

1
2
3
4 VIRGINIA OIL AND GAS CONSERVATION BOARD
5

6 HEARING OF MARCH 17, 1992
7

8 9:00 A. M.
9

10 AT THE SOUTHWEST VIRGINIA 4-H CENTER
11

12 ABINGDON, VIRGINIA
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

<u>ITEM</u>	<u>PAGE</u>
1	2
2	48
3	67
4	83
5	84
6	85
7	165
8, 9	167
16	181
17 - 26	191

March 17, 1992

This matter came on to be heard on this the 17th day of March, 1992 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 45.1-36-.23.B.

MR. CHAIRMAN: Good morning. My name is Benny Waspler and I'm Assistant Director for Mining for the Virginia Department of Mines, Minerals and Energy. I'll ask our Gas and Oil Board to introduce themselves.

(BOARD MEMBERS INTRODUCED.)

ITEM I

MR. CHAIRMAN: The first item on the agenda today is a petition for the establishment of a compulsory pooled longwall drilling unit from Pocahontas Gas Partnerships and this is docket number VGOB-92/02/18-0103. This was continued from February. I would ask the parties that wish to address the Board regarding this matter to please come forward to the table. Anyone else here that's not at the table that wishes to address the Board in this matter? Ms. McClannahan.

MS. McCLANNAHAN: If the Board will remember, on February 18th of this year the Board approved the South Longwall 5 Unit which consists of 450.476 acres. The Board requested that we change a boundary line on this particular unit and therefore, we filed an amended forced pooling application and that is what's before the Board today. You can see the amended boundary lines on Exhibit 9 of the booklet that we have submitted. Pocahontas Gas Partnership controls 80.836 percent of the right to develop oil and gas from the tracts. It controls 97.464 percent of the right to develop the P-3 Seam and 100 percent of all coal below the Tiller Seam. The first witness we would like to call is Les Arrington.

CLERK: (Swears witness.)

1
2 LESLEY ARRINGTON

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

5
6 DIRECT EXAMINATION

7
8 BY MS. McCLANNAHAN:

9 Q. Mr. Arrington, would you please identify the exhibit
10 marked for identification as Exhibit 1?

11 A. Yes. That's my resume and work history.

12 Q. Does that also list your current address and phone
13 number?

14 A. Yes, it does.

15 Q. Mr. Arrington, have you been qualified as an expert
16 witness before the Gas and Oil Board?

17 A. Yes, I have.

18 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
19 Exhibit 1 listing Mr. Arrington's qualifications.

20 MR. CHAIRMAN: Okay. Without objection it is introduced.

21 (Lesley Arrington's Qualifications marked as
22 Exhibit 1.)

23 Q. (Ms. McClannahan continues.) Mr. Arrington, have you
24 given notice as required by Virginia Code annotated
25 Section 45.1-361.19 to each person or entity identified

1 on Exhibit C of the forced pooling application?

2 A. Yes, we have, by certified mail, return receipt.

3 Q. Is the exhibit marked for identification as Exhibit 2

4 the notice of hearing that was mailed to the parties?

5 A. Yes, it is. That was the original notice of hearing.

6 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of

7 Exhibit 2, the notice of hearing.

8 (Notice of Hearing marked as Exhibit 2.)

9 Q. (Ms. McClannahan continues.) Do you have the returned

10 receipts from your mailing?

11 A. Yes, we do. That's marked -- for the original notice

12 that's marked as Exhibit 3.

13 MS. McCLANNAHAN: I move for the introduction of Exhibit 3,

14 the copies of the returned receipts.

15 (Returned Receipts marked as Exhibit 3.)

16 Q. (Ms. McClannahan continues.) Is the exhibit marked for

17 identification as Exhibit 4 the notice of amended

18 application in hearing that was mailed to the parties

19 listed on Exhibit C in the amended forced pooling

20 application?

21 A. Yes, it is.

22 MS. McCLANNAHAN: I move the introduction of Exhibit 4.

23 (Notice of Amended Application in Hearing

24 marked as Exhibit 4.)

25 Q. (Ms. McClannahan continues.) How was this mailing

1 accomplished?

2 A. By certified mail, return receipt requested.

3 Q. And do you have those returned receipts?

4 A. Yes, I have. That's marked as Exhibit 5.

5 MS. McCLANNAHAN: I move the introduction of Exhibit 5.

6 (Returned Receipts marked as Exhibit 5.)

7 Q. (Ms. McClannahan continues.) Were there any persons
8 whose names and addresses were unknown at the time of the
9 mailing?

10 A. No, there wasn't.

11 Q. Did you publish a notice, in any event, in the Virginia
12 Mountaineer, Bristol Herald Courier, and Bluefield Daily
13 Telegraph?

14 A. Yes, we did. It was in the Virginia Mountaineer, Bristol
15 Herald, and Bluefield Daily Telegraph on 2-27, 2-28, and
16 2-29 respectively.

17 Q. Have you filed permits to convert the VMs within the
18 SLW-5 unit?

19 A. Yes, we have.

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

22 A. No.

23 Q. Has a drilling permit been previously refused to PGF on
24 any of the tracts that make up this unit?

25 A. No, it has not.

- 1 Q. And what percentage of the coal rights in the tracts that
2 comprise this SLW-5 unit has Pocahontas Gas Partnership
3 leased to date?
- 4 A. We control 97.464 percent of the Pocahontas #3 seam, 100
5 percent of all coal below the Tiller seam, less the P-3.
- 6 Q. And what percentage of the oil and gas rights in the
7 tracts that comprise the SLW-3 unit does Pocahontas Gas
8 Partnership control?
- 9 A. 80.836 percent.
- 10 Q. Have you obtained coalbed methane gas leases on any
11 portion of the acreage within the SLW-5 unit?
- 12 A. Yes, we have. We have 100 percent of it leased.
- 13 Q. Have you stated on an exhibit to the application the
14 unleased owners and the lease hold owners and mineral
15 owners leased to other parties who will be pooled and
16 their percentages of ownership in the respective tracts
17 for the SLW-5 unit?
- 18 A. Yes, we have.
- 19 Q. Are those all listed on Exhibit D of the amended forced
20 pooling application?
- 21 A. Yes, they are.
- 22 Q. Are the conflicting claimants whose funds are to be
23 escrowed listed on Exhibit E of the 5 unit amended forced
24 pooling application?
- 25 A. Yes.

1 Q. Are you requesting that the Board pool the interest of
2 the parties listed on Exhibit C of the SLW-5 unit amended
3 forced pooling application?
4 A. Yes, we are.
5 MS. McCLAINAHAN: Those are all the questions I have for Mr.
6 Arrington.
7 MR. CHAIRMAN: Any questions, members of the Board?
8 (Witness stands aside.)
9 MR. CHAIRMAN: All right. Call your next witness.
10 MS. McCLAINAHAN: Oil Gillenwater.
11 CLERK: (Swears witness.)
12

13 WILLIAM GILLENWATER

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

17 DIRECT EXAMINATION
18

19 BY MS. McCLAINAHAN:

20 Q. Mr. Gillenwater, would you please state your full name
21 for the record?
22 A. William Dalton Gillenwater.
23 Q. And is your address and current phone number listed on
24 the resume at Exhibit 67?
25 A. Yes, it is.

- 1 Q. Does Exhibit 6 reflect your work history and qualifica-
2 tions?
- 3 A. Yes.
- 4 Q. Have you been qualified as an expert witness before the
5 Gas and Oil Board?
- 6 A. Yes.
- 7 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
8 Exhibit 6 as reflecting Mr. Gillenwater's qualifications.
- 9 MR. CHAIRMAN: Okay.
- 10 (William Gillenwater's qualifications
11 marked as Exhibit 6.)
- 12 Q. (Ms. McClennahan continues.) Where has your experience
13 in obtaining mineral leases been concentrated?
- 14 A. Coal leasing.
- 15 Q. In your experience have you also obtained coalbed methane
16 leases?
- 17 A. Yes, I have.
- 18 Q. In your experience obtaining leases in Southwest Virginia
19 are you familiar with the fair market value for coal
20 leases, oil and gas leases, and coalbed methane leases in
21 the SLW-3 unit area?
- 22 A. Yes, I am.
- 23 Q. How many acres have you leased in Buchanan County in the
24 last year?
- 25 A. Over 4,000 oil and gas acres.

- 1 Q. What are the fair market value terms for a coal lease in
2 this area?
- 3 A. Ranging between three and a half and five percent of the
4 gross selling price with the advance minimal royalties
5 ranging between \$1 to \$10 per acre.
- 6 Q. For an oil and gas lease?
- 7 A. \$5 per acre per year and a one-eighth production royalty.
- 8 Q. And for a coalbed methane lease?
- 9 A. \$1 per acre per year with an one-eighth royalty.
- 10 Q. And what is the standard primary term for a coalbed
11 methane lease?
- 12 A. 10 years.
- 13 Q. Oil and gas?
- 14 A. 10.
- 15 Q. And a coal lease?
- 16 A. 10 years.
- 17 Q. With regard to the unleased owners that are listed on
18 that South Longwall 5 unit amended forced pooling
19 application, have you contacted those land owners or
20 tried to contact them to obtain a lease?
- 21 A. Yes.
- 22 Q. What kind of lease have you offered each of them?
- 23 A. A standard oil and gas lease. That includes their
24 coalbed methane rights, any claims they would have.
- 25 Q. By what method did you contact them and offer the lease?

1 A. Verbal.
2 Q. Were there any unknown owners or owners whose addresses
3 were unknown at the time of the filing of this applica-
4 tion?
5 A. No, there was not.
6 MS. McCLANAHAN: Those are all the questions I have for Mr.
7 Gillenwater at this time.
8 MR. CHAIRMAN: Any questions, members of the Board?
9 (Witness stands aside.)
10 MR. CHAIRMAN: Okay. Call your next witness.
11 MS. McCLANAHAN: Randall Albert.
12 CLERK: (Swears witness.)
13

14 RANDALL MARK ALBERT

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

18 DIRECT EXAMINATION
19

20 BY MS. McCLANAHAN:

21 Q. Mr. Albert, would you please state your full name for the
22 record?
23 A. Randall Mark Albert.
24 Q. And I understand the resume that is attached as Exhibit 7
25 in the booklet that we've submitted has an incorrect

1 phone number, is that correct?

