every agency or board that is authorized to adopt regulations to adopt public participation guidelines. The public participation guidelines are designed to insure that the public has an opportunity to participate in the process of developing regulations from the earliest stages of regulatory development. And the Board is aware that we went through utilizing public participation guidelines as we developed our rules and regulations. The individual boards and agencies have some discretion as to whether a public meeting is held at the beginning of every regulatory action and whether a work committee is used to develop the regulations. So that's a discretionary item. The Department of Mines, Minerals and Energy first adopted public participation guidelines in 1986. Since the guidelines were first adopted there have been changes in requirements for making regulations. And as you know, there have been

1 changes in the Board's associated with the Department.
2 The Department also identified the need for some changes
3 to improve the effectiveness of the regulatory develop-
4 ment. And you have before you the draft, a marked up
5 version of the public participation guidelines. I'll
6 just take a few minutes to walk you through those
7 changes. The title has been changed to reference the
8 Board of Examiners and the Virginia Gas and Oil Board.
9 Part of the definition has been added to clarify the use
10 of the term department, director, and promulgating
11 authority. References to the Board of Examiners and Gas
12 and Oil Board have been corrected in the text. The
13 application of the guidelines has been clarified in part
14 two to show that they only apply to adoption, amendment,
15 and a repeal of regulations, and not to the regulatory
16 actions. Part three now allows the regulatory authority
17 to deny petitions for regulatory changes only after
18 careful consideration. Specific provisions for creating
19 and maintaining a regulatory mailing list have been
20 eliminated. The amendments would simply require the
21 Department to maintain a current list. The amendments
22 require the regulatory authority to notify interested
23 parties as soon as it decides to consider amending any
24 regulation. Currently work committees may be formed
25 before the notice is published there is a mandated

1 change. A notice of intended regulatory action would
2 have to be published in the newspaper in any area that is
3 particularly affected by a regulation. The regulatory
4 authority would have the option of deciding whether a
5 work committee would have to be formed to consider
6 regulatory amendments. Other options for public partici-
7 pation could be used. Notices of public hearing would
8 have to be published in a newspaper in any area that is
9 particularly affected by a regulation. Proposed regula-
10 tions no longer would have to be submitted to the
11 Attorney General for review. All of the changed languag-
12 es underlined, the language to be deleted is struck over
13 with dashed lines. So I'm asking your approval to
14 publish the draft text that I've given you. It is the
15 official proposed text of public participation guidelines
16 for the Virginia Gas and Oil Board. Do you have any
17 questions? In developing these guidelines the Department
18 utilized a work group and there in as is reflected in
19 this document.

20 MR. MASON: Am I to understand that this is just the initial
21 step in this process?

22 MR. CHAIRMAN: That's right. These will be published as a
23 draft.

24 MR. MASON: Will it come back before us --

25 MR. CHAIRMAN: For final adoption, yes.

1 MR. MCGLOTHLIN: And changes?

2 MR. CHAIRMAN: Yes.

3 MR. MASON: I don't want to cut off anybody short. If not, I
4 move we adopt it.

5 MR. CHAIRMAN: We have a motion to adopt.

6 MR. MCGLOTHLIN: Second.

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

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ITEM 11

MR. CHAIRMAN: The next item on the agenda, the Board will review recommendations from the review committee for requests for proposals submitted for final negotiation of an agent for escrow services. This is Docket Number 0178. I'm doing this in two steps here for you just to make sure that -- the review committee at this point in time has only ranked these proposals. It was the consensus of the review committee that -- the number one proposal just based on review of information submitted was Great Star Bank. Number two was C&S Sovran. Number three was Tazewell National Bank. Signet Trust was four and E. R. Keene Financial Services, Incorporated was number five. I've attached for your additional information the scoring and the evaluation criteria and what would be done in the award of contract. There's also an analysis of the statement of charges by each person that submitted a bid. Before we went to the next step -- we had talked about this before I believe the Board authorized the Department to go ahead and have this group make a final recommendation, but I wanted you to see this stage and again ask you if it's your preference that this review committee interview these starting with number one and try to get the best bid, negotiate for the best.

1 award. If that's acceptable to you I would like a
2 motion in that effect or whatever other pleasure you may
3 have.

4 MR. McCLOTHLIN: Would you explain to us why we would be
5 trying to negotiate once their bid's been received? I
6 don't understand that process.

7 MR. CHAIRMAN: The State purchasing requirements require you
8 to bring in the -- after your ranking to bring in your
9 number one candidate and negotiate what a specific price
10 would be. Negotiate the contract if you will. And then
11 if there was any misunderstandings of what you read in
12 the proposal versus what they were willing to commit in a
13 contract then you would reject that bid and have that
14 documented and go to number two. You're not anticipating
15 that they're going to change anything that's in the
16 contract, but you're just interviewing to make sure that
17 the proposal can be stipulated in a contract.

18 MR. McCLOTHLIN: I just didn't understand the process. Thank
19 you.

20 MR. MASON: Kevin had mentioned and had talked to me about
21 this and indicated that he wanted to review these
22 proposals. Have you had an opportunity to do that,
23 Kevin?

24 MR. McCLOTHLIN: No, I have not.

25 MR. CHAIRMAN: I've given them to him. He has those.

1 MR. HASON: Did you want some time to go over this?

2 MR. MCGLOTHLIN: I would like to have time to go over them. I
3 have no problem with the Department going ahead and
4 negotiating with the Board having a final chance to
5 interview the people who submitted the proposals.

6 MR. CHAIRMAN: Okay. I would certainly come back to the Board
7 prior to the final award and it would be the Board's
8 approval that we'd be asking for it at the next meeting
9 provided they could do that of the contracting and then
10 if you decided you wanted to interview that one that's
11 recommended we can arrange for that at the next meeting,
12 if that's what you're asking. Have I confused you?

13 MR. MCGLOTHLIN: Yes.

14 MR. CHAIRMAN: Let me go through it again. What I was saying
15 is -- if I'm understanding what you would like to do -- I
16 could have the Department staff interview and interview
17 whomever they need to interview to get to a point they
18 would have a recommended contract for award by this
19 Board. And which ever party that happens to be we could
20 have them here at the next meeting for interview by the
21 Board prior to final authorization. That way is there's
22 any questions you could get those resolved and we could
23 have any changes in the contract stipulated.

24 MR. MCGLOTHLIN: I just want to reserve the right to do our
25 own interview. That's all I'm requesting.

1 MR. CHAIRMAN: Okay.

2 MR. MASON: Well, I think. Mr. Chairman, it might be ap-
3 propriate if you could allow a period of time if possible
4 that anybody wants to can review. Kevin's expressed an
5 interest in reviewing these documents and I'd like to
6 look at them also. Perhaps if we could work on some way
7 that any other members of the Board would have an
8 opportunity, too, we could pass them around and then take
9 action at that time or defer action until -- this has
10 taking a while. I don't know that another meeting would
11 make a lot of difference, would it?

12 MR. CHAIRMAN: It's just the length of time that it takes to
13 get it done.

14 MR. MASON: Yeah, I know.

15 MR. CHAIRMAN: But it's whatever you want. I want you to be
16 satisfied that you're getting whatever review you need of
17 these.

18 MR. MCGLATHLIN: Go back to the applicants and request ten
19 copies. I believe that was part of the motion if we
20 deemed it necessary that we would ask them to provide ten
21 copies.

22 MR. CHAIRMAN: I can give whomever here a copy. I can get
23 that in the mail by tomorrow whoever needs it because I
24 think we have additional copies.

25 MR. HARRIS: Mr. Chairman, were there only five applicants?

1 MR. CHAIRMAN: Yes, that set the qualifications.

2 MR. MCGLOTHLIN: I'll go on record saying that I think that
3 whoever we choose as an escrow agent since the majority
4 and bulk of this money is coming from Southwest Virginia
5 should be a financial institution from Southwest Virgin-
6 ia. And upon that I would make the motion that Mr.
7 Waspier direct the Department to go ahead with the
8 negotiations.

9 MR. HASON: Wouldn't that be subject to final review by the
10 Board in their right to interview any effected people?

11 MR. MCGLOTHLIN: Yes, sir.

12 MR. CHAIRMAN: I have a motion that we direct the Department
13 to go ahead with negotiations subject to final review by
14 the Board preserving their right to interview.

15 MR. EVANS: Second.

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

19 MR. FULMER: Mr. Chairman, for the purposes of the publication
20 on the Board's agenda, will that be occurring at the next
21 hearing?

22 MR. CHAIRMAN: Well, I have to get some other information
23 here. Are you talking about regarding this escrow?

24 MR. FULMER: You're not putting on the agenda for the next
25 hearing?

1 MR. CHAIRMAN: I need some more information here for you. Who
2 else wants to see the proposals? Who are the board
3 members that would like to get a copy of the five
4 proposals under consideration?

5 MR. MASON: Yes, sir.

6 MR. FULMER: It's my understanding, Mr. Chairman, based on
7 what Kevin was saying that we can go forward with
8 negotiations and it doesn't necessarily mean it will come
9 up the next meeting. I guess it would come up whenever
10 the staff has a recommendation subject to our right to
11 review and interview for part of that final approval.
12 That would more or less depend on when they do what
13 they're doing.

14 MR. CHAIRMAN: It would. I would suggest that we go ahead and
15 put it on the agenda and we can continue it if it's not
16 ready because we're not authorized to discuss it if we
17 were to get ready and not have it on the agenda. Thank
18 you.

ITEM III

MR. CHAIRMAN: The next item on the agenda, the Board on its own motion will reconvene the hearing on OXY, USA, Incorporated's CEM well W-32. This is Docket Number VCON-91/09/24-0142. Would any of the parties that would like to address the Board regarding this come forward, please.

MR. SWARTZ: I believe this is the one that we have spoken about adjuring, Mr. Chairman. I'm Mark Swartz for OXY. For the rest of the Board members, this is the matter that #60 ran through a unit and we were force pooling the Commonwealth and an issue arose as to whether or not the letters that we had from the Department of Transportation were sufficient indicia of consent to frack. And there has been some concern expressed by the AG's office, I suspect, and the chairman with regard to whether or not the record that we made at that point in time was sufficient and that's why this was put back on. I have talked to the Chairman and indicated to him that it is our present intention that we will probably withdraw that for some reasons unrelated to what you're doing. And in the event we change our mind and don't withdraw it I'll give the director plenty of notice and he can put it back on the docket. But I think this is going to go away and

1 I would request that it be continued indefinitely subject
2 to my telling you that we're either going to dismiss it
3 or give notice that you can put to back on the hearing,
4 if that is satisfactory to you all.

5 MR. CHAIRMAN: Any questions, members of the Board? Do you
6 need more information?

7 MR. EVANS: Mark, when you say continue it indefinitely --

8 MR. SWARTZ: Marty, when would we know?

9 MR. WIRTH: We ought to know by the January docket. If you
10 want to discontinue it for a thirty day period I think we
11 ought to be able to finalize it by then.

12 MR. EVANS: That's fine.

13 MR. CHAIRMAN: Any problems. Okay. We'll continue that till
14 the next meeting.

ITEM IV

MR. CHAIRMAN: The next item on the agenda is a petition by OXY, USA Incorporated for the establishment of drilling units in the Oakwood Coalbed Methane Gas Field. This is Docket Number VGOB-91/11/19-0162 continued from November. I would ask anyone who wishes to address the Board in this matter to come forward, please.

[AFTER A BRIEF RECESS, THE PROCEEDINGS CONTINUED AS FOLLOWS:]

MR. CHAIRMAN: I'll again ask are all the parties that wish to address the Board regarding Item IV on the agenda, Docket Number VGOB-91/11/19-0162 at the table? Anyone else?

MR. LEVY: Jim Levy with Cabbot Oil and Gas. We would like to have the permission of the Board at the appropriate time to enter into comment.

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

MR. SWARTZ: Mark Swartz, Howard Salisbury and Patsy Bragg appearing for OXY, USA. As the Board will recall, this matter was on the agenda last month. Mr. Kelly asked that OXY and it's counsel prepare some additional information to respond to several questions that he had raised. There were two areas of concern with Mr. Kelly and I think the Board shared. One was more information on how it would work -- the proposal would work -- in

1 terms of production, in terms of cost. And the exhibits
2 that you have before you are responsive to those in-
3 quiries. I think there were some other issues that were
4 left unresolved, perhaps. Patsy Bragg is prepared to
5 deal with the questions and work through the exhibits.
6 We have several witnesses here this morning. We will try
7 to move through this as quickly as we can, but I think
8 the sense that I left with last time was that you really
9 wanted to have some examples before you so that you could
10 reflect upon how these proposed field rules, if im-
11 plemented, would impact on mining and allocation to
12 royalty owners in the field. And I think we have tried
13 to come up with a group of exhibits to give you a variety
14 of situations to give you our view of some generic
15 examples that we've come with and give you an opportunity
16 to the extent you want to to propose other hypotheticals
17 and allow us to respond to indicate how this might work
18 if it were implemented and the scope in other words. I
19 think another issue that was before the Board although
20 Mr. Kelly didn't really discuss it was are these proposed
21 rules flexible enough to accommodate various mining
22 operations of various miners comfortably and various
23 forms of development comfortably. And I think we have
24 also tried to address and will try to address that issue.

25 MR. MCCLAINDAHAN: Excuse me, Mr. Chairman. Elizabeth Mc-

1 Clannahan and Jim Jones on behalf of Pocahontas Gas
2 Partnership. We would also like to reserve the right to
3 speak.

4 MR. CHAIRMAN: Thank you. Any others? You may continue, Mr.
5 Swartz.

6 MS. BRAGG: Mr. Chairman, if you would allow Mr. Swartz and I
7 some lieu way and flexibility. As you can appreciate, we
8 have filed a number of exhibits here and have a number of
9 witnesses. We will try to go through them as rapidly as
10 we can at the Board's pleasure to economically use your
11 time and that will mean that both of us may be assisting
12 one another at various points in this hearing, if that's
13 acceptable to you. We after the last hearing appreciated
14 the questions that were opposed to us and decided that we
15 should really start at the very beginning in the present-
16 ation of this case and to lay out for you in pre-filed
17 exhibits the rational and the basis on which our applica-
18 tion was filed. We've pre-filed what has been marked
19 Exhibit G, a pink document if you will, that gives the
20 outline of our testimony today. We have previously
21 discussed in the past hearing Exhibits G forward and at
22 this time we would like to withdraw those exhibits and
23 replace them with these because we believe they are
24 better examples and more complete. The others were not
25 admitted into evidence. So we will start with Exhibit G

1 here which is the outline of our testimony. Moving
2 forward, we have another exhibit book which will be our
3 actual examples and that is a blue book marked Exhibits A
4 through G. We've done these in two separate binders in
5 hopes that you could follow with the outline and simul-
6 taneously follow with the exhibits. You will hear
7 testimony today from a number of people. We want back
8 and looking at the statute reviewed, I guess, our
9 obligations in terms of our request to you and likewise
10 your authority under the statute. And therefore, the
11 very basics of this is what are you allowed to do and
12 what should you do with respect to the development of
13 coalbed methane. We are asking in this application for
14 field wide rules. One of the most important tenets of
15 our request is that a uniform method be adopted field
16 wide for the area that has previously been described as
17 the Oakwood Field. We believe that this is required by
18 the statute and is the best vehicle available to protect
19 all of the interest in the field. And the rational for
20 doing that is this: generally the coal operators will
21 protect their interest before you and likewise the oil
22 and gas interest will also come before you and have the
23 ability to protect their own interest. What a uniform
24 mechanism does is primarily protect the royalty owners
25 and others who do not have the wherewithal to come

1 before you on even a case by case basis such that if you
2 have uniform development over an entire field and entire
3 acreage every owner, be it a coal owner, oil and gas
4 owner or operator and royalty owner, will be treated the
5 same field wide. He and his neighbor will get the exact
6 same treatment from you, the Board, and the Commonwealth
7 of Virginia. We believe that's an integral part of our
8 application, that we have a uniform system and mechanism
9 in the Commonwealth of Virginia. As you are well aware,
10 OXY can before you in 1990 and requested field rules for
11 this same area and at that time an order was entered
12 establishing 80 acre drilling units for coalbed methane
13 wells in advance of mine through. The same rational
14 applied there is that really everyone should be treated
15 in the same manner. At that time frankly OXY was not in
16 a position to recommend to you what should be the
17 occurrence for development field wide for the protection
18 of short hole gas and gob gas. OXY now believes that it
19 has experience from the drilling of it's well in conjunc-
20 tion with the knowledge and information from the coal
21 company that it is affiliated with and others to make a
22 recommendation before you with respect to gob gas and
23 short hole gas. Those events, as you are well aware,
24 are now occurring in the field and OXY very much believes
25 it needs to be addressed on a field wide basis. We have

1 and would at this time like to amend our application to
2 dismiss out any requests for relief for long hole gas.
3 Basically at this point, even though the application was
4 filed and contemplated that we would come before you on
5 long hole, we do not feel as a company that we can make a
6 recommendation that we are comfortable with that should
7 be applied on a field wide basis. And hereford, at this
8 time we are asking that our application be amended to
9 dismiss out that request for relief. Hopefully at some
10 point in the future when there is more experience with
11 long hole gas we can come before you with facts and
12 evidence to support either field wide rules or a case by
13 case basis. One of the most important factors that we
14 believe should be considered today is the protection of
15 correlative rights. And the statutory definition means
16 the right of each gas or oil owner having an interest in
17 a single pool to have a fair and reasonable opportunity
18 to obtain and produce his just and equitable share of
19 production of the gas from that pool. What you will hear
20 testimony today is that the seams below the Tiller seam
21 are one pool. That was the testimony in the Oakwood
22 order. I believe you have heard testimony to that effect
23 in other cases. That all seams below the Tiller are, in
24 effect, one pool under this statute meeting the defini-
25 tion of a common accumulation, a common reservoir of gas.

1 And you will hear testimony from the geologist today that
2 our application and our testimony is the same as has been
3 presented before you. Considering that you have a field
4 wide pool, what then is the appropriate mechanism for
5 development of this pool field wide? We believe that
6 because it is a single pool the protection of correlative
7 rights of the gas owners is vital. We would also like to
8 be mindful during the presentation of this application
9 that gas is a very different natural resource in the
10 Commonwealth of Virginia than coal is. As we all know,
11 if our forefathers and mothers owned coal and it was not
12 mined we own those tracts that are passed down to us.
13 There is still the possibility of mining and receiving
14 revenue from that coal. It is in place for our fore-
15 fathers and our successors. Gas is very, very different
16 and we all know gas is migratory. If you penetrate a gas
17 seam and put a straw or a well into it and start sucking
18 that gas up you will get or may get your neighbor's gas.
19 It will not be there unless the conservation laws of the
20 Commonwealth and this Board effectuate a mechanism that
21 equitably prorates that revenue in production from that
22 gas. So what you have in your situation is coal which is
23 in place, gas which is migratory, the competing interest
24 of the operators of those two natural resources and the
25 implementation of a legal frame work that makes sense and

1 works for the coal companies, the gas companies, and the
2 very important royalty owners who have gas underneath
3 their lands and have the right to recover what is, in
4 fact, underneath their tracts. We believe we've come up
5 with a mechanism that will allow you to do that and
6 that's what we're presenting here today. We have also in
7 Exhibit G applied some definitions for gob gas, unsealed
8 gob gas, short hole gas, and gas from increased density
9 wells and we have provided those to you. Basically
10 they're the same as were presenting in our testimony last
11 month. We are dealing here only with active gob or
12 unseal gob. We believe that seal gob is a far different
13 situation that we are not willing to address at this
14 point in this application. So with that preface I would
15 now like to call Mr. Dennis Lewellen.

16 CLERK: (Swears witness.)

17
18 DENNIS GILBERT LEWELLEN

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

21
22 DIRECT EXAMINATION

23
24 BY MR. BRAGG:

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

1 sir?

2 A. Dennis Gilbert Lewellen.

3 Q. And by whom are you employed?

4 A. I am the division geologist for Island Creek Coal

5 Company.

6 Q. And how long have you been in that employment?

7 A. I've been there for five years.

8 Q. What are your responsibilities within that employment?

9 A. I am responsible for all of the geologic data and input

10 for the division.

11 Q. And exactly what does that include by way of coal

12 geology?

13 A. I'm responsible for underground mine mapping, hazards,

14 various types of geologic hazards. I'm also responsible

15 for core drilling programs, exploration that may be

16 necessary and I also provide some of the geologic input

17 or people under me provide the input for the coalbed

18 methane program.

19 Q. Besides working in a supervisory capacity are you -- in

20 fact, do you review the base data with respect to the

21 collection of it in Island Creek's coal operations?

22 A. Yes, I do.

23 Q. What is your educational background?

24 A. I have a Bachelor's degree in political science, a

25 Master's in geology, and a PhD candidate in geology.

1 Q. And what are you obtaining your PhD in?

2 A. My specialty is coal geology with particular emphasis on

3 the Appalachian Basin.

4 Q. So you are seeking a PhD in this particular formation, is

5 that correct?

6 A. Right.

7 Q. Have you testified previously before this Board?

8 A. Yes, I have.

9 Q. And were your expert credentials as a coal geologist

10 accepted at that time?

11 A. Yes, they were.

12 Q. In fact, did you testify at the hearing for the Oakwood

13 Field coalbed methane field order?

14 A. Yes.

15 MR. BRAGG: Mr. Wampler, at this time I would ask that Mr.

16 Lewellen be accepted as an expert witness in coal

17 geology.

18 Q. (Mr. Bragg continues.) We have before us an application

19 to create 80 acre drilling units for a formation which

20 has been defined in the application as all seams below

21 the Tallier seam. This is, is in not, the same seams as

22 you heretofore testified in the Oakwood field?

23 A. Yes, it is.

24 Q. And at that time your testimony was that this was a

25 common accumulation and a pool under the definition of

- 1 the statute?
- 2 A. Yes.
- 3 Q. Would you go into some detail as to the seams that make
4 up this pool?
- 5 A. Okay. We defined the pool as all coal seams and adjacent
6 strata below the Tiller seam down to the red and green
7 shells or the top of the bluestone formation which marks
8 the base or the bottom of the coal measures. The main
9 seams that we discussed below the Tiller were the Upper
10 Seaboard, the Greasy Creek, Middle Seaboard, Lower
11 Seaboard, Upper Horsepin, Middle Horsepin, War Creek,
12 Lower Horsepin, the Pocahontas 9 through 1, and also the
13 Squire Gem.
- 14 Q. Would you give us the depositional characteristics of
15 this formation?
- 16 A. The coal measures in this area are basically composed of
17 a series -- in most instances -- thin and discontinuous
18 coal seams. The exception being, of course, the Pocahon-
19 tas 23 and the War Creek in some areas or Beckley as it's
20 known by some is fairly thick in some areas.
- 21 Q. Do you believe that the named seam should be treated as a
22 pool because of their common deposition and that they are
23 an accumulation in communication with itself?
- 24 A. Yes.
- 25 Q. With respect to the interval, are there approximate

1 depths through the field and describe any variance in the
2 depths and thickness from one side of the field to the
3 other?

4 A. In the Oakwood Coalbed Field the zone I describe from
5 basically the base of the Tiller down to the red and
6 green shales is about 800 feet thick on the west side of
7 the property. And on the east side it increases in
8 thickness to approximately 1,200 feet or so. There's a
9 little bit of range in there, but it does thicken from
10 west to east about 300 to 400 feet.

11 Q. And likewise with respect to this pool the definitions
12 include various unnamed seams which may be found which
13 have not been specifically articulated. Is that correct?

14 A. That's correct.

15 Q. And also adjacent rock strata within that seam, is that
16 correct?

17 A. Yes.

18 Q. With respect to the field what is your testimony with
19 respect to the dis-formation which we're defining as a
20 pool in terms of its existence throughout the field?
21 Does it underlay all of the lands that are requested in
22 the application?

23 A. Yes, it does.

24 Q. And is it essentially the same in terms of its charact-
25 eristics and in particular its producing characteristics

1 through the entire field?

2 A. Broadly speaking, yes.

3 Q. Is it fair to say then under your expert opinion this is
4 a pool under the definition of the statute that should be
5 treated as a pool for all owners in the pool?

6 A. Yes.

7 MS. BRAGO: I have no further questions of this witness.

8 MR. CHAIRMAN: Questions, members of the Board?

9 MR. MASON: I have one if I may, Mr. Chairman.

10 MR. CHAIRMAN: Mr. Mason.

11 MR. MASON: This is totally related to my own curiosity. Do
12 you know whether there's any migration of gas from
13 individual coals like from seam to seam? I know there is
14 within the seams, but is there any data -- have you all
15 developed any data that relates to whether there is any
16 migration between seams?

17 MR. LEWELLEN: Well, what we do see is that -- of course,
18 altering different types of strata in between the seams.
19 But all of the strata will contain some gas in it, be it
20 shell or sandstone. It's very tightly held and under
21 normal circumstances you won't see it released. But
22 there obviously has been a great deal of movement of gas
23 at some point or at some time because like I said, the
24 formations are saturated with gas when there's no water
25 there.

1 MR. MASON: What I'm really looking at, absent the fracturing
2 that occurs in these mining operations and the long wall
3 collapses and so forth, the roof collapses, to your
4 knowledge is there any data that supports cross seam or
5 between seam migration?

6 MR. LEWELLEN: Generally unless you would mine it and fracture
7 the strata if you drill a hole and the coal measures it's
8 -- be it a coal seam or be it a sandstone, most of the
9 times the gas is very tightly held and very little gas
10 will actually enter into the well bore. Once in a while
11 you will get a fracture zone and you'll get a well that
12 will produce some gas without stimulation.

13 MR. MASON: In absent this mining activity or fracturing there
14 wouldn't be a great deal of gas released?

15 MR. LEWELLEN: No. There would probably be very few, if any,
16 economic wells producing.

17 MR. MASON: Thank you.

18 MR. BRAGG: May I ask a follow-up question?

19 MR. CHAPMAN: Sure.

20 MR. BRAGG: There have been prepared Exhibits H, I and J which
21 show the extent of the field. Is this, in fact, what you
22 have testified to in terms of the area of the pool that
23 you have described?

24 MR. LEWELLEN: Yes, it is.

25 MR. BRAGG: We would ask that those exhibits be admitted into

1 evidence, H and I, showing the aerial extent of the pool.

2 MR. CHAIRMAN: Any objection?

3 MR. MASON: I'd just like to ask one further question. Now

4 did you determine -- is this based on the determination

5 of the earlier Oakwood field boundaries?

6 MR. BRAGG: This is identical to the boundaries of the Oakwood

7 field.

8 MR. MASON: What was the determining factor for the boundary?

9 MR. LEVELLEN: There were two reasons that we selected those

10 intervals. In that particular field the gas bearing coal

11 seams and adjacent strata would coincide with basically

12 below the Tiller down to the red and green shells and

13 secondly, that's also -- in most cases those are the

14 seams that we contain leases --

15 MR. BRAGG: Are you talking about the aerial extent?

16 MR. LEVELLEN: Yes.

17 MR. MASON: Well, normally fields that I've seen like the

18 field is defined as being like the formation diminished

19 to a certain unproductive level and that's where you draw

20 the perimeter of the field. I'm just curious that this

21 is --

22 MR. LEVELLEN: Well, that's true. Basically you get above the

23 Tiller, in that area you're above drainage and most of

24 the gas is escaped. You're either above or at drainage

25 and you get down to the red and green shells you're

1 that the Oakwood Field is surrounded by another Hara
2 Field which has different sized units.

3 MR. MASON: I understand that.

4 MR. SWARTZ: Okay.

5 MR. MASON: Yeah, at some point somebody told me that.

6 MR. BRAGG: We would call Mr. Sam Gordon.

7 CLERK: (Swears witness.)

8 MR. BRAGG: For the Board's convenience Mr. Gordon will
9 explain Exhibits J forward in the blue book. And we
10 would like to use overhead projections to assist him in
11 doing that.

12
13
14
15 HAMUEL EDWARD GORDON

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

18
19 DIRECT EXAMINATION

20
21 BY MR. BRAGG:

22 Q MR. Gordon, let me ask you some predicate questions
23 before you begin. You have not heretofore testified
24 before this Board, have you?

25 A No, I have not.

1 Q. Would you please state for the record your full name?
2 A. Samuel Edward Gordon, II.
3 Q. And by whom are you employed?
4 A. OXY.
5 Q. And in what capacity?
6 A. As regulatory agent for this project.
7 Q. And what do your responsibilities include in that
8 position?
9 A. They will include permitting, force pooling, and the
10 preparation for royalty distributions with our Tulsa
11 office.
12 Q. And how long have you been employed by OXY?
13 A. I've been employed by OXY one year.
14 Q. One year?
15 A. One year.
16 Q. And what have your responsibilities been throughout your
17 career? And if you would briefly go into your education-
18 al background and your professional experience in the oil
19 and gas area.
20 A. I have an Associate of Arts degree in liberal arts from
21 West Apt Community College. I have my Bachelor of
22 Science in Business management from LaSalle University.
23 And I have twenty-one years of experience with independ-
24 ent oil and gas producers.
25 Q. Does that experience encompass the calculation and the

1 division of interests both on the royalty side and on the
2 working interest side?

3 A. It does.

4 Q. Has that been your primary area of responsibility within
5 your career?

6 A. It has, yes.

7 MS. BRAGG: We would ask that Mr. Gordon's credentials be
8 accepted as an expert witness.

9 MR. CHAIRMAN: Okay.

10 Q. (Ms. Bragg continues.) Mr. Gordon, have you prepared the
11 exhibits which you are about to describe to the Board?

12 A. Yes, I have.

13 Q. And it is within your responsibilities to do the division
14 of interest for the units that OXY is either drilling or
15 producing. Is that correct?

16 A. That is correct.

17 Q. If it would assist you you may go forward to the Board.

18 Exhibit J is in essence a combined recitation of the
19 definitions which we will utilize in the presentation of
20 this application for short hole gas, gob gas, unsealed
21 gob gas, and gas from increased density wells. Moving on
22 to K. Again, after last hearing we thought it may be
23 appropriate to start at the beginning in terms of where
24 we have come from and where we are going in terms of the
25 development of coalbed methane in this area. Mr. Gordon,

1 if you would briefly describe for us what Exhibit K
2 depicts.

3 A. Since I didn't testify in the beginning with the creation
4 of the field rules I'd like to ask your indulgence to let
5 me go back and start kind of at square one. When we
6 develop a unit you have two estates primarily you're
7 dealing with, one being royalty and one being working
8 interest. In our scenario this morning we have developed
9 two tracts, Tract 1 and Tract 2, in which we have
10 calculated the acreage and from this acreage and the size
11 of the unit is what we create the decimal interest which
12 will be disbursed on as well as the working interest that
13 we build on. So in Tract 1 we have 43.68 acres in CHM A-
14 1. In Tract 2 we have 36.32 acres. The two totaled
15 together give us our 80 acre unit. For the royalty
16 estate side when we calculate royalty on Tract 1 we
17 simply place 43.68 acres over the unit size of 80 acres
18 and multiply it times whatever the lease calls for as for
19 the royalty. When we force pool it's an automatic one-
20 eighth. So in our example we set up one-eighth.
21 Calculate that and we come up with a decimal interest off
22 of which we will pay royalties. Now, in our scenario
23 here we have just hypothetically established that this
24 unit produced 1,000 MCF in a month's period of time.
25 You take the decimal interest of royalty owner in Tract 1

1 times that MCF and we come up with a number of 104.75
2 MCL. The same scenario is true on Tract 2. We're using
3 different averages of 16.32 acres over 80 and we come up
4 with the MCF on that royalty owner. Now, the working
5 interest estate is the eight-eighths less the royalty.
6 So when we come down to the working interest portion we
7 are dealing with seven-eighths. And you'll see the
8 fractional computations are identical except for seven-
9 eighths instead of one-eighth. The same base of 3,000
10 MCF on our monthly production. And you come up with the
11 working interest owner's portion of the total MCF
12 produced that month.

13 Q. Going back to the very beginning, what happens when the
14 board establishes a drilling unit it joins together all
15 the interests in that unit for the sharing of production
16 within that unit --

17 A. That's correct.

18 Q. -- so that if in this case the well was on Tract A-1 and
19 there was not a drilling unit then only those owners in
20 that Tract 1 would share in any of the production from
21 that well, is that correct?

22 A. That is correct.

23 Q. Absent a drilling unit. And the Board has determined
24 that the fair and equitable distribution of that gas is
25 on an 80 acre basis and therefore, that production is

1 spread on an 80 acre basis. is that correct?

2 A. That is correct.

3 Q. That's essentially what the Oakwood field rules did and

4 that's what you've been implementing?

5 A. That is correct.

6 Q. And it is the royalty owner side that essentially

7 receives production without the capital expenditure of

8 drilling the wells. It's the working interest that pays

9 all the costs for the drilling and production of the

10 wells?

11 A. That is correct. And the working interest owner recoups

12 his expenditure from our net working interest numbers

13 here.

14 Q. And this is really just a very easy example of what has

15 been implemented today for coalbed methane prior to mine

16 through?

17 A. Correct.

18 Q. Okay.

19 A. The second phase of our slide here deals with the costs.

20 I think this is probably the most important part to the

21 board. Under our scenario most of the DMEs you see are

22 fixed around 250,000. That's the number I just hypo-

23 thetically reached out and grabbed. So to compute the

24 growth number we take the acres contributed by the

25 working interest of both Tract 1 and the working interest

1 of Tract 2 and divide those numbers by 80. That gives us
2 what we call a gross working interest decimal. This
3 number is for billing purposes among the working interest
4 owners. So you take that decimal in the first Tract : as
5 43.68 divided by 80, calculates to .546 or 54.6 percent.
6 ever how you wish to address that. We take that decimal
7 times 250,000 and the working interest owner of Tract 1
8 will have capital expenditures of \$136,500 just to drill
9 the hole. The same situation for Tract 2. You calculate
10 36.32 acres divided by 80. That comes up with 45.4
11 percent or .454. That again times 250,000 in his part of
12 the expenses of drilling that well is \$113,500. That's
13 basically how we get to billing out the costs.

14 Q. Mr. Gordon, for the testimony that we're fixing to move
15 into, DXY has requested 80 acre drilling units be
16 established. It would be this same math methodology that
17 would be applied for the establishment of 80 acre units
18 from gob and short hole such that the ownership would be
19 fixed within the 80 acre drilling unit?

20 A. That is correct.

21 Q. So that's why we did this example to show the very basics
22 of what we're doing now and how it would be impacted by
23 the drilling units requested today --

24 A. That is correct.

25 Q. -- essentially to move forward and have a consistent

1 approach to the development of the field. Let's move on
2 then to the facts for examples 2 and 3.

3 A. If you will, Counsel, I'd like to ask the Board if they
4 are comfortable with this, if there's any questions at
5 this point, because we're going into some second and
6 third dimensional type thinking in a minute.

7 MR. HARRIS: I do have one question. I'm not sure about the
8 Tract 1 and Tract 2 as shown here. Could you repeat
9 again how that was determined, the shape of the --

10 MR. GORDON: Mr. Harris, it could have been any shape. It was
11 just that we -- most of our leases are not rectangles or
12 squares or anything like that. This is the way the
13 tracts run out there. This is hypothetical. It's based
14 on no lease that we have. That for our case I just draw
15 a line. But this is the way the tracts look out there
16 and when you draw a unit in here here's the property
17 lines on this particular unit and you will have more than
18 one or two tracts most of the time.

19 MR. HARRIS: So the shape of this tract has no significance?

20 MR. GORDON: Just for an example of showing you how we would
21 break down the tracts in a very simple basis.

22 MS. BRAGG: As I appreciate it it's very seldom that you have
23 this simple of a real life situation. It's multiple
24 tracts in an 80 acre unit.

25 MR. HARRIS: For clarification, are those surface or mineral

1 tracts that we're talking about?

2 MR. GORDON: Those particular ones on this I believe are
3 surface.

4 MR. SWARTZ: No, these are minerals.

5 MR. GORDON: Those are minerals, excuse me. Those are
6 minerals. I'm sorry.

7 MR. SWARTZ: Basically we are using mineral tracts.

8 MR. MASON: That's what I'm saying. The point I wanted to
9 make is that you do the allocation --

10 MR. BRAGG: Absolutely.

11 MR. MASON: -- based on mineral acreage --

12 MR. GORDON: Mineral ownership.

13 MR. MASON: That's correct. And that may vary sometimes or
14 most often does from surface. So if you look at a map --
15 my only point is and you all probably aren't going to
16 get into this is that sometimes you look at these maps
17 and the surface parameters of tracts is fractured
18 around and you get into some pretty bizarre --

19 MR. BRAGG: Mr. Mason, that's a very well made point. These
20 tracts are the minerals that underlie the surface.
21 That's what this is representative of, the mineral
22 estate.

23 MR. CHAIRMAN: Just a reminder again, as you're talking it's
24 very hard to keep record of whose talking and we'll need
25 counsel to help control that. Any other questions.

1 members of the Board?

2 Q. (Ms. Bragg continues.) If I may preface this example 1.
3 We have put together the facts for examples 2 and 3,
4 short hole and unsealed gob gas production. And the
5 reason that we have combined these facts is because the
6 production will be treated the same and therefore, it was
7 easier to have one fact page than several to repeat it,
8 basically it maintains the integrity of the 80 acre units
9 and then also derives the production that is coming from
10 each one of those 80 acre units when you have a short
11 hole and an unsealed gob situation of a longwall panel.
12 So with that -- and as you can, the diagram is identical
13 to the previous diagram. So Mr. Gordon, if you would,
14 explain here. We've got unit A-1. You might for the
15 sake of simplicity talk about unit A-1 and what has
16 occurred in it when you have a panel -- a longwall panel.

17 A. All right. In the scenario that is before you again,
18 it's hypothetical and if I leave you anywhere please stop
19 me at any point. In the panel I have -- we just arbi-
20 trarily picked a size of 6,000 feet long, 750 feet in
21 width. By a simple measurement in unit A-1 the panel is
22 actually 1,175 feet in length. That portion of the panel
23 in A-1 is 1,175. So if we want to see how many acres of
24 that panel lies under unit A-1 we simply multiply 750
25 times 1,175 and we divide it by a number that's the

1 square feet in an acre and that's 43,560 square feet to
2 come up with the 20.23 acres. Now, the same methodology
3 applies in computing your acreage in the whole panel.
4 750 times 6,000 divided by 43,560 will give you the total
5 acres in that panel which is 103.31 acres. Is everybody
6 with me so far? Okay. Again, you just simply move down
7 the panel. You establish the number of acres under each
8 of the tracts or each of the units. And then when you
9 run your total you should come back to 103.31. You will
10 see here that we have successfully done that. Now, to
11 establish a percentile of production from the panel we
12 take the number of acres in the unit and divide that by
13 the total number of acres in our panel. So in the first
14 situation we have -- or A-1 we have 20.23 acres divided
15 by the 103.31 and it gives us 19.58 percent. Now, that
16 is the amount of this panel underlying unit A-1. We do
17 that with B-1, C-1 and D-1. And we come up with the
18 percentages of each of the units or the part of the panel
19 under each of the respective units. Is everybody with me
20 in the calculations of that? Okay.

21 Q. Now, I guess let's summarize at this point. We have four
22 80 acre units, A-1, B-1, C-1 and D-1. We've got a
23 longwell panel that cuts through those four 80 acre
24 units. And what you have done is taken the mine plan of
25 the longwell panel, laid it on top of these units, and

1 determined what percentage of the longwall panel lies
2 within each of these units such that in unit A-1 it's
3 19.38 percent, B-1, C-1, D-1. You've determined the
4 percentage of the panel that lies within each and every
5 unit and therefore, the percentage of production from the
6 panel that's actually produced from that unit. That's
7 what you have done by this methodology, is that correct?

8 A. That's exactly what I'm hoping to show in my next phase
9 here. Yes.

10 Q. We've got all the maps and all the calculations here and
11 I think it's important that we get the main point of the
12 method that we're asking the Board to adopt. It's
13 basically the 60 acre units plus the mine plan on top of
14 it, calculated to the interest of the panel.

15 A. Correct.

16 Q. If all the Board members are clear on this then we can
17 move along. If you've got questions of Mr. Gordon on
18 this methodology it would appropriate to answer them at
19 this time, I believe.

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

21 Q. (MR. BROUD continues.) This is the methodology that is
22 to be applied to short hole gas and to gob gas, is this
23 same exact same method of calculation. So let's move on
24 then to the short hole.

25 MR. HANCOX: Just again for following up. So what your premise

1 here is that you're going to -- essentially where you are
2 heading as I see it is that you're going to make --
3 assuming that the production of gas in this entire
4 longwall panel is to be allocated back to the individual
5 80 acre units based upon the proportion of the longwall
6 panel that lies under each unit?

7 MS. BRAGG: You will hear testimony to the effect that the 80
8 acre unit A-1 is, in effect, producing 19.58 percent --

9 MR. MASON: But I'm just saying that basically you're trying
10 to determine, assuming whatever production is made from
11 that entire longwall panel, you're going to allocate that
12 back to the units based on the proportion of the panel
13 that lies within each unit?

14 MS. BRAGG: Based on these calculations, that's correct. What
15 you will hear testimony on is that this is the fair
16 allocation or this is the fair production of gas from
17 this unit.

18 MR. MASON: Okay.

19 A: [Mr. Gordon continues.] To continue our scenario, we
20 again just reached out and grabbed some numbers. We said
21 that for this test we would take say the well or the
22 panels producing 150 MCF a day. We multiply that times
23 30 days and we come up with a figure of 4,500 MCF for a
24 month. Now, by taking that production figure and the
25 percentage under unit A-1 we calculate it as 19.58

1 percent times our total production and come up with 881.9
2 MCF of the panel production that was produced out from
3 under unit A-1.

4 Q. Two points here, Mr. Gordon. As I appreciate it and the
5 evidence will be that short hole production will occur
6 along these short holes from each and every one of these
7 units: A-1, B-1, C-1 and D-1, with the question being how
8 the ownership within the 80 acre units should be allowed
9 to receive revenue from that short hole production is all
10 underground production, is that correct?

11 A. That is correct.

12 Q. So the methodology is that in unit A-1 19.38 percent is
13 actually produced from unit A-1 and then within A-1 that
14 revenue and that production will be spread among both
15 Tract 1 and Tract 2. It will not lie in just the Tract 2
16 owners.

17 A. That's correct.

18 Q. And that's the basis of the 80 acre unit?

19 A. That is correct, yes. We will lead back into our 80
20 acre unit on that.

21 Q. So that everyone in each 80 acre unit will share in the
22 production whether their actually in the longwall panel
23 or not.

24 A. That's right. Under the rules that are currently
25 established any gas taken under here belongs to A-1.

1 Anything under B-1 belongs to B-1 and we carry it on
2 through that scenario. So regardless of where the gas
3 comes through -- to the surface on that panel, it is
4 drained from under those units. So it should be allocat-
5 ed in some way, shape, form or fashion back to the
6 people that own it. They are the ones being drained.

7 Q. Would you, Mr. Gordon, for their convenience on the
8 exhibit on the right side put up M-2?

9 A. M-2 or M-1?

10 Q. M-2. I'm sorry. Sam, do both of them.

11 A. (Witness indicates.)

12 Q. The right side of M-2 is the application of the method
13 that you've explained applying to what would be actual
14 production from short holes.

15 A. Right. That is correct.

16 MR. MASON: As I understand this, it's interesting that that
17 underground line to the surface delivery point even if
18 the vertical hole that produced that short hole gas
19 wasn't even on these units the gas would still be
20 allocated back to the units from which the production was
21 made. It wouldn't make any difference where the actual
22 surface production occurred in terms of where the gas was
23 brought to the surface. The allocations would still be
24 made back to the units from which the gas was produced
25 based on these allocations.

1 MR. BRAGG: That's exactly correct.

2 MR. SWARTZ: We did that on purpose because you're going to
3 see in some of the longwall gob production that there may
4 or may not be wells in some of the units that production
5 is allocated to. So it's a lot different than what
6 we've seen today. There's production coming from all
7 four of those panels and the well is off and you'll see
8 in active gob you'll have production from panels that
9 may or may not have a well bore that's producing. And
10 you have to go back and say this is where the production
11 is coming from and deal with it. Not where the well bore
12 happens to be on the surface.

13 MR. MASON: I understand. That's why my question was precise-
14 ly that point that traditionally it's sort of the point
15 at which you make some determination of who's entitled to
16 it. It's been based on where the gas or the mineral
17 surfaced as opposed to where it was produced from.

18 MR. BRAGG: You're exactly correct, Mr. Mason. Normally the
19 physical well bore is on and is producing from the unit.
20 Those are one in the same. What we see here because of
21 the convergents of coal mining operations and gas
22 production a very and unusual situation in terms of gas
23 that is actually produced from a unit and is received at
24 the surface off unit. And that's part and parcel, I
25 think, of the equity of this application, is for the

1 Board to make a determination as to who's the rightful
2 owner of that gas dis-respective of where the well bore
3 may be.

4 MR. MCGLOTHLIN: I might be addressing this question at the
5 wrong time. On the short hole, will you have the same
6 number of short holes per panel drilled in the panel or
7 will that be on a -- what's going to determine how many
8 short holes you put into a longwell panel?

9 MR. BRAGG: I think that question can really be better
10 answered by someone else. I'll give you a brief lawyer's
11 answer if you want, Mr. McGlothlin, as I think that's
12 going to be a function of mine planning and mine develop-
13 ment in terms of the short hole configuration. And
14 probably Mr. Breeding or Mr. VanGolen is the best person
15 to respond to that question.

16 MR. MCGLOTHLIN: My concern and I'll state it now so they can
17 be thinking on it is if you have tract A up there and
18 you've got three short holes drilled into that tract, if
19 you only put two short holes there and then you come down
20 to Tract B and you've got six in that one and you put
21 four in that one or say eight in that area, is that not
22 going to change the amount of gas deriving under the
23 drainage pattern?

24 MR. BRAGG: I'll need to let the engineers and experts speak
25 to this, but the theory is and Dr. Wilson has testified

1 previously and will testify today that unit A-1 contains
2 an amount of gas and that it will be recovered and those
3 people in A-1 who own or claim should receive that amount
4 of production. And our effort is to try to approximate
5 what was there no matter how it's produced. The best
6 method for doing that.

7 MR. MCGLATHLIN: I feel that everyone's entitled to their due
8 certain, but there again if the gas is not derived from
9 there mineral or their gas rights then I don't think they
10 should get anymore than their fair share and they should
11 get their fair share.

12 MR. BRAGG: Sure. We'll ask Mr. Breeding that question, but
13 my assumption is that it will look very similar to this.
14 It will be short hole production all the way up and down
15 the panel. But I would reserve the response to Mr.
16 Breeding as an engineer to respond to that configuration.
17 That's your concern as I appreciate it.

18 MR. CHAIRMAN: Any other questions? Continue.

19 (Mr. Bragg continues.) Shall we move on, Mr. Gordon.
20 Let's talk about M-3 briefly. What we've done here, Mr.
21 Gordon has done in particular, is throughout these
22 examples used unit A-1 repetitively so we can see what
23 happens to unit A-1 as we move through the mining
24 process. What Exhibit M-3 represents is just the same
25 facts as were used in M-2, but we've gone from unit A-1

1 to show you a break out of all the units, A-1, B-1, C-1
2 and D-1. It's just more detail with respect to all
3 impacted 80 acre units. Unless the Board feels other-
4 wise, Mr. Gordon, I would think that's there for their
5 detail. If you've got any questions as to what happens
6 to the other units, B-1, C-1 and D-1, we would entertain
7 them now. But unless it's necessary I think it's all
8 there on the exhibit.

9 MR. KELLY: While we're on this first exhibit, I'll just throw
10 this out at this point and it may apply elsewhere here.
11 In the case of short hole gas in the first exhibit here,
12 if none of the panel is located on Tract 1 why should
13 anyone in Tract 1 participate in the production?

14 MR. GORDON: The Board established that one well would drain
15 80 acres originally. We are draining that same 80 but
16 using just a different mechanism to do it. So --

17 MR. KELLY: But you're draining the gas out of the panel and
18 the panel doesn't cover the whole 80 acre unit.

19 MR. GORDON: But part of that panel is in that 80. And I
20 can't tell you that we've not draining this land owner
21 right here when we drain this panel.

22 MR. KELLY: If that panel is isolated from that tract how can
23 you be draining gas out of that tract?

24 MR. GORDON: It's not sealed. This is an unsealed panel.

25 MR. BRADY: If I may interject here. I think your question is

1 well put. I think perhaps Mr. Wilson or the engineers
2 are better able to respond to you if you wouldn't mind
3 deferring that answer.

4 MR. KELLY: Sure.

5 MS. BRAGG: Mr. Gordon has done the calculations of the
6 methodology and we wanted to present it and then come
7 forward with the support for it from engineering.

8 MR. KELLY: Sure. Well. I said it may not have been the
9 correct time to ask the question. I just wanted to get
10 it on tape.

11 MS. BRAGG: But you're absolutely right. And this is what
12 this demonstrates. That the owners outside the panel
13 within the 80 acre units will share in production.

14 MR. KELLY: I understand. Thank you.

15 Q. (Mr. Bragg continues.) Mr. Gordon, we need to address
16 briefly because we had an inquiry last meeting as to the
17 cost associated with the methodology that we're propos-
18 ing. And on these exhibits we have shown a working
19 interest side or a cost bearing side of the short hole
20 gas. If you would just briefly state what the exhibits
21 show here I would appreciate it.

22 A. We're on M-3. Is that correct?

23 Q. That's correct.

24 A. Okay.

25 MR. CHAIRMAN: When you're saying M-3 you mean M. Page 3?

1 MR. CHAIRMAN: Yes, sir.

2 A. (The witness continues.) Exhibit M, Page 3, what we have
3 shown here is zero cost mainly because this is a mining
4 operation and we really didn't have any cost except for
5 costs like title work and things of that nature. But as
6 far as equipment and things like that we have incurred no
7 cost on this so we were showing zero on our figures.

8 Q. These facilities for the short hole production will be
9 basically owned by the coal company and not by the gas
10 operator and therefore, the operator will not have a
11 substantial capital expenditure for short hole produc-
12 tion, is that the basis?

13 A. That's my understanding, yes.

14 Q. Let's move on then to the next exhibit of unsealed gub
15 bes which are Exhibits N, Page 1, and N, Page 2. Here
16 again we've taken the exact same methodology as the facts
17 demonstrated for examples 2 and 3.

18 A. We need to offer an amendment here, if I say. We
19 discovered that instead of an equal sign I believe it
20 showed up as a times sign in there in one spot and I'd
21 like to offer these as amendment pages to correct that
22 typographical error.

23 Q. That is to N, Page 2?

24 A. N, Page 2, yes.

25 MR. CHAIRMAN: The record will reflect that Board has received

1 an amended example 3, Exhibit W, Page 2.

2 MR. GORDON: And I will point out, the error is right here.

3 It was typed up as a plus and it should have been equal.

4 MR. CHAIRMAN: And that's in the royalty area, is that
5 correct?

6 MR. GORDON: That's correct. And it is also in the working
7 interest area down here, too. We were consistent with
8 our mistake.

9 Q. (Ms. Bragg continues.) Mr. Gordon, let's talk about the
10 impact on unit A-1 for gas production which is shown on
11 Exhibit W, Pages 1 and 2.

12 A. Okay. Again we go back to our earlier calculations and
13 we establish that the percentage of the panel in A-1 was
14 the 19.58 percent. We take that times the production of
15 4,500 that we had established earlier and we come up with
16 the portion of the panel in unit A-1 having 881.1 MCF
17 produced from under the unit. What we have done on this
18 example is taken the 881.1 MCF and again shown you how we
19 would spread that among the royalty estates and the
20 working interest estates to come back to a total of the
21 4,500. But in our case here we are spreading that
22 between the owners of Tract A-1, Tract 1 and Tract 2,
23 because we feel like the drainage is there and that just
24 because the panel doesn't underlie it they're entitled to
25 the royalties from the 80 acre unit. They are part of

1 that 80.

2 Q. Such that the methodology is the same here as it was for
3 short hole and that is the surface acreage lying within
4 the panel?

5 A. That is correct, yes.

6 Q. Is the key to the distribution of gas within the 80 acre
7 unit?

8 A. That is correct.

9 Q. And that's true on the royalty side and on the working
10 interest side?

11 A. That is correct, yes.

12 Q. Mr. Gordon, I notice also that in unit A-1 there is a CEM
13 well A-1. With respect to that well what would be the
14 allocation or what would be the -- who would receive
15 production from that well and who would pay for that
16 well, CEM A-1 in unit A-1?

17 A. The production from that well would be combined with
18 panel production. That would all be a part of the panel
19 production.

20 Q. Tract 2 in unit A-1 would share in production from CEM A-
21 1, that that well is an 80 acre well under the Oakwood
22 order, and therefore everyone in the 80 acre unit of A-1
23 shares in production from that well and would continue to
24 share in production from that well?

25 A. That is correct, yes.

1 MS. BRAGG: That was the point I was trying to make with that
2 CBM well.

3 MR. CHAIRMAN: Would they also share in the cost of the CBM A-
4 1 well?

5 MS. BRAGG: Yes.

6 MR. GORDON: Yes, sir.

7 MS. BRAGG: That is a well that would have been drilled under
8 the Oakwood field rules so that most of the production
9 and costs would be shared by all the owners or claimants
10 in unit A-1. Any questions on these pages?

11 MR. HARRIS: Just one question again. Does this mean -- now,
12 there are two wells, vertical ventilation to VVH and then
13 the CBM A-1?

14 MS. BRAGG: Right.

15 MR. HARRIS: Those two are producing -- would produce under
16 these?

17 MS. BRAGG: That's correct.

18 MR. HARRIS: And then both would contribute to the production
19 for that unit and both, of course, would be allocated
20 based on the property ownership?

21 MS. BRAGG: That's correct.

22 MR. CHAIRMAN: In Tract 2 if there's costs associated with the
23 well or the VVH in Tract 2 is that shared by the Tract 1
24 owners as well? Is that distributed back to Tract 1,
25 any costs associated with Tract 2 production?

1 MS. BRAGG: Essentially the cost side and this exhibit shows
2 in and further on would show it, the cost side is going
3 to mirror the production side such that the production
4 from each and every unit the amount -- the 18.58 percent
5 is going to be mirrored by the cost side, 19.38 percent.

6 MR. CHAIRMAN: And whatever costs will be the cost in the 80
7 acres shared by whatever percent of tracts -- the number
8 of tracts you have, is that correct?

9 MS. BRAGG: That's right.

10 MR. MASON: So all co-owners within that -- all co-tract
11 owners within that unit would share the cost in the same
12 proportion as they share revenue?

13 MS. BRAGG: That's exactly right. Those who receive the
14 production will likewise on the working interest side be
15 required to pay the cost of that production. That's
16 exactly right.

17 MR. McCLOTHLIN: Back to the initial drilling of VWH, the cost
18 of the initial drilling of the VWH will be passed through
19 them?

20 MS. BRAGG: Yes, sir, it will to some extent. We need to
21 respond to that in later testimony. But the exact
22 testimony with respect to that is later on in the
23 presentation.

24 MR. McCLOTHLIN: Okay.

25 MR. MASON: What you're really saying is there are really two

1 questions. What are the proper allocable costs and once
2 they're determined how are they allocated?

3 MR. BRAGG: That's right.

4 MR. MASON: And you've determined a mechanism for allocation.
5 The question remains as to what costs are still
6 properly --

7 MR. BRAGG: That's right. And OXY's response to that is that
8 is within the Board's privilege and discretion. What we
9 are trying to do here is to primarily determine the right
10 to production. We will also talk when Dr. Wilson talks
11 about what we believe is economic in terms of the wells
12 that can be supported by 80 acre units. But when it
13 comes time to force pool OXY will present testimony on a
14 well by well DWE basis in terms of what it can support
15 in terms of economics per 80 acre unit.

16 MR. MASON: I think what Mr. Kelly's point is and I think what
17 we're very concerned about is that in making a decision
18 about how these various income and expense items are
19 allocated in the unit, we don't want to make any pre-
20 determination or commit ourselves to creating what costs
21 themselves. In other words, basically we're seeing
22 whatever X is, this is how X is going to be allocated.

23 MR. BRAGG: That is correct. You do not as I appreciate it
24 want to determine today exactly what costs are going to
25 born by unit A-1 and we're not asking you to do that.

1 MR. MASON: Thank you.

2 MR. MCGLOTHLIN: I think my questions might seem a little bit
3 trivial after my colleagues's. Mr. Gordon, Exhibit M, the
4 amended sheet you handed us, on your panel gas production
5 say unit A-1, Tract 1, you have 681.1 MCF.

6 MR. GORDON: Correct.

7 MR. MCGLOTHLIN: Then if we go back to -- now, that's on
8 unsealed gob?

9 MR. GORDON: Right.

10 MR. MCGLOTHLIN: And you're using the same figure for a short
11 hole gas. Are you anticipating -- is this just an
12 arbitrary figure or --

13 MR. BRAGE: Hypothetical.

14 MR. GORDON: It's hypothetical. We did this simply so that we
15 would have some consistent numbers and not start running
16 a bunch of different numbers at you. We're just trying
17 to maintain some consistency because these things are
18 hard to --

19 MR. MCGLOTHLIN: You're not anticipating that you're going to
20 get the same production off of each method?

21 MR. GORDON: No. The numbers mean nothing. It's just the
22 methodology.

23 MR. BRAGE: Are there further questions from the Board?

24 MR. SWARTZ: To anticipate with these exhibits, if you'll
25 notice in Unit C-1 there are three wells and if you'll

1 turn in Page 3 of Exhibit M with regard to unit C-1
2 you'll notice that with regard to one of those wells in
3 our hypothetical we've got in as zero and what we are
4 suggesting to you by these examples is that when these
5 units are force pooled we will be coming forward with a
6 justification of wells that we think that we can legit-
7 imately ask you to approve those costs and pass those
8 along. And then we are conceding in these examples and I
9 think it needs to be conceded and it needs to be out on
10 the table that some of these wells in the example we're
11 talking about, not a hypothetical, do not make sense and
12 that there will be wells in units and C-1 is an example
13 where we will not be prepared and will not be able to
14 defend those costs at a pooling. There will be testimony
15 later, but this is where we're headed here and we're
16 trying to give you examples of where there's -- when
17 there's one well in a unit obviously we're going to be
18 talking about those costs. But where there are multiple
19 wells there's going to have to be an effort to justify
20 those costs and we're trying to disclose that that is our
21 intention and you will have that opportunity to pass on
22 evidence.