2 A. That is right.

3 Q. What is your current phone number?

4 A. 498-4512.

5 Q. But that is your current address?

6 A. It is the current address.

7 Q. And does the resume at Exhibit 7 reflect your educational

8 background, work history, and qualifications?

9 A. Yes, it does.

10 Q. Have you been qualified as an expert witness before the

11 Gas and Oil Board?

12 A. Yes, I have.

13 MS. McCLANNAHAN: I move the introduction of Exhibit 7 as to

14 Mr. Albert's qualifications.

15 (Randall Albert's qualifications

16 marked as Exhibit 7.)

17 Q. (Ms. McClannahan continues.) Have well work permits been

18 submitted for the SLW-5 unit?

19 A. Yes, they have except for the proposed location for the

20 one additional well.

21 Q. For what type of wells were the permits submitted?

22 A. To convert existing vertical ventilation holes to coalbed

23 methane wells.

24 Q. You have indicated in the amended forced pooling applica-

25 tion that the mineral and lease hold owners for the SLW-5

1 unit which are not leased or assigned to PGP are Island
2 Creek Coal Company, Coal Mountain Mining Company, Coal
3 Mountain Trust, Ruby Horne, Amos Meadows, Rufus Meadows
4 heirs, Eva Meadows, Vergie Meadows, Leonard Meadows,
5 Eunice Strouth, Ruby McGiggen, Jimmy Meadows, Ernest
6 Meadows, Alice Smith, Eddie Meadows, Charlotte Smith,
7 Laverene Osborne, Lular Meadows, Donna Fonzy, Danny
8 Meadows, Rufus Meadows, Marjorie Estin, Linda Garth,
9 Marland Meadows, Jessica Googet and Howard Meadows
10 heirs. Is that still correct?

11 A. No, it is not.

12 Q. Why is that not still a correct list?

13 A. Since the filing the amended application we have acquired
14 additional information regarding the name and address for
15 one of the Rufus Meadows heirs.

16 Q. And have those revised pages been submitted as Exhibit 8,
17 Exhibits C, D, and E to the application?

18 A. Yes, they have.

19 MS. McCLANNAHAN: I move the introduction of Exhibit 8 which
20 shows that new address.

21 (Revised Address marked as Exhibit 8.)

22 Q. (Ms. McClannahan continues.) Have you received any
23 written responses to the amended or original forced
24 pooling applications?

25 A. No, we have not.

- 1 Q. Is Pocahontas Gas Partnership the owner of the drilling
2 rights underlying the mineral tracts that are to be
3 encompassed by this unit?
- 4 A. Yes, we are.
- 5 Q. Does the plat attached to the amended forced pooling
6 application filed by Pocahontas Gas Partnership indicate
7 the acreage to be embraced within the SLW-5 unit as
8 approved by the Board at its February 18th, 1992
9 hearing?
- 10 A. Yes, it does.
- 11 Q. Does the plat attached to the amended forced pooling
12 application filed by Pocahontas Gas Partnership indicate
13 the shape of the acreage embraced within the SLW-5 unit?
- 14 A. Yes, it does.
- 15 Q. Does the unit follow the boundary lines of the long wall
16 panel and its surrounding area for the mine that
17 comprises the South Longwall 5 unit?
- 18 A. Yes, it does.
- 19 Q. Could you please identify the exhibit marked for identifi-
20 cation as Exhibit 9?
- 21 A. Exhibit 9 is a copy of Exhibit B-1 of the South Longwall
22 5 amended forced pooling application.
- 23 MS. McCLAINAHAN: Mr. Chairman, I move the introduction of
24 Exhibit 9.
- 25 MR. CHAIRMAN: Okay.

(Copy of Exhibit B-1 marked as Exhibit 9.)

MR. CHAIRMAN: I'd like to go back to Exhibit E in the application when you were talking about the Rufus Meadows heirs. You read Vergie Meadows, I believe, and I had Vergie Meadows McGiggen?

MS. McCLANNAHAN: That's correct.

MR. CHAIRMAN: Is that correct?

MS. McCLANNAHAN: Uh-huh.

MR. CHAIRMAN: Okay. Go ahead. I'm sorry.

Q. (Ms. McClannahan continues.) Is Pocahontas Gas Partnership the owner of the drilling rights underlying the mineral tracts that are being encompassed by this unit?

A. Yes.

Q. Does the plat attached to the amended forced pooling application filed by PGP indicate the acreage as it was amended by the Board in its February 18th, 1992 hearing?

A. Yes, it does.

Q. Does the drilling unit embrace two or more separately owned tracts?

A. Yes, it does.

Q. Are the costs and expenses for the wells set forth on detailed well estimates attached to the amended forced pooling application as Exhibits H through J?

A. That's correct.

Q. Have there been any revisions to the DWEs for the wells

- 1 that comprise the South Longwall 5 unit?
- 2 A. No, there have not.
- 3 Q. Do these exhibits reflect the cost of drilling the wells
- 4 to total depth and completed for production costs?
- 5 A. Yes, they do.
- 6 Q. Generally, how did you calculate the costs that are
- 7 listed in the DWES?
- 8 A. For the existing wells they are actual costs when
- 9 invoices have been found. When invoices have not been
- 10 found they are estimated cost. For the additional well
- 11 to be drilled, that is estimated cost based on the
- 12 average of drilling cost and completion cost we have
- 13 seen.
- 14 Q. Are you requesting that the Board pool the interest of
- 15 the parties listed on Exhibit C of the amended forced
- 16 pooling application?
- 17 A. Yes, we are.
- 18 Q. And that Pocahontas Gas Partnership be designated as the
- 19 well operator?
- 20 A. Yes, we are.
- 21 Q. That the Board prescribe the time and manner in which
- 22 other mineral and lease hold owners may elect to partici-
- 23 pate in the operation of the wells?
- 24 A. Yes, we are.
- 25 Q. That participating mineral and lease hold owners bear the

1 reasonable costs and expenses connected to the wells in
2 the proportion which the acreage they own has to the
3 total acreage in the SLW-5 unit?

4 A. Yes, we are.

5 Q. Are you requesting that non-leasing mineral and lease
6 hold owners have reasonable access to production and
7 transportation records collected by the Inspector?

8 A. Yes, we are.

9 Q. That the Board make provision for the payment of all
10 reasonable costs of the operation including a reasonable
11 supervision fee by all mineral or lease hold owners who
12 elect to be participating owners?

13 A. That's correct.

14 Q. And that the Board provide alternatives to the mineral or
15 lease hold owners who do not elect to be participating
16 owners in the unit such as those set forth in the
17 Virginia Code annotated Section 43.1-361.21?

18 A. That is correct.

19 MS. McCLANAHAN: Those are all the questions I have for this
20 witness.

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

22 (Witness stands aside.)

23 MS. McCLANAHAN: The next witness I have is Mr. Morgan.

24 CLERK: (Swears witness.)
25

1 CLAUDE D. MORGAN

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

4
5 DIRECT EXAMINATION
6

7 BY MS. McCLANNAHAN:

8 Q. Mr. Morgan, would you please state your full name for the
9 record.

10 A. Claude D. Morgan.

11 Q. And is the resume attached as Exhibit 10 and marked for
12 identification indicate your current address and phone
13 number?

14 A. Yes, it does.

15 Q. And does it also reflect your educational background,
16 work history, and qualifications?

17 A. Yes, it does.

18 Q. Have you been qualified as an expert witness before the
19 Gas and Oil Board previously?

20 A. Yes, I have.

21 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
22 Exhibit 10 reflecting Mr. Morgan's qualifications.

23 (Mr. Morgan's Qualifications marked
24 as Exhibit 10.)

25 Q. (Ms. McClannahan continues.) With regard to the costs

1 that are listed on the DWES that Randy Albert has
2 described and submitted for the wells in the SLW-5 unit,
3 how do you propose to allocate the cost among the owners
4 in the unit?

5 A. Since the proposed wells within the unit will be serving
6 two different units over a life span of about 19 years
7 with 9 years being the approximate life of this first
8 unit designation, we have proposed to proportion the cost
9 of these wells to the units based on the anticipated
10 production from the two different units.

11 Q. And the two different units that you're referring to are
12 the frack unit which is at Exhibit 9 and the sealed gob
13 unit which is at Exhibit 12, is that correct?

14 A. That's correct.

15 Q. And Exhibit 12 shows the proposed sealed gob unit
16 boundary line, is that right?

17 A. That is correct.

18 MS. McCLANNAHAN: I move the introduction of Exhibit 12.

19 MR. EVANS: Wait a minute. I've got 11 as a map, 12 as a
20 calculation --

21 MS. McCLANNAHAN: I'm sorry. Exhibit 13.

22 MR. EVANS: Oh, okay.

23 MR. CHAIRMAN: Okay.

24 (Proposed Sealed Gob Unit Boundary
25 Line marked as Exhibit 13.)

- 1 Q. (Ms. McClannahan continues.) Mr. Morgan, Exhibit 13
2 reflects the proposed sealed gob unit boundary, is that
3 correct?
- 4 A. That is correct.
- 5 Q. Could you please identify Exhibit 12?
- 6 A. Exhibit 12 is a chart depicting the production allocation
7 and the manner in which we arrived at the percentage to
8 allocate the cost of these wells to the different units.
- 9 Q. And could you please explain the calculation at it's
10 shown on Exhibit 12?
- 11 A. Exhibit 12 shows the production from SLW-5 unit during
12 the frack, horizontal, and active gob phase as
13 1,434,000,000 cubic feet. The production from this same
14 area in the sealed gob phase is estimated to be
15 1,055,000,000 cubic feet. The sum of these two is
16 2,489,000,000 cubic feet. We divided the production from
17 this proposed unit by the total production from this area
18 to arrive at a percentage which we would propose to apply
19 to the total cost of the wells within this unit. The net
20 cost would be allocated to this unit on a net acre basis.
- 21 Q. And that percentage is 57.6 percent, is that correct?
- 22 A. That is correct.
- 23 Q. And that percentage of the total cost as listed on the
24 DWEs has been calculated, is that right?
- 25 A. That's correct.