23 MR. MASON: So what you're saying, Mr. Swartz, is it's your
24 proposal in adopting these rules that you're proposing at
25 the present time the determination of the propriety of

1 costs for wells within a unit would be made on a case by
2 case basis by the Board. There's no --

3 MR. SWARTZ: With one exception or two exceptions. I think
4 realistically when you look at this example we have to
5 assume that any CBM well like that CBM A-1 well has
6 already been blessed. That is provided for in the
7 existing Oakwood rules. To the extent that a panel for
8 short hole gas production occurs on a unit there may be
9 one increased density well that's essential. If the CBM
10 well is not mined through by the panel you're going to
11 have to drill another well to produce that unsealed gob.
12 So essentially what we're saying is there may be situa-
13 tions -- or they may be as simple as possible where
14 there is a existing CBM well and the panel does not mine
15 through that well we are going to be indicating to you
16 that we will in the future be offering testimony to try
17 and defend as practical and I don't think we'll going to
18 have a lot of trouble the second well. If you mine
19 through the initial CBM well we may not be talking about
20 a second well in that unit, but you need to take that
21 into consideration where the CBM well is not mined
22 through.

23 MR. MASON: Okay. But my point is that the determination on a
24 drilling unit by drilling unit basis of what are and are
25 not properly allocatable well costs will be made not as a

1 part of this --

2 MR. SWARTZ: Correct.

3 MR. MASON: -- but that will be before this Board or in
4 conjunction with whatever rules or whatever's adopted.
5 But the key thing is here we're only saying this is a
6 proper method of allocating those costs if they're
7 determined at a future time?

8 MR. SWARTZ: Right.

9 MR. BRAGG: Correct. Once they're determined.

10 MR. MASON: We're not pre-committing ourselves to any method-
11 ology as far as determining what are the proper costs.

12 MR. SWARTZ: What are the amounts of costs. No. What we're
13 asking is can we use the mine plans as we have proposed
14 and get your blessing to use mine plans and 80 acre units
15 as a method of dealing with correlative rights on the
16 production side and costs on an allocation of cost
17 without determining the amount of those costs. We're
18 just asking a blessing on the methodology we're talking
19 about, not the dollars and cents associated with any
20 given well or group of well for costs.

21 MR. MASON: If I may just follow up. In this particular
22 method that you're suggesting since it follows this 80
23 acre pattern allows us to make that later determination
24 on an 80 acre basis. Is that correct?

25 MR. SWARTZ: Correct. Philosophically the Board has already

1 make a decision with regard to the Oakwood field in the
2 traditional sense, yet from a philosophical standpoint, a
3 correlative rights standpoint, you are going to share in
4 common between tracts that coexist within an 80 acre
5 unit. For example, under the existing Oakwood rules the
6 wells that happen to be on Tract 1 in unit A-1, the
7 production from that well is going to be participated
8 under royalty interest by the owners of Tract 2. I mean,
9 you're already of record saying that we want to include
10 the largest group of royalty owners within a reasonably
11 sized unit to participate and that's the position you've
12 taken. And essentially what we're saying is we're coming
13 back to you with exactly the same mechanism or plan or
14 theory to address correlative rights and we're saying
15 just like if there is a CBM well in Tract 1 in unit A-1
16 and the production will go to Tract 2, if the longwall
17 panel comes through and happens to be exclusively in
18 Tract 2 the same rules are going to apply and the
19 production which comes from Tract 2 in that 80 acre unit
20 will be shared with the folks who own the mineral
21 interest under Tract 1.

22 MR. MASON: See, my point is that the determination of -- this
23 later determination of cost will be made on an 80 acre by
24 80 acre basis as opposed to some other basis which is
25 exactly what we've been doing in the past.

1 MR. SWARTZ: Correct. It will be the same and it will also --
2 another wrinkle is you'll notice that the cost numbers
3 always are equal in revenue numbers. And I think that
4 the methodology that we're proposing is that through the
5 estate you participate in revenue you're cost participa-
6 tion has got to be equal on a percentage basis.

7 MR. MASON: Okay. Thank you.

8 MR. BRAGG: As a forecast in the future, too, hoping that the
9 Board will adopt this kind of mechanism, there is some
10 urgency in doing so because we do have forced pooling
11 applications that we would like to file immediately
12 whereby we can start making some of those determinations
13 as to what costs will be allowed on a per 80 acre unit
14 basis. So we hope and anticipate getting to that very
15 soon, not within the context of this application, but
16 perhaps by the next Board meeting or certainly there-
17 after.

18 MR. CHAIRMAN: Whoever -- if you want Sam to answer this. In
19 A-1 if you didn't have the VVH CRM, if it didn't exist,
20 because I know here we conveniently have one in each one.
21 But if we had a tract where no VVH CRM existed in A-1
22 Tract 2 how would you handle -- would you handle differ-
23 ently any of the allocation?

24 MR. BRAGG: Of production?

25 MR. CHAIRMAN: Yes.

1 MR. BRAGG: Mr. air, we would not. The methodology is
2 intended to work based upon what the owners of the
3 claimants in A-1's fair share of gas that is produced.

4 MR. CHAIRMAN: But when you go to cost if you had two VRR CEMs
5 in tract B-1 and none in unit A-1 would any of the costs
6 be prorated to the unit A-1?

7 MS. BRAGG: Yes, sir. If 19.58 percent of the production is
8 produced from A-1 likewise the mirrored cost -- 19.58
9 percent of the cost of this panel will be requested to
10 be paid from those working interest owners in A-1.

11 MR. CHAIRMAN: I just wanted to clarify that.

12 MR. MASON: I think it's an excellent plan.

13 MS. BRAGG: Otherwise it would be unfair if they would get the
14 production and not have the cost of producing that gas.

15 MR. CHAIRMAN: Okay. Thank you.

16 MR. BRAGG: Mr. Gordon, it may be appropriate at this point --
17 let's go over briefly the increased density example
18 situations, O-1 and J-1, and make clear to the Board what
19 our request is with respect to increased density wells.
20 Basically here OXY has tried to construct for you a
21 proposal that facilitates oil and gas operators and coal
22 owners. When we read the statutes we see basically two
23 different kinds of increased density wells that are
24 permitted by the statute. One is what would be called a
25 traditional increased density gas well such that if you

1 wanted to drill more than one CEM in unit A-1 you would
2 be required to come before the Board and say I need an
3 additional well in unit A-1 to produce all of the gas
4 under unit A-1. You allowed me one well in the Oakwood
5 orders and now I need another CEM to drain all the gas
6 for whatever reason under that unit. That is what we are
7 calling a Section 20-A well and that's the part of the
8 statute that is referenced. That's what is traditional
9 oil and gas development. One well per unit. Any
10 additional wells are increased density wells in that
11 unit. Because coalbed methane is a separate and distinct
12 situation there are increased density wells allowed under
13 what we have dubbed as Section 20-C of the statute.
14 Because of the peculiar nature of having to drill VWHs
15 and now CEMs for mine purposes so that a traditional
16 increased density is a 20-A. A mine plan -- mine
17 conformance second well in a unit is what we are calling
18 a 20-C well. In our mind it is appropriate for the Board
19 at the Board's discretion to allow Mr. Fulmer to permit
20 as many C wells as a coal company -- an oil and gas
21 company is necessary to liberate and to degas a mine.
22 That is essentially a coal mining function, a 20-C well.
23 Such that I don't believe you want to be in the position
24 of having to continually come to you to allow mine --
25 mined wells for mine purposes. As we have seen there may

1 Be a number of wells in any given drilling and spacing
2 unit. What we do believe you want the discretion to do
3 is a coal company or a gas company can drill and permit
4 that well through Mr. Fulmer. Your concern is whether
5 or not the cost of that well should be born by the
6 working interest owners in that unit. So we've tried to
7 differentiate the two to allow the permitting and the
8 drilling of 20-C wells because they're mine development
9 wells, but to give you the discretion to determine yes,
10 we agree that that well was needed for degas and for coal
11 purposes but we the Gas and Oil Board want to bless
12 whether or not that well is economically justified in
13 terms of recovering and capturing the cost. So we have
14 drawn a distinction between 20-A wells and 20-C wells and
15 that's what you see reflected on these exhibits. We
16 believe this is not only statutorily based but what, in
17 fact, the statute contemplates and requires for the
18 marriage between coal operations and oil and gas opera-
19 tions. So in our testimony that's what you're talking.
20 We will refer to 20-A wells and 20-C wells and basically
21 all the wells that are in a longwall panel will essen-
22 tially be 20-C wells. They'll be drilled from mine
23 reformation and mine development and we believe that
24 really the coal companies and Mr. Fulmer should have
25 quite a bit of discretion in terms of the drilling of

1 those wells. They're essential for mine safety and other
2 testimony that you've heard before. Whether or not you
3 allow those costs to be recaptured among the unit owners
4 we believe is a different question. That's what is
5 reflected in these exhibits that you see before you. Are
6 there any questions on that?

7 MR. CHAIRMAN: These wells that you're referring to as 20-C
8 wells would be producing wells, right? At increased
9 density would be producing wells?

10 MR. BRAGG: That's right.

11 MR. CHAIRMAN: Any other questions?

12 MR. MASON: To use increased density and C wells, are they
13 interchangeable?

14 MR. BRAGG: Any well that is a second, third or fourth well is
15 an increased density well. In your Oakwood order and in
16 this order I am assuming you will allow at least one
17 well per drilling and spacing unit. The question is what
18 if somebody needs or wants to drill an additional well in
19 addition to the one you've already given them. That's
20 the definition of an increased density well. You've got
21 one well that you're permitted. Now are you going to
22 deal with additional wells beyond that one well. That
23 additional well can be a 20-A. The second well can be a
24 20-A or it can be a 20-C.

25 MR. EVANS: The basic distinction is who asks for the well.

1 MR. SWARTZ: Pretty much. Because they'll have different
2 reasons to --

3 MR. EVANS: Basically it's whether it's the coal operator asks
4 for the well or whether it's someone else.

5 MR. SWARTZ: Exactly.

6 MR. MASON: The guy asking for it -- if it's a miner he has a
7 purpose and if it's a coal and gas operator they have a
8 purpose.

9 MR. BRAGG: Let's move on to Exhibit F. What we have attempt-
10 ed to do in these exhibits is start from the relatively
11 simple to move into the real world of what, in fact, is
12 happening and will happen with the coexistence of coalbed
13 methane and coal operations. And you are well familiar,
14 I think, with these kind of facts scenarios. But it was
15 important to us to propose to you a plan that worked
16 field wide dis-respective of who the gas operator was,
17 who the coal company was, to have a methodology that
18 could be applied uniformly. And that means that it needs
19 to apply to the real facts in the real world of what's
20 actually happening for us and everyone else out there.
21 So even though it's a little bit complex it's impossible
22 to do it without this kind of scenario. And I would ask
23 Mr. Gordon to again look at -- in this case you see the
24 real unit numbers here and we're not at A-1 and B-1 and
25 C-1. We've got a real mine plan. Mr. Gordon has taken

1 the Island Creek mine plan, over laid it on eight 80 acre
2 drilling units, and has done the kind of calculations
3 that he has testified to here before.

4 Q. (Mr. Bragg continues.) Mr. Gordon, if you would walk us
5 through just one of these units just for panel one at
6 this point I think that would be helpful.

7 A. It might be helpful to drop panel 2 for just a moment and
8 that looks like the original configuration we had on
9 Exhibit L, Page 2. So again it's a computation of
10 length and width to come up with acreage. In these
11 panels the mining operation actually stopped there and
12 that's where I stopped my line. I don't know if that's
13 right or wrong, but that's what I did. The panel is
14 4,718.76 feet and the width of that panel is 762.5 feet.
15 Using the same computation scenario we come with a total
16 acreage in panel one of 82.56 acres. And breaking each
17 one of these out we come up with the individual amount of
18 the panel underlying each of the units and put that on a
19 percentage basis which is this right here. Here's the
20 acreage under T-13, B-13 and S-13 and this is the
21 percentages that that actually calculates to. You take
22 these acres and divide them by 82.56 acres. Like we
23 said, in the real world we now have to introduce the fact
24 that in a mining plan we actually have panels running
25 wide by side. Again we do the same thing. This panel

1 right here happens to be 850 feet wide and for calcula-
2 tion purposes where the mine was going to stop it gives
3 us a panel of 4,391.16 feet which actually calculates to
4 85.7 acres. Now, in this situation the panel if you'll
5 notice lies on both sides of the unit line here. So I
6 had to take this and instead of calculating it like this
7 I had to calculate what lies over in the 14 area of Q. R.
8 Because we now have acreage under these units that is
9 being drained by our panel -- by this mining panel. So
10 again it's calculations of footage. We calculate this to
11 be 275 feet on the right side of the unit lining and then
12 there's 575 feet here to give us our 850. And then we
13 calculate each one of these tracts based on those
14 dimensions to come up with net acres, divide that by the
15 total number of acres in the panel which gives us our
16 percentage break out. Here on panel 2 we get acres,
17 total, and divide these by your total acreage and we come
18 up with our percentage which brings us to the 100 percent
19 which we're searching for. That's the methodology in the
20 calculations of what we will actually be looking at under
21 one of our actual mine plans that we hope to propose to
22 you in the near future.

23 Q. Mr. Gordon, this is, is it not, the exact same method-
24 ology? You look at the 80 acre units that are impacted.
25 You look at the mine plan that is filed of record and you

1 apply it in those 80 acre units and make the appropriate
2 calculations.

3 A. That is correct.

4 Q. And you do that on really essentially a panel by panel by
5 panel basis?

6 A. That is correct.

7 Q. For how every many panels there exist?

8 A. That is correct.

9 MR. CHAIRMAN: Is that also this example part of the support
10 for doing away with the 300 foot set-back from each unit?

11 MR. BRAGG: Yes, sir, it is.

12 MR. GORDON: Yeah, it is. Mr. Chairman, we have all this sub-
13 suffered. So it's nothing on the surface other than
14 setbacks and it's almost -- I mean, it's not needed.

15 MR. CHAIRMAN: I'm just trying to think through this. If you
16 had a well in 14-Q, panel 2, and it's 6.70 acres and not
17 over on the other side in 13-Q, you're proration of cost
18 and pay out would be N-14 I would assume, Q. R. S and T
19 and not over in 13?

20 MR. GORDON: We would basically attribute 7.82 percent of
21 panel 2, Q-14.

22 MR. CHAIRMAN: Just help me one more time. If you prorated
23 your cost would any of your cost and any of your prorated
24 production even though you had the well over in 14, would
25 it move over to 13, either cost or production?

1 MR. BRAGG: Yes, sir. The well is in Q-14 as I appreciate
2 your hypothetical. It is a well that is contained
3 within that panel.

4 MR. CHAIRMAN: Right. So you're using the panel here to draw
5 your pay-out and your cost distribution?

6 MR. BRAGG: That's correct. Basically Q-14 would receive 7.82
7 percent of the production and therefore the revenue and
8 would pay 7.82 percent of the cost of that panel.

9 MR. MASON: As I understand it what you're saying is is that
10 basically you accumulate all the cost associated with the
11 panel just as you accumulate all the revenue generated by
12 the panel and make both of those allocations based on the
13 proportion of that panel that occurs within any unit.

14 MR. BRAGG: That's correct.

15 MR. MASON: Regardless of where the well bores are or where
16 the production surfaces?

17 MR. BRAGG: That's correct. That's right because a function
18 of where the well bore is is dependant upon a lot of
19 different factors.

20 MR. MASON: And as we said I guess earlier in relation to the
21 short hole, the well bore itself to that, that the gas
22 surfaces through could, in fact, not even be over the
23 panel, is that correct?

24 MR. BRAGG: That's right. And Q-14 may not have a well
25 actually in Q-14.

1 MR. MASON: I mean, the bore itself could be somewhere other
2 than over that panel?

3 MR. BRAGG: That's correct.

4 MR. MASON: That's hypothetical I would guess.

5 MR. BRAGG: I mean, that's a very real world kind of situa-
6 tion.

7 MR. MASON: I can't imagine why you would want to transport
8 the gas horizontally underground, but you might.

9 MR. SWARTZ: Mr. Chairman, you could directionally drill where
10 your bottom is intentionally off. It could happen for
11 lots of reasons. So -- I mean, this could really happen
12 that you would, in fact, drill a --

13 MR. BRAGG: We have at this point, I think, pretty well
14 concluded our examples and explained the methodology
15 which was the purpose of this packet. Mr. Gordon has
16 prepared an amended Exhibit Q-1 and you might briefly go
17 over the corrections to that exhibit, Mr. Gordon.

18 MR. CHAIRMAN: Mr. Evans has a question.

19 MR. BRAGG: I'm sorry.

20 MR. EVANS: I have one question. All this is going to depend
21 rather heavily on the ability to locate underground works
22 and surface lines. How do you -- I know this is a
23 logistics problem, but how do you intend to tie it
24 together? I know that mine surveys you do take up some
25 what cost. But you will have to tie them to the Oakwood

1 lines in some way, shape or form. Now? Have you thought
2 about that or is that --

3 MR. BRAGG: Mr. VanGolen is whispering in my ear that it's all
4 tied to Island Creek's mine plans and State plan co-
5 ordinates. And we'll be happy to answer to your ques-
6 tions in --

7 MR. EVANS: State plans is what I was looking for. As long as
8 there's a consistent --

9 MR. BRAGG: And, in fact, the application does set those out
10 as alternatives.

11 MR. GORDON: The correction that counsel was referring to is
12 in trying to be consistent we got too consistent and
13 instead of naming this well B-13 and this one down here
14 B-13-1 on your example it's B-1 and B-1-1. So we'll just
15 offer these as amendments to that page to correct that
16 error.

17 MR. CHAIRMAN: Without objection it's accepted. I'm just
18 accepting the amendment.

19 MR. BRAGG: Certainly. At this point, Mr. Wampler, unless
20 there are questions on these exhibits and appreciating
21 that we tried to make them as simple as possible and go
22 through them as rapidly as we could we would move for the
23 admission of Exhibits H through Q as amended.

24 MR. CHAIRMAN: Any objections? They're so accepted.

25 (Exhibits H through S received, marked and

1 filed.)

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

3 (Witness stands aside.)

4 (AFTER A BRIEF RECESS, THE PROCEEDINGS CONTINUED AS
5 FOLLOWS:)

6 MR. CHAIRMAN: Mr. Evans had a question he wanted to ask.

7 MR. EVANS: I know that in coal operations things do happen.

8 If a panel needs to be cut short you have an allocation
9 situation here that you've got percentages and costs and
10 the question being how do you handle that up front. How
11 do you deal with it. Are the moneys both being paid and
12 being received on both sides held until the panel is
13 completed or allocated out and if the panel is cut short
14 what happens then?

15 MR. DRAGO: If I may respond briefly and then Mr. Wirth and
16 others can respond. I think one of the benefits of this
17 mechanism is that it can accommodate just that. If for
18 some reason there isn't complete mine through and at some
19 point you realize you're never going to get that then you
20 can go back and use the same methodology to get to an
21 appropriate calculation.

22 MR. EVANS: I understand that. that the methodology's there,
23 but I'm questioning the timing of when that is made, when
24 the mine is due. Is it so -- the panel doesn't get
25 mined all at once. It does take an amount of time. Are

1 the costs up front?

2 MR. BRAGG: I see. So you're talking about when is CXT or
3 whomever the operator is is going to request that the
4 costs be paid initially?

5 MR. EVANS: Uh-huh.

6 MR. BRAGG: That's a perfect lead into Mr. Wirth's testimony
7 and I appreciate that.

8 MR. MASCH: One comment sort of along the same lines or a
9 little further than that. We've talked about in all
10 these examples what happens when -- all of these are
11 based upon complete panels and Mr. Evans points out what
12 happens if you get to some point and stop. My question
13 which I would like -- I'm not asking for a direct answer,
14 but I would like in the course of your testimony to
15 address -- what happens between the period of time in
16 which you commence mining a panel and the completion of
17 the panel which I understand may be several months? What
18 happens because you've got coal in place and you've got
19 open mine through area? How do you handle costs in
20 production allocations in what are essentially two
21 distinct different conditions? I think that's sort of a
22 follow-up to what you're saying. There's a transitory
23 period and there's a potential that it may stop before
24 completion. If you all would address that.

25 MR. BRAGG: As I appreciate your question, it is when is the

mechanism in this order triggered on the production side.
And basically the answer to that is as soon as you have
production which will normally be short hole production
and then gob hole production will trigger this mechanism.
And then the question is when will the cost side of it be
triggered and Mr. Wirth can answer that as well.

CLERK: (Swears witness.)

MARTIN E. WIRTH

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

DIRECT EXAMINATION

BY MR. BRAGG:

Q: Would you state your name for the record?

A: Martin E. Wirth.

Q: Mr. Wirth, by whom are you employed?

A: OXY. USA.

Q: And in what capacity?

A: I'm project land manager.

Q: What are your responsibilities as project land manager?

A: I oversee any and all land functions, leasing, title,
regulatory, and matters of such that pertain to land and
legal matters.

1 Q. And that is respecting the coalbed methane operations and
2 leases that are under consideration in this application?
3 A. That is correct.
4 Q. And how long have you been employed by CMY?
5 A. Fourteen years.
6 Q. What is the extent of your experience in land?
7 A. My experience in the land department is throughout the
8 fourteen years I've been in various areas throughout the
9 United States in the same as I'm doing here with the
10 exception of the unique characteristics of coalbed
11 methane as overseeing or implementing leases, contracts,
12 titles and land and legal matters.
13 Q. You have testified numerous times before this Board, have
14 you not?
15 A. Yes, I have.
16 Q. And have had your credentials as an expert in the area of
17 land accepted?
18 A. That's correct.
19 MR. BRAGG: We would now move for the admission of Mr. Wirth
20 as an expert land manager.
21 MR. CHAIRMAN: Okay.
22 Q. (Mr. Bragg continues.) Let's address briefly here --
23 within your area of specialty, of course, is the leases
24 under consideration that you take. And before we get
25 there I would like for you to briefly review for the

1 Board the applications that were provided to the operat-
2 ors in the field with respect to the request today.

3 A. As previously testified in November hearing we did a
4 publication in the three different counties affected by
5 the application. Also as a matter of courtesy known
6 operators oil and gas and coal, and known royalty owners
7 were provided a courtesy copy with our notice and
8 application advising them of the continuance to the
9 matter to this date and time.

10 Q. Will you or have you provided Mr. Fulmer a copy of those
11 persons that you mailed applications to?

12 A. We have not provided and I say, if you would like,
13 provide two copies with the cover letters that had the
14 attachment of the notice and the application to the
15 parties that we did provide copies to.

16 Q. Just so that the record will be clear in that respect.

17 A. That the records will be clear in that respect.

18 MR. BRAGG: We would ask that that be marked as Exhibit B. I
19 move for the admission of Exhibit B at this time, Mr.
20 Chairman.

21 MR. CHAIRMAN: Any objections? Okay. Without objection.

22 1977 received, marked and filed as Exhibit B.)

23 Q. (Mr. Bragg continues.) One of your primary respons-
24 ibilities is it not, Mr. Wirth, is to advise your
25 members of your activities in the area and how it impacts

1 the leases that you have taken from them. Have you done
2 that with respect with this proposal and this applica-
3 tion?

4 A. Yes. Under most of our contractual agreements or what we
5 call the coalbed methane leases or oil and gas and
6 coalbed methane leases our obligation is to inform our
7 lessors of the different regulatory hearings or anything
8 affecting their acreage or the outcome of the revenues
9 they may receive.

10 Q. Just so that the Board will have their hearings, this is
11 a field right application for what has originally been
12 established as the Oakwood coalbed methane field. As
13 land manager what is the extent of OXY's leases, owner-
14 ship or however you wish to phrase that in this field?
15 What's the extent to which OXY will utilize these field
16 rules?

17 A. Basically I (Inaudible.) to the Oakwood coalbed gas field
18 that was previously approved by the Board in May of
19 1990. This was not just an arbitrary let's pick this
20 area and do it because we have coal operations coinciding
21 there. It was based on square foot of coal and I'm not
22 the really proper -- the engineering or geology. You'll
23 hear future testimony on the square foot of coal in an
24 area -- in a geographic area. And looking in the
25 statutes we came up to a uniform shape and size and by

1 one the Board member's request and everything we came up
2 with Latin longitude lines. It so happens that 75
3 percent of the acreage is what OXY, USA either leases or
4 Island Creek has coal leases or we have some sort of
5 contractual arrangement to develop.

6 Q. So is it your testimony that 75 percent of the coalbed
7 methane -- the acreage will be developed by OXY?

8 A. It possibly will be developed by OXY, USA and 75 percent.

9 Q. Should it be fully developed?

10 A. Yeah.

11 Q. So that primarily it will be OXY as an operator utilizing
12 these field rules, is that correct?

13 A. That's correct.

14 Q. With respect to specific lessors, if you would give the
15 Board I guess the benefit of the conversations you have
16 had with the lessors with respect to this application and
17 the protection of their rights.

18 A. Well, basically we don't have a perfect world. Contract-
19 ual obligations were done before field rules or estab-
20 lished during field rules. 42 percent of OXY, USA's
21 lessors has an escalating royalty provision in their
22 lease, a contractual obligation. You may look at it as a
23 working interest. A person has a right to participate.
24 Their royalty interest is based on a pay-out calculation
25 on a well by well basis and then it escalates from the

1 initial royalty to a larger royalty. Therefore, not only
2 do we have to consider costs to working interest owners,
3 but some -- like I said, 42 percent of our acres are
4 covered by an escalating royalty provision which we have
5 to account for in the royalty side also.

6 Q. So that in terms of how production and cost are deter-
7 mined by this Board to be fair and equitable is very
8 important under the terms of your leases more so than
9 under many just straight one-eighth leases, is that
10 correct?

11 A. That is correct.

12 Q. In that regard have you explained the methodology laid
13 out today to the lessors in terms of how they will be
14 impacted, both the escalating royalty and the straight
15 one-eighth royalty?

16 A. Yes. We've had numerous discussion with our lessors.

17 Q. And what has been the feedback from those discussions?

18 A. Basically the feedback is that we're trying to protect
19 what we call correlative rights and their rights not only
20 as a royalty interest but again I go back as to their
21 escalating royalty clauses and the effects these clauses
22 -- how they differ in the different scenarios that could
23 be. We've provided them with any and all application
24 that may be coming across the board or that we may
25 receive and they, to answer your question, reacted

1 favorably as to OXY's application in how the -- treatment
2 of their leases.

3 Q. This concerns you as I appreciate you because your lease
4 requires that someone not drill right up next to your
5 lease and drain your lessors gas without your protecting
6 them. So the field wide basis is an obligation that you
7 can fulfill to some extent under you lease clauses.

8 A. Yes. Basically OXY's application has taken various
9 scenarios and various rights under consideration. We've
10 addressed physical waste. We've also had to address
11 conflict of us. There's not only OXY, USA but there's
12 shallow coal, there's other gas and oil operators,
13 there's other coal operators in the area. We've reviewed
14 this and said the Oakwood field is in place. Let us try
15 to use the same geographical area and the same unit size
16 because everybody that's in this field for the past two
17 years are very aware of the previous application. And
18 there's a lot of conflict that -- the majority of
19 problems, you have coal objections from deep coal to
20 shallow coal. You have to take other operators into
21 consideration. So we what we derived as saying well,
22 let's try to keep and stick with the 80 acre and the
23 drainage areas, it just appears to us to be the best way
24 possible for all to operate because everybody knows what
25 the rules are under that Oakwood field.

1 Q. With respect to the cost side and understanding that here
2 we're primarily addressing production and that the cost
3 will be address in much greater detail in pooling
4 applications, in response to the questions that have been
5 raised today would you give us a brief explanation of
6 how you anticipate proposing to the Board that that work?

7 A. As the Board is aware under numerous times and there is
8 as of record and we can pass again out and make an
9 exhibit again to this application, OXY proposes to
10 develop under the joint operating agreement. The joint
11 operating agreement is one of the most widely used and
12 employed documents throughout the industry and recognized
13 by regulatory agencies throughout the U. S. The agencies
14 have adopted the joint operating agreement as a reference
15 and guidelines in operator's performance and in and under
16 the rules promulgated by the agencies. The proposed JOA
17 before you had to modified to reflect the unique circum-
18 stances of this region and to conform to the provisions
19 and scope of the Virginia Gas and Oil Act. This JOA is
20 not written as a pro-operator. It spells out rights
21 afforded to all interested parties and participants or
22 non-participants in each and every unit. Without such an
23 agreement many scenarios may occur which a party having
24 an interest in the unit that it covers may have not given
25 future consideration or thought in rendering that such

1 party if they hadn't. as an example, made no election to
2 participate in a -- in the examples as you saw as
3 original 80 acre unit drilled under the Oakwood fields,
4 we're allowing them to give another election to what we
5 call either C wells or A wells under 10.C of the statu-
6 tory. It affords them elections and it also gives the
7 kick-in or when the timing of these elections are to be
8 made and when we expect payments or when they should be
9 ready to expend the capital costs to them. Should they
10 have not thought about this you may have placed the
11 person who participates in a financial burden that they
12 cannot be obligated to and we have problems which will
13 come back before the Board over and over on different
14 operational scenarios.

15 Q. Is it your suggestion, Mr. Wirth, that the Board consider
16 not particularly to adopt in this application and I don't
17 feel it necessary to present this as an exhibit, but for
18 your night time reading pleasure the joint operating
19 agreement because we will next month or as soon there-
20 after as we propose pooling any of these units will ask
21 for your consideration in adopting a joint operating
22 agreement in conjunction with that pooling?

23 A. That is correct. We're not asking or forcing anyone to
24 a joint operating agreement, but to have the Board to
25 realize the guidelines to which parties can be notified

1 and it takes care of your notice. It takes care of your
2 payments. It takes care of what everybody's interest is
3 and how it may in the timing of these payments and
4 everything and that the Board consider the joint operat-
5 ing agreement that we've testified as one of the guide-
6 lines and may be accepted as guidelines in the future.
7 We're not asking the Board to give up any rights as to
8 the things I spelled out. If a party does not agree to a
9 part or any of the model form operating agreement it
10 always has the authority to come back before the Board
11 and the Board will adjudicate a reasonable and fair
12 settlement of these things.

13 Q. With respect to the question previously presented as to
14 when costs would be incurred and the payment therefore,
15 and again this is a pooling issue the proposal of OXY
16 will be to the extent that it's possible that those costs
17 be paid to OXY in a relatively short period of time
18 before they're actually incurred by OXY and to compress
19 the lag time to as short a time frame as possible and
20 that that would be part of the pooling application and
21 the joint operating agreement concept?

22 A. Yes. The time and notice that's -- mostly throughout the
23 operating agreement it's thirty days notice. You have a
24 mining plan of record. It is already of record. We can
25 take this mine plan and coordinate with the co-operators

1 or any party under the field can coordinate with the co-
2 operators as to when that operation will commence.
3 Thirty days prior to that election notices and everything
4 for information purposes can go out to the parties
5 effected in each and every unit.

6 MR. BRAGG: I know that the Board has questions with respect
7 this. Would you specifically like to address Mr. Wirth
8 on any of the timing issues of cost at this point? Our
9 hope here was to summarize generally how it's going to be
10 treated and then deal with it in some detail next month
11 when it's specifically before you.

12 MR. CHAIRMAN: I would go to Mr. Kelly and say did he cover --

13 MR. KELLY: You may have to get to the specific issues before
14 you can really see the specific question to ask.

15 MR. WIRTH: In our general outline we're not asking anybody to
16 come in and put in 200,000 or cost or anything up front
17 and it not occur five years later because it's almost
18 giving OXY, USA and an operator alone to use for free and
19 the time, value of money is worth something. Our plan
20 proposes as the mining develops and as needed or as by
21 the mine plan we need a 20-C well, physical waste again,
22 we'll capture that gas and sell it but that kicks in the
23 timing of what it would cost as set by the Board. The
24 cost will still be set by the Board and that would be the
25 timing it kicks on and everything like that. And that's

1 just a basic example. And I think further testimony by
2 Mr. VanGolen and other parties will also be able to
3 assist you. That's just one example.

4 MR. EVANS: My reason for the question was the time value of
5 money and when both for your protection and for other
6 people's protection. When moneys are paid, when money
7 changes hands, and that was the sole reason that I asked
8 the question.

9 MR. WIRTH: It is basically a very, very strong issue because
10 of the escrow proceedings because as you're well aware
11 there may be a conflict and they may need to go into
12 escrow at that time point in time. So we considered it.
13 we hope, under our application.

14 MR. MASON: This isn't directly related to this, but I was
15 just trying to read through. Previously we talked about
16 the allocation being made on mineral acres -- the mineral
17 tracts. In the application in this red booklet at H,
18 maybe I'm misinterpreting this, it says each owner in an
19 80 acre drilling unit will share in all production and
20 costs from any well in the 80 acre drilling unit in the
21 proportion that the surface acreage owned by such owner
22 bears to the entire surface acreage.

23 MR. WIRTH: I assisted Mr. Gordon as to how this -- the map --
24 the question came about is this surface or minerals.
25 There are mineral tract outlines. To answer your

1 question, counsel, statutory must be under surface
2 acreage under --

3 MR. MASON: I understand that the allocation is based upon the
4 mineral acreage as reflected on surface.

5 MR. WIRTH: That's correct.

6 MR. BRAGG: That is correct.

7 MR. MASON: But this says that the surface acreage owned by
8 such owner. If that mineral owner doesn't own any
9 surface --

10 MR. BRAGG: I'm being urged to take full responsibility for
11 that misstatement. And your reading of it was exactly as
12 it was intended.

13 MR. MASON: I understand that. In fact -- pardon?

14 MR. WIRTH: It is wrong. It's incorrect.

15 MR. BRAGG: You're exactly right. It's the mineral acreage as
16 reflected by the surface.

17 MR. MASON: It just needs to be clarified because I assume
18 that you don't want the order to read like this.

19 MR. BRAGG: That's correct. And I appreciate your clarification
20 for my client's sake.

21 MR. MASON: Okay. So I assume that with some form or fashion
22 essentially this is being amended to reflect that what
23 we're really talking about is mineral averages reflected
24 on the surface?

25 MR. BRAGG: That's correct. And you're drawing a very

1 important distinction. The statute requires a reflected
2 surface acreage concept in the Gas and Oil Act and that's
3 what these words are intended to do.

4 MR. MASON: I personally view that -- what I call the superman
5 x-ray look. You look down from the top and you see the
6 mineral acres exist. But that's what we're talking about?

7 MR. BRAGG: That's right.

8 MR. MASON: Okay. Thank you.

9 Q. [MR. Bragg continues.] To summarize again, Mr. Wirth,
10 considering the implications to the lessors and the land
11 and title work that you have done on this project is it
12 your opinion as a land man that this fairly protects the
13 correlative rights of all the owners that you deal with
14 and claimants in this field wide area?

15 A: Yes. As I stated, the application has taken various
16 rights under consideration and correlative rights is the
17 basis. And in my opinion and our opinion and others
18 opinions as one of the strongest in any field rules that
19 needs to be considered correlative rights is simply that
20 each person has a right to produce from a common source
21 and supply and ought to have a fair and reasonable
22 opportunity to produce his or her fair share of oil and
23 gas. That right should not be improperly defeated
24 through the negligent or intentional actions of other
25 parties nor should one be deprived of that right by any

1 regulatory or without due process and just compensation.
2 So it was a very strong factor that we had to -- and we
3 had a field that already existed and therefore, the
4 correlative rights issue we can -- any mine plan -- the
5 80 acres you can shift it anywhere you want. As we have
6 shown the panels can run north, south, east or west or
7 northerly, northeasterly and you still have an 80 acre grid
8 and a pattern to go by.

9 Q. Likewise in summary do you believe with respect to those
10 interested and effected persons the ability by your
11 mailing of notice of courtesy copies and otherwise the
12 opportunity to input on these field rules?

13 A. Yes, I do.

14 MS. BRAGG: I have no further questions of Mr. Wirth at this
15 time.

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

17 (Witness stands aside.)

18 MR. CHAIRMAN: Okay. You may call your next witness.

19 MR. BRAGG: Dr. Weldon Wilson.

20 (Clerk: Forward witness.)

21
22 WELDON J. WILSON

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

DIRECT EXAMINATION

BY MS. BRAGG:

Q. Would you state your name for the record?

A. Weldon J. Wilson.

Q. And by whom are you employed?

A. OXY, USA.

Q. And in what capacity?

A. I'm an engineering advisor working in the reservoir group out of the Oklahoma City Mid-continent Region Office.

Q. You testified last month before this Board and had your credentials accepted, did you not?

A. I testified before the Board, yes, I did.

Q. Were your credentials accepted at that time?

A. Well, I assume they were. We didn't have any of the credentials requested.

Q. Well, we shall recap then. Give us your educational background.

A. I have a PhD in physics and a Bachelors degree in physics.

Q. What is within your area of responsibility at OXY?

A. Primarily specialized reservoir evaluation studies like enhanced methane, maybe like special reservoir studies that's more outside the realm of usual petroleum engineering.

1 Q. Is this coalbed methane project, in fact, one of your
2 areas of study within your employment?
3 A. Yes, it is.
4 Q. And what in particular have you done to study the
5 reservoir characteristics of this project?
6 A. I have evaluated available data, recommended tests to
7 acquire more data. I've done computations of data from
8 the literature and things that were in the public domain.
9 I have done computer reservoir modeling to predict
10 forecast production in drainage areas.
11 Q. Was it, in fact, your testimony that was part of the
12 basis of the establishment of the original Oakwood field
13 60 acre drilling units?
14 A. Yes, it was.
15 MR. BRAGG: I would at this time move that Dr. Wilson be
16 accepted as an expert reservoir engineer.
17 MR. CHAIRMAN: His credentials are accepted.
18 Q. (MR. BRAGG continues.) Have you prepared exhibits for
19 the purposes of this hearing, Dr. Wilson?
20 A. Yes, I have and they're being distributed.
21 Q. And they have been marked Exhibit A. You have been
22 present at the hearing today and have heard all the
23 witnesses before you, have you not?
24 A. Yes, I have.
25 Q. And you are well familiar with the application and the

1 method that is being proposed in this application today?

2 A. Yes, I am.

3 Q. Have you, in fact, done the engineering and economic
4 studies in support of this application?

5 A. Yes, I have.

6 Q. I would briefly like for you at this point to go through
7 your exhibits and describe for the Board the data you
8 reviewed, the studies you've done, and why you've reached
9 the conclusions you have with respect to this applica-
10 tion.

11 A. To set the frame work let me review very briefly the
12 physical conception that I've worked under and the
13 complications that the longwall mining process and
14 particularly in the gob present from a reservoir en-
15 gineering standpoint. The reservoir properties prior to
16 gob process can be well determined from core holes, from
17 tests on core, from wells logs, etcetera. Once the 1
18 seam in our case has been mined out and I tried to
19 depict that a panel that is say 750 wide by 5,000 feet
20 long with -- in our case I've just shown schematically
21 two vertical vent wells, when the longwall mining has
22 progressed through the roof is allowed to collapse behind
23 it in some fashion. What that does is it produces a
24 rubberized zone at some extent. Roughly -- and again this
25 is our conceptional model of it, in the pattern shown

1 there's an arching process. So it's roughly like half of
2 a cylinder as you see here. When it does that it creates
3 fractures, maybe massive void spaces between the rock
4 that vary and I have another picture before or subsequent
5 to this, but the reservoir properties in this gob region
6 -- this rubblized zone -- are drastically altered. In
7 particular the permeability to any gas or any fluids that
8 might be in the area in certain areas probably go up
9 hundreds of fold, maybe thousands of folds. It's very
10 difficult to determine precisely what the reservoir
11 properties are in this situation. In addition to the
12 extent that there is a gas that is absorbed on the coal
13 seams that are in the strata -- and maybe I should go to
14 the next picture. This is an end view --

15 Q Dr. Wilson, if I may interrupt here. You have heard Mr.
16 Lewellen's testimony here today with respect to the pool
17 in the formation and it's about this pool that you are
18 identifying, is that correct, for clarification sake?

19 A Yes. This is an end view. The J Seam has been extracted
20 and the roof is allowed to fall down. So that gas is
21 gone out of the J Seam. So right there is immediate
22 alteration in the reservoir properties. You've pulled
23 out of maybe five or six feet of rock. Down below the
24 permeabilities may be very, very high. This may be
25 almost like pipe flow as far as what the permeabilities

1 are. And as you increase you go up into pipe it turns
2 into more of probably a fractured network, but these
3 fractures then give you enhanced permeability. The
4 distance -- we've done some rock modeling to find out
5 element predictions as to what kinds of heights we would
6 expect and also what areal extent. And basically it's
7 confined to the width of the longwall and anywhere from
8 300 to maybe 500 feet above the base of the 3 Seam. In
9 that zone you have maybe coal seams. You may have
10 associated strata that are extremely tight. Maybe less
11 than a tenth of a millidarcy that have suddenly gone up
12 to maybe ten fold or one-hundred fold. It's very
13 difficult to determine. So the basic problem from a
14 reservoir standpoint is it's very difficult based on the
15 data that I think that anyone has and certainly that we
16 have is what precisely are the reservoir properties in
17 this area which we're going to be producing gas from.

18 MR. HASON: I'm curious. Do you all have any knowledge -- have
19 you all developed any knowledge about what happens as
20 time goes by? Does this rubble area change like over a
21 period of two months or years?

22 MR. WILSON: Yes, sir.

23 MR. HASON: Is there additional falling and compaction at the
24 bottom?

25 MR. WILSON: There is subsidence and it's a very dynamic

1 process. There's plastic movement throughout the rock --
2 plastic deformation that is ongoing.

3 MR. MASON: So it actually changes over time?

4 MR. WILSON: Yes.

5 MR. MASON: Will that effect, you think, the gas flow or the
6 amount of gas freed in this rubble zone?

7 MR. WILSON: It probably enhances it and it's probably a
8 beneficial effect.

9 MR. MASON: Well, I understand that. But there are some --
10 there may be additional fracturing as time goes by which
11 with additional gas flows and things like -- it's a
12 possibility?

13 MR. WILSON: That's correct. Although I think to the best of
14 our knowledge at this point it's confined to a region
15 roughly of the geometry that I've shown here.

16 MR. MASON: Is it fair to say that a lot of that's unknown at
17 this point?

18 MR. WILSON: Yes. That's one thing I wanted to point out.

19 We're looking from a data base standpoint and a knowledge
20 standpoint that's on such shaky and scientific and
21 engineering basis than the things that were presented in
22 the original Oakwood hearing. Those were things that
23 were better determined than what we have today.

24 (Mr. Bragg continues.) With respect to your knowledge,

25 Dr. Wilson, do you believe given that this is a situation

1 in which you and others will continually look at the data
2 that's available that you have to this studied everything
3 available to come to the conclusions that you now have?

4 A. Yes. It is an active area of ongoing research and study
5 not only within OXY but within the industry.

6 Q. With respect to your previous testimony it was that 80
7 acres was an appropriate size drilling unit that would
8 fair and equitably recover the gas resource among those
9 owners in the 80 acre units and we have requested here
10 maintenance of those 80 acres. As I appreciate your
11 testimony there are significant changes in the reservoir
12 itself from a straight CBM Oakwood field to short hole
13 and now gob. And you have to some extent explained those
14 characteristics. Why do you continue to believe that 80
15 acres is the appropriate sized drilling unit from the gob
16 and short hole?

17 A. Well, primarily and I have some exhibits that will show
18 this, it's a matter of time frame on the original CBM
19 well, the original Oakwood field, we were looking at a
20 time frame of production that was on the order of ten to
21 twelve years normally and may be extending out to twenty
22 years and the drainage of any well in any reservoir
23 actually increases with time. So you have to specify not
24 only a time frame but as well as the physical properties
25 to determine what, in fact, the spacing is.

1 Q. So that the actual time of the drainage is shortened
2 because of the short hole and gobbing process?

3 A. Yes.

4 Q. And you're taking that into consideration in this
5 proposal.

6 A. That is correct.

7 Q. Let's move on to the next exhibit.

8 A. Let me show you the kinds of data that we have and most
9 people have and this is an actual simulation history
10 match on that kind of geometry that I showed you. The
11 circles are actual production data. What I did is I
12 tried to vary the net permeability -- the effective
13 permeability of the gob region and tried to match that
14 data as best I could.

15 Q. So this is what you believe the production will be over
16 time based on the gobbing effect?

17 A. Not only that, but the circles are an actual gob well
18 production. Based on these numbers, 26 millidarcies,
19 that's not to say that there may be any portion of that
20 gob region that actually has 26 millidarcies of perme-
21 ability. There may be some that have thousands of
22 millidarcies and some that may have tenths of milli-
23 darcies. But the over all effect is that kind of a
24 permeability.

25 Q. Dr. Wilson, as I appreciate your answer this is actual

production from one gas in a longwall panel, is that correct?

A. Yes.

Q. Would you give us the parameters of that panel? What I'm driven at is this a typical situation and is this, in fact, the kinds of panels that they've seen previously in the exhibits?

A. Yes. This was roughly -- I don't have the precise numbers, but it's roughly a 750 by 3,000 foot longwall panel, something on that order.

Q. And do you believe this to be typical of other gas situations?

A. This is an average well. There are data that shows gas wells that are much, much higher, some much lower mines say by a factor of two. But this from our data looks like an average one and that's the one --

Q. Very well.

MR. CHAIRMAN: If this panel was sealed would you predict or do you have any actual data where your production goes up or down it --

MR. WILSON: Yes. One of the things that is important from an oil and gas company standpoint is having the quality of the gas sufficient -- the methane content high enough to be acceptable to sell into a pipeline. And the sealing really -- it isolates the panel although the modeling

1 would indicate this high permeability region effectively
2 isolated the panel anyway. But primarily it's to keep
3 the quality of the gas high enough so that it can be sold
4 in the market -- to reduce the nitrogen and oxygen
5 content.

6 MR. EVANS: Doctor, I have a question. In your modeling and
7 statistical work have you correlated any difference
8 between the number of wells per panel? How does that
9 effect your recovery curves and does it?

10 MR. WILSON: This was a panel that had, I believe, three gob
11 wells in it and this was one of the gob wells.

12 MR. EVANS: Do the other wells in that panel show a similar --

13 MR. WILSON: They show similar characteristics.

14 MR. EVANS: Do other panels with either more or less wells
15 show similar patterns and similar numbers?

16 MR. WILSON: That's right. It's more a question of what the
17 gas content of the coal seams are, I believe, which
18 you've liberated the gas from.

19 Q. (MR. BRAGG continues.) Based upon that statement one of
20 your recommendations under this applications is that
21 there will essentially need to be one well per panel per
22 80 acres, is that correct?

23 A. Yes. That is correct.

24 MR. BRAGG: Which is the question you were asking.

25 Q. (MR. BRAGG continues.) And that would be the basis for

1 maintaining the 80 acre units.

2 A. If you look in the previous exhibits where they show the
3 longwall panels and existing 80 acre unit the -- a
4 typical panel will cross over about three of the 80 acre
5 units on average. Let me give you a little schematic
6 here and show you the kind of thing that occurs. Here
7 we're looking at a plan looking down from the top. Here
8 is an actual head gate and tail gate. Here's a plan
9 projecting the entry way. The dash lines are horizontal
10 short holes that are drilled into a panel. I'm just
11 trying to set the frame here. These short holes as I
12 understand it are typically done in advance of the actual
13 mining of -- of the construction of these entry ways in
14 advance so that when these short holes here are drilled
15 production may begin from it. The reservoir is opened
16 from this side from a reservoir standpoint. So, in
17 effect, it's almost semi-infinite in extent. From my
18 studies so long as you go ahead and isolate this panel
19 which is here by going ahead and completing these
20 projected entry ways within a one to two year time frame
21 then these short holes will drain only gas from the area
22 that is enclosed by the panel. One of the questions that
23 the mining company has to address is how many of these
24 are appropriate and -- I'll show you some projections
25 here. It's very much a characteristic of the perme-

1 ability and the gas content of the number 3 seam which
2 has already been mined out and they need the flexibility
3 to alter plans based on what they -- the mining process
4 to increase the density of the short holes. From our
5 studies there's actually a fair amount of range in the
6 percentage of gas that is recovered via the short holes
7 depending on what the reservoir property of the 3 seam
8 is. Again, the short holes extract gas only from the 3
9 seam. The gob well gets all the associated strata and
10 coal seams in that 400 foot or so region above. So
11 that's what's different here. In both cases it's gas
12 that would have been recovered by a CBM well had this
13 development not occurred.

14 Q. Let's touch on that point a minute. You originally
15 testified that it would take one CBM well per 80 acre
16 units. So are you now saying that that gas would have
17 been recovered by that CBM and because the methodology is
18 changed and we need to take that into account? Basically
19 it's that same gas that was in that 80 acre unit?

20 A. That's correct.

21 Q. One of the questions posed earlier is why should owners
22 that are in those 80 acre units that don't lie actually
23 within the panel have the right to receive the production
24 and if you would address that I would appreciate it.

25 A. Well, again if a panel had not been put in place the CBM

1 well over the twenty year -- or twelve to twenty year
2 life of that well would have recovered all of that gas.
3 The only thing that we're doing by introducing the gob
4 holes, introducing the short holes that the mining
5 company's doing by introducing these is they're acceler-
6 ating the recovery. So you need some mechanism to say
7 hey, you're going to get it in the CBM case so you still
8 need to get the same gas or you should get the same gas
9 even though we're just accelerating that recovery.

10 Q. And likewise when you go through the gobbing process it's
11 just not only gas that's recovered from underneath that
12 panel, it is the same gas that was in those units
13 originally?

14 A. That's correct. From the seams above the J. The J is
15 gone. Hopefully we address physical waste by getting all
16 of that gas out via the short hole process and this gas
17 that would have been gotten via CBM well, the gob process
18 gets out the gas that were from the other seams up
19 forward.

20 Q. You've testified in your original 80 acres and then now
21 with respect to drainage and how this methodology will
22 work and fit hand in glove with the original rules,
23 let's talk about the economics associated with that
24 drainage. You've talked about recovery over a shortened
25 time. Do you believe the economics of the recovery of

1 the gas from short hole and long hole support the
2 establishment of the 80 acre drilling units?

3 A. Yes. Via the apportioning technique where you apportion
4 costs back along with the production then the economic
5 sense is maintained on the 80 acre spacing.

6 Q. Even though you're using a different methodology?

7 A. Even though the methodology has changed. Primarily the
8 methodology changed to accommodate the mining companies.

9 MR. CHAIRMAN: If you have a royalty owner that owns the Pokey
10 3 and you're producing short -- and only Pokey 3 and your
11 producing short hole gas from that you would still have
12 your distribution to all owners of the entire unit?
13 Would you?

14 MR. BRACE: Yes, sir, you would. And we need to address that.
15 It's not Dr. Wilson, I would suspect, that would be the
16 appropriate person to do that. I would move for the
17 admission of these exhibits at this time and ask for any
18 other questions to Dr. Wilson.

19 (Witness stands aside.)

20 MR. CHAIRMAN: Any other questions regarding Exhibit B? Okay.

21 (AFTER A LUNCHEON RECESS, THE PROCEEDINGS CONTINUED AS
22 FOLLOWS:)

23 MR. CHAIRMAN: Go ahead.

24 MR. BRACE: If the Chairman would allow, at this point we've
25 taken a considerable amount of the Board's time with a

1 lot of testimony on a lot of witnesses. We had planned
2 to call Mr. Steve Breeding. As you know he's an employee
3 of Island Creek Coal Company to give the coal operators
4 perspective and approval of this plan, but after reflection
5 at lunch it seems appropriate to forgo that testimony
6 but to make him available to you should you have
7 specific questions from a coal operator. Otherwise I
8 would proceed with Mr. VanGolen at this time.

9 MR. CHAIRMAN: Okay. Proceed.

10 MS. BRAGG: I call Mr. Glen VanGolen.

11 CLERK: (Swears witness.)

12
13 GLEN VANGOLEN

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

16
17 DIRECT EXAMINATION

18 BY MS. BRAGG:

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

20 A. Glen VanGolen.

21 Q. And by whom are you employed?

22 A. OXY, USA.

23 Q. And in what capacity?

24 A. Project manager of the coalbed methane project.

1 Q. And how long have you been an OXY's employee?
2 A. Ten years.
3 Q. And what are your responsibilities as project manager?
4 A. Overall management and direction of the Virginia coalbed
5 methane project.
6 Q. Describe that project briefly to us, please.
7 A. It encompasses development of coalbed methane in Buchanan
8 County Oakwood field rule area coordinating all activ-
9 ities from pipeline production operations, etcetera.
10 Q. Has this application been filed at your request?
11 A. Yes, it has.
12 Q. What is your professional background?
13 A. I'm a chemical engineer, a BS in chemical engineering
14 from the Colorado School of Mines.
15 Q. With respect to this project have you been responsible
16 for the engineering aspects as well as the management of
17 the project generally?
18 A. Yes, I have.
19 MR. BRAGG: I would ask that Mr. VanGolen be accepted as an
20 expert witness.
21 MR. CHAIRMAN: Okay. Without objection.
22 Q. (MR. BRAGG continues.) As I said, we have taken a
23 considerable amount of the Board's time this morning with
24 the presentation of this application. And for you as
25 project manager in charge of not only this application

1 but this entire project we'd like to ask you only a few
2 questions as to why this application was filed and what
3 the purposes of it are. We've heard testimony with
4 respect to a uniform plan and I guess I would like the
5 Board to hear your perspective as to why the development
6 of a field wide plan is necessary if not essential for
7 you to proceed with the coalbed methane development you
8 anticipate.

9 A. We feel it's imperative to have a uniform plan that
10 encompasses a wide area obviously because there's a
11 number of different coal operators, not only our af-
12 filiates but other operators, and as a gas operator it's
13 never easy to predict the changes, the direction of the
14 coal operations. We need to be able to focus on the
15 production mechanisms involved and not worry about the
16 changes in plans that may occur and change of plans that
17 we're not aware of, even changes in directions corporate-
18 ly that we're not involved in. So we feel a uniform plan
19 that encompasses a great field area allows for us the
20 flexibility. It allows for the coal operator a flexib-
21 ility. It protects all the interested parties involved,
22 correlative rights issues, the economic issues, physical
23 waste issues. It allows for complete development of the
24 field with total flexibility.

25 Q. With respect to the establishment of a methodology do you

1 believe that it will save you as a gas operator and other
2 gas operators the efficiency of costs and likewise if the
3 Board approves a methodology feel why that it would
4 conserve their resources in having to come before them on
5 a case by case basis?

6 A. Obviously if we retain everything on 80 acres a lot of
7 things have been done in the primary development of that.
8 The title work has been done on 80 acres. The splitting
9 of ownership among the 80 acre units has already been
10 established. Any conflicting claims that may have been
11 escrowed. The percentages will remain the same for the
12 units which the Board has to administer and it would be a
13 lot easier for them to police in that respect. If you've
14 got one set of units that overlap each other the title
15 opinions, all the interested claimants, the forced
16 pooling, everything's done at one time or can be done at
17 one time under this order and the Oakwood field order
18 that allows for an efficient administrative process.

19 Q The Oakwood order was issued in May of 1990 and I assume
20 at that time you not only contemplated but realized there
21 would be gas production and short hole production. Have
22 you considered the various alternatives available to you
23 in formulating this plan and this methodology?

24 A Yeah. We've examined a number of options and gone
25 through several years worth of neg -- not negotiations

1 but discussions among ourselves which often turn into
2 negotiations among ourselves. But the overall develop-
3 ment of this, it can done effectively, it can be done
4 efficiently, and we recommend that it proceed forward.

5 Q. We have requested in our application that this order be
6 made effective immediately at the date of hearing. And I
7 think the Board would appreciate an explanation of the
8 urgency of getting an order in effect at this time.

9 A. There's really two things for that. We're not con-
10 templating any other pooling that was done previously
11 under the Oakwood field rule be grandfathered in in any
12 manner under this order. In fact, we understand that
13 those will have to be re-pooled and new elections made
14 for anybody under that order. We feel it's imperative to
15 go forward from here with upcoming pipeline schedules,
16 commitments. We'd really like to start getting this gas
17 in the line instead of seeing it go in the air. As I
18 said last time, we're looking in the neighborhood of
19 150,000 a day being vented. When you start talking in
20 that order of magnitude you can understand some of the
21 urgencies that we feel.

22 Q. Do you anticipate in the very near future, perhaps within
23 the next few days, filing applications to pool under
24 these units, to hopefully be on the January docket, and
25 being able to assume thereafter within a period of months

1 capture and allow the production revenue to flow and be
2 given to the owners as determined by the Board?

3 A. That's right. No matter whether this order be approved
4 or -- we hope it's this order -- or any other mechanism
5 to pool interest, we need to start proceeding and moving
6 forward to make sure that we can capture this gas.

7 MS. BRAGG: I have no further questions of Mr. VanGolen at
8 this time.

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

10 MR. MCLOTHLIN: Mr. VanGolen, last month we discussed
11 participating in the well and the costs. Could you
12 elaborate on that a little bit more for us?

13 MR. VANGOLEN: You bet. One of the reasons we're really
14 strong on the JOA, there's a lot of things in there that
15 protect both parties. One is the JOA allows us only to
16 call for cost thirty days prior to mine through for gas
17 wells for instance. Any costs associated with short
18 hole, title cost, things like that will be just thirty
19 days prior to production of the short hole. It doesn't
20 allow us to recoup costs totally up front and in essence
21 fund our drilling program. The other urgencies, there's
22 a lot of protections in a JOA that are not addressed in
23 the orders right now. What happens if we have to work a
24 well over? Is there an election by any of the partic-
25 ipants? Currently it's not addressed. The JOA allows

1 that. If there's a replacement well, Sometimes wells
2 are created. What's the election by the participants
3 under the current Board orders? There are a lot of
4 things there that are incorporated in JOAs that protect
5 all parties and allows different economic decisions.
6 Under the JOAs you can go mine carried. You can --
7 whatever. But that's the kind of mechanics we're
8 looking at. We don't anticipate that any of these orders
9 really are enacted. I mean, we're going to come forward,
10 but we really don't expect that these things be enacted
11 until we're ready to produce gas from the long hole -- or
12 from the short holes and the gob areas to the extent that
13 there is no short hole. And like I say, we won't try to
14 recoup any cost until thirty days prior to that election.

15 MR. MCGLOTHLIN: You had mentioned last month that -- this is
16 just to kind of paraphrase. The general idea of what you
17 said as I understood it was that if someone elects to
18 participate on the 80 acre unit that's now in place and
19 you have a longwell panel and you put another well in, a
20 gob well, then they can elect to participate in that
21 one --

22 MR. VANGOLEN: Uh-huh.

23 MR. MCGLOTHLIN: But they have to -- could you explain that a
24 little bit, please?

25 MR. VANGOLEN: The JOA allows for if he was carried in the

1 first well it allows for him to do a catch up on the
2 first well before he makes his election on the second
3 well. So in essence he catches up -- he's back in as an
4 operating partner in that 80 acre and then he can make an
5 election on the second well to either to participate or
6 again go a non-carrier.