1 Q. How do you propose to charge the unit owners for the
2 additional wells and then any additional wells that will
3 be drilled?
4 A. We are asking the Board's approval for the cost of four
5 wells. Any additional costs we would propose to come
6 back before the Board and it would have to be justified
7 on the basis of drainage, economics, and whatever.
8 Q. And when you say the cost of the four initial wells,
9 you're actually referring to 57.6 percent of the cost of
10 those four initial wells, is that correct?
11 A. That is correct.
12 MS. McCLANNAHAN: Those are all the questions I have for this
13 witness.
14 MR. CHAIRMAN: Any questions, members of the Board?
15 MR. EVANS: Would you -- Mr. Morgan or whoever -- explain on
16 Exhibit 13 the offset for the sealed gob unit and the
17 shape of the --
18 MS. McCLANNAHAN: Yes, sir. I think Mr. Albert is prepared to
19 give you an explanation on that question.
20 MR. ALBERT: Mr. Evans, the offset is an area that is develop-
21 ed by mains in the #3 seam. We brought the southern
22 portion of the boundary over to match the existing BUS2
23 sealed gob unit that has been approved by the Board.
24 Where you see the offset is the set of existing mains in
25 the #3 seam.

1 MR. EVANS: Will that offset be included in any sealed gob
2 unit or are those just going to mains open for all time?
3 MR. ALBERT: Those will be mains open for all time. That will
4 not be pillar mined.
5 MS. McCLANNAHAN: In that case we would request that the Board
6 pool the interests of all the parties listed on Exhibit C
7 for the SLW-5 unit.
8 MR. MASON: Mr. Chairman, I move the approval.
9 MR. CHAIRMAN: We have a motion to approve.
10 MR. EVANS: Second.
11 MR. CHAIRMAN: A motion to approve and a second. All in favor
12 signify by saying yes. (ALL AFFIRM.) Opposed say no.
13 (None.) The motion carries.
14 MS. McCLANNAHAN: Thank you.

15 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)
16
17
18
19
20
21
22
23
24
25

ITEM X

MR. CHAIRMAN: We're back in session. Unless there's an objection we're going to move to Item X on the agenda thanks to the parties who have worked out an agreement here. I will listen if there's any objection to doing that. With no objection, Mr Counts, we have a petition for a well location exception by Equitable Resources Exploration for VP-2340 and this is docket number VGOB-92/03/17-0199.

MR. COUNTS: Mr. Chairman, we have before the Board today a request for six separate location exceptions, Items X through XV on today's docket. So in front of you the Board members will find what we'll be using as our Exhibit C which indicates all six of these locations commencing with VP2340 which is today's docket number - 0199, 2325 today's docket number 0200, 2343 today's docket number 0201, 2346 today's docket number 0202, 2345 today's docket number -0203, and 2324 today's docket number 0204.

MR. CHAIRMAN: Let me stop you there and ask, are there any parties in the room that wish to address the Board regarding these matters?

MS. CLEVINGER: I do.

MR. CHAIRMAN: Would you just tell us your name?

1 MS. CLEVINGER: I'm Nancy Clevinger.
2 MR. CHAIRMAN: Would you tell us which one of these or do you
3 object to all of these?
4 MS. CLEVINGER: All of them. I have 50 acres and I have four
5 tracts of land and I live on 624.
6 MR. CHAIRMAN: Is that in this area?
7 MR. MCGLOTHLIN: We're on Item X of the agenda. 624 -- where
8 do you live?
9 MS. CLEVINGER: I mean that's the route that I live on. Rowe,
10 Virginia, Drill Mountain.
11 MR. CHAIRMAN: Mr. Fulmer, would you go back and check and
12 see --
13 MR. FULMER: If you live in Rowe, this has nothing to do with
14 Rowe. You're in Wise County.
15 MS. CLEVINGER: Sir?
16 MR. CHAIRMAN: Show her on the map what we're dealing with --
17 MR. FULMER: I don't know whether that would be the best map
18 to show her.
19 MR. CHAIRMAN: Well, look at her papers that she has there and
20 see. I think she's interested in the cases that Occi-
21 dental Petroleum has, but I'm not sure.
22 MS. CLEVINGER: Well, I own coal and gas and oil on 624 here.
23 And Island Creek and PerMac and all of them, you know,
24 is moving coal and they're up there drilling now near my
25 farm and it won't be drilled on it.

1 MR. CHAIRMAN: Ma'am, I think that's later items on the
2 agenda.
3 MS. CLEVINGER: Well, I just brought that paper. A neighbor
4 gave it to me and that's how I knew about this meeting.
5 MR. FULMER: That would be 162 -- yeah, she's on a different
6 case.
7 MR. CHAIRMAN: Okay. That will be cases that we'll call
8 later, ma'am.
9 MS. CLEVINGER: All right.
10 MR. CHAIRMAN: But we'll make sure that you get a chance to
11 address the Board on that. Thank you. Any others? The
12 record will show there are none. Mr. Counts, you may
13 proceed.
14 MR. COUNTS: Thank you. Mr. Chairman and members of the
15 Board, I would request to handle these in two separate
16 matters beginning with the eastern most three wells first
17 which was shown on the Coeburn field area map which would
18 be VP-2346 and VP-2345 and VP-2344 and then I would like
19 to address in a separate application the western most
20 three wells, VP-2340, VP-2325 and VP-2343.
21 MR. CHAIRMAN: Okay.
22 MR. COUNTS: Thank you, sir. Let the record show that the
23 wells addressed will be again VP-2345, VP-2346 and VP-
24 2345. Mr. Chairman and members of the Board, this is
25 part of our continuing effort to develop oil and gas from

1 within the boundaries of the U.S Forest Service. These
2 wells were previously permitted by ANRs at these specific
3 locations in order to be consistent with the environ-
4 mental impact statement and subsequent environmental
5 substances which this Board has previously heard testi-
6 mony in regard to. Equitable now seeks a transferring of
7 the operating rights as a result of it's acquisition of
8 the ANR properties. The testimony will indicate that the
9 units involved as well as the reciprocal or offset
10 locations within 2,640 feet of the proposed location
11 exceptions are each leased 100 percent to the Roaring
12 Fork partners which Equitable as operator. Thus the
13 correlative rights with adjacent parties are protected
14 based upon the common ownership. The issue is therefore
15 would waste result in the event these locations excep-
16 tions are not approved. I would also like at this time
17 to introduce the exhibits. The EIS and Coeburn field map
18 area which you have one in front of you, Mr. Chairman, on
19 the table there and additionally behind Mr. Fulmer, this
20 shows the Coeburn area field insert which will be used as
21 Exhibit C and in addition shows the outline of the
22 environmental impact sighting which was approved in 1986.
23 Exhibit B will be the topographic map which again shows
24 all of the locations. We're now concerned with the
25 eastern three most locations for the location exceptions

1 denoted here by the orange dots on the map. We will then
2 address the western most three location exceptions.
3 Exhibit C will be the Cosburn field area map which all
4 the members of the Board should have in front of them.
5 With your approval, Mr. Chairman, I'd like to call my
6 first witness.

7 MR. CHAIRMAN: Go ahead.

8 MR. COUNTS: Mr. Lee Talbot.

9 CLERK: (Swears witness.)

10
11 LEE TALBOT

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

14
15 DIRECT EXAMINATION

16
17 BY MR. COUNTS:

18 Q. Mr. Talbot, who are you employed by and in what capacity?

19 A. My name is Lee Talbot. I'm employed as Land Administrat-
20 or of Equitable Resources Exploration.

21 Q. Mr. Talbot, have your qualifications as an expert witness
22 with regard to land related matters previously be
23 accepted by this Board?

24 A. Yes.

25 MR. COUNTS: Mr. Chairman, I'd like to offer Mr. Talbot as an

expert witness in this matter.

MR. CHAIRMAN: Okay.

Q. (Mr. Counts continues.) Mr. Talbot, do your responsibilities include the lands involved here and the surrounding area?

A. Yes.

Q. And are you familiar with the application for location exceptions for wells 2343, 2344, and 2346 and the relief requested?

A. Yes.

Q. Using the Coeburn field area map, Exhibit C, would you indicate for the Board the relief requested, showing the location exception wells and the reciprocal wells and the distances to those?

A. For well 2344 it's 2,002 feet from BREX well V-2352 or 10971 and 2,262 feet from existing well 133810 or previous number 10945. For well 2345 we are 2,371 feet from existing well 133548 or previous number 10006. We are 2,023 feet from proposed well V-2346, previous number 10924. We approximately 2,325 feet from existing well 13366, previous number 10927. For well VP-2346 which it's previous number was 10924 we are 2,023 feet from proposed well VP-2345, previous number 10931. And 1,357 feet from existing well 133548, previous number 10006.

- 1 Q. Mr. Talbot, are these well locations currently under
2 permit to ANR Production Company and are you seeking a
3 transfer of the permits to Equitable?
- 4 A. Yes.
- 5 Q. And have all parties been notified as required by Section
6 (Inaudible.) of the Virginia Oil and Gas Board regula-
7 tions?
- 8 A. They have. And Mr. Davis has received copies of the
9 certified mailings by cover letter dated March 6th, 1992.
- 10 Q. And who owns the surface underlying each location?
- 11 A. Surface owned by United States Forest Service and all
12 drill site locations.
- 13 Q. Does the Roaring Fork Partnership own 100 percent of the
14 working interest under all three location exceptions?
- 15 A. Yes.
- 16 Q. Does the Roaring Fork Partnership own 100 percent of the
17 working interest within 2,640 feet of each proposed well?
- 18 A. Yes, they do.
- 19 Q. Based on these facts is it your professional opinion that
20 the correlative rights of each of the effected parties
21 will be protected by the granting of the location
22 exceptions as requested by Equitable?
- 23 A. Yes, sir.
- 24 Q. Mr. Talbot, was an environmental impact study conducted
25 on the Forest Service property where the proposed wells

1 are located?

2 A. Yes, sir.

3 Q. With respect to each individual well site, what factors
4 did the environmental impact statement consider?

5 A. They considered the conformity of the existing 1980 EIS
6 archaeological considerations, soil/water conservation,
7 the topography, the road locations, the location of the
8 existing timber and with regard to current access roads
9 and also the location of the pipelines with existing
10 timber.

11 Q. Mr. Talbot, has the Forest Service reviewed the proposed
12 locations for VP-2344, VP-2345 and VP-2346 and approved
13 each location as being consistent with the environmental
14 impact statement and the environment assessment previous-
15 ly conducted by the Forest Service?