7 MR. MCGLOTHLIN: So the option is open if say an 80 acre tract
8 is drilled and no one elects to participate and then you
9 move in and drill another -- a job well and they can go
10 back and participate in the first well?

11 MR. VANDOLEN: In the case if he leases that's not an option.
12 If he's gone non-consent in the first situation then he's
13 allowed to back in for those costs and then allowed for
14 an election in the second well. If he's leased he's
15 always leased.

16 MS. BRAGG: Let me rephrase that to make sure we're being
17 clear. If you have elections for a pooled 80 acre unit
18 and someone elects to lease their interest which is what
19 the statutes provide OXY does not anticipate that they
20 will be able at some point in the future to come back in
21 either as a working interest owner or as a carried
22 interest owner so that if you lease at least the antic-
23 ipation is now and this is certainly subject to your
24 approval that once leased always leased. If you're a
25 working interest owner or a carried owner you do have

1 continuing elections.
2 MR. VANGOLEN: That's right.
3 MR. BRAGG: Because you are participating in the cost of
4 development.
5 MR. MCLOTHLIN: I'm confused now. I understood Mr. VanGolen
6 to say that if you did not participate in the first well
7 and you elected to participate in the second one you
8 could go back and participate in the first one. Now
9 you're saying that if you're leased you can't.
10 MR. VANGOLEN: If you deemed a lease in the first case then
11 you've always leased. Okay. If you elect and go a non-
12 consent in the first case then you can catch up and
13 continue to participate.
14 MR. BRAGG: To be a carried.
15 MR. VANGOLEN: Non-consent is carried.
16 MR. MASON: And the reason for that, if you lease then you're
17 not somebody who's basically a defendant in the forced
18 pooling application and the law imposes upon you or
19 grants to you certain rights. Once you sign a lease
20 you're out of that and you basically give up those
21 rights --
22 MR. BRAGG: Exactly.
23 MR. MASON: -- as a part of the leasing transaction and
24 theoretically you're compensated for that and dealt with
25 in a different framework than what you have if you're a

1 defendant in the forced pooling matter.

2 MR. BRAGG: Once you've leased you become a royalty owner that
3 is a non-cost bearing interest. You've made the decision
4 that you do not want to share in the costs and risks of
5 development.

6 MR. MCGLOTHLIN: But if someone is forced pooled then they
7 have the option of going back?

8 MR. BRAGG: Any forced pooling. The forced poolings we're
9 doing now, everyone has those three elections.

10 MR. MCGLOTHLIN: Right.

11 MR. VANDOLEN: Up front.

12 MR. BRAGG: Up front, that's right.

13 MR. MCGLOTHLIN: I think I understand it. Thank you.

14 MR. CHAIRMAN: Other questions?

15 MR. MASON: Just for my frame of reference. What you're
16 really saying is that when a person leases they have, in
17 effect, declined to do that. You've got the statutory
18 rights to participate, but when they sign a lease they
19 effectively waive those rights. They've made a decision
20 then instead of later.

21 MR. BRAGG: That's right.

22 MR. VANDOLEN: That's right.

23 (Witness stands aside.)

24 MR. CHAIRMAN: Do you have other witnesses?

25 MR. BRAGG: No, sir. I do not. At this point OXY has con-

1 cluded it's case by the calling of witness and I believe
2 we have admitted all of the exhibits. At this point we
3 would urge the Board, of course, to accept our applica-
4 tion and grant the relief requested. We believe first
5 and foremost that it's essential that a uniform method be
6 applied to this field because the pool is defined as a
7 pool that is relatively uniform within the field and
8 should be developed consistently within that area and we
9 have set out before you what we believe is to the best of
10 our ability a scheme that will work field wide and will
11 protect all owners. And therefore, we would urge for the
12 adoption of this application.

13 MR. HASON: I'd like to ask you a question about something,
14 focus on something. In Exhibit G, Page 6, number I, you
15 have requested that the Board provide that operations
16 carry on under and in accordance with this order shall be
17 regarded and considered as the fulfillment of and in
18 compliance of the provisions, covenants, conditions both
19 expressed and implied of the several oil and gas leases
20 or mining leases upon lands including within any 80 acre
21 drilling unit. Now, that's a fairly broad request in my
22 regards simply because as we don't have any idea of what
23 such provisions, covenants and conditions are and say it
24 would vary from one lease to another not particularly
25 those that are implied, whatever that might be. And I

1 guess what I'm concerned about is -- I think I understand
2 the problem. I understand that there's a necessity that
3 in order to hold your leases open that you have to have
4 production from those leases.

5 MR. BRAGG: That's exactly right.

6 MR. MASON: I think that perhaps that dealing with that issue
7 in terms that there is production is not -- but to take
8 that to the step of saying that that is basically deemed
9 to be compliance of the lease terms -- and I guess my
10 question most off would be framed in terms of how do we
11 have the authority to do that? That something that we're
12 doing here is deemed to be a satisfaction of a legal
13 contract?

14 MR. BRAGG: I think your point is well taken and let me
15 express our objective which I think you appreciate from
16 your question.

17 MR. MASON: I understand the objective and I don't have any
18 problem with the idea that the production in this panel
19 as allocated is deemed or is considered to be --

20 MR. BRAGG: Is produced.

21 MR. MASON: -- or is found to be production from each of those
22 areas or any area within the unit.

23 MR. BRAGG: That's right.

24 MR. MASON: I have a problem going beyond that to deem this to
25 be satisfaction of any requirements of a lease.

1 MS. BRAGG: I think that's a point well taken. I think what
2 the Board can do and is requesting that you do is to by the
3 wording of this order say this is, in fact, production from
4 these units. And I think the obligation is on OCT then to
5 look at those words, look at that order, look at that product-
6 ion, and to make the determination this satisfies our lease
7 clauses.

8 MR. MASON: I do appreciate the idea that that can be done in
9 terms to be deemed compliance, but I don't think we have
10 the ability to do that.

11 MS. BRAGG: Uh-huh. What we're most concerned about is -- the
12 issue you've raised before is it's possible if not
13 probable that there may not be an actual well when in, in
14 fact, you've got production from that unit and that's the
15 issue we're trying to address here.

16 MR. MASON: I understand that. I don't know who's in how the
17 order would be drawn, but I do suggest that whatever the
18 board does to this request is only framed up in terms of
19 production from --

20 MS. BRAGG: In the narrower terms.

21 MR. MASON: I have no problem whatever with the idea that
22 production attributable to a unit constitutes production
23 from all leased portions within that unit which I assume
24 is what you're looking for.

25 MS. BRAGG: That's right.

1 MR. MASON: Thank you.

2 MR. CHAIRMAN: Other questions? I will call out one other
3 thing and I know it's not a part of what your -- you
4 requested relief. But in the summary of the proposed
5 testimony and the exhibits on Page 7, B-2 and then Mr.
6 Gordon's testimony, there is a statement "The allocation
7 of all costs based on 80 acre drilling units will be
8 governed by the terms of the JOA to be incorporated and
9 to any pooling order subsequently issued by this Board."
10 And I would just remind you that the Board's been very
11 reluctant to make a part of it's order any sanctioning of
12 a JOA. We've left those kinds of terms more or less
13 between the parties that are lessing or what have you.
14 Other questions? We had requests to address the Board
15 regarding this from Cabbot. If you would like to make
16 statement come forward, please.

17 MR. LEVY: Mr. Chairman and members of the Board, my name is
18 Jim Levy. I'm regional exploration manager for Cabbot
19 Oil and Gas in Charleston. I'm here because we own oil
20 and gas leases within the Oakwood coalbed methane field
21 area which have been previously made subject to a field
22 light order for the Pilgrim's Knob Field. I'd like to
23 commend the Board for taking on such a naughty problem
24 here because of the conflicting estates. I feel this is
25 probably the most difficult matters that I've ever seen

1 before a regulatory body. The gas and coal interests
2 often conflict when in with the various methodologies of
3 coalbed methane production it appears to get even more
4 difficult. Some specific comments; I was pleased to hear
5 your comment that you would not wish to endorse a form of
6 JOA before the parties here because that is a negotiated
7 contract and it should be between the parties in each
8 unit. I commend GXY for wanting to put together some
9 sort of a uniformity over the entire area. I think it's
10 needed. We thought it was needed when we had our
11 Pilgrim's Knob hearings several months ago. Certainly
12 some basis by which we can proceed in a uniform manner in
13 oil and gas development or coalbed methane development is
14 needed. I would like to comment on one thing. Title
15 opinions -- this is Page 9 of Exhibit G -- for all units
16 of title opinions and ownership in minerals will have
17 uniform basis in the Oakwood Field for all phases of
18 production and there will not be a need to perform title
19 of functions before, during and after mine through. I
20 think we heard testimony here today from Dr. Wilson and
21 Mr. Lewellen that once the seam is mined and, in fact, is
22 gone there's no gas from it left. And then during the
23 gob phase of production there's collapse and, of course,
24 gas is freed from all formations within that rubble zone
25 which includes, we feel, rocks other than coalbed. It

1 does include rocks other than coalbed. Which, in fact,
2 that gas present in those rocks and freed may not be
3 coalbed methane. And I think that should be recognized
4 and perhaps some determination made then of the rightful
5 ownership of gas freed due to fracturing in a rubble area
6 of a mine. Where VWH wells are -- VWH holes, they're
7 not wells, of course, are to be used I think that well
8 documented costs and depreciation schedules need to be
9 taken into account. So I think that some of this cost
10 that I saw here presented to the Board such as \$250,000
11 for a well at these depths are quite excessive in our
12 experience where we can drill a well to the Burea
13 Formation 5,000 feet deep, treat it for about the same
14 amount of money. So a well one-third that depth I think
15 would have to be well documented for the Board in the
16 future. In the matters coming before the Board I think
17 perhaps there were some psychological preparation being
18 made with those numbers. They probably are a little bit
19 excessive. In conclusion I think that this is a step in
20 the right direction toward providing a fair and equitable
21 manner of production of coalbed methane from the field.
22 I do not envy your task in determining just how it needs
23 to go. I think there's a number of issues that will need
24 your very careful consideration.

25 MR. CHAIRMAN: Thank you. Any questions, members of the

1 Board? Do you have any follow-up comments?

2 MR. BRAGG: No, sir.

3 MR. MASON: I have one question. Are you aware in this
4 Oakwood field of any gas bearing strata between the Pokey
5 and the Tiller?

6 MR. LEVY: I have not looked at logs that would in effect tell
7 us that. There's very little data because we as gas
8 companies commonly don't go straight up there behind our
9 surface casing and we have not gotten that information
10 from coal companies. They would be more likely to have
11 it than we.

12 MR. MASON: Thank you.

13 MR. CHAIRMAN: Any other questions for Mr. Levy? Thank you,
14 sir. Ms. McClannahan, Mr. Jones, you asked to speak.

15 MR. JONES: Mr. Chairman and members of the Board, my name is
16 Jim Jones and along with my colleague Ms. McClannahan we
17 represent Pocahontas Gas Partnership. And as the Board
18 will recall at the last hearing date we participated in
19 the previous hearing of this matter. We do have a few
20 questions that we would like to ask of the witnesses that
21 have been presented on behalf of OXY. With the Board's
22 indulgence we have a witness that we would like to
23 present briefly and then we would like to state our
24 position insofar as this application is concerned.

25 MR. CHAIRMAN: Okay.

1 MR. JONES: Mr. Chairman and members of the Board, I'd like to
2 ask a few questions of Dr. Wilson if I could.
3

4 WELDON J. WILSON

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

8 CROSS-EXAMINATION
9

10 BY MR. JONES:

11 Q. Dr. Wilson, my name is Jim Jones and I represent Focahon-
12 tes Gas Partnership. Let me direct your attention to an
13 exhibit that was introduced by your company which is
14 Exhibit M. Perhaps you might refer to that, Page 1, the
15 schematic diagram. As I understood your testimony you
16 agreed that the drainage from the longwall panel area
17 would not be to what has designated in this example as
18 Tract 1. Is that correct?

19 A. No. I believe the concept we were trying to get across
20 was that the drainage from the panel attributable to that
21 80 acre spacing A-1 would have been drained had we had a
22 CDB well there under 80 acre spacing.

23 Q. Right. I understood that, but your first premise was
24 that -- or your first testimony based on your knowledge
25 and experience was that because of the method of mining

1 that the short hole gas would come from the --
2 A. from the short hole only comes -- only from the panel.
3 Q. That's right.
4 A. I believe that's what I said.
5 Q. So that for the owner as to Tract 1 what if you -- if you
6 would explain again what is the basis for attributing any
7 short hole gas production to that Tract 1?
8 A. Because that is part of the pool attributing to the --
9 that we were trying to prove here.
10 Q. Well, in what respect? You've testified, again you
11 agreed that there is no drainage that is attributable to
12 tract 1. That for the short hole production it comes
13 all from this shaded area, the longwall panel. Is that
14 right?
15 A. Yes. And if there were a CBM in that 80 acre unit it
16 would get that gas as well.
17 Q. Not every 80 acre unit has a CBM well, does it?
18 A. In the Oakwood field no but -- at the current time. BUT
19 presumably the field rules are set up under some of
20 eventuality that would occur.
21 Q. You're saying that it's theoretically possible that there
22 would be a CBM well in every unit?
23 A. Yes.
24 Q. But as a practical matter that's not likely?
25 A. As a practical matter there probably would be wells in

1 areas we would anticipate mining either of a vent hole
2 nature or of a CDM nature because that enhances the
3 mining operations to get that gas out via some other
4 method.

5 Q. You indicated, I think, in your direct testimony that the
6 state of scientific knowledge in regard to this type of
7 recovery of coalbed methane gas was developing -- was
8 that your word?

9 A. I think it is -- yeah, the front edge.

10 Q. And as we learn more -- as we progress in projects such
11 as your company's and others we will learn more about
12 drainage patterns and other production data and other
13 information relating to these matters?

14 A. Yes.

15 Q. What was the data based on from which you gave your
16 conclusions as to production, Dr. Wilson? Was that
17 hypothetical or theoretical?

18 A. It was data -- our data was actual production data
19 provided to me by Island Creek personnel on operations.
20 The other data -- some of the lines that you saw were
21 generated via computer models to try to incorporate the
22 best known reservoir parameters that we can to make an
23 estimate based on the computer model.

24 Q. One of the exhibits which you showed did have some -- you
25 referred to it as actual well data, is that correct?

1 A. That's correct.

2 Q. Did you identify -- what was that well? Where was that
3 from?

4 A. I did not identify that and I'm not sure that it was
5 identified to me by Island Creek. What was given to me
6 on those kinds of data were a summary of reservoir
7 properties in the area that they had and the insurance
8 that this was from their experience atypical for a high
9 well, a low well.

10 Q. Experience where, do you know?

11 A. I could not tell you that.

12 MR. JONES: I have no other questions for this witness.

13 (Witness stands aside.)

14 MR. MASON: Can I ask Mr. Jones a question?

15 MR. CRAFTMAN: Sure.

16 MR. MASON: Mr. Jones, it seems to me that your questions in
17 regard to the allocation of production from this panel
18 under Tract 2 to Tract 1 seems to question the concept of
19 a unit. It seems to me that this entire oil and gas law
20 is based upon the idea that you can adopt in a field
21 uniform units because of the ability to predict drainage
22 and to determine what gas is coming from where is
23 difficult and probably impossible. And consequently well
24 fields are divided up into units based on evidence and
25 testimony and there's just basically an arbitrary

1 decision made based on the best evidence you have that
2 the best way to allocate this production among the owners
3 is based on a unit and within that unit whatever is
4 produced from that unit is attributed to all owners in
5 that unit. It seems like the direction of this question-
6 ing seems to be to question that concept where a longwall
7 panel is in part included within a unit. Is that your
8 premise?

9 MR. JONES: Not necessarily. And maybe in view of your
10 question it might be a good idea to make our position
11 again expressed. As we stated when we were here last
12 month we have no objection in principle to the applica-
13 tion and it's scheme of development that has been
14 presented to you then and today. We believe however that
15 we're all new at this. And we presented last month and
16 the Board accepted a plan for a unit involving the same
17 process. That is different. And we asked at the earlier
18 hearing in DEY's application that while we had no
19 objection we would ask our areas -- the areas under our
20 development of the field be excluded. At that time Mr.
21 Swartz said that he felt that that was a matter in the
22 Board's discretion. We've heard today from Ms. Bragg
23 and apparently DEY will argue that the Board ought to
24 reject our proposal. And anticipating that, their
25 objection to our request, not objecting to their applica-

tion but only that our areas under development be excluded. What I was attempting to show and what we will present to the Board is that this is a developing area and we don't have all the answers. We frankly feel that we are closer in terms of production than OXY is in this scheme and we will know with time more facts about what is a better more workable system. We simply want to be able to use the system that we presented to the Board and which the Board accepted last month in the future and we would plan to file some more applications in that regard. We're happy for OXY to proceed under its plan. We have discussed this plan with them as we have presented them with ours. We feel we all have a lot to learn from each other. But we don't think that we ought to be foreclosed in this early development of the law and practical rules in this area from proceeding with our proposals. And we would not like the Board to take any action that would make it impossible for us to proceed or more difficult for us to proceed with the same scheme that the Board has already approved for us last month. So that's simply where we're coming from. And I agree with you, Mr. Mason. You're absolutely right as far as I can understand that these are arbitrary rules in many cases based upon the best scientific evidence. My point is we don't have that best scientific evidence yet and

1 until we get it or until we're further on down the track
2 I don't think and my client doesn't think we ought to
3 foreclose different ways of doing things. That's simply
4 our position. And as I indicated that we are, in fact,
5 in actual production now. So we're really closer along
6 and I assume OXY will agree although I didn't hear any
7 exact testimony from them in that regard that they are
8 some distance -- some years away from production under
9 their proposal.

10 MR. SWARTZ: Months.

11 MR. JONES: Let me ask you one more question. Can you tell me
12 of any reason why your clients could not allocate costs
13 and production and proceed on exactly the same basis as
14 set forth in this petition?

15 MR. JONES: Well, I guess if I could -- if I can give you some
16 what of a lawyer's answer. I could turn around and say I
17 don't know of any reason that OXY could not proceed and
18 allocate cost and production on the same basis that this
19 board approved for us last month.

20 MR. HADSON: I'd grant that, but I'm asking you is there any
21 reason why you couldn't?

22 MR. JONES: I think I would have to say it would not be
23 impossible for us for the reasons that we can get into
24 and that we discussed at some length last month. We
25 think for us that the scheme that we presented and like

1 OXY we looked into this. I mean, it's not a matter of
2 pride of ownership or authorship. We've considered a lot
3 of different plans and we just felt that this was best
4 for us and best for our system. Our system of operation
5 is different. The associated coal mining operations are
6 different in some significant degrees. And we just felt
7 that this was a better -- our system was better. But I
8 cannot tell you that it's impossible for us to proceed
9 under OXY's plan and I trust that they would admit the
10 same for ours even though they obviously have preference
11 for their own.

12 MR. MASON: Well, I understand that. I'm just trying to
13 decide what -- it seems to me that there are competing
14 plans. I haven't heard anything that seems to indicate
15 why one plan wouldn't work for either party which in my
16 mind leads me to the conclusion that what this board
17 needs to decide is which is the best plan. And you're
18 telling me that you analyze it in terms of what plan is
19 the best for you based upon your conditions and your
20 mining operation and their individual characteristics
21 related to your client which dictate that being a better
22 plan for you and I assume OXY perhaps has similar views.
23 I guess I'm concerned about -- I'm not as concerned with
24 what is the best plan for you or for them as I am with
25 what is the best plan that we should implement from the

1 standpoint of our job as representing myself a public
2 member of the Commonwealth and the owners in these areas.
3 And I think that that's something that we have to decide.
4 Thank you.

5 MR. CHAIRMAN: Other questions?

6 MR. JONES: Mr. Mason, I think we can get into that. Again, I
7 think -- and I do want to emphasize that I agree with your
8 view of your role entirely. I perhaps mis-spoke when I
9 said that -- or I didn't mean to leave the impression
10 that I thought that we liked our scheme only because it
11 helped us more.

12 MR. MASON: Oh, I understand that.

13 MR. JONES: We believe that, in fact, it does protect cor-
14 relative rights, our system, in ways that OXY's does not.
15 And frankly this point about the short hole gas I think
16 is somewhat relevant there. One point there, of course,
17 is that while your right units are based on some arbitr-
18 ary decisions, if you'll recall from our system there
19 would not be a sharing of the short hole gas from the
20 longwall panel by a different tract under our system.
21 And we feel our system protects correlative rights more
22 in that particular instance and that's one example and we
23 could perhaps discuss some others. So I don't want to
24 leave the impression that we're for our plan because it
25 helps our situation. We like OXY and I think we have an

1 honest disagreement here. Certainly we don't contend
2 that anything that GEF has presented is for any reason
3 other than they firmly believe that it's a better plan
4 and we feel the same for ours.

5 MR. BRAGG: Mr. Wampler, may I interject a question here?

6 MR. CHAIRMAN: Yes, ma'am.

7 MR. BRAGG: As I understand it, Mr. McGlothlin at the last
8 hearing asked when Mr. Jones made this request that Pocahontas
9 submit information to them to specify the request and our
10 testimony today has been that our interest field wide is
11 approximately 75 percent. So therefore the Pocahontas is
12 something less than that. We were much believe that a uniform
13 plan is best for all involved and, in fact, is what the
14 statute is asking you as the Board to do. That is not to say
15 that we say not if we have the opportunity to consider the
16 specifics of your request review those and agree to them. We
17 have not had the opportunity to do that to this time. And if
18 you have the information it may well be that we should do
19 that.

20 MR. JONES: I do and I have sent you map last week.

21 MR. BRAGG: I'm sorry. I did not receive it.

22 MR. JONES: If I might, it might be appropriate, we have
23 prepared a map and if I could share that with the Board.

24 MR. CHAIRMAN: While he's going this let me just identify if
25 there are any other parties that wish to address the

1 Board regarding this matter?

2 MR. JOHNSON: Donald Johnson.

3 MR. CHAIRMAN: Any others?

4 MR. JONES: Mr. Chairman, for the purposes of this the map's
5 going to be marked Defendant's Exhibit A.

6 MR. CHAIRMAN: Just mark Pocahontas Gas Partnership's Exhibit
7 A.

8 (Map marked as Pocahontas Gas Partnership
9 Exhibit A.)

10 MR. JONES: Mr. Chairman, I wonder if it might be appropriate
11 if I could call Mr. Albert and he could explain the map
12 that's in front of you?

13 MR. CHAIRMAN: Okay.

14 CLERK: (Swears witness.)

15
16 RANDALL M. ALBERT

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

19
20 DIRECT EXAMINATION

21
22 BY MR. JONES

23 Q Would you state your name, please, sir?

24 A My name is Randall M. Albert.

25 Q And by whom are you employed, Mr. Albert?

1 A. I'm employed by Consolidation Coal Company.

2 Q. What is your position, sir?

3 A. I'm project manager of the Pocahontas Gas Partnership.

4 Q. Mr. Albert, just in one or two sentences if you would
5 state your educational and work experience background?

6 A. I have a Bachelor of Science in mining engineering from
7 Virginia Tech. I've spent eleven years with Consolidation
8 Coal Company in varied engineering capacities. And
9 for the past year and a half I've been the project
10 manager of the Pocahontas Gas Partnership which is a
11 partnership formed between Consolidation Coal Company and
12 Connico.

13 Q. Mr. Albert, before you and before members of the Board is
14 a Pocahontas Gas Partnership map and I wonder if you
15 would explain what that is?

16 A. This map is primarily as we asked at the last hearing
17 that area contained in our active mining plan to be
18 excluded from CXY's proposal. The map you have before
19 you is the limit of the exclusion area. The blue line
20 is the limit of the Pocahontas #1 seam. Control is the
21 orange line. As you can see, we tried to match the blue
22 line along the existing 80 acre boundaries so there would
23 not be areas that where an 80 acre was cut. But for the
24 most part as you can see it follows very closely what's
25 commonly referred to as the Island Creek/Consol trade

1 line moved up to include the break on the even 80 acre
2 lines.

3 Q. Now, when you say that the orange line is the limit of
4 the Pocahontas #1 seam control what do you mean by that?

5 A. That is the #1 seam controlled by Consolidation Coal
6 Company either by lease or by agreement with Island
7 Creek.

8 Q. Now, does this map show the entire Oakwood field?

9 A. No, it does not.

10 Q. Approximately what portion of the Oakwood field is this,
11 can you tell?

12 A. In percentage?

13 Q. Yeah.

14 A. It would be roughly -- I haven't put a pencil to it, but
15 I would guess what I'm looking at here would be about 15
16 percent of the Oakwood field. Also the blue line for
17 further clarification is the proposed trade that Pocahon-
18 tas Gas Partnership and OCY are currently negotiating
19 where we will trade gas and oil rights similarly to the
20 way that coal rights were traded between Island Creek and
21 Condit some years ago to clear up any differences we have
22 along our boundaries -- our common boundaries.

23 Q. Mr. Albert, last month the Board approved applications by
24 Pocahontas Gas Partnership in regard to units for
25 production from longwall mining units, is that correct?

1 A. That's correct.

2 Q. And there was testimony at that time based on -- there
3 was testimony of production given at that hearing, was
4 there not?

5 A. Yes, sir. That's correct.

6 Q. Was that based on actual experience?

7 A. Yes, sir. That was based on seven years of actual data
8 acquired by Consol during the degasification program
9 that's been in place at the Buchanan mine since 1984.

10 Q. Mr. Albert, what is Pocahontas Gas Partnership's position
11 as to OXY's application for these field rules?

12 A. We are in agreement with OXY's application in as far as
13 it applies to averages controlled by OXY. We have
14 absolutely no objection to it in principle. We do
15 however if it is tried to be imposed upon acreage that we
16 control we've tried to point out a few of the differences
17 here today, but we are in opposition to it being forced
18 upon us on the area that we control in our active mines.
19 I need only to take the Board back to last month and the
20 several hours of testimony that we put on as to why the
21 80 acre field rules did not fit our particular situation
22 where the wells are in place and have been in place for a
23 number of years. They're drilled to fit the mine plan,
24 not an 80 acre grid system.

25 Q. The mine plan is shown. I take it, on the map that you've

1 been referring to. is that correct?

2 A. Yes, sir. That is correct.

3 Q. Is that a mine plan that is on file?

4 A. Yes, sir. That is correct. That is the Buchanan #1 mine
5 Consolidation Coal Company.

6 MR. MASON: The last hearing we talked about this. You
7 indicated that your application for your method of
8 determining units would apply to areas in which you all
9 had filed mine plans.

10 MR. ALBERT: Yes, sir.

11 MR. MASON: Now, do I understand you to be telling me today
12 that you want to extend that not only on which you filed
13 mined plans but everywhere that's under Consolidated's
14 control?

15 MR. ALBERT: No, sir. We want to exclude the areas shown on
16 this map.

17 MR. MASON: Well, I understand that, but like this in this
18 area up in the upper right hand corner like blocks N-35,
19 E. 7. 8 down, is there a mine plan on file now for all of
20 that?

21 MR. ALBERT: Yes, sir. That is still part of the Buchanan #1
22 mine.

23 MR. MASON: Okay, well, you'll have to pardon me because I
24 don't know how you all do that. So everywhere that's
25 shown in here in blue you all have a mine plan on record?

1 MR. ALBERT: Yes, sir.

2 MR. MASON: Thank you.

3 MR. McGLOTHLIN: To clarify, when was the mine plan filed?

4 MR. ALBERT: Mr. McGlothlin, bear with me. I'm no longer into
5 the coal mining end of it, but I believe those are
6 required to be filed every five years for five year
7 periods. I'm not absolutely sure on that. I could make
8 a phone call and get a definite answer for you, but that
9 is my recollection of the law.

10 MR. McGLOTHLIN: Back to Mr. Mason's question. W-35, 36, that
11 area on the right hand side is all under a mining plan
12 now?

13 MR. ALBERT: To my knowledge it is, sir. I would have to
14 check to be absolutely sure that it is on file, but I can
15 testify that that is part of the acreage assigned to the
16 Buchanan #1 mine.

17 MR. McGLOTHLIN: Approximately what was the date of the five
18 year plan and when was it submitted?

19 MR. ALBERT: I have no knowledge of the actual date. The
20 Buchanan #1 mine itself has been in existence since 1983.

21 MR. McGLOTHLIN: Part of my stipulation was that it would --
22 for everything that was on here that you had planned as
23 of November 19th, 1991. And I'm just trying to clarify
24 for the record that this is -- this meets my stipulation?

25 MR. ALBERT: Yes, sir. This is the mine plan as we see the

1 Buchanan #1 mine today December 17th -- or as of November
2 19th that we see the mine plan for Buchanan #1 mine.
3 This is the area embraced. As you can see, we only do
4 projections for ten years. So the lines you see for
5 longwall panels only go for ten years. The rest of the
6 block is after the ten year projections.
7 MR. MCGLOTHLIN: Has a plan been filed for that block, though?
8 MR. ALBERT: That I cannot -- I cannot answer that without
9 checking.
10 MR. JONES: We can get you an answer on that, Mr. McGlothlin.
11 I'm sorry we don't have one.
12 MR. MASON: When you go down into this mine where do you go?
13 Where do land when you go down in here?
14 MR. ALBERT: If I could draw your attention to about 2-22 or
15 2-23 is the initial area of development, the shaft
16 bottom area for the Buchanan #1 mine.
17 MR. MASON: Okay. Do you all go into this mine through more
18 than one area?
19 MR. ALBERT: No, sir. We go in only that one facility.
20 MR. MASON: Thank you.
21 MR. ALBERT: At this present time.
22 MR. MASON: Do what?
23 MR. ALBERT: At this present time we enter only that one area,
24 one port hole.
25 MR. MASON: This is the one that when we went by there that

1 day we saw?