16 A. Yes, they have. And the final EIS statement was issued
17 February 12th, 1988.

18 MR. COUNTS: Mr. Chairman, I have previously provided the
19 Board with copies of the 1990 Environmental Assessment
20 and Decision Notice and also the 1988 Decision Notice
21 which implemented the 1980 EIS and we request that the
22 Board incorporate these into the record at this time.

23 MR. CHAIRMAN: Any objection? Okay.

24 Q. (Mr. Counts continues.) Mr. Talbot, in your professional
25 opinion are these location exceptions necessary in order

1 to comply with the plan of development approved by the
2 environmental impact statement and subsequent environmen-
3 tal assessment?

4 A. Yes, sir, they are.

5 Q. Is it your professional opinion that these well location
6 exceptions are required in order to safeguard the
7 environment and accommodate other mineral interests and
8 effective land management practices?

9 A. Yes, sir.

10 MR. COUNTS: Mr. Chairman, I have no further questions of this
11 witness. I will next be calling Mr. Bob Dahlin, the
12 geologist.

13 MR. CHAIRMAN: Any questions, members of the Board, of this
14 witness?

15 MR. EVANS: Just by way of explanation, in the vicinity of
16 VP-2344 would you explain real quickly, since it's not on
17 this, W08-6A just north?

18 MR. TALBOT: Yes, sir. That's a plugged and abandoned well.

19 MR. EVANS: Abandoned?

20 MR. TALBOT: Uh-huh.

21 MR. EVANS: And W5-4A is the same?

22 MR. TALBOT: The same status, sir.

23 MR. EVANS: W5-5A?

24 MR. TALBOT: Also.

25 MR. EVANS: Thank you. That's all I needed.

1 MR. CHAIRMAN: Okay. Any other questions?

2 (Witness stands aside.)

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

4 MR. COUNTS: Thank you, sir. I'd like to call Mr. Ron Dahlin.

5 CLERK: (Swears witness.)

6
7 BOB DAHLIN

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

10
11 DIRECT EXAMINATION

12
13 BY MR. COUNTS:

14 Q. Mr. Dahlin, who are you employed by and in what capacity?

15 A. I'm an operations specialist at Equitable Resources,
16 Kingsport, Tennessee.

17 Q. And what is your educational background, sir?

18 A. Geologist BS degree from WVU.

19 Q. And have you previously testified before the Board and
20 your qualifications as an expert witness been excepted?

21 A. I have.

22 MR. COUNTS: Mr. Chairman, I would like to offer Mr. Dahlin as
23 an expert witness in this matter.

24 MR. CHAIRMAN: Okay.

25 Q. (Mr. Counts continues.) Mr. Dahlin, would you summarize

1 briefly for the Board from Equitable's prospective the
2 purpose of these applications?

3 A. The study was done so as to minimally impact the environ-
4 ment. Generally, it's a continuation of the previous
5 permit applications.

6 Q. And are these locations necessary in order to prevent
7 waste of the hydrocarbons underlying these tracts?

8 A. Yes, they are.

9 Q. In the event these location exception wells are not
10 drilled, can you project the estimated loss of reserves?

11 A. From between 200 and 500 million cubic feet per well.

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. Yes, they should.

16 Q. Mr. Dahlin, would you briefly indicate for the Board some
17 of the factors which make each of the location exceptions
18 necessary?

19 A. Primarily topographic considerations, spacing at the time
20 of the permit application, and drainage -- surface
21 drainage of the waterways.

22 Q. Is it also necessary in order to be in consistent with
23 the EIS and the desires of the U.S Forest Service that
24 these wells be located to the extent possible on the
25 ridge tops in order to avoid or minimize the environmen-

1 MR. EVANS: Does it make a different on 2345 and 2346 for
2 your order which is an exception from which? Do we need
3 to stipulate that or just at these locations as --
4 MR. FULMER: Well, for the purpose of the order, they'll have
5 to reciprocate each of them as a written order as done.
6 MR. EVANS: Okay.
7 MR. FULMER: They will reciprocate.
8 MR. MASON: Each of them as an exception to the other.
9 MR. CHAIRMAN: Yes.
10 MR. COUNTS: That would be our request in addition to the
11 five, that each is also an exception to 133548 or 10006.
12 MR. EVANS: In that case, Mr. Chairman, I move that we accept
13 EREX's petition for location exception.
14 MR. MASON: Second.
15 MR. CHAIRMAN: We have a motion and a second. All in favor
16 signify by saying yes. (ALL AFFIRM.) All opposed say
17 no. (NONE.) The motion carries.
18
19
20
21
22
23
24
25

ITEMS XI, XII, XIII, XIV, XV

1
2
3 MR. COUNTS: Mr. Chairman, the next three wells that we will
4 address are well VP-2340, VP-2343 and VP-2325. Again,
5 these wells were previously permitted by ANR at these
6 specific locations. Equitable is still seeking a
7 transfer of the operating rights as a result of it's
8 acquisition of the ANR properties. Testimony will
9 indicate that the units involved as well as the reciprocal
10 are offset locations within 2,640 feet of the
11 proposed well location exception are leased 100 percent
12 to the Roaring Fork Partners with Equitable as operator.
13 Thus, the correlative rights of the adjacent parties are
14 protected. Again, the issue we would submit to the Board
15 is whether waste would occur in the event these location
16 exceptions are not approved. I again request incorporation
17 of the same exhibits in the same sequence as in our
18 prior hearing.

19 MR. CHAIRMAN: Okay. That's approved.

20 MR. COUNTS: And would again like to ask Mr. Lee Talbot,
21 remind Mr. Talbot that he's previously been sworn, and
22 has also previously provided testimony with regard to his
23 employment and ask the Board if his qualifications might
24 again be accepted in this matter as an expert witness.

25 MR. CHAIRMAN: It is noted that they are previously accepted.

1 MR. COUNTS: Thank you, sir.

2
3 LEE TALBOT

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

6
7 DIRECT EXAMINATION

8
9 BY MR. COUNTS:

10 Q. Mr. Talbot, do your responsibilities include these lands
11 and the surrounding area?

12 A. Yes, sir.

13 Q. And are you familiar with the applications for location
14 exceptions to wells VP-2340, VP-2343 and VP-2325?

15 A. Yes, sir, I am.

16 Q. Would you state the relief requested using Exhibit C, the
17 Cosburn field area map?

18 A. The distances for a well beginning with 2340, previous
19 number 1095, is 2,550 feet from EREX well 133762,
20 previous number 10925. For well VP-2343 2,465 feet from
21 EREX well VP-2325, previous number 10946 and it's also
22 2,466 feet from EREX well 33765, previous number 10967.
23 For EREX well VP-2325, previous number 10946, it's 2,465
24 feet from EREX well 2343, previous number 10955.

25 Q. Mr. Talbot, are the locations for each of these location

1 exception wells currently under permit to AWR and are you
2 seeking a transfer of those permit rights to Equitable?

3 A. Yes, sir. They're existing permits and presently have a
4 pending status of transfer.

5 Q. And have all interested parties been noticed as required
6 by Section 4.B of the Virginia Gas and Oil Board Regulations?
7

8 A. Yes, sir, they have. Again, Ms. Davis has received
9 copies of the certified mailings of a cover letter dated
10 March 6, 1992.

11 Q. And does the Roaring Fork Partnership own 100 percent of
12 the working interest under all three location exception
13 units?

14 A. Yes, sir.

15 Q. And does the Roaring Fork Partnership own 100 percent of
16 the working interest within 2,640 feet of each proposed
17 well?

18 A. Yes, sir, they do.

19 Q. Based on these facts is it your professional opinion that
20 the correlative rights of each of the effected parties
21 will be protecting by the granting of location exceptions
22 as requested here today?

23 A. Yes, that's correct.

24 Q. Are these location exceptions located on private tracts
25 or on U.S. Forest Service property?

1 A. The drill site is on individual surface owners.
2 Q. In your opinion are these drill sites dictated however
3 by the environmental impact statement and by the location
4 of wells on U.S. Forest Service properties?
5 A. Yes, they are, in regard to total EIS statement in regard
6 to existing proposed pipeline and accessories.
7 Q. Are the location of these three wells effected by the
8 environmental impact statement conducted which en-
9 compassed proposed wells 2340, 2325 and 2343?
10 A. Yes, they are.
11 Q. When was the EIS implemented?
12 A. Again, it was implemented on February 24th, 1988.
13 MR. COUNTS: Mr. Chairman, I request that all testimony from
14 the prior hearing concerning the EIS study be incorporat-
15 ed into this hearing.
16 MR. CHAIRMAN: Any objection? Okay. Without objection.
17 MR. COUNTS: Thank you, sir.
18 Q. (Mr. Counts continues.) Mr. Talbot, has the Forest
19 Service reviewed the proposed locations for wells 2340,
20 2325 and 2343 and indicated that each location is
21 dictated by the development of the Forest Service
22 properties and the environmental impact statement?
23 A. Yes, sir, they have.
24 MR. COUNTS: Mr. Chairman, I would again request that the 1990
25 environmental assessment notice and the 1988 decision

1 notice implementing the 1988 EIS be incorporated into the
2 record.

3 MR. CHAIRMAN: Okay. Without objection.

4 Q. (Mr. Counts continues.) Mr. Talbot, is your professional
5 opinion that these well location exceptions are required
6 in order to safeguard the environment and accommodate
7 other mineral interests and effective land management
8 practices?

9 A. Yes, sir, they are.

10 MR. COUNTS: Mr. Chairman, I have no further questions of Mr.
11 Talbot.

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

13 (Witness stands aside.)

14 MR. CHAIRMAN: All right. Call your next witness.

15 MR. COUNTS: Next witness will be Mr. Dahlin. I remind you
16 that you've previously been sworn, Mr. Dahlin. Mr.
17 Chairman, I would also like to request Mr. Dahlin's
18 qualifications as an expert witness based on prior
19 testimony be accepted in this matter.

20 MR. CHAIRMAN: Okay.

21
22 BOB DAHLIN

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

DIRECT EXAMINATION

BY MR. COUNTS:

Q. Mr. Dahlin, is the primary reason why these location exceptions are being requested by Equitable in order to prevent waste and maximize recovery of these resources?

A. Yes, sir.

Q. In the event these location exception wells are not drilled, can you project the estimated loss of reserves?

A. Again, between 200 and 500 million cubic foot per well.

Q. Should all formations from the surface of the ground to the total depth drilled be covered by any order issued by the Board?

A. Yes, sir.

Q. And would you indicate briefly for the Board what factors make these location exceptions necessary on a well by well basis using the Coeburn field area map, Exhibit C?

A. Again, primarily the topographic considerations, existing pipelines, and water run-off potential damage. These wells are all located on surface structural highs in relatively flat area so as to be located not on steep slopes.

Q. In your professional opinion are there any other feasible locations which will allow these wells to be drilled without requiring a location exception?

1 A. No, there are not.

2 Q. In your opinion will the granting of these location
3 exceptions be in the best interest of prevention of
4 waste, protecting correlative rights, and maximizing the
5 recovery of gas reserves underlying wells 2340, 2325, and
6 2343?

7 A. Yes, sir.

8 MR. COUNTS: Mr. Chairman, I have no further questions of this
9 witness.

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

11 MR. MASON: With respect to 2340, I assume -- is this map
12 oriented north, east, south, west to the square of it?

13 MR. DAHLIN: Approximately. You'll notice the --

14 MR. MASON: Okay. Well, with respect to this well, why
15 couldn't that well just be moved south and a little bit
16 west to avoid that reserve?

17 MR. DAHLIN: I don't believe I understand your question.
18 South and west to avoid --

19 MR. MASON: Well, as I understand it, the only state wide
20 spacing problem is with respect to WS-262, is that
21 correct?

22 MR. DAHLIN: Yes, sir.

23 MR. MASON: Why can't that well be moved south -- what would
24 it take, 130 feet?

25 MR. DAHLIN: Again, it's primarily a topographic considera-

1 tions. It's a little hard to see, but the 400 topo on
2 the far wall indicates that that wall is on a structural
3 feature. Any move south will start to put you over the
4 ridge top and start you down the slopes and again, the
5 drainage will all contribute to the -- again, the
6 detriment of the water resource in the area. It's
7 primarily a topographic consideration.

8 MR. MASON: The reason I was asking this is both this wall and
9 WS-260 are not in State forest land and it would seem
10 that it wouldn't be too hard to move those two wells to
11 get them out of this complex. And then calling your
12 attention again to WS-60, why that one couldn't be moved
13 west, there again you could move it west without en-
14 croaching on Park Service property.

15 MR. DAHLIN: It could be moved west. That particular location
16 is in a hollow. It's not on a ridge top, but it is -- if
17 you can notice how tight the contouring gets directly
18 west of the dot there on 260, you would be on extremely
19 steep topography at point. Any other surface disturbance
20 in there we would feel -- that would contribute directly
21 to the monitoring station on Quarter Branch which is
22 immediately just into the surface.

23 MR. MASON: All the Forest Service.

24 MR. COURTS: All these wells, Mr. Mason, are located in an
25 attempt to be consistent with the Forest Service with

1 regard to their monitoring stations where they are
2 monitoring the quality of water which is going into the
3 gas grubber, subsequently into the clench where there is
4 the potential impact upon the endangered species includ-
5 ing the white water moccasin.

6 MR. MASON: So what you're saying is if you move these into
7 steeper terrain it would have a higher potential for
8 erosion related problems because of the topography?

9 MR. COUNTS: That is correct.

10 MR. DANLIN: Yes, sir. There is only one other feature that I
11 would point out. In that area it would be in the center
12 of the three locations. There's one other ridge top.
13 That's the only other surface location that's available
14 to us to not damage the surface. And currently, as
15 mapped, we would feel that that would have a very high
16 risk to be drilled also. It would preclude the drilling
17 of each of these three locations.

18 MR. MASON: And you think that would be a wasteful use of
19 this area?

20 MR. DANLIN: Absolutely.

21 MR. MASON: Any other questions?

22 (Witness stands aside.)

23 MR. McGLOTHLIN: Mr. Counts, you can direct this to one of the
24 three. In previous hearings we've heard how the impact
25 on the environment is minusculed with this drilling and

1 we have been in situations where the topography has been
2 steeper and a bit more severe than this. And now you're
3 saying that wait a minute, we will impact the environment
4 if we do it there and if we don't do it where we're
5 asking. I see a double standard there.

6 MR. COUNTS: Well, let me suggest, if I may, Mr. McDlothlin,
7 that first off the oil and gas operator is the first
8 party that wants to try to maximize the recovery which
9 means to try to attempt to be consistent with the well
10 spacing patterns as dictated by the State. So the
11 operator has a significant concern and each time one of
12 these wells has to be drilled closer than what existing
13 statewide regulations are, the potential for impacting
14 the reserves is significant and that is extremely
15 detrimental to the operator. Secondly, we do believe
16 that these operations are conducted in an environmentally
17 safe and sound manner. However, what we've attempted to
18 do here -- again, these locations are approved locations
19 as of right now. They have been previously approved.
20 What we are attempting to do is to drill these locations
21 consistent with the environmental impact statement. And
22 even though they are located on private surface, they are
23 nonetheless essentially dictated as a result of the fact
24 that this is totally surrounded by Forest Service
25 property and as you can tell from the map at Exhibit A it

1 is basically in the middle of the environmental impact
2 study area. So there were a number of considerations
3 taken into place. Basically, it was not a question of
4 the fact that the environment would be harmed, but it was
5 a question of trying to minimize the potential environ-
6 mental impact. And these locations according to the NIS
7 and according to the State based upon prior regulations
8 were locations which would minimize the impact upon the
9 environment, be consistent with the efforts of the Forest
10 Service in terms of visual impacts, all the other areas
11 we've gone through, in addition to each of these streams
12 is flowing toward the guest in a west to east manner and
13 every attempt is being made to comply with the Forest
14 Service so that these monitoring stations are not
15 impacted whatsoever and that they continue to monitor the
16 potential impact upon the endangered and threatened
17 species with the minimal impact as possible as result of
18 oil and gas operations.

19 MR. McGLOTHLIN: Would the forester with Jefferson National
20 Forest have any input into the location of these wells?

21 MR. COUNTS: The Forest Service would have no jurisdiction
22 with regard to being able to require that these wells be
23 located here. They are consistent with the environmental
24 impact statement, but the Forest Service could not
25 require -- they can ask, they can suggest, but they

1 cannot require. They don't have that jurisdiction.

2 MR. MCGLOTHLIN: I'll ask that. Was there a suggestion on
3 their part?

4 MR. COUNTS: According to the Forest Service and according to
5 the conversation we had with Mr. McIntyre yesterday these
6 locations were consistent with the environmental impact
7 statement and were dictated by the U.S. Forest Service
8 locations on the U.S. Forest Service properties.

9 MR. MCGLOTHLIN: Was there any suggestion from the Forest
10 Department -- any of their personnel as to the location
11 of these wells?

12 MR. COUNTS: No, sir, there was not. Not that I am aware of.

13 MR. MCGLOTHLIN: Okay. Thank you.

14 MR. COUNTS: I don't believe they would have been involved in
15 this process.

16 MR. CHAIRMAN: Other questions?

17 MR. COUNTS: I would like to request to the Board that the
18 location exceptions for VP-2340, VP-2325 and VP-2343 be
19 approved with respect to the transfer of the existing
20 permit to the transfer to Equitable Resources.

21 MR. EVANS: Mr. Chairman, I make a motion that we accept
22 EREX's petition for permit transfer and for the location
23 exceptions for these three wells.

24 MR. CHAIRMAN: A motion to approve.

25 MR. MASON: Second.

1 MR. CHAIRMAN: Second. All in favor signify by saying yes.
2 [SOME AFFIRM.] Opposed say no. [ONE DENIES.] The
3 motion carries.
4 MR. COUNTS: Thank you, Mr. Chairman and members of the Board.
5 MR. FULMER: For the purpose of clarity on this, in the future
6 applications from BREC for transferring the well I didn't
7 hear as part of 2345 and it may have, and excuse me if
8 they have, but there was an exception asked for from
9 10927?
10 MR. COUNTS: Yes, sir.
11 MR. FULMER: An you're asking for an exception from 10925?
12 What I'm trying to get at, Mr. Chairman, these are
13 existing wells out there that they have not yet filed for
14 transfer of and I want to make sure that the Board when
15 it does approve these petitions also approve those --
16 can also be transferred without having to come back to
17 the Board.
18 MR. CHAIRMAN: Okay. This is docket number VGOB-92/03/17-0203
19 that's being discussed for the record.
20 MR. COUNTS: Mr. Chairman, with respect to the testimony on
21 the location exceptions for VP-2345, it was requested to
22 be an exception from existing well 10006, from proposed
23 well 2346 immediately to the east, and from the well
24 which Mr. Fulmer refers to, 10927 located to the north-
25 west.

ITEM II

1
2
3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 the establishment of a compulsory pooled drilling unit
5 from OXY, USA, Inc. for a CBM V-34, docket number VGOB-
6 92/03/17-0191. I would ask that any parties that wish to
7 address the Board in this matter to come forward,
8 please.

9 MR. SWARTZ: Mr. Chairman, Mark Swartz and Howard Salisbury
10 appearing on behalf of OXY, USA.

11 MR. CHAIRMAN: Are there any others who wish to address the
12 Board on docket number 01917

13 MS. CLEVINGER: Well, I want to address the Board, but I don't
14 know what docket I'm on.

15 MR. CHAIRMAN: Okay. Maybe we can try to help you here.

16 MS. CLEVINGER: Okay.

17 MR. WIRTH: Mr. Chairman, I've looked at the map and she's on
18 Route 624 which is very remote from the units that are
19 going to be talked about all day today. But she has a
20 general statement as to the oil, gas and coal is what she
21 wanted to make to the Board.

22 MR. CHAIRMAN: Ma'am, so that we don't miss -- maybe you would
23 want to come up to the table and as we get into this
24 testimony -- so you can here come on up to the table. At
25 least you can hear better what's going on.

1 MS. CLEVINGER: Okay.

2 MR. CHAIRMAN: Do you have just a general statement that you
3 want to make?

4 MS. CLEVINGER: Yes. I want to make a claim that I own the
5 coal and the gas and the oil on 624. That's Rowe
6 Mountain. And they've been tearing everything I've got
7 up and I just want it stopped. I can't get nothing out
8 of nothing and they're wanting to come in and drill --
9 PerMac is. Now, I don't know if you all connected, but
10 I guess some of you are with PerMac.

11 MR. SWARTZ: No.

12 MS. CLEVINGER: And they are drilling at my neighbors houses
13 and they said that -- I got it from a lawyer that they
14 want to drill on my property. But I want to them and
15 they said they didn't -- wasn't going to do anything on
16 my property. But they drilled a well and they found
17 several seams of coal just going down 400 feet.