2 MR. ALBERT: Yes, sir.

3 MR. MASON: That large facility there is located approximately
4 here?

5 MR. ALBERT: That is correct.

6 MR. CHAIRMAN: Other questions? Do you have any other
7 questions, Mr. Jones?

8 MR. JONES: No, Mr. Chairman.

9 (Witness stands aside.)

10 MR. CHAIRMAN: Mr. Bragg, Mr. Swartz?

11 MR. SWARTZ: I have a couple of comments that I would like to
12 make if Mr. Jones is finished.

13 MR. CHAIRMAN: He's finished.

14 MR. SWARTZ: I would like to put in prospective where I think
15 we are. OXY has an application which has been filed.
16 We started hearing it last time and we've completed the
17 hearing this time and we have a proposal that covers the
18 entire field that we are making. I think that there has
19 been testimony and there has been comments and that is in
20 your hands for a decision. Now what we are hearing is a
21 request to exclude a portion of the Oakwood field from
22 OXY's uniform plan that is proposed for the entire field.
23 I think from my prospective that is the position that
24 they're adopting whether or not I agree with their
25 reasoning it leads them to that. It sounds like all they

1 are saying is we would like you to exclude this portion
2 of the Oakwood field. As a matter of expediency --
3 although I believe OXY may control some acreage and the
4 swap is not completed at this point and these lines may
5 be somewhat fluid, as a matter of expediency on the one
6 hand I may be tempted to say well, if that's their only
7 objection let's move on with our life. But I feel
8 compelled to make a couple of comments that I would like
9 you to consider when you're considering OXY's applica-
10 tion. Mr. Jones has told you that PGP could live with
11 OXY's field rules if they had to. And there's an
12 assumption apparently that OXY could live with the
13 scenario that we saw last time that PGP proposed to this
14 Board and I want to disabuse you of that notion. We do
15 not feel that if that was a field rule under proposal
16 that we could live with that. Now, those were applica-
17 tions that were at the hearing last time that you
18 approved, but I don't want to be silent on this and
19 suggest to you that we could live with that. I believe
20 that the applications that were approved last time did
21 not address correlative rights. There was direct
22 testimony in the record that the panels drained one to
23 the other. That there was actual drainage in the frack
24 holes from one to the other. There were cost issues
25 embedded in those which we could not live with. You

1 heard our testimony with regard to our intention at
2 pooling hearings and that these field rules do not
3 address cost and that our intention at a pooling hearing
4 is with the exception of the one CCM well and one well
5 per panel per unit to the extent that we're attempting to
6 recoup costs, we'll have to justify those costs and we
7 understand that. The applications that you all decided
8 last month with regard to Pocahontas and having seen the
9 pooling applications that were filed this month but
10 adjourned, they're looking for 100 percent of the cost.
11 If there are four wells in the unit they're looking for
12 100 percent of four wells. If there are seven they're
13 looking for 100 percent. Now, the corollary is we can't
14 live with that, we're not going to do that. So we think
15 we have proposed to you all a uniform plan of development
16 which fairly treats royalty owners, which accommodates
17 coal owners, which accommodates other oil and gas
18 interests. In addition to that I think you need to be
19 aware of this alternative. To the extent that Pocahontas
20 Gas Partnership or other gas operators should come to you
21 in the future and ask for an exception to the Oakwood
22 rule because they think their mine plan dictates that, if
23 they can demonstrate to you in requesting that exception
24 that there is a good reason and a valid basis for you as
25 the Gas and Oil Board to make an exception and to approve

1 another plan because it's demonstrated at that point in
2 time that it protects correlative rights, that deals with
3 physical waste issues, that addresses economic waste,
4 that addresses cost issues, if you feel -- there is
5 nothing to prevent them from proceeding to come in here
6 next month, for example, and saying we would like to
7 carve out some additional exceptions and tell you why and
8 try to persuade you that it's fair and it makes sense and
9 it's consistent with the obligations you have under the
10 statute. But to come in here and generically say we want
11 to carve this field out with no specific plan -- I mean,
12 they're not telling you what they're going to do -- I
13 think it's an inappropriate request. I think you should
14 pass on the merits. I would recommend that you pass on
15 the merits of our plan as a uniform proposal for this
16 field. You are certainly not in doing that foreclosing
17 them from coming -- the last time they were here they
18 were asking for an exception to the Oakwood field rules
19 to an extent and I think they got it. I think that had
20 to be embedded in what happened and there is nothing to
21 prevent that from happening again in the future. To the
22 extent that GXY and GXY's lessors have some interests in
23 this area and I could Mr. Wirth on the stand, but I think
24 I'll just ask you to take my word for that. If Mr.
25 Albert has a problem with that we can address that. But

1 we prefer that a uniform system of development that we
2 believe is fair and we can live with be in place. And to
3 the extent that there are requests for exceptions in the
4 future, they need to be dealt with and the specifics that
5 we went through today with regard to allocation of
6 production of cost, when are cost recouped, how many of
7 the costs are going to be recouped. Those things have to
8 be on the table. And I think you're being asked to make
9 a decision in a vacuum with regard to this corner of the
10 field. So I would respectfully request that you pass on
11 the merits of Gily's application. If as a matter of
12 expediency you feel this is appropriate obviously you
13 have the power to exempt this corner. I would suggest
14 that the more prudent course would be to adopt uniform
15 rules for the field and in the event Pocahontas Gas
16 Partnership wants to petition for exceptions in the
17 future as they did last month and to the extent that
18 those proposals meet with your approval you can pass on
19 it. It sounds to me like every unit that you're ever
20 going to see from Pocahontas Gas Partnership is going to
21 be somewhat different than the last one you saw. And to
22 give generic approval to something that you know is going
23 to change would seem to be imprudent. Thank you.

24 MR. CHAIRMAN: Thank you, Mr. Swartz. Any questions, members
25 of the Board?

1 MR. JENSEN: Could I just briefly respond, Mr. Chairman and
2 members of the Board? We frankly don't accept Mr.
3 Swartz's characterization of the evidence at our hearing
4 before. It is a recitation of the cost evidence. It is
5 not accurate. In fact, we did not -- it's simply not
6 accurate. We think that the telling question is what Mr.
7 Swartz just ended up with and that is that this would --
8 without an exclusion it would require us to come in and
9 meet some burden of proof to get exceptions. Under
10 circumstances whereas the Board will recall from the
11 evidence at the last hearing, our evidence was based on
12 actual production over a seven year period, not hypo-
13 theoretical or theoretical data, in a plan that protected
14 correlative rights. And Mr. Mason has pointed out, the
15 establishment of units is to some extent arbitrary and I
16 think that testimony here today has indicated that some
17 leap of faith has to be made in that regard. But we would
18 be placed in the position under this application without
19 the exclusion of having to come up and meet a certain
20 burden of proof to show exceptions when it in our opinion
21 has been Forchontas who has had the actual experience,
22 presented the actual data that convinced the Board last
23 time of the correctness of our position. But yet in the
24 future we would be placed in the position of the suppl-
25 yant trying to meet some unknown burden of proof in an

1 established situation and we just don't think that's
2 necessary. And again, we're not attacking OXY's applica-
3 tion, but we just simply ask that an exclusion be made.
4 I'd return to the point again that we're really all new
5 in this process and the evidence that's been presented is
6 somewhat speculative. And we would ask that before the
7 Board lay down hard, fast rules that may be difficult to
8 over turn that we have more experience in that regard.
9 That's what we're attempting to do. OXY's gaining more
10 experience. We're all gaining more experience as is the
11 Board. But for the present we would ask that this
12 exception be incorporated in the Board's decision in this
13 matter.

14 MR. CHAIRMAN: Mr. Johnson, could we hear from you? Dr.
15 Wilson, could we let him come to the table, please?

16 MR. JONES: I would ask that this map be introduced into
17 evidence, Mr. Chairman.

18 MR. McCLOTHLIN: Mr. Chairman, I would ask that that map be
19 verified by DOME on the date of the plan.

20 MR. JONES: And we'll be glad to help supply that information.

21 MR. McCLOTHLIN: Thank you.

22 (Map received and filed as Pocahontas Gas
23 Partnership's Exhibit A.)

24 MR. FULMER: Mr. Chairman, I didn't quite understand that.

25 MR. CHAIRMAN: He asked for verification of the date that the
mine plans were on file with the Department of Mines.

1 Minerals and Energy.

2 MR. FULMER: The mine plans shown on the map or for the
3 entire area?

4 MR. MCGLOTHLIN: On the map.

5 MR. JONES: As I understand it mine plan --

6 MR. MCGLOTHLIN: PGP has offered this into evidence -- what
7 they have drawn here was on record for the mining plan.
8 And all I'm asking is that the Division of Mines and
9 Minerals verify that this was their plan.

10 MR. FULMER: I can understand that. There was some other
11 evidence about that corner up there that had a mine plan
12 with it and is that also would be included?

13 MR. CHAIRMAN: The entire area.

14 MR. MCGLOTHLIN: The whole area in blue.

15 MR. JOHNSON: Mr. Wampler, members of the Board, I come before
16 you representing Longbee Rogers Bradshaw Trust and
17 Longbee Rogers Bradshaw Trust #2, the combination in
18 which owns, I believe, approximately 7,000 acres within
19 this field. Coal being owned by Trust #1 and oil and gas
20 by the first Trust. First let me tell you that my
21 clients got notice of this hearing from DEY who has
22 submitted several unit applications that involved my
23 clients via a letter from Mr. Wirth dated December 5th.
24 And as to the extent that I don't have all my act
25 together or to the extent that this Board ought to

1 consider what's going on here and whether or not all the
2 royalty owners involved truly have been talked to I
3 think you need to keep that in mind. I don't know to
4 what extent other mineral owners have been contacted or
5 have been made aware of this application and I believe
6 that the application itself will greatly effect not only
7 owners but also operators who are conventional well
8 operators in the area. Starting with that initial
9 summary I want you to be cautious of whether or not this
10 application really is getting serious consideration by
11 all parties who need to be made aware of it. There are
12 several things that I want to say to this Board and I
13 came here before and told the Board I didn't think you
14 needed to form units in the area and I come before this
15 Board again saying to you I don't believe you need to
16 adopt these field rules on the wide grid system basis
17 that OXY proposes. I differ with them I feel like that
18 royalty owners in this area need to differ with them.
19 Mr. Jones said something very important in his argument
20 and I believe that this Board needs to take that into
21 consideration. And that is we're talking about new
22 technology, technologies which have not been used in the
23 Commonwealth specifically what they call short hole and
24 long hole gas extraction. We're talking about gas
25 extraction which will be done underground involving a lot

1 of experimentation and hopefully it's going to work.
2 Hopefully they will take the gas out. What I really want
3 to say to you is that I don't believe that this method-
4 ology ought to be adopted by the Board at this time. I
5 think the Board should take its time. I don't think this
6 Board should have anything forced on it. I don't feel
7 like the Board is obligated to adopt field rules particu-
8 larly when the Board really doesn't have and the people
9 who are proposing it don't have all the information.
10 It's easy for this company GIV to say look at what we
11 have done. We've adopted 80 acre unit grids for Buchanan
12 County and because we have done that then you all are
13 obligated to listen to us about how we want to extend
14 those field rules to apply to technologies which are
15 still being proposed, still haven't been in place. We
16 want you to come along and adopt these field rules to
17 apply to those technologies. I want to turn the Board's
18 attention to a couple of statutes. I've made copies of
19 them. With regard to the adoption of field rules, the
20 top sheet I think has a lot to say to us about -- as far
21 as what the legislature said with regard to coalbed
22 methane. And specifically I want to refer you to C in
23 Section 45.1-361.20. It says, "In establishing or
24 modifying a drilling unit for coalbed methane gas wells
25 in an order to accommodate the unique characteristics of

1 coalbed methane development the Board shall require that
2 drilling units conform to mine development plan, if any,
3 and if requested by the coal owner well spacing shall
4 correspond with mine operations including the drilling of
5 multiple coalbed methane gas wells on each drilling
6 unit." I think that that statute really tells you what
7 authority you have. What you need to be looking at in
8 the way that you put together these units. The first
9 thing that occurs to me in looking at this whole system
10 is my general overall objection to the grid system and
11 the way the Board -- not this Board, but the predecessor
12 board adopted field rules and established the grid system
13 in 1990. The first thing I want to point out to, you'll
14 see the second sheet there is another statute which is in
15 our code. It says, "Statewide spacing of wells." This
16 provision was adopted just before the vote was taken in
17 May of 1990 and took effect immediately thereafter and
18 that established some guidelines which the Board, of
19 course, did not follow in the way that the Oakwood field
20 was put together. In other words, the legislature said
21 here are some parameters and the Board said no, we reject
22 those parameters which will go into effect six weeks
23 later. Specifically this statute seems to say that wells
24 will be in the center of units and that the legislature
25 ought to make sure that people's correlative rights are

1 taken care of so that drainage doesn't occur. The third
2 sheet that I have there shows you the basic system that
3 was established for the Oakwood field and the basic
4 parameter upon which that field was put together. And to
5 me this is how correlative rights in a vacuum ought to be
6 evaluated. That is that there ought to be a drainage
7 established for wells and that the well ought to be in
8 the center of the drainage pattern and that those persons
9 who own an interest in that drainage pattern get compensated.
10 The second just shows you a circle instead of a
11 square. The third shows you what happens if you drill in
12 the corner of an Oakwood field square and how the
13 drainage works if you drill in that corner and who gets
14 compensated and who doesn't. The fourth shows you the
15 worst overlap that can occur in the Oakwood field and
16 shows you who's getting compensated and who's not. This
17 is under the current rules that you've adopted. This
18 last sheet is just basically the way a longwall's set up
19 and this can be any longwall mine -- how longwalls are
20 set up in a mining operation. The way they're set up is
21 you drive entries for it and then you longwall a section.
22 I know Mr. Evans knows a lot more about that than I'll
23 ever know, but that's basically how it's done. It gives
24 you an idea of how it's done. My primary point for
25 saying all these things is that when the concept is out

1 there that you can through units together and have
2 portions of the unit drained and other portions not
3 drained, that's not a protection of correlative rights.
4 It's just not. The examples that have been submitted and
5 Mr. Jones questioned Mr. Wilson about his diagram there
6 on the short gas, I think he was looking at L-1 or M-1,
7 and he asked him about that and it is a fact based on his
8 testimony that because of the way these coal mines are
9 laid out any development in those panels is only going to
10 extract the gas in that panel. It's not going to extract
11 gas elsewhere, but only in the panel. Mr. Wilson also
12 told you that on gob gas that the width of the gob gas
13 extraction was going to be limited to the panel size. So
14 what they're telling or what these examples show you is
15 that what we do know -- we don't know very much, but what
16 we do know about this is that the areas that are going to
17 be drained are very well defined. Just as Oxy came to
18 you case -- to the predecessor board and said in 1990
19 that if we drill one well in the center of that square
20 it's going to drain that square. That's what they told
21 this Board. And Mr. Wilson said something and he said
22 today twelve to twenty years. I don't know what's
23 correct. But he said if you leave that well there it's
24 going to drain it. And, of course, I've shown you by the
25 offset pattern that the Board has permitted in the field

1 rule adoption that it may not drain that square. But
2 anyway this Board -- not you guys but this Board has
3 adopted some field rules that already caused some
4 problems in terms of who gets compensated. The only way
5 that this works is in that true vacuum where all units
6 are drilled. Then everybody gets fairly compensated
7 assuming that the wells produce about the same quantity
8 of gas. Now the proposal is we've got lots of technology
9 that's going to permit us to take out gas right prior to
10 the mining process, take out all the gas from the Pokey
11 3 in panels. And then we've got processes that allow us
12 to come back and get gob gas which would come from higher
13 seams or higher sands, listening to Cabbot, that are
14 going to filter down into the Pokey 3 because of fractur-
15 ing, that we're going to also try to extract that gas. I
16 just feel that what's going on here is a house of cards.
17 I mean, they just keep throwing cards on this situation.
18 I don't believe this Board is obligated at this time to
19 adopt field rules that cover hundreds of square miles
20 that are going to effect every unit in that grid system
21 and will -- I think Mr. Jones was very correct when he
22 said to the Board one of their concerns is if you adopt
23 these field rules and they apply everywhere and to
24 everybody that down the road people are going to have
25 trouble unraveling this situation. If there's a mine

1 plan that Island Creek has that they want to start
2 developing a coal mine in some location and they want to
3 start long hole development or short hole development or
4 gob gas development let them come to the Board and ask
5 for any exceptions that are necessary from the Oakwood
6 field which has been established based upon testimony
7 from OXY that one well drains the whole unit. The
8 reasons given on an exhibit which I believe must have
9 been introduced at the last hearing which is called
10 Exhibit E -- the reasons given for adopting this; the
11 first one is the proposed units are the same shape and
12 size as already created in the Oakwood Coalbed Methane
13 Gas Field Rules. Well, tell me why or I ask the question
14 why should the Board because somebody told the predecessor
15 board in 1980 that one well ought to drain 80 acres
16 why that ought to be the unit shape for this kind of
17 development? The creation of the units would afford the
18 same protection in correlative rights of owners as
19 already afforded by the current Oakwood field rule.
20 Well, I would submit to you that if you look at the
21 little diagram that puts the well in the corner yeah, it
22 probably does do that. It probably does do that. The
23 talk about administrative efficiency which -- and they're
24 saying that if units haven't been pooled then they're
25 going to go ahead and adopt all of these -- they're going

1 to ask the Board to adopt these field rules and make them
2 applicable to all units and then lock those units in.
3 That's the purpose of that request. And for units that
4 have already been established they're going to say okay,
5 we've already done our title work, we've already got all
6 of that done, so we'll come back in and ask the Board to
7 modify it. I don't believe that that administrative
8 efficiency is what this Board ought to be looking to.
9 They ought to be looking to protect the rights of the
10 people who own the gas or who own the coal where the gas
11 is being extracted. And they talk about allocation. The
12 allocation of production under the units thought would be
13 created would be as follows; royalty owners and working
14 interest owners would share in the net production
15 allocated a unit based upon a percentage of ownership
16 within the 80 acre unit. Again I ask the question of
17 why. Why is that? Why should someone in the north or
18 left hand corner of these sheets of paper -- why should
19 someone in that corner be obligated to participate or
20 share or be allowed to share in the development of an
21 area where the drainage is by the design of the coal mine
22 already configured? They talk about long holes, short
23 holes, and active gas and that they would just divide the
24 acreage among the units. Now, I do not believe that this
25 board in adopting these rules is protecting the cor-

1 relative rights of the parties. I believe what the
2 board is doing is just doing something so that the
3 parties who have made applications and others who wish
4 to take advantage of it can move on down the road. It
5 still doesn't solve these problems. They talk about
6 allocation of costs and how those costs are going to be
7 allocated and I realize that you know this problem was
8 there already. Whether or not you adopt these field
9 rules you've got to look at what's going to happen when
10 somebody comes in and density drills a bunch of wells in
11 an area and then wants to charge back the costs to the
12 gas estate. I mean, you already see that problem and I
13 think it's definitely a problem that looms over the whole
14 situation. I want to point out and just say again that
15 if you look at the examples that have been submitted
16 today basically those examples and the testimony that Dr.
17 Wilson gave show you that what they're saying is that
18 they know exactly what area can be drained by this
19 development and that is the panel area that's being
20 affected. And with the exception of the long holes
21 they're basically -- in which they say that drainage is
22 (Inaudible.) whatever that means. All that I know is
23 that when you drill a hole straight down the only
24 assumption that you get if it's a surface to strata hole
25 is the only thing that we know is that it must drain in

1 some sort of circle or maybe some oblong pattern. These
2 underground holes that they're talking about when they
3 ever do it, this short hole and long hole extraction,
4 they're going to know where these panels are and they're
5 going to know that all the gas that comes out of these
6 panels is going to come from those holes. Now, they have
7 also told you and I've also gone through why they think
8 it's desirable and all that. There's a couple of other
9 things I wanted to bring up. They are asking on Page 3
10 of their application, this is the one dated November
11 19th, for you to provide that the Inspector may grant
12 location exceptions and increased density wells in any
13 drilling unit. I would submit to you that that's solely
14 within the jurisdiction of the Board and it not something
15 that should be given to the Inspector. Mr. Gordon when
16 he was asked questions made a statement that these
17 proposed rules would allocate back the gas to the person
18 being drained. I can tell you from what they have said
19 today that it does not do that. It allocates it back to
20 a predetermined unit that was established a year and a half
21 ago. That's what it allocates it back to. Mr. Swartz
22 said he wanted you to bless the methodology and I'm
23 asking you not to bless it. And Mr. Wirth brought up to
24 you that somehow or another the royalty owners, some of
25 which I speak for, are somehow going to be damaged

1 because of their lease clauses. I'd say that's probably
2 the least if your also worries what the lease clauses
3 do. Mr. Wirth also said that he had contacted and had
4 all these big discussions. Well, I represent probably
5 the largest landowner in this area -- the largest single
6 landowner. No discussions at all with my clients. Just
7 this letter that we got dated December 5th, 1991 saying
8 to show up if you like. One of the things Mr. Wilson
9 said and I think I mentioned this before, but I think
10 it's important is he told you that the gob is basically
11 limited by the panel. And I think what he's saying there
12 -- and I'm not an engineer and don't profess to be, but I
13 think what he's saying is is that the gob that comes --
14 in other words, the fall-out from mining the coal seam
15 and the drop of the roof behind the continuous miner
16 creates the area and therefore defines the area and that
17 the fractures are coming back into that area. I think
18 that's what he told you and I believe it's another reason
19 for telling you that not only with regard to this short
20 hole and long hole systems that are being discussed but
21 also the gob system that's being discussed is likewise
22 clearly defined by the mining panel. One other thing
23 that's troubled me about this that I also want to bring
24 the Board's attention is that these coalbed methane wells
25 that we're now seeing being drilled basically are

1 multiples. They will drain and are presented to extract
2 multiple seams above the Pokey 3. Now we're talking
3 about a situation -- to make things more complicated
4 we're talking about a system where when the coal mining
5 is begun we are draining only Pokey 3 and after the
6 mining process has ended we're draining all the seams
7 above Pokey 3. Again I see -- there's a problem with
8 that and I think it's pretty obvious what that problem
9 is. You're talking in terms of different coal seams,
10 different drainage at different times from different
11 types of wells. This continues to be, I think, an
12 ongoing situation where you need to look at each situa-
13 tion as it comes in front of you and I do not believe
14 that the Board should adopt these field rules. We've
15 already got two parties here that say yours are okay with
16 us and mine are okay with you and one party says well,
17 just carve me out. I'm sure if some of the other royalty
18 owners were around here they would say well, carve us
19 out, too. I'd certainly say for the Rogers we'd sure
20 like to be carved out of these field rules because we
21 don't think that these field rules at this time and with
22 the limited amount of knowledge that only the Board but
23 the operators suffer from should not mandate that the
24 rules be adopted at this time. I'm not telling the Board
25 never ever. But I'm telling the Board that you're being

asked to do this in advance of any real experience.
You're being asked to set this up when there are no short
hole and long hole extraction that has been commercially
produced. That's what you're being asked to do.
Certainly there is some experience with gob and certainly
there's increased experience or some experience with the
VW holes in densely cropping around coal mining opera-
tions. But we're talking about something new. We're
talking about commercially developing these resources for
the first time. And Virginia -- say I say to each of
you. Virginia is sitting here and this Board is the only
board that's hearing this. We're the only state that's
hearing this. We're the only state that's making up
these rules and proceeding to try to coordinate with a
Board like this the development of coalbed methane. You
are on the horizon of whatever happens. And I tell you
that I believe that this application again is premature
and it doesn't protect people. It's not designed to do
that. It's designed to go ahead and get the job done and
I don't believe that's what this Board's here for. I
don't believe that's why the legislature put you here.
Just to make sure that a lot of gas comes out of South-
west Virginia. I hope it does. I hope that my clients
get paid for it. I hope that they prosper because of
coal and oil and gas development. But I don't believe

1 it's your job to just see what you can do to expedite the
2 situation. Thank you.

3 MR. CHAIRMAN: Thank you, Mr. Johnson. Any questions?

4 MR. JOHNSON: I will not be cross-examined.

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

6 MR. JOHNSON: If anybody has any questions I'll be glad to
7 answer them.

8 MR. CHAIRMAN: The Board doesn't have any questions. Thank
9 you.

10 MR. SWARTZ: I have two points. I think both Mr. Jones and
11 Mr. Johnson have suggested that OXY has dressed up the
12 concept of a field wide uniform scheme. The legislature
13 of the Commonwealth at Section 361.20 declared the policy
14 of this state with regard to drilling units and with
15 regard to fields. And this statute says -- this isn't my
16 idea. I'm trying to follow the statute and the statute
17 says that the Board to the extent reasonably possible
18 shall create drilling units which are of uniform shape
19 and size for an entire pool. They may not like the
20 proposal, but it certainly seems to be the first choice
21 that's dictated by the General Assembly of the Common-
22 wealth. And in my view our field wide proposal is an
23 effort to follow the dictates of this statute. The
24 second point that I'd like to respond to which Mr.
25 Johnson raised which I think is new and needs to be dealt

1 with is we have requested that some authority be delegat-
2 ed to the Director and Inspector in our petition and I
3 would suggest to you that it's based upon the following
4 statutes. Section 45.1-361.20 C. of course, is the
5 provision that lets the Board modify drilling units and
6 include increased density wells. Section 45.1-361.4
7 says that the Director has power and jurisdiction and
8 authority to enforce rules promulgated by the Board and
9 that the Director shall appoint in the Inspector.
10 Section 45.1-1.1 says the Director may delegate to the
11 head of any division any of the powers and duties
12 relating to work of the division that may be conferred or
13 imposed by law on the Director. Section 45.1-361.20 says
14 the duties of the Inspector shall be those delegated to
15 him by the Director. And I think there is a statutory
16 chain that let's the Virginia Gas and Oil Board promul-
17 gate a rule and then delegate the enforcement or opera-
18 tion of that rule to the Director and on to the Inspect-
19 or. So I think there is statutory authority for you to
20 do that in the event you choose to do that. And those
21 are my two comments in rebuttal.

22 MR. CHAIRMAN: Mr. Jones.

23 MR. JONES: We do have a clarification about our map. We've
24 checked and in that upper right hand corner we do not
25 believe a mine plan has been filed. There is also a

1 small rectangular orange section and it is possible that
2 a mine plan has not been filed for that section because
3 it has just recently been acquired -- it's in the process
4 of being acquired. Excuse me.

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

6 MR. JASON: Mr. Chairman, I just have one statement I want to
7 make. I know I've ran my mouth about this enough. It
8 seems to me that the basic conflict we've talked about
9 here really revolves around the idea -- if you accept the
10 concept of field wide uniform drilling units which has
11 been the basis of everything we've done in this Oakwood
12 field then I think you should extend that to these areas
13 as well. On the other hand I think the Pocahontas plan
14 asked you to change this policy and go with a piece meal
15 approach to what are units and how are we going to
16 develop this field. It seems to me that's really the
17 issue. Do you want to do it on uniform units or do you
18 want to do it on a piece meal basis? My personal feeling
19 is that if you wish to go on a piece meal basis then I
20 think we ought to repeal the Oakwood rules entirely and
21 do the whole thing that way. Are we going to do that way
22 or not. That's all I have to say.

23 MR. CHAIRMAN: Let me clarify. Are there any other parties
24 that wanted to address the Board regarding this case?
25 The record will show that there are none others that

1 identified. Any further discussion?

2 MR. MCGLOTHLIN: I still have a concern and this is both OX's
3 and PCP's proposals. If the coal is extracted under a
4 tract of land I'm not so sure that the neighboring tract
5 should participate in any royalties from coal that they
6 do not own. It's one thing when it's being drilled and
7 it's a hole and you're extracting from square, circle,
8 whatever. But when you're extracting gas from one
9 particular area I just have a concern about that and
10 would like for anybody to help me out here.

11 MR. WIRTH: A scenario that might help, Mr. McGlothlin, is
12 take the scenario of what we call a CBM well under an 80
13 acre in the Oakwood field has been drilled. A panel
14 comes along and being mined and both parties will
15 probably agree -- I'm not in engineering and if you need
16 more technical advice -- you would either see a decrease
17 in production by that original well and sometimes maybe
18 an increase. So there is some kind of communication in
19 there.

20 MR. MCGLOTHLIN: Mr. Wirth, when you're talking about a well
21 your gases are migratory and flowing from one area to the
22 other.

23 MR. WIRTH: That's correct.

24 MR. MCGLOTHLIN: And even on out of the 80 acre unit into
25 another one. But when you're coming into a panel you've

1 defined that gas and who it belongs to.

2 MR. WIRTH: Well, who does it belong to.

3 MR. JOHNSON: That's what I've been trying to tell you. I
4 feel like what these people are telling you is they can
5 define where the gas is coming from. It's not from some
6 circle that should be in the center of some place, but
7 they're telling you exactly where it's coming from. And
8 now they're saying share it with people who don't have
9 any interest in that particular area of mineral owner-
10 ship.

11 MR. MCGLOTHLIN: But you've gone to the next step. You've
12 defined where that gas is coming from to a certain
13 degree.

14 MR. SWARTZ: To a certain degree.

15 MR. MCGLOTHLIN: I'll give you that it's not 100 percent, but
16 still you pretty well say it's coming from -- 19.58
17 percent of it is coming from this lower tract here.