18 MR. CHAIRMAN: I need to get your name, ma'am -- your full
19 name.

20 MR. CLEVINGER: Well, could I show the paper?

21 MR. CHAIRMAN: Could I get your name, please?

22 MS. CLEVINGER: Nancy Clevinger.

23 MR. CHAIRMAN: Yes, you say. You may show us the paper.

24 MS. CLEVINGER: I never did do this before. I don't know
25 anything about it.

1 MR. CHAIRMAN: We'll try to help you. The only thing we can
2 discuss today, ma'am, are the cases that are on the
3 agenda. If there is any of your property that is
4 involved in any of the cases today and we can determine
5 that, we'll certainly try to make sure we listen to you.
6 Otherwise, we really can't hear the case that's outside
7 the Board's agenda today.

8 MS. CLEVINGER: Someone just gave me a paper and it said if
9 anybody wanted to make a claim that they owned it to come
10 up here today and that's the reason I came by.

11 MR. CHAIRMAN: Okay. That's for the cases that are involved
12 on the Board's agenda. Now, I'm sure that as you listen
13 to the testimony if you hear anything that involves your
14 property -- from what I'm hearing it appears that it
15 doesn't involve your property. But if it does then we'll
16 listen to what you have to say.

17 MS. CLEVINGER: Well, also I would like to ask all of you,
18 before you mine coal, gas or anything aren't you accord-
19 ing to the Code of Virginia get your consent in writing
20 when they mine under you or get gas or anything from
21 under you?

22 MR. CHAIRMAN: Ma'am, it depends on your leases and -- I mean,
23 those are things that are beyond our jurisdiction, but
24 it would depend on what your lease rights were and the
25 lessee rights of the companies involved. But I would

1 think that courtesy would dictate that you would be
2 contacted.

3 MS. CLEVINGER: Well, nobody has -- never.

4 MR. CHAIRMAN: You're welcome to sit up here where you can
5 hear better and listen to what's going on.

6 MS. CLEVINGER: Okay.

7 MR. CHAIRMAN: Mr. Swartz.

8 MR. SWARTZ: Grant McQuire who represents Ashland asked me to
9 -- and I think he sent the Board a letter to this effect,
10 but asked me to tell you that he will not be appearing in
11 person today. No one will be appearing on behalf of
12 Ashland with regard to this particular unit. And he has
13 requested that the Board consider the written objection
14 which he filed which the Board, I think, will notice is
15 much shorter than the ones we're use to seeing and he
16 asked me to convey those two things. One, that they will
17 not be here and they are simply relying on the written
18 objection and written papers they have filed and I am
19 telling you that as I agreed. The first witness I would
20 like to call is Sam Gordon.

21 CLERK: (Swears witness.)

22
23 SAMUEL EDWARD GORDON, II

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

DIRECT EXAMINATION

BY MR. SWARTZ:

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

A. Samuel Edward Gordon, II.

Q. Where do you live?

A. Tazewell, Virginia.

Q. Who do you work for?

A. I work for OXY, USA, Incorporated.

Q. And do you have a title with OXY?

A. Regulatory affairs coordinator.

Q. Do your duties as regulatory affairs coordinator include the preparation of pooling applications and dealing with the paper work necessary to present pooling applications to this Board?

A. It does.

Q. Did you participate in the preparation of the notice of hearing, the application and the exhibits which pertain to unit B-34 that we're talking about now?

A. I did.

Q. Was a notice of hearing prepared and mailed as required by the Code?

A. It was.

Q. Have you filed a proof of mailing -- two copies of the

1 proof of mailing with this Board?

2 A. Yes, I have. It was filed with Mr. Fulmer's office.

3 Q. And was that identified as Exhibit F7

4 A. It was.

5 Q. Is the only respondent in this application Ashland

6 Exploration?

7 A. That is correct.

8 Q. Did you cause a notice of publication to be filed with

9 regard to this unit?

10 A. Yes, I did, with the Virginia Mountaineer.

11 Q. And on what date was that published?

12 A. February 27th.

13 Q. And have you filed two copies of the certificate of

14 publication with this Board?

15 A. Yes, I did. Again, I sent it to Mr. Fulmer's office on

16 March 3rd.

17 Q. And that would have been marked as Exhibit E?

18 A. That is correct.

19 Q. With regard to this -- some general questions with regard

20 to OXY, USA, is OXY a Delaware Corporation?

21 A. It is.

22 Q. Is OXY authorized, to your knowledge, to do business in

23 the Commonwealth of Virginia?

24 A. It is.

25 Q. Has OXY registered with the Department of Mines, Minerals

1 and Energy and does it have a blanket bond on file with
2 regard to it's oil and gas operations?

3 A. It does.

4 Q. Do you wish to dismiss any respondents or add any
5 respondents to the application that we have filed?

6 A. Not to this application, no.

7 Q. And have you listed -- is the list of respondents set
8 forth in Exhibit B accurate?

9 A. Yes, it is.

10 Q. What is OXY's interest in this unit that causes it to be
11 a claimant in your judgement and gives it standing to
12 make application?

13 A. OXY currently has 100 percent of the coal ownership under
14 lease. We have 10 percent of the oil and gas and --

15 Q. When you say oil and gas, is that coalbed methane
16 specifically?

17 A. That's coalbed methane. And then we have all the oil and
18 gas except for 33.7 percent.

19 Q. I have marked and blown up a little bit the plat map that
20 is on file with the application and you'll notice I have
21 highlighted a portion of it in yellow, do you see that?

22 A. Yes, sir.

23 Q. Is this the tract that Ashland has a lease on that has
24 caused you to notice them and make them a respondent to
25 this forced pooling application?

1 A. That is correct.

2 Q. Essentially it's a tract on the northern northeast corner
3 of the 80 acre unit, correct?

4 A. That is correct.

5 Q. With regard to this tract that we've colored, can you
6 tell me whether or not OXY has a lease covering coalbed
7 methane on that very tract?

8 A. We do have a coalbed methane lease under that tract.

9 Q. And that lease is from the Alpha Stickley heirs?

10 A. That is correct.

11 Q. Does Ashland also have a lease from the same Alpha
12 Stickley heirs with regard to the same tract?

13 A. They do and it covers the oil and gas.

14 Q. So the difference is you have one from them for the
15 coalbed methane specific and Ashland has one for the oil
16 and gas?

17 A. That is correct.

18 Q. With the exception of this one tract where there are
19 conflicting leases -- at least in Ashland's view -- does
20 OXY have coalbed methane leases from the rest of the
21 folks whether they be coal or oil and gas owners?

22 A. That is correct.

23 Q. With regard to the question of what lease terms would be
24 appropriate to be included in any order that might be
25 entered by this Board I would ask you whether or not you

1 are familiar with and have, in fact, participated in
2 negotiations on behalf of OXY to lease both coalbed
3 methane gas rights and coalbed methane and conventional
4 gas rights?

5 A. I am familiar with the terms that we do offer.

6 Q. And what terms does OXY offer with regard to coalbed
7 methane leases in terms of a bonus?

8 A. We're offering \$1 per acre bonus with a one-eighth
9 royalty for a five year term.

10 Q. And in the event that the person you're dealing with has
11 both coalbed methane claims and oil and gas interest,
12 what would the bonus be?

13 A. We have offered up to \$5.

14 Q. And what would the royalty be?

15 A. It would still be a one-eighth royalty and a five year
16 term.

17 Q. And in the event that the Board should enter an order of
18 forced pooling this unit would you recommend that the
19 Board incorporate those lease terms as you have just
20 recited them into any order with regard to election
21 rights?

22 A. Yes, I would.

23 Q. Is this an 80 acre unit?

24 A. Yes, it is.

25 Q. And is it a unit that has been established by a field

1 rule order?

2 A. Yes, it has. The original Oakwood field order.

3 Q. What is the target seam of the development on V-24, Mr.

4 Gordon?

5 A. It would be the Pocahontas 3 seam.

6 Q. And what are the other seams or what are the totality of

7 seams that are sought to be forced pooled by this

8 application?

9 A. It will be all seams below the Tiller seam.

10 Q. And what is the proposed depth of this well?

11 A. 2,050 feet.

12 Q. And was a DWE prepared with regard to this well?

13 A. Yes, it was.

14 Q. And who prepared that?

15 A. I prepared this in conjunction with Mr. VanGolen.

16 (Witness stands aside.)

17 MR. SWARTZ: I'd like to call Glen VanGolen.

18 CLERK: (Swears witness.)

19

20 GLEN VANGOLEN

21 a witness who, after having been duly sworn, was examined and

22 testified as follows:

23

24 DIRECT EXAMINATION

25

1 BY MR. SWARTZ:
2 Q. State your name.
3 A. Glen VanGolen.
4 Q. Where do you live?
5 A. In Tazewell, Virginia.
6 Q. Who do you work for?
7 A. OXY, USA.
8 Q. And what is your title?
9 A. Project manager for the coalbed methane project.
10 Q. Would it be fair to say that you in general have overall
11 supervision with regard to the entire project?
12 A. Yes. That's true.
13 Q. Exhibit C to this application is a detailed well esti-
14 mate. Do you have it before you?
15 A. Yes, I do.
16 Q. Did you prepare this or participate in preparing this?
17 A. Yes, I did.
18 Q. And when was it prepared.
19 A. February 13th, 1992.
20 Q. So within 90 days of today, right?
21 A. Yes, that's right.
22 Q. And the proposed total depth of this well as shown on the
23 DWE is what?
24 A. 2,050 feet.
25 Q. And what is the total projected cost of this well?

1 A. \$247,383.
2 Q. Does that include fracking?
3 A. Yes, it does.
4 Q. Does it include more than one frack?
5 A. Yes. It includes three stimulations.
6 Q. Is it your opinion that the \$247,383 set forth on Exhibit
7 C represents the reasonable projected cost to drill and
8 complete the proposed well to a depth to produce from the
9 Pocahontas #3 seam?
10 A. Yes, it is.
11 Q. With regard to this well and the proposed developed of
12 unit V-34, can you tell me whether or not this well will
13 contribute -- if drilled and if pooled, contribute to the
14 protection of correlative rights of the owners of the
15 methane within and under this unit and lessen the
16 likelihood of both physical waste and economic waste?
17 A. Yes, it will.
18 Q. Is the well that is proposed by OXY, USA for this unit in
19 your judgement a reasonable method to develop the
20 coalbed methane on an economic basis within and under
21 this unit?
22 A. Yes, it is.
23 (Witness stands aside.)
24 MR. SWARTZ: Okay. I'd like to call Steve Breeding for one
25 minute.