18 MR. SWARTZ: And you've also to turn that around defined who
19 you're taking it from. I mean, if there's a CBM well in
20 that unit and the long wall unit comes in, that CBM well
21 if left to run its course of twelve to twenty years will
22 drain that gas. So when that long wall unit comes in you
23 have also defined who you're taking that gas away from.
24 They've spent the money. They've invested the capital of
25 that initial well. And if there's a fall off in produc-

tion when it comes through which there probably is going to be because you're going to be sucking on that gas like crazy and it's going to go to the lowest pressure it's -- you know where it's coming from but you also know who you're taking it from.

MR. MCCLOTHLIN: With your own Exhibit K, Page 1, CEM A-1, when you add that panel in there you've also determined that that gas is gone from that area, from that tract, and who's to say that at that point that Tract 2 should not get any of Tract 1, what's left in it. I don't know and that's what we're here for. We've had fun over the last year. I think it's time to get down to business.

MR. KELLY: Mr. Chairman, I'd like to make a motion.

MR. CHAIRMAN: Mr. Kelly,

MR. KELLY: I like to move that this meeting be recessed and the Board immediately reconvene in executive closed seating for the purpose of consultation with legal counsel and/or briefings by staff members and attorneys pertaining to actual and/or potential litigation of the legal matters within the jurisdiction of the Board as permitted by Section 8, Paragraph 7, of Section 2.1-144 of the Code. This motion is made with respect to matters identified as Item IV.

MR. CHAIRMAN: You've heard the motion.

MR. HARRIS: Second

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

4 (AFTER MEETING IN EXECUTIVE SESSION, THE PROCEEDINGS
5 CONTINUED AS FOLLOWS:)

6 MR. CHAIRMAN: This is certification of executive session
7 whereas the Virginia Gas and Oil Board has convened in
8 executive meeting on this date pursuant to a recorded
9 affirmative vote in accordance with the provisions of
10 the Virginia Freedom of Information Act and whereas
11 section 2-1-344 of the Code of Virginia requires certifi-
12 cation by this Virginia Gas and Oil Board that such
13 executive meeting was conducted in conformity with the
14 Virginia law. Now therefore be it resolved that the
15 Virginia Gas and Oil Board hereby certifies that to the
16 best of each members knowledge only public business
17 matters lawfully exempted from open meeting requirements
18 for the Virginia law were discussed in executive meeting
19 to which this certification resolution applies. And only
20 such public business matters as were identified in the
21 motion convening the executive meeting were heard,
22 discussed or considered by the Virginia Gas and Oil
23 Board. I ask that each member vote yes or no. I'll ask
24 you to rise and vote.
25 (ALL AFFIRM.)

1 MR. CHAIRMAN: Board, what's your pleasure?

2 MR. FULMER: Mr. Chairman, can I clear up something? Just for
3 the record the exhibits submitted by Mr. Johnson that
4 have been marked as Don Johnson and Longbee Rogers
5 Exhibit A for the record.

6 MR. MASON: I move that we enter a temporary order subject
7 to OXY amending it's proposal to delete the area approved
8 by the Board in the FGP case cases BUNH1, BUS7, BUNE1 and
9 BUN1 on November 19th, 1991 approving the OXY proposal
10 until such time that additional information is available
11 to support the spacing of wells, field boundaries, and
12 drilling units size or shape.

13 MR. CHAIRMAN: I have a motion.

14 MR. EVANS: Second.

15 MR. CHAIRMAN: The motion is seconded. All in favor signify
16 by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
17 The motion carries. Thank you.

18 MR. SWARTZ: If I might ask a question. Is this a final
19 action on which people can rely absent someone coming to
20 the Board with a petition to modify the temporary order?
21 I mean, what is the --

22 MR. CHAIRMAN: This is a temporary order until the Board has
23 sufficient information to make these determinations on a
24 permanent basis. In other words, we would require anyone
25 coming before the Board that would produce additional or

1 conflicting information or as you or whomever develops
2 the field that they collect good data to support or to
3 change the order. It will stay a temporary order until
4 we feel we have enough information --

5 MR. SWARTZ: Until there's a modification?

6 MR. CHAIRMAN: Correct.

7 MR. SWARTZ: That answers my question.

8 MR. BRAGG: This order would establish the 80 acre units
9 temporarily?

10 MR. CHAIRMAN: This order would approve your proposal with the
11 exception noted in the motion.

12 MR. BRAGG: And what was the Board's pleasure with respect to
13 the effective date of the order?

14 MR. CHAIRMAN: It was as proposed.

15 MR. BRAGG: Very well.

16 MR. MASON: Do you understand that it's -- they're to amend it
17 to exempt out the area in those four.

18 MR. JONES: The four applications that were approved by the
19 Board last month.

20 MR. CHAIRMAN: I have to excuse myself and wish you all a
21 Merry Christmas and Happy New Year. I have to drive to
22 Richmond and Mr. Mason's going to chair the remainder of
23 the meeting.

24 (THEREUPON, MR. MASON RESIDED AS CHAIRMAN AND THE

25 PROCEEDINGS CONTINUED AS FOLLOWS:)

1 MR. FULMER: Just to clarify what Mr. Jones said. Actually
2 that involves six orders before the Board which was the
3 BUSI and the BUSI to begin with. So that includes the
4 other four orders that were issued in the BUSI and BUSI.
5 And those are the four areas to be exempted.
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ITEM V

MR. CHAIRMAN: The next item is docketed number five, a petition for well location exception by Equitable Resources Exploration. It's VOOB-91/12/17-0163.

MR. COMPTON: Mr. Mason, I'm Richard Counts on behalf of Equitable Resources. Ms. McClannahan has requested the opportunity to address the Board with regard to the remaining items on the docket concerning FEV. We've agreed to have her address that. I think it's just a housekeeping measure.

MS. McCLANNAHAN: The applications that we have on the docket starting with number six or the Northeast Longwall 1, I believe 6 through 12 have all been continued or withdrawn. That's the word I get from Mr. Fulmer. I actually don't have the letter yet.

MR. McGLATHLIN: You have that document in front of you, Mr. Chairman, in the summary.

MR. CHAIRMAN: Yes, sir. That's correct.

MR. BRADG: And we just wanted to confirm that that's true and we're dismissed.

MR. McGLATHLIN: On that note I would ask that notification and papers be given in more than one day in advance from all concerned.

MR. BRADG: We have given notification and the papers for all

1 the ones except the ones that we just filed on Friday
2 which there would be three of those, but we will publish
3 those now.

4 MR. CHAIRMAN: Okay. Mr. Counts, are you ready?

5 MR. COUNTS: Yes, sir.

6 MR. CHAIRMAN: Is there anyone else here that wishes to be
7 heard in this matter? Mr. Counts, then you know what
8 witnesses you're going to have?

9 MR. COUNTS: Yes, sir.

10 MR. CHAIRMAN: Would you like to have them sworn in advance?

11 MR. COUNTS: Yes, sir. I would. Mr. Lee Talbot and Bob
12 Dahlin.

13 CLERK: [Swears witnesses.]

14 MR. COUNTS: Mr. Mason, I would also like to submit my
15 exhibits at this time. I think the Board already has a
16 copy of the plat showing the requested location excep-
17 tion.

18 MR. CHAIRMAN: Is there more than one exhibit?

19 MR. COUNTS: There will be two.

20 MR. CHAIRMAN: Do you want to have these designated as
21 partitioner's Exhibit 1 and 2?

22 MR. COUNTS: This will be Equitable's Exhibit 1, a letter from
23 the United States Department of Interior, Bureau of Land
24 Management. I apologize for this. We had equipment
25 failure yesterday. We were trying to duplicate this map

1 on a small scale and were unable to do that, but we will
2 provide that so that it will be a part of the record of
3 the proceedings. This is an isopack map and location map
4 of the Burea Formation. This is Exhibit 2.

5 (Letter received, marked and filed as
6 Equitable's Exhibit 1.)

7 (Isopack Map received, marked and filed as
8 Equitable's Exhibit 2.)

9 MR. COMPTON: Mr. Mason, effectively this is a request for a
10 location exception for well P-376 made necessary as a
11 result of a permit location or proposed location which
12 was declined by the U. S. Army Corp of Engineers and the
13 relief requested will resolve in location exceptions to
14 three adjacent wells, P-374 2,250 feet approximately
15 from that well, P-294 approximately 2,335 feet from that
16 well, and P-359 which is approximately 2,268 feet from
17 proposed well P-376. I would like to call my first
18 witness, Mr. Lee Talbot.

19
20 LEE TALBOT

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

23
24 DIRECT EXAMINATION
25

1 BY MR. COUNTS:

2 Q. Mr. Talbot, would you state your full name and who you're
3 employed by?

4 A. Lee Talbot, Equitable Resources Exploration, land
5 administrator.

6 Q. And would you state for the Board what your duties are as
7 land administrator?

8 A. My duties are to coordinate land department functions in
9 as much as receiving the well spot from a geology
10 department, monitoring that well to the inception of
11 drilling which includes permitting.

12 Q. And would you state your education and work history
13 background for the Board, please?

14 A. Bachelor of Science degree at West Virginia Westland
15 College, various seminars as related to the industry
16 specifically land department functions, a member of the
17 ISMA and the AABL, also a member of the Virginia Oil and
18 Gas Association.

19 MR. COUNTS: Mr. Chairman, I'd like to move that the Board
20 accept Mr. Talbot as an expert witness in this matter.

21 MR. MASON: Mr. Counts, has he testified before as an expert
22 witness?

23 MR. COUNTS: No, sir, he has not in front of this one.

24 MR. MASON: Any objections from the Board? If not, you may
25 proceed.

1 Q. (Mr. Counts resumes.) Mr. Talbot, do your respons-
2 ibilities include the lands involved here and the
3 surrounding area?
4 A. Yes, they do.
5 Q. And are you familiar with the application for location
6 exceptions to well F-376 and the relief requested?
7 A. Yes, sir.
8 Q. Have all interested parties been notified as required by
9 Section 4.B of the Virginia Gas and Oil Board regula-
10 tions?
11 A. Yes. They were all notified and it was confirmed by
12 copies of certified mailing sent to the Department of
13 and Gas by a letter dated 11/21/91.
14 Q. Mr. Talbot, has Equitable previously attempted to permit
15 well F-376 in a location other than that location
16 depicted at Exhibit 27?
17 A. Yes.
18 Q. Would you explain the procedure involved in that and Mr.
19 Talbot, would you indicate the original location, please?
20 A. The original location was permitted on the Corp of
21 engineers at BLM Property. After field research and
22 studies it was determined that that was an unacceptable
23 location due to the existing contour which was above
24 their criteria of approximately twenty degrees and
25 basically denied the location.

1 Q. I'd like to refer the Board to Exhibit 1, a letter from
2 Sid Evonkpaui, Assistant director and manager of Minerals
3 Resource Division of the United States Department of
4 Interior. Who owned the surface underlying the original
5 location, sir?
6 A. The surface was owned by the United States Corp of
7 Engineers.
8 Q. And you did attempt to secure an approval of this well at
9 that location and were denied approval, is that correct?
10 A. Correct.
11 Q. Has Equitable previously drilled wells in Virginia
12 requiring approval by the Corp of Engineers?
13 A. Yes.
14 Q. And have those approvals been obtained?
15 A. Yes, they have.
16 Q. Did the Corp of Engineers recommend an alternate location
17 on USA surface tracts?
18 A. Yes.
19 Q. Would you go into detail for the Board in terms of what
20 locations?
21 A. Yes. They denied that location due to the contour and
22 suggested that it be moved in a north or northwest
23 direction.
24 Q. In other words, the original location as requested was
25 denied and they suggested that the location be north or

1 west. is that correct?

2 A. That's correct.

3 Q. Was the location to the north or west acceptable to your
4 geologists or engineers?

5 A. No.

6 Q. Does the present location of F-376 require approval from
7 the Corp of Engineers?

8 A. No, it does not.

9 Q. Would you indicate for the Board the ownership of the oil
10 and gas underlying well F-376?

11 A. At the present location the ownership is owned by Pine
12 Mountain Oil and Gas, Steinman Land Development Company
13 and the United States Bureau of Land Management.

14 Q. And have any of those parties objected to this location
15 exception?

16 A. No. They have not.

17 Q. Does Equitable have an oil and gas lease covering all
18 these tracts?

19 A. Yes.

20 Q. And have you also obtained leases from all of the oil and
21 gas owners within a 1,320 foot radius of the proposed
22 location for F-376?

23 A. Yes, we have.

24 MR. COUNTESS: MR. Chairman, I have no further question of this
25 witness.

1 MR. CHAIRMAN: Do any members of the Board have questions for
2 this witness?

3 MR. EVANS: When you say that you couldn't move north or west
4 because -- your geologist said --

5 MR. COUNTS: Mr. Evans, I'll have Mr. Dahlin address that
6 question just momentarily.

7 MR. CHAIRMAN: Any other questions, Board?

8 MR. McGLOTHLIN: Clarification on your map, you're asking for
9 P-376 PIN lot to be excepted?

10 MR. COUNTS: The original location of P-376 appears to the
11 north and west of the location now being requested which
12 does constitute a location exception to 359, 294 and
13 374. And that property is not owned by the Corp of
14 Engineers.

15 MR. McGLOTHLIN: The surface is not owned.

16 MR. COUNTS: Yes.

17 (Witness stands aside.)

18 MR. COUNTS: If it please the Board, I'd like to call Mr. Bob
19 Dahlin.

20
21 BOB DAHLIN

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

24
25 DIRECT EXAMINATION

1
2 BY MR. COUNTS:

3 Q. Mr. Dahlin, have you previously testified before this
4 Board and have your qualifications as an expert witness
5 been accepted?

6 A. Yes, I have.

7 MR. COUNTS: Mr. Chairman, I move that Mr. Dahlin be allowed
8 to testify in this matter as an expert witness.

9 MR. CHAIRMAN: Have you appeared before this Board before?

10 MR. DAHLIN: I have.

11 MR. CHAIRMAN: Have you been qualified as a witness?

12 MR. DAHLIN: Yes, sir.

13 MR. CHAIRMAN: Any objections from the Board. Okay.

14 Q. (Mr. Counts continues.) Mr. Dahlin, are you familiar
15 with the application for location exception filed by
16 Equitable for P-176?

17 A. Yes, I am.

18 Q. And was it necessary to spot these wells at these
19 locations due to topographic considerations and reservoir
20 qualities?

21 A. It was.

22 Q. And did you attempt to secure the permission of the Corp
23 of Engineers to locate this well at a location which
24 would have not required a location exception?

25 A. Yes.

1 Q. And this request was not accepted by the Corp of Engin-
2 eers, is that correct?
3 A. That's correct.
4 Q. Would you explain your considerations in terms of
5 relocating the well?
6 A. This is a very well defined reservoir. We're on the edge
7 of the Berea Sand deposition indicated in these lines.
8 Q. Now, the lines which you have on your map there, one's
9 labeled 20 feet and the other is labeled 40 feet. Would
10 you indicate for the Board what that represents?
11 A. This is a clean sand line characteristic of the reser-
12 voir. Our current economics approximate this as econom-
13 ic.
14 MR. EVANS: You're saying that the 40 foot isopack represents
15 the area below that that's not economic to drill?
16 MR. DANLIN: That's correct.
17 Q. (MR. Counts continues.) The further away you get from
18 the 40 foot isopack the more your economics are question,
19 is that correct?
20 A. That's exactly right.
21 Q. With respect to the alternate locations recommended by
22 the Corp of Engineers would those locations have also
23 required a location exception?
24 A. More than likely the northwest move would, but west would
25 not but would have been unacceptable.

1 Q. In other words, the locations which the Corp of Engineers
2 did suggest would either have been unacceptable based
3 upon current geology or would have also constituted
4 location exceptions?
5 A. That's correct.
6 Q. Will the results of P-376 determine whether additional
7 wells will be drilled to the west of P-376?
8 A. It will.
9 Q. In the event that this location exception is not granted
10 in your professional opinion would this result in waste?
11 A. It would in that the location would not be drilled.
12 Q. Should all formations from the surface of the ground to
13 the total depth drilled be covered by any order issued by
14 the Board?
15 A. They should.
16 Q. In your opinion will the granting of this location
17 exception be in the best interest of preventing waste,
18 protecting correlative rights and maximizing recovery of
19 gas reserves underlying P-376?
20 A. Yes, sir.
21 MR. COUDTS: I have no further questions of this witness, Mr.
22 Chairman.
23 MR. CHAIRMAN: Mr. Evans.
24 MR. EVANS: I do have one. Is P-376 yours?
25 MR. SAHLIN: Yes, it is.

1 MR. EVANS: Is that on the other side of the line?
2 MR. DANLIN: It sure is. Wild cat way out there. It sure is.
3 MR. EVANS: Is that wild cat producing?
4 MR. DANLIN: I'm sure it is, yes. The thickness indicated --
5 MR. EVANS: I see it makes a little hook, but it doesn't go
6 out.
7 MR. DANLIN: Yeah. That's the only well we have -- it's
8 sixteen feet thick. It's the only control we have so
9 far. The orderly development of the field is what's at
10 issue here. We felt we could not go beyond this to the
11 west and the drilling of this one will prove up or
12 disprove any further development to the west. It's
13 simply too risky as we want further.
14 MR. EVANS: Okay. I understand. I saw the one sitting out
15 there so I thought I'd ask you.
16 MR. CHAIRMAN: Any other questions of the Board?
17 MR. KELLY: To follow up Mr. Evans, I would assume that your
18 369, 368 -- you're looking at marginal economics?
19 MR. DANLIN: They are. We're currently assigning approximate-
20 ly 250 million cubic feet to --
21 MR. KELLY: How many?
22 MR. DANLIN: Approximately 250.
23 MR. CHAIRMAN: Any questions?
24 MR. COOPER: Mr. Sir, I would simply request that the
25 location exceptions requested be approved by the Board.

1 MR. CHAIRMAN: Any discussion, Board?

2 MR. EVANS: I have one other question. These are marginally

3 economic wells?

4 MR. DAHLIN: Yes, sir.

5 MR. EVANS: Do you anticipate any problem with making them

6 even less economical by drilling close together? Do you

7 need the --

8 MR. DAHLIN: Actually it's probably prudent in that if the

9 reservoir is diminished we probably should drill on a

10 lesser spacing. That's our basis for coming in closer.

11 MR. MCLOTHLIN: How old are the P-355, 294 and 374?

12 MR. DAHLIN: I don't have the dates that the wells were

13 drilled. I do know that their development has been

14 orderly and that they are of the newer rank. The

15 reserves we have are somewhat shaky in-house numbers.

16 MR. MCLOTHLIN: Five years old, ten years old?

17 MR. DAHLIN: No, I don't believe they're five.

18 MR. CHAIRMAN: Less than five?

19 MR. DAHLIN: Yes. They're less than five.

20 MR. CHAIRMAN: Further questions? Do we have a motion?

21 MR. MCLOTHLIN: Mr. Chairman, I move that we accept the

22 proposal.

23 MR. CHAIRMAN: Is there a second?

24 MR. EVANS: Second.

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

1 Mr. Counts, your motion is approved.

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

1
2
3 ITEM VI

4 MR. CHAIRMAN: A petition for establishment of a compulsory
5 pool drilling unit by OXY, USA. VGOB-91/12/17-0173.
6 What's this?

7 MR. SWARTZ: That's Exhibit G which we'll be using. It's a
8 proposed order.

9 MR. CHAIRMAN: Okay. Mr. Fulmer, do you have this?

10 MR. FULMER: Yes.

11 MR. CHAIRMAN: Proceed, sir, if you will.

12 MR. SWARTZ: Mark A. Swartz and Howard Salisbury appearing as
13 counsel for OXY. I will have two witnesses-, both of
14 which have already been sworn, Mr. VanGolen and Mr.
15 Wirth. I would like to start with Mr. Wirth if that's
16 okay.

17 MARTIN E. WIRTH

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

20
21 DIRECT EXAMINATION

22
23 BY MR. SWARTZ:

24 Q: Would you state your name for the record, please?

25 A: MARTIN E. WIRTH.

1 Q. I'll remind you you're still under oath.
2 A. Okay.
3 Q. Who do you work for?
4 A. DXY, USA, Inc.
5 Q. Your title?
6 A. Project land manager.
7 Q. The office you work out of?
8 A. Richlands, Virginia.
9 Q. Did you participate in preparing the documents with
10 regard to this application to force pool certain respondents
11 in unit U-29?
12 A. Yes, I did.
13 Q. And did you sign both the notice of hearing and the
14 application itself?
15 A. Yes, I did.
16 Q. Is DXY, USA a Delaware Corporation?
17 A. Yes, it is.
18 Q. Is it authorized to do business in the Commonwealth of
19 Virginia?
20 A. Yes, it is. It has proper bonding and is on file with
21 the Department of Mines, Minerals and Energy and in the
22 Commonwealth of Virginia.
23 Q. I would like to identify the respondents, the people that
24 we are seeking to have force pooled in this unit, and who
25 would they be?

1 A. The respondents are two respondents Ruby E. Shavahorn and
2 a Matthew C. Deskina.
3 Q. Is Mr. Deskina a minor?
4 A. That is correct.
5 Q. Is he the same minor that we've dealt with before?
6 A. That is correct.
7 Q. Will he also be in unit U-30?
8 A. That is correct.
9 Q. Do you recall that the Board adjourned the question of
10 how to deal with elections where you have minors in the
11 guardian ad litem issue until January?
12 A. Yes, I do.
13 MR. SMART: I would request that the Board allow us to offer
14 testimony on these two units that we're going to be here
15 on the guardian ad litem issue on and that we deal with
16 that and that the orders in the three cases be entered at
17 that point if that's okay with you all.
18 MR. FULMER: I have no objection to it.
19 MR. CHAIRMAN: Tom, is there any problem with that from the
20 docket standpoint?
21 MR. FULMER: From a docket standpoint I think the question
22 that the Board addressed last time was not whether the --
23 the order I think was conditionally approved upon the ad
24 litem in January.
25 MR. SMART: No, we had to come back.

1 MR. CHAIRMAN: Yeah. It had to do with whether proper notice
2 had been given in the order.
3 MR. SWARTZ: No. It was whether or not a guardian ad litem
4 had to be appointed so that he could make his elections
5 was my -- and whether or not that was necessary. We have
6 not gotten an order and I'm not expecting one until
7 January on that unit until we resolve that issue. That
8 was the way it was in my mind.
9 MR. FULMER: Right. That's correct. As far as the rest of
10 the evidence presented in that case it was accepted by
11 the Board.
12 MR. SWARTZ: Right. Correct. And I'm proposing, I guess, to
13 follow the same format here.
14 MR. CHAIRMAN: Okay. Just as long as we've got it straight
15 exactly how we're going to deal with that mechanically
16 from your standpoint. That's what I was trying to --
17 MR. FULMER: That's fine. Until the Board issues an order
18 itself, agree upon this question of ad litem, then the
19 orders will not be issued.
20 MR. CHAIRMAN: Fine. Please proceed.
21 Q. (MR. Swartz continues.) MR. Wirth, did you mail notices
22 to the two respondents identified as respondents in this
23 hearing?
24 A. Yes, we did.
25 Q. And did you file those notices with the Board prior to

1 the hearing?

2 A. Yes, we did.

3 Q. When did you mail them to the Board?

4 A. It was mailed to the Board on December 9th, 1991.

5 Q. Did you get return receipt cards from both of the

6 respondents back?

7 A. Yes, we did.

8 Q. And those copies were filed as Exhibit what with the

9 Board?

10 A. Exhibit F.

11 Q. Was there also a publication of a notice with regard to

12 this pooling hearing?

13 A. Yes, there was.

14 Q. And in what newspaper was that published?

15 A. That was in the Virginia Mountaineer.

16 Q. And what date was it published on?

17 A. November 21st, 1991.

18 Q. And did you file certificates of publication with regard

19 to that with the Board?

20 A. Yes, as Exhibit E.

21 Q. And when was the two copies of Exhibit E mailed to the

22 Board?

23 A. On December 2nd, 1991.

24 Q. Did you undertake and other employees of OYU undertake to

25 identify all potential claimants?

1 A. Yes, we did.

2 Q. Are the only claimants that need to be pooled that you

3 have not otherwise agreed with on some basis the two

4 respondents?

5 A. That is correct.

6 Q. Do you wish to dismiss either one of them?

7 A. No, we don't.

8 Q. Do you wish to add any?

9 A. No, we don't.

10 Q. Who signed the card on behalf of the minor -- or that was

11 sent to the minor?

12 A. That was the minor's mother.

13 Q. He lives with his mother?

14 A. That's correct.

15 Q. And it was mailed to him in care of his mother?

16 A. That's correct.

17 Q. And you got a signed card back from them?

18 A. Yes, we did.

19 Q. Could you describe or tell the Board what OXY's standing

20 in bringing this petition in terms of their lease hold

21 position or lease hold interest is?

22 A. I will can. In this 80 acre unit OXY has acquired the

23 coalbed methane rights from 99.041 percent of the coal

24 owners and 99.0741 percent from the oil and gas owners.

25 Q. Is the only tract -- directly the Board's attention to

1 the well plat or the map that's been filed as Exhibit A
2 to the application which shows the drilling unit on it,
3 is the portion that's been colored purple the portion
4 where there is an unleased, undivided interest that these
5 respondents have an interest in?

6
7 A. That is correct. It's identified as the Richard Deskins
8 Mineral Tract on Exhibit A.

9 Q. And that tract contains 3.9 acres, correct?

10 A. That's correct.

11 Q. And is it fair to say that OXY has coalbed methane leases
12 on the balance of the acreage?

13 A. That is correct.

14 Q. And also OXY has coalbed methane leases from undivided
15 owners in the 3.9 acres as well?

16 A. That is correct.

17 Q. The well location as shown on the plat Exhibit A is in
18 the drilling window, is it not?

19 A. That is correct.

20 Q. And does Exhibit A state somewhere that the drilling unit
21 contains 80 acres?

22 A. Yes. If you'll see almost in the lower southeast corner
23 it says, "This block composed of 80 acres."

24 Q. And is this one of the first times that we've been to the
25 board with the new approved plat form?

A. This is under the new regulations. That's correct.

1 Q. Have you filed with regard to this unit a consent to
2 track with the Board?

3 A. That is correct.

4 Q. And is that Exhibit D?

5 A. That is correct.

6 Q. And that was filed with the application?

7 A. That is correct.

8 Q. And Exhibit D, the consent, that's signed by Mr. Epperly
9 of Island Creek Coal Company?

10 A. That is correct.

11 Q. And it's dated?

12 A. 9/5/91.

13 Q. Do we have a new affidavit from Kenneth Price?

14 A. Yes. Upon the Board's request we went and had an updated
15 affidavit stating that Mr. Epperly has the authority to
16 sign such document.

17 Q. And what's the date of Mr. Price's affidavit in that
18 respect?

19 A. This is also dated October 18th, 1991.

20 Q. What seems does this application attend to? What seems
21 are in issue?

22 A. From the base of the Tiller to the lowest or deepest
23 known coal which is basically Pocahontas #1 or Pocahontas
24 #7 depending on if there is a 1.

25 UNVISIBLY you have attempted to lease and have, in fact,

1 been able to lease most of the interest in this unit,
2 correct?

3 A. That is correct.

4 Q. And you have leased many other leases on other units?

5 A. That's correct.

6 Q. What generally are the terms that are prevalent and that
7 OXY offers when you're into voluntarily agreements and
8 not force pooling people for coalbed methane?

9 A. The terms are a bonus consideration of \$1 an acre with a
10 one-eighth royalty executed for a primary term of five
11 years.

12 Q. And would you recommend that those terms be provided for
13 in any order issued by the Board with regard to elect-
14 ions?

15 A. Yes, I do.

16 Q. So that if someone were deemed to have leased you would
17 recommend they be deemed to have leased on those basic
18 terms?

19 A. That's correct.

20 MR. SWARTZ: And we have submitted today and I would offer
21 into evidence Exhibit G which is a proposed order with
22 regard to this particular unit. Unless the Board has
23 some questions, I would like to move to Mr. VanGolen.

24 (Witness stands aside.)

25 MR. CHAIRMAN: CORRECT? I didn't ask when we started, is there

1 anyone here that wished to be heard on this matter?
2 proceed.
3

4 GLENN VANCOLEN

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

8 DIRECT EXAMINATION
9

10 BY MR. SWARTZ:

11 Q. Would you state your name, please?

12 A. Glenn VanCohen.

13 Q. And you are still under oath. Do you understand that?

14 A. Yes.

15 Q. Who do you work for?

16 A. DRY, USA.

17 Q. Do you have a title?

18 A. Project manager.

19 Q. Did you participate in or did you prepare the detailed
20 well estimate with regard to U-20?

21 A. Yes, I did.

22 Q. And it's been submitted to the Board as part of the
23 application and it's shown to be Exhibit C, is it not?

24 A. Yes, it is.

25 Q. When did you prepare that?

1 A. November 12th, 1991.

2 Q. What is the proposed total depth of this coalbed methane

3 well?

4 A. 1,557 feet.

5 Q. Has this well been drilled as yet?

6 A. No, it has not.

7 Q. So this DWE is, in fact, an estimate of a proposed well?

8 A. Yes, it is.

9 Q. Is the proposed total depth of this well sufficient to

10 produce from the Pocahontas #3?

11 A. Yes, it is.

12 Q. And can the Board assume that that is the target forma-

13 tion?

14 A. Yes, it is.

15 Q. Does the DWE incorporate funds to frack more than one or

16 stimulate more than one seam?