1 CLERK: (Swears witness.)

2

3

STEVEN G. BREEDING

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

6

7

DIRECT EXAMINATION

8

9 BY MR. SWARTZ:

10 Q. Could you state your full name for us?

11 A. Steven G. Breeding.

12 Q. And where do you live?

13 A. 171 Hutton Street, Abingdon, Virginia.

14 Q. Who do you work for?

15 A. I'm employed by Island Creek Coal Company.

16 Q. And what is your title?

17 A. My title is coalbed methane coordinator.

18 Q. I assume that you are aware of the fact that the Virginia
19 Code addresses questions of consent by coal owners,
20 lessees, operators before coal seams can be stimulated.
21 Are you familiar with that requirement?

22 A. Yes, I am.

23 Q. I would ask you whether or not you have authority to
24 consent to the stimulation of the coal seams penetrated
25 by and below the Tiller seam?

1 A. Yes.

2 Q. By the proposed well on unit V-34 on behalf of Island
3 Creek Coal?

4 A. Yes, I do.

5 Q. And can you state to the Board whether or not Island
6 Creek does or does not consent to the stimulation
7 proposed and related to the drilling of the well on unit
8 V-34?

9 A. Yes, Island Creek does grant consent to stimulate on
10 V-34.

11 (Witness stands aside.)

12 MR. SWARTZ: That's all I have. I would ask, if there are no
13 questions, that the Board approve our petition as filed.

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

15 MR. MCGLOTHLIN: Mr. Swartz, with Mr. Breeding stipulating the
16 consent, are you going to follow that up with a letter
17 from the president as we did with the previous stipula-
18 tions?

19 MR. SWARTZ: I wasn't planning on it, but if you would want
20 one more piece of paper -- I mean, I'm hopeful that
21 this -- if you want me to do it I will, but I was not
22 planning on doing it.

23 MR. MASON: Mr. Chairman, may I?

24 MR. CHAIRMAN: Mr. Mason.

25 MR. MASON: Kevin, I understand your concern. But I think the

1 Board received a letter from some unknown person and we
2 needed some -- we didn't know who they were or what
3 authority they had. I believe this witness has -- we
4 certainly can take some notice of the fact that he has
5 appeared here on behalf of Island Creek a number of times
6 and certainly appears to be sufficient for the authority
7 to consent. If not, someone would surely --
8 MR. MCGLOTHLIN: I'll yield to Mr. Mason.
9 MR. MASON: And I think that frankly his personal agreement to
10 the stimulation probably would be more satisfactory than
11 some of the written ones.
12 MR. SWARTZ: Thank you.
13 MR. CHAIRMAN: Other questions? What's your pleasure?
14 MR. MASON: May I ask?
15 MR. CHAIRMAN: Mr. Mason.
16 MR. MASON: I was noticing, Mr. Swartz, Exhibit G to your
17 application which is escrow recommendation. Is this not
18 a new document?
19 MR. SWARTZ: Uh, I'm not sure that it is. It's been a while
20 since we've been before you with a traditional --
21 MR. MASON: Maybe that was one that you may have used -- I
22 don't recall seeing this before. I may not have been
23 here. And I was wondering for my edification if you
24 might briefly have one of your people explain.
25 MR. SWARTZ: Sam Gordon would be the person that would -- I

1 wouldn't want to take a whack at that.

2 MR. GORDON: Mr. Mason, we have simply tried to show in this

3 Exhibit G the royalty claimants. We've set out those

4 claiming coal and those claiming the oil and gas and

5 we've shown them to be the royalty claimants. These are

6 the parties that we have -- they basically have 19.91

7 percent of the royalty.

8 MR. MASON: Okay. That's what I was trying to get -- so

9 you're saying they have essentially a claim to 19.91 of

10 the one-eighth?

11 MR. GORDON: Yes.

12 MR. MASON: I see. But none of those are lease related

13 royalties. They all would be --

14 MR. GORDON: They're not to the coalbed methane. They're not

15 to the coalbed methane. They are to the oil and gas and

16 the coal.

17 MR. MASON: I understand that. But they're not -- in other

18 words, when you say royalty this is a landowner's

19 royalty, not any reserve royalties or anything that would

20 encumber this lease?

21 MR. GORDON: (Shakes head in affirmative response.)

22 MR. MASON: That's what I was trying to be sure of. And then

23 the working interest claimants would be the fact that OXY

24 on that one tract and this 33.70, is that a percentage of

25 the working interest?

1 MR. GORDON: That's correct.

2 MR. MASON: Which would be the seven-eighths in this case?

3 MR. GORDON: Yes.

4 MR. SWARTZ: The problem with this exhibit and we have used
5 them sporadically -- I know I seen it before and it's
6 pointed out by Mr. Gordon with the asterisks here and the
7 comment at the point that any guesstament as to this is
8 subject to election rights.

9 MR. MASON: I understand, whether they want to become a
10 participating operator or not.

11 MR. SWARTZ: Right.

12 MR. MASON: I understand that. I think it's helpful to focus
13 on exactly the extent of the conflicting claims. And
14 obviously if there would be additional factors involved
15 if one of these people would get elected to take an
16 interest as a participating operator. Thank you.

17 MR. CHAIRMAN: Thank you.

18 MR. WIRTH: Could I clarify this for the Board?

19 MR. CHAIRMAN: State your name, please.

20 MR. WIRTH: Martin E. Wirth with OXY, USA as project land
21 manager. Exhibit G initially started out as a plan for
22 escrowing for the Board. We developed a plan of escrow-
23 ing with the Board because an escrow agent was being
24 tried to be developed.

25 MR. CHAIRMAN: Right.

1 MR. WIRTH: Normally the plan of escrow is with the escrow
2 agent. You will see Exhibit G really basically on the
3 file after now on the new Board procedures. Sixty days
4 after election we must provide the disputed claim and
5 that's really what Exhibit G is I have provided to the
6 executive of the staff sixty days after election --
7 within sixty days. And at this point we were just
8 showing you for the Board's information basically -- this
9 is what your escrow agent will see, but you won't have
10 the asterisks. We'll know whether it's a working
11 interest or a royalty interest.

12 MR. MASON: I think it's very helpful because it focuses very
13 clearly on what the claimants are and what portion they
14 have and the effect of which ever way the claims go.

15 MR. SWARTZ: I think Marty's point is we ought to consider
16 that we have been for some considerable period of time
17 filing with the Board an indication of who has elected to
18 what. That's kind of a clean up and that will obviously
19 be what gets to the escrow agent. This is helpful in
20 sense if it shows what is potentially in play, but then
21 we file a subsequent document which --

22 MR. MASON: I understand. That's actually in the form of an
23 affidavit.

24 MR. SWARTZ: Right. It has been. Correct.

25 MR. MASON: Thank you.

1 MR. CHAIRMAN: Any other questions? If not, what's your
2 pleasure?
3 MR. EVANS: I make a motion that we grant OXY's petition for
4 a compulsory pooled drilling.
5 MR. CHAIRMAN: Motion to approve.
6 MR. EVANS: Also noting Ashland's written objection.
7 MR. MCGLOTHLIN: Second.
8 MR. CHAIRMAN: A motion and a second. All in favor signify
9 by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
10 The motion carries.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ITEM III

1
2
3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 the establishment of a compulsory pooled drilling unit
5 from OXY, USA, Incorporated for a CEM V-35 and this is
6 docket number VGOB-92/03/17-0192. I would ask any
7 parties that wish to address the Board in this matter to
8 come forward, please.

9 MR. SWARTZ: Again, Mark A. Swartz and Howard Salisbury
10 appearing for OXY.

11 MR. CHAIRMAN: Would you state your name, please, sir?

12 MR. OSBORNE: Estel Osborne.

13 MR. CHAIRMAN: Would you state your name, ma'am?

14 MS. DAVIS: Jessie Davis.

15 MR. CHAIRMAN: Do you have a statement you want to make Ms.
16 Davis?

17 MS. DAVIS: Yes, sir. I just want to name a change from
18 Wilderness Tabernacle Baptist Church. It's Wilderness
19 Tabernacle Holiness Church.

20 MR. CHAIRMAN: Okay. Thank you. Mr. Osborne.

21 MR. OSBORNE: I'm for the Rosie Osborne property. And I would
22 just like to find out how many wells is going to be on
23 that property and if there is going to be a gas line
24 across it or whatever.

25 MR. CHAIRMAN: Okay. Maybe we can discover that as we listen

1 to the testimony.

2 MR. SWARTZ: Well, we can probably do it right now.

3 MR. CHAIRMAN: Okay.

4 MR. SWARTZ: We're talking about one well at this point. But
5 in terms of flow lines we're looking at V-35. Your
6 surface is down here, isn't it or is it?

7 MR. WIRTH: This is Curtis' surface in oil and gas.

8 MR. OSBORNE: I adjoin him. I adjoin Curtis down here.

9 MR. WIRTH: Here's another surface. Here's Jewell surface.
10 Here's Wildness owns a surface in oil and gas over here.

11 MR. SWARTZ: Well, the well in this unit --

12 MR. WIRTH: Is five feet from right here, Mr. Osborne. I
13 believe it is if I'm thinking right.

14 MR. SWARTZ: It's part of the Hurt McQuire, so it's got to be
15 down here. As best we can figure out the Rosie Osborne
16 tract is -- or the interest that we are force pooling
17 here and the reason we sent out this notice is an
18 undivided interest in the Hurt McQuire, Marty, or is it?

19 MR. WIRTH: I'm Marty E. Wirth for OXY, USA. The Hurt McQuire
20 interest, they own coal only. We have a methane lease
21 from just the coal owner. Rosie Osborne owns the oil and
22 gas under that tract.

23 MR. OSBORNE: She owns under that on the --

24 MR. WIRTH: Right. The Hurt McQuire heirs only own coal and
25 she owns the gas under there -- the oil and gas rights to

1 it. Therefore, she has a claim to the methane. There-
2 fore in order to protect all interests we're pooling all
3 parties and that money will be escrowed.