17 A. Yes. There are funds in there for three stimulations.

18 Q. Do you intend at this point to definitely stimulate the

19 Pocahontas #3?

20 A. Yes, we do.

21 Q. Whether or not other seams are stimulated will depend

22 upon the electric logs, I take it?

23 A. Yes, it will.

24 Q. What is the estimated cost of drilling the proposed well?

25 A. \$275,000.

1 Q. And does the sum of \$726,332 shown on this DWI Exhibit C
2 represent in your opinion the reasonable estimated cost
3 to drill and complete this proposed well?

4 A. Yes, it does.

5 Q. Is it your opinion that the plan of development, the
6 drilling of this well, is a reasonable plan for develop-
7 ment of the coalbed methane within this unit for the
8 benefit of the owners of the unit?

9 A. Yes, it is.

10 Q. Will this proposed well contribute to in your opinion the
11 protection of correlative rights of the owners of the
12 methane or claimants of the methane within and under the
13 unit in question and lessen the likelihood of both
14 physical waste and economic waste?

15 A. Yes, it will.

16 MR. SWARTZ: That's all I have on this unit.

17 (Witness stands aside.)

18 MR. CHAIRMAN: Any questions from the Board?

19 MR. SWARTZ: And then the relief I'm requesting has sort of
20 changed. I'm requesting that you suspend a final
21 decision until January when we will be prepared to deal
22 with the guardian ad litem issue and then you can
23 incorporate that into your decision at that point. I
24 think it's probably what we --

25 MR. CHAIRMAN: Basically you're asking for the Board to

1 approve this petition subject to satisfaction of the
2 previous requirement or condition with respect to the
3 right to stimulate on behalf of the minor's defense?

4 MR. SWARTZ: No. We don't need a right to stimulate. Well,
5 actually --

6 MR. CHAIRMAN: Or right to consent.

7 MR. FULMER: Election.

8 MR. CHAIRMAN: Election consent.

9 MR. SWARTZ: It's the election rights and we really can't
10 provide -- give the notice of elections and expect a
11 response. So yes, I'd ask that it be approved subject --
12 any order be held up subject to dealing with the
13 guardian ad litem problem and in an appropriate fashion
14 that satisfies you all.

15 MR. MCGLOTHLIN: So moved.

16 MR. HARRIS: Second.

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

18 The action carries.

19 MR. CHAIRMAN: Excuse me a minute, Mr. Swartz. On your DWE
20 you have the proposed cost as \$226,322 and on the
21 proposed order you've got \$226,474.

22 MR. SWARTZ: I made a mistake in the proposed order.

23 MR. CHAIRMAN: Which one is right? Since how the one on the
24 DWE is a suggestion --

25 MR. SWARTZ: Well, let me tell you what I did and then we can

1 ask Mr. VanGolen which one is right. I got the number
2 that I inserted in the proposed order out of the applica-
3 tion which is \$226,474. The DWE however does not agree
4 with the application and maybe we can --

5 MR. VANGOLEN: The DWE is the correct amount.

6 MR. SWARTZ: Okay.

7 MR. FULMER: Mr. Chairman, can I ask Mr. Swartz a question?

8 MR. CHAIRMAN: You certainly may.

9 MR. FULMER: What was the other well that was involved in the
10 ad item so I can make sure I can get it on the agenda?

11 MR. SWARTZ: T something.

12 MR. WIRTH: T-34. I'll get you that information. I think it
13 is.

14 MR. FULMER: I just want to make sure I get it on the agenda.

15 MR. WIRTH: I'll verify it and let your office know.
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3 ITEM XIV

4 MR. CHAIRMAN: Moving right along, Item XIV, a petition for
5 the establishment of a compulsory pooled drilling unit
6 under Virginia Code from OXY, USA. Docket Number VUCB-
7 91/12/17-D174. Is there anyone here who wished to speak
8 in this matter? If not, I suppose we will proceed. You
9 witnesses are already under oath?

10 MR. SWARTZ: Yes. Again, Mark A. Swartz and Howard Salisbury
11 appearing for OXY, USA. I'd like to start with Mr.
12 Wirth.

13 MARTIN E. WIRTH

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

16
17 DIRECT EXAMINATION

18
19 BY MR. SWARTZ:

20 Q State your name for me.

21 A Martin E. Wirth.

22 Q Where do you work for?

23 A OXY, USA, Inc.

24 Q Your title?

25 A Coalbed methane project land manager.

1 Q. Mr. Wirth, did you prepare the notice of hearing in the
2 application in this matter with regard to unit U-30?
3 A. Yes, I did.
4 Q. Is OXY, USA a Delaware corporation?
5 A. Yes, it is.
6 Q. Is it authorized to do business in the Commonwealth of
7 Virginia?
8 A. Yes, it is. It has a bond on file with the Department of
9 Mines, Minerals and Energy.
10 Q. The notice of hearing on unit U-30 is directed to the
11 same folks that we saw in U-29, is it not?
12 A. That is correct.
13 Q. Have you undertaken or have other people at OXY under-
14 taken to identify all owners and claimants of this unit
15 and to list as respondents all persons with whom OXY
16 does not have a voluntary agreement in place?
17 A. That is correct.
18 Q. Do you wish to dismiss either of these persons as
19 respondents today?
20 A. No, I do not.
21 Q. Do you wish to add anyone else as a respondent?
22 A. No, I do not.
23 Q. Were notices mailed according to the requirements of the
24 Virginia Code to both of these individuals?
25 A. Yes, OXY, USA on December 9th, 1991 supplied via

1 certified mail return receipt proof of mailing which is
2 the notice and application to all respondents named in
3 the application and it's filed as Exhibit F before the
4 Board.

5 Q. Is Matthew Deskins a minor?

6 A. Yes, he is.

7 Q. And was the notice with regard to Matthew Deskins sent to
8 him in care of his mother?

9 A. That is correct.

10 Q. And it was returned signed by a family member apparently?

11 A. I cannot read the signature. Yes, it looks like Deskins.

12 Q. In addition to the notice by mail to the two respondents
13 was there a notice by publication?

14 A. Yes. Again OXY, USA published in the Virginia Mountain-
15 eer on November 21st, 1991 the notice of hearing pertain-
16 ing to this unit.

17 Q. With a little map showing the approximate location?

18 A. Yes, as in our application. That's marked Exhibit A-1.

19 Q. And was the proof of publication previously filed with
20 the Board as Exhibit E?

21 A. That is correct. On December 2nd it was mailed by
22 certified mail to the Department and the Board.

23 Q. Directing your attention to the well plat or unit plat in
24 dealing with the question of OXY's standing, could you
25 describe what OXY's interest is in unit U-10?

1 A. Sure. Exhibit A, Page 2. CHV. USA has coasided methane
2 lease rights from 99.0741 percent and also from the oil
3 and gas owners 99.0741 percent.
4 Q. And do the respondents have undivided interests in the
5 tract that I have shaded on the plat map A shaded purple?
6 A. Yes, they do.
7 Q. They don't own it entirely. They have undivided inter-
8 est, correct?
9 A. That's correct.
10 Q. And do you have lessees with regard to the shaded tract
11 from other coal owners of that undivided interest?
12 A. Yes, we do.
13 Q. So what we're seeking to force pool is an undivided
14 interest of two individuals named as respondents in the
15 tract that has been shaded on the plat map?
16 A. Yes, sir. And you also notice that it may not be showed
17 that they have an interest in the adjoining tract also.
18 Q. Okay. Does this plat map show that this is an 80 acre
19 unit?
20 A. Yes, it does.
21 Q. Is the proposed well in the drilling window?
22 A. Yes, it is.
23 Q. Have you previously filed with the Board and included
24 with your application a consent to track and an affi-
25 davit?

1 A. Yes, we have. It's marked as Exhibit B, Page 1 and Page
2 2.
3 Q. Page 1 is the actual consent to stimulate which was dated
4 what date?
5 A. September 5th, 1991.
6 Q. Signed by Mr. Epperly of Island Creek?
7 A. That's correct.
8 Q. And does this deal with all seams below the Tiller?
9 A. That is correct.
10 Q. Are the seams that are proposed to be developed by this
11 well all seams below the Tiller?
12 A. That is correct.
13 Q. And there's also an affidavit attesting to the authority
14 of Mr. Epperly to sign this consent, correct?
15 A. That is correct.
16 Q. Signed by whom?
17 A. Signed by Kenneth R. Price, Vice-president and general
18 manager of the Virginia Division, Island Creek Coal.
19 Q. The date?
20 A. October 18th, 1991.
21 Q. In obtaining leases with regard to this unit and with
22 regard to other units and again just directing you to
23 coalbed methane leases what terms are prevalent in this
24 area for coalbed methane leases?
25 A. Coalbed methane specific leases are \$1 an acre bonus with

1 a one-eight royalty with a primary term of five years.

2 Q. Would you recommend to the Board that in entering any
3 order pooling these respondents in this unit that the
4 election with regard to deemed to have leased contain
5 those terms?

6 A. That is correct. I do.

7 (Witness stands aside.)

8 MR. SWARTZ: We're going to submit a proposed order which is
9 Exhibit G with ten copies of that with regard to unit U-
10 30. I'd ask that it be received.

11 MR. CHAIRMAN: Any objections to the receipt of the proposed
12 orders and exhibit? So received.

13 MR. SWARTZ: Unless there are any questions of Mr. Wirth I
14 would like to shift to Mr. VanGolen.

15 MR. CHAIRMAN: Are there any questions from the Board for Mr.
16 Wirth? Proceed.

17
18 GLENN VANGOLEN

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

21
22 DIRECT EXAMINATION

23
24 BY MR. SWARTZ:

25 Q. State your name.

1 A. Glenn VanGolen.
2 Q. You're still under oath. Do you understand that?
3 A. Yes.
4 Q. Who do you work for?
5 A. OXY, USA as project manager.
6 Q. Did you prepare the detailed well estimate, Exhibit C,
7 with regard to this unit U-367
8 A. Yes, I did.
9 Q. When?
10 A. November 13th, 1991.
11 Q. What's the proposed depth of this well?
12 A. 1,740 feet.
13 Q. What's the target seam?
14 A. Pecanontas #3 seam.
15 Q. Is the well depth sufficient to produce from that seam?
16 A. Yes, it is.
17 Q. What is the total estimated cost shown on the detailed
18 well estimate that you prepared?
19 A. \$232,014.
20 Q. In your opinion does the sum of \$232,014 represent the
21 reasonable estimated cost to drill and complete this
22 proposed well?
23 A. Yes, it does.
24 Q. And is it, in fact, a proposed well that has not been
25 drilled as yet?

1 A. That is correct.

2 Q. Again, how many seams are you certain you're going to be
3 fracking?

4 A. We anticipate three frack jobs in this well.

5 Q. But you are definitely going to frack the Pocahontas #1?

6 A. That's correct.

7 Q. Are there sufficient funds built into this DWE to
8 accomplish that?

9 A. Yes, there is.

10 Q. Is it your opinion that the plan of development to
11 drilling the proposed CEM well is a reasonable plan to
12 develop the coalbed methane within unit U-30 for the
13 benefit of the owners or claimants of the coalbed
14 methane?

15 A. Yes, it is.

16 Q. Will this proposed well and this development protect the
17 correlative rights of the owners or claimants of the
18 methane within the unit and lessen the likelihood of both
19 physical and economic waste?

20 A. Yes, it will.

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

22 MR. HARRIS: Just a quick question. This is informational.
23 U-24 and U-30 are on adjacent tracts, is that correct?
24 Let me just clarify. You can look at either one of them.
25 But longitude 81°300, is that -- there's a measure at the

1 top of the page right above the word latitude in the
2 upper right on either one, U-19 or U-20. I just want to
3 get some information. 7,200 feet, is that out to that
4 longitude line? Is that from the location of --

5 MR. WIRTH: It's 7,200. You start from the cross hairs of the
6 intersection of the long line and then you go west to
7 that footage and then you go south from the other footage
8 and that will put you at the well location. If you'll
9 note also on Exhibit A you see a cross hair below and to
10 the right. If you would take that cross hair and put it
11 on a US topographic map that is where that well would
12 fall on that topo map.

13 MR. CHAIRMAN: So this plat is basically indexed both to the
14 State plain system and the --

15 MR. WIRTH: To the USGS. As you see on the bottom it denotes
16 the location of the well of the US topo maps at a certain
17 scale.

18 MR. CHAIRMAN: I was just looking at where it says well
19 coordinates, north and east and then it says State plain
20 north and east. Those are the two?

21 MR. WIRTH: That is correct. As the new regulation has been
22 to the well location it is all referenced to the State
23 plain coordinates. We're going ahead. It's not effective
24 until October, 1992 but we're referencing both and
25 it will always be both for everybody's information.

1 MR. CHAIRMAN: Thank you, Bill, anything else?
2 MR. HARRIS: No, that's all. Thank you.
3 MR. FULMER: It is the new plat.
4 MR. SWARTZ: I would request that the Board do the same thing
5 with U-30. That is approve the pooling, but defer the
6 entry of any order because we will need to deal with
7 election issues until January at which time the Board
8 can determine how it wants to handle guardian ad litem
9 issues in these cases.
10 MR. CHAIRMAN: Does anyone wish to speak?
11 MR. MCGLOTHLIN: So moved.
12 MR. CHAIRMAN: Mr. McGlothlin moves the adoption of this
13 petition subject to the reservation in regard to the
14 minor. Is there a second?
15 MR. EVANS: Second.
16 MR. CHAIRMAN: All in favor. (ALL AFFIRM.) Opposed? (NONE.)
17 This petition is adopted and subject to the condition as
18 stated.
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3 ITEM XV

4 MR. CHAIRMAN: The next matter on the docket is Item XV which
5 is a petition for the establishment of a compulsory
6 pooled drilling unit by OXY. USA. VOOB-91-17/17-0176. I
7 note from the record that there's an objection that's
8 been filed on behalf of Ashland.

9 MR. McGUIRE: Graham McGuire here representing Ashland
10 Exploration.

11 MR. CHAIRMAN: Do you have any witnesses, Mr. McGuire?

12 MR. McGUIRE: I have none.

13 MR. CHAIRMAN: Do we want to determine this before hand or
14 will you be testifying this time?

15 MR. McGUIRE: I will not be testifying.

16 MR. CHAIRMAN: You may proceed, Mr. Swartz.

17 H. B. SWARTZ: Mark A. Swartz and Howard Salisbury, counsel for
18 OXY appearing on their behalf. I'd like to start with
19 Mr. Wirth.

20 MARTIN E. WIRTH

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

23
24 DIRECT EXAMINATION
25

1 BY MR. SWARTZ:

2 Q. I'll remind you that you're under oath. Could you state
3 your name for us, please?

4 A. Martin E. Wirth.

5 Q. Who you work for?

6 A. OXY, USA as project land manager.

7 Q. Is OXY, USA a Delaware corporation?

8 A. Yes, it is.

9 Q. Is OXY, USA authorized to do business in the Commonwealth
10 of Virginia?

11 A. Yes, it is. It has on record a bond with the Department
12 of Mines, Minerals and Energy to do business.

13 Q. With regard to unit R-11 who is that OXY by this applica-
14 tion is seeking to force pool?

15 A. The oil and gas lessee Ashland Exploration, Inc.

16 Q. Was Ashland Exploration, Inc. notified by mail as
17 required by statute?

18 A. That is correct. It was done by certified return
19 receipt.

20 Q. And has the mailing information been filed with the Board
21 in advance of today as Exhibit F with regard to certified
22 mail on Ashland?

23 A. Yes, it has.

24 Q. Did you also publish?

25 A. Yes, we did.

1 Q. And in what newspaper and on what date?
2 A. In the Virginia Mountain and it was published the 22nd of
3 November, 1991.
4 Q. And before today's date in accordance with board rules
5 have you filed two copies of the certificate of publica-
6 tion and identified them as Exhibit E with regard to this
7 unit and the notice that was published?
8 A. Yes, we have.
9 Q. And the notice that was published here would have been
10 the notice of application and the little map that
11 identifies the location of the unit?
12 A. That is correct.
13 Q. Do you wish to dismise Ashland?
14 A. No, we do not.
15 Q. Do you wish to add anyone?
16 A. No, we do not.
17 Q. With regard to this unit and directing your attention to
18 the plat map that's been filed, does OXY have coalbed
19 methane specific leases for the 80 acres?
20 A. Yes, we do.
21 Q. From both the coal owners and the oil and gas owners?
22 A. Yes, we do.
23 Q. Based on your examination of title what is Ashland's
24 interest, if any, in this unit?
25 A. Ashland's predecessor and by assignment has an oil and

1 gas lease covering the acreage identified as the Alpha
2 Stickley Mineral Tract.

3 Q. And basically have I shaded that Alpha Stickley tract
4 with purple lines?

5 A. That is correct.

6 Q. Does OXY also have a coalbed methane specific lease
7 covering the tract that I've shaded purple?

8 A. Yes, it does.

9 Q. And is the well location in the drilling window?

10 A. Yes, it is, on the Yukon/Pocahontas lease hold interest.

11 Q. To ask the question the other way is the well location on
12 any portion that's leased to Ashland Exploration?

13 A. No. It's not under lease to Ashland Exploration.

14 Q. The land that it's located on or the minerals that it's
15 penetrating --

16 A. That's correct.

17 Q. -- physically penetrating?

18 A. Yes.

19 Q. In obtaining the leases with regard to this unit and
20 other units obviously you've had to make offers to folks.
21 Could you tell the Board what in your view are reasonable
22 lease terms that are and reasonable payment terms,
23 royalty terms that are in use in this area?

24 A. For coalbed methane specific leases it's \$1 an acre bonus
25 consideration with a one-eighth royalty with a primary

1 term of five years.

2 Q. We have submitted an Exhibit C to the Board with regard
3 to this unit today and that incorporates those lease
4 terms in the proposed order. Would you recommend to the
5 Board that those terms with regard to bonus royalty and
6 lease length be incorporated by the Board in any order
7 dealing with elections?

8 A. Yes, I would.

9 MR. FULMER: I don't have the right one.

10 MR. SWARTZ: This is R-33. Didn't we change the number on it.
11 Oh, okay. The docket number is wrong on this one. You
12 have one that says the unit number is R-33 but the docket
13 number didn't get changed apparently.

14 MR. CHAIRMAN: It's got the wrong docket number but it's got
15 the right unit number.

16 MR. SWARTZ: Oh, it's got the right exhibit number. So it's
17 totally confusing. If you look at the top left it says
18 176 and if you look at the caption it says 174. It is
19 176. I'm sorry.

20 Q. [Mr. Swartz continues.] Mr. Wirth, as part of the
21 application have you obtained and submitted a copy of a
22 consent to stimulate or consent to frack?

23 A. Yes, we have, signed by Howard Epperly of Island Creek
24 Coal on September 5th, 1991.

25 Q. And that is a consent to frack what seems -- or stimu-

1 late?

2 A. To stimulate the coal seam or seams that the undersigned
3 operates. So below the Tiller formation.

4 Q. And what seams are sought to be produced from by this
5 application for unit B-33?

6 A. Seams below the Tiller formation.

7 Q. So that's the seams addressed by the consent to stimu-
8 late?

9 A. That's correct.

10 Q. And in addition to filing a consent to stimulate signed
11 by Mr. Epperly of Island Creek Coal have you also
12 submitted an affidavit stating that Mr. Epperly has the
13 authority to so consent?

14 A. Yes, as Exhibit D, Page 2, Kenneth R. Price, Vice-
15 president and General Manager of Virginia Division has
16 executed this affidavit on October 18th, 1991.

17 Q. The acreage in this unit as stated on the plat map is 80
18 acres. Is it not?

19 A. Yes, it is.

20 MR. JEWETT: Unless there's some questions of Mr. Wirth I'd
21 like to shift to Mr. VanGolen.

22 MR. CHAIRMAN: Do any members of the Board have questions?

23 Mr. McGuire.

24 MR. MCGUIRE: I have a few.

CROSS-EXAMINATION

BY MR. MCGUIRE:

Q. Mr. Wirth, are you familiar with the Stickley lease?

A. Yes. Our Stickley lease, yes, I am.

Q. Are you familiar with Ashland's Stickley lease?

A. Yes, I am.

Q. Are there any coalbed methane rights excluded from Ashland's Stickley lease?

A. It does not specifically say coalbed methane, so it would be interpreted by law.

Q. You do not have a coalbed methane lease from the Stickleys that is prior in time to Ashland's lease, do you?

MR. SWARTZ: I'm going to object to this line of questioning. You're not going to determine ownership here. We've got competing claimants. This is totally irrelevant.

MR. CHAIRMAN: Mr. McGuire, I have some difficulty with asking a witness to make a determination about what the legal impact of the terms of the lease are.

MR. MCGUIRE: I'm only asking about when OXY's coalbed methane lease --

MR. CHAIRMAN: You can ask him the date of his lease. That's fine.

MR. MCGUIRE: That's what I'm asking.

MR. CHAIRMAN: Okay.

1 Q. (MR. McGUIRE CONTINUES.) What is the date of your lease,
2 please?

3 A. I'll have to check with you. I don't know the exact date
4 and time right now.

5 Q. Is it after the 15th day of November, 1987?

6 A. I believe so, Mr. McGuire.

7 MR. McGUIRE: No further questions.

8 MR. CHAIRMAN: Anybody else?

9 (Witness stands aside.)

10 MR. CHAIRMAN: Mr. Swartz, proceed.

11 MR. SWARTZ: I would like to move to Mr. VanGolen.

12
13 GLENN VANGOLEN

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

16
17 DIRECT EXAMINATION

18 BY MR. SWARTZ:

19 Q. State your name, please.

20 A. Glenn VanGolen.

21 Q. I'll remind you you're still under oath.

22 A. Thank you.

23 Q. Who do you work for?

24 A. DEY, USA as project manager

1 Q. With regard to unit E-11 did you yourself prepare a
2 detailed well estimate?
3 A. Yes, I have.
4 Q. Is it attached to the application and identified as
5 Exhibit C?
6 A. Yes, it is.
7 Q. When was this DWE prepared?
8 A. November 15th, 1991.
9 Q. Is this well drilled at this time or is it proposed at
10 this time?
11 A. It's proposed at this time. The permit is with the
12 Inspector.
13 Q. What is the proposed total depth of the well?
14 A. 1,640 feet.
15 Q. What seam is it targeted for?
16 A. The Pocahtonian #3 seam.
17 Q. And is it your opinion it's deep enough to produce from
18 that seam?
19 A. Yes, it is.
20 Q. What is the total amount shown on your detailed well
21 estimate?
22 A. \$229,884.
23 Q. Does the sum of \$229,884 in your opinion represent the
24 reasonable estimated cost to drill and complete the
25 proposed well and fracture it or stimulate it in three

1 same?

2 A. Yes, it does.

3 Q. Is it your opinion that this plan of development in
4 drilling the proposed coalbed methane well on unit B-33
5 is a reasonable plan to develop the coalbed methane
6 resource within that unit?

7 A. Yes, it is.

8 Q. Is it your opinion that this proposed well will contri-
9 bute to the protection of correlative rights of the
10 owners of the methane or the claimants to the methane
11 within the unit and under the unit and lessen the
12 likelihood that there would be physical waste and/or
13 economic waste to their resources?

14 A. Yes, it would.

15 MR. SWARTZ: That's all I have of Mr. VanGolen.

16 MR. CHAIRMAN: Members of the Board? Anyone?

17
18 CROSS-EXAMINATION
19

20 BY MR. MCGUIRE:

21 Q. Mr. VanGolen, how do you propose to take this gas out of
22 the field?

23 A. It will be gathered in a collectionary gathering system,
24 brought into Columbia system in Grant, West Virginia.

25 Q. What's the status of that gathering system?

1 A. Well, the sixteen inch diameter line has 100 percent
2 right-of-way cleared and about 80 percent ditch. 5
3 percent totally completed and various stages of develop-
4 ment.

5 Q. Do you have a date by which you believe it will be
6 completed?

7 A. We hope sometime around March 1st, April 1st.

8 Q. Of 1992?

9 A. Yes.

10 MR. MCGUIRE: No other questions.

11 MR. CHAIRMAN: Anyone else? Mr. Swartz.

12 MR. SWARTZ: I'm finished. I think Mr. McGuire needs to argue
13 his objection, but I'm done with my part of it.

14 MR. MCGUIRE: I have filed with the Board a number of object-
15 ions with my motion to dismiss for the sake of clarity.
16 I filed this in order to give me some latitude to argue
17 before the Board. I'm going to narrow my arguments down
18 to two arguments, both of which you've heard many times
19 before, but I'll agree them again for the record. One is
20 that this process constitutes an unconstitutional taking
21 of Ashland's personal property for the benefit of OXY
22 without just compensation. Number two, that this
23 constitutes an unconstitutional impairment of Ashland's
24 lease contracts. With that said that's all I have to
25 argue today.

1 MR. CHAIRMAN: Mr. Swartz, any rebuttal?
2 MR. SWARTZ: Well, are you withdrawing all other -- the other
3 fourteen objections?
4 MR. McGUIRE: I am not arguing them, I am not making them an
5 issue before this Board.
6 MR. SWARTZ: Are you asking the Board to pass on the other
7 fourteen?
8 MR. McGUIRE: I am only asking the Board to consider these two
9 arguments and I've made my statement.
10 MR. CHAIRMAN: Well, let me just say -- as I understand it
11 there are some sixteen written objections and now you
12 have argued two of those.
13 MR. McGUIRE: That's right.
14 MR. CHAIRMAN: So are you withdrawing the written ones that
15 you haven't argued or are you just letting them stand as
16 they are and not arguing them?
17 MR. McGUIRE: Well, I will withdraw them if that's what --
18 MR. CHAIRMAN: Well, it's up to you.
19 MR. McGUIRE: I'm not making an issue of them and if you want
20 to consider them withdrawn you say.
21 MR. CHAIRMAN: I think we need to clarify that. You can
22 certainly within your rights let them stand on the record
23 as written objections for which no oral argument was
24 offered or you can withdraw them and stand on the two
25 that you've argued. It's up to you.

1 MR. MCGUIRE: I would stand on the two that I've offered
2 today.

3 MR. CHAIRMAN: Thank you.

4 MR. SWARTZ: I've argued this so many times. I'm not going to
5 argue it again assuming you have a memory of this issue.
6 I've concluded my presentation.

7 MR. CHAIRMAN: Mr. McGuire, anything further? Anyone else.
8 Board?

9 MR. EVANS: Mr. Chairman, I make a motion that we accept and
10 grant OXY's proposal and deny Ashland's in this matter.

11 MR. CHAIRMAN: Do I hear a second?

12 MR. MCGLOTHLIN: Second.

13 MR. CHAIRMAN: All in favor signify by saying yes. (ALL
14 AFFIRM.) Opposed? (NONE.) The petition is approved.

ITEM XVI

MR. CHAIRMAN: What about Item XVI? If I may, I realize although I am personally somewhat sympathetic to the matter involved, I would very much be more comfortable if this matter were carried over to a meeting in which the Chairman and most of the Board were present if that would not render any hardship upon anyone here.

MR. SWARTZ: I think that this simply was a nudge that we were given to the Board that this was another alternative that was available.

MR. CHAIRMAN: Right.

MR. SWARTZ: It would be fine with us if you did something -- whatever is your pleasure.

MR. CHAIRMAN: Let me suggest -- I mean, I'm not trying to tell you what to do or what your pleasure is. I think it's perhaps something that should be considered when everyone is here and Mr. Wampler. I'm less than comfortable with taking an action on something that has ramifications with regard to the Department as well as the General Assembly and I would just suggest that we carry it over. Is that a problem, Tom, to carry it over to the next meeting?

MR. FULMER: There's no problem with me.

MR. SWARTZ: There is no urgency.

1 MR. FULMER: I have relayed this to certain members of the OET
2 organization.

3 MR. WIRTH: This is basically future considerations that we
4 need to address the Board with.

5 MR. CHAIRMAN: Yeah. And I think whatever action should be
6 taken I would feel more comfortable in Mr. Waspler's
7 presence and with additional members of the Board. Would
8 I hear a motion by you all to continue it?

9 MR. EVANS: I would move to continue this until the next
10 meeting.

11 MR. CHAIRMAN: What's the Board's pleasure in that regard?

12 MR. MCLOTHLIN: I would request that the motion be granted.

13 MR. CHAIRMAN: I hear a motion to that effect.

14 MR. EVANS: Mr. Chairman, I move that we continue this matter
15 until the next meeting.

16 MR. CHAIRMAN: Is there a second?

17 MR. MCLOTHLIN: Second.

18 MR. CHAIRMAN: All in favor signify by saying yes. (ALL
19 AFFIRM.) Opposed. (NONE.) The motion carries. I would
20 like to say and thank the staff for their summary. I
21 think that is very helpful and we appreciate the work and
22 effort that went into it. Thank you.

23
24 (End of Proceedings for December
25 1991.)

1
2 CERTIFICATE
3

4 COMMONWEALTH OF VIRGINIA

5 COUNTY OF WASHINGTON
6

7 I, Tamara L. White, Notary Public in and for the Common-
8 wealth of Virginia, at Large, do hereby certify that the
9 foregoing proceedings of the Virginia Gas and Oil Board
10 meeting held on December 17, 1991 at the Southwest Virginia
11 4-H Center, Abingdon, Virginia, were taken by me and that the
12 foregoing is a true and correct transcript of the proceedings
13 had as aforesaid to the best of my ability.

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

18 GIVEN under my hand this 9th day of January, 1992.
19

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

24 MY commission expires January 21, 1993.
25