4 MR. SWARTZ: To answer which was where is the well in relation
5 to her interest, her interest is down in the bottom half
6 of the unit and the well, as you can see, is in the upper
7 corner.

8 MR. OSBORNE: All right. Is there going to be a line come
9 across the Davis property all the way across her's?

10 MR. SWARTZ: I really don't know. Do you know what the
11 line --

12 MR. WIRTH: Yes. That is the very southern boundary of the
13 Oakwood field we're developing. All lines will be going
14 to the north, northeast, northwest or something -- 460
15 runs pretty close down here. We will not be going south.
16 We will be going up. So if you own the surface down here
17 we do not believe at this time we'll be effecting your
18 surface. If so we will contact you to let you know that.
19 But I believe all the contacts have been made. So it
20 must be going north at this time, but I'll have one of
21 our engineers check it out and get with you.

22 MR. OSBORNE: Okay. What I was wanting to know, there's a
23 bunch of good timber on there and we're going to try to
24 get it off before they go across there with the line.

25 MR. WIRTH: I don't believe our lines will cross you. Our

1 access road is shown here. What surface will be deserve
2 will be coming across the Hurt McQuire and Alpha Stickley
3 heirs which is north of your tract quite a distance. It
4 looks like it is approximately -- depending on where your
5 line is here, Mr. Osborne, it's a distance away -- it
6 looks like roughly at scale it would probably be 700, 750
7 feet away because this circle represents 750 feet and it
8 just barely gets over on Curtis's property. Therefore,
9 all the timber that may be disturbed will be in this area
10 right.

11 MR. OSBORNE: We're on the north side of Curtis Davis.

12 MR. CHAIRMAN: Mr. Wirth, can you get with him or have some
13 of your folks get with Mr. Osborne after the hearing and
14 show him what your plans are?

15 MR. WIRTH: We'd be more than happy to. If we could have your
16 phone number I'll even set up a time and day where
17 someone can meet with you and show you what our operation
18 plans are going to be in that area.

19 MR. OSBORNE: Well, I'm out of state and I just came up here
20 today for this from North Carolina.

21 MR. WIRTH: Mr. VanGolen and myself would be more than happy
22 to answer your questions or get on the telephone and try
23 to answer your questions and we'll be able to show you a
24 map of our operations and send it to you via map.

25 MR. OSBORNE: Okay. Do that and then maybe I can know more

1 about it.

2 MR. WIRTH: Okay.

3 MR. CHAIRMAN: You can feel free to stay up here if you hear
4 anything that concerns you as we go forward with this.

5 Mr. Swartz.

6 MR. SWARTZ: I'd like to call Mr. Gordon.

7

8 SAMUEL E. GORDON, II

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

11

12 DIRECT EXAMINATION

13

14 BY MR. SWARTZ:

15 Q. I'll remind you that you are still under oath.

16 A. Yes, sir.

17 Q. You need to state your name again for us.

18 A. Samuel E. Gordon, II.

19 Q. Where do you live?

20 A. Tazewell, Virginia.

21 Q. Who do you work for?

22 A. OXY, USA, Incorporated.

23 Q. And what is your title with OXY?

24 A. Regulatory Affairs Coordinator.

25 Q. And what responsibilities, if any, do you have insofar as

1 they pertain to the application that we're hearing today?

2 A. The preparation of the paper work and putting together

3 the notifying and publishing of the application.

4 Q. Were you, in fact, involved in and did you discharge

5 those responsibilities with regard to unit V-35 that's

6 the subject of this application?

7 A. I did.

8 Q. Is OXY, USA a Delaware Corporation?

9 A. It is.

10 Q. Is it authorized to do business in the Commonwealth of

11 Virginia?

12 A. It is.

13 Q. Is it registered with the Department of Mines, Minerals

14 and Energy and does Oxy have a blanket bond on file

15 covering it's oil and gas operations?

16 A. It does.

17 Q. Who are the respondents that are subject to this forced

18 pooling application?

19 A. Ashland Exploration, Inc., Wilderness Tabernacle Holiness

20 Church and R. Osborne.

21 Q. Did you cause notice to be mailed to all these respond-

22 ents?

23 A. Yes, I did.

24 Q. Have you filed two copies of the proofs of mailing with

25 Mr. Fulmer's office?

1 A. Yes, we did.

2 Q. Did you also cause a notice to be published?

3 A. Yes, we did.

4 Q. In what newspaper?

5 A. In the Virginia Mountaineer.

6 Q. And on what date or dates was that published?

7 A. February 27th, 1992.

8 Q. And have you filed an Exhibit E, the certificates of

9 publication?

10 A. Yes, I have.

11 Q. This proposed well with regard to unit V-35, what is it's

12 target seam?

13 A. The Pocahontas #3.

14 Q. And what interest in coalbed methane or what seams and

15 interest are sought to be forced pooled by this applica-

16 tion?

17 A. All of the seams below the Tiller.

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

19 A. 2,050.

20 Q. And what is the estimated cost that's shown on the

21 application?

22 A. \$247,383.

23 Q. Do you wish to amend your application to either add any

24 respondents or to dismiss any respondents?

25 A. No, we do not.

- 1 Q. Are you familiar with the terms that OXY, USA and perhaps
2 other oil and gas operators are offering for both coalbed
3 methane lease terms and coalbed methane and conventional
4 oil and gas lease terms in this part of the Commonwealth?
- 5 A. For coalbed methane it's \$1 bonus, one-eighth royalty for
6 a five year term lease.
- 7 Q. And with regard to acquiring a lease where there's both a
8 lease taken for both the coalbed methane and the oil and
9 gas generally?
- 10 A. They are the same except it will range around \$5 an acre.
- 11 Q. For the bonus?
- 12 A. Right.
- 13 Q. In the event that the Board should approve this applica-
14 tion to force pool unit V-35 would you recommend that the
15 election rights afforded in that order in terms of the
16 provision that people who do not elect or deemed too
17 lease that the lease terms as fixed by the Board include
18 terms similar to those that you have just testified to
19 regarding coalbed methane leases as specifically a \$1
20 bonus, a one-eighth royalty, and a five year terms?
- 21 A. I would, yes.
- 22 Q. How many does this unit contain?
- 23 A. 80 acres.
- 24 Q. And is it in an established field subject to field rules?
- 25 A. It's in the Oakwood Field under the original field rules.

1 Q. The ones that were promulgated in May, 1990?

2 A. Right.

3 Q. Is there an Exhibit C or DWE that has been submitted with

4 the application?

5 A. Yes, there is.

6 Q. And who prepared it?

7 A. I prepared it in conjunction with Mr. VanGolen.

8 Q. And what was the date on which it was prepared?

9 A. February 17th, 1992.

10 Q. It that within less than 90 days of today's date?

11 A. Yes, it is.

12 Q. With regard to -- you're aware of the fact that Ashland

13 is a respondent and that Ashland has filed an objection?

14 A. Yes.

15 Q. I would repeat what Mr. McQuire has asked me to tell you.

16 That is neither he nor Ashland will appear today and they

17 are standing on their written objection which I believe

18 is on file with you all. On a copy of the plat map that

19 we filed I have highlighted in yellow a tract and I would

20 ask you whether or not that is the tract that causes or

21 has caused you to join Ashland as a respondent?

22 A. Yes, it is.

23 Q. And what's the state of the lease or leases as between

24 OXY and Ashland with regard to the tract that we've

25 highlighted?

1 A. The tract that you've highlighted is the Alpha Stickley
2 heirs tract. Ashland currently holds an oil and gas
3 lease on this tract and OXY has the coalbed methane
4 rights under this tract.

5 Q. Okay. Both leases being from the same lessors?

6 A. That's correct.

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

8 MR. MASON: I'd like to ask, with regard to the notice to the
9 Wilderness Tabernacle Church, how was notice given? Who
10 was it given to?

11 MR. GORDON: It was sent to the Wilderness Tabernacle Baptist
12 Church, Star Route Box 113. We didn't have any particu-
13 lar parties.

14 MR. MASON: Was it Lois Osborne?

15 MR. GORDON: Our returned receipt was signed by Lois Osborne
16 on February 19th, 1992.

17 MR. CHAIRMAN: Ms. Davis, is that person a member of the
18 church or someone that would be authorized to receive
19 that notice?

20 MS. DAVIS: Yes, sir.

21 MR. CHAIRMAN: Okay.

22 MR. MASON: Are you satisfied that the church got notice and
23 you don't object to the name change?

24 MS. DAVIS: No. I know we got notice. I just wanted it
25 cleared up that it was the Holiness Church instead of

1 Baptist.
2 MR. MASON: I understand. And you have objection of notice on
3 that basis, do you?
4 MS. DAVIS: No.
5 MR. MASON: Thank you.
6 MR. CHAIRMAN: Thank you, Mr. Mason. We would also need to
7 get Exhibit B amended on the parties respondent just to
8 show this correction.
9 MR. MASON: The Clerk's Office have those trustees on record
10 or are suppose to if they exist. You might want to --
11 MS. DAVIS: I'm one of the trustees also.
12 MR. CHAIRMAN: Okay. Thank you.
13 MR. MASON: Did the record reflect that Ms. David told the
14 Board that she is a member of the trustees of the church?
15 COURT REPORTER: Yes.
16 MR. MASON: Thank you.

17 (Witness stands aside.)
18

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

23 DIRECT EXAMINATION
24
25 BY MR. SWARTZ:

1 Q. Mr. VanGolen could you state your name for us again?
2 A. Glen VanGolen.
3 Q. I will remind you that you're still under oath, do you
4 understand that?
5 A. I do.
6 Q. Where do you live?
7 A. Tazewell.
8 Q. Who do you work for?
9 A. OXY, USA.
10 Q. And what is your title?
11 A. Project Manager for the coalbed methane project.
12 Q. I'm showing you Exhibit C which was filed with regard to
13 this unit V-35. I would ask you whether or not you
14 prepared Exhibit C?
15 A. Yes, I did.
16 Q. What is the target formation or target coal seam of this
17 proposed well?
18 A. The Pocahontas #3 seam.
19 Q. What is the total depth that's proposed?
20 A. Again 2,050.
21 Q. Is this proposed as opposed to actually already drilled?
22 A. It's proposed. It's not already drilled.
23 Q. And what is the estimated cost in your view to drill and
24 complete the proposed well to the Pocahontas #3 seam?
25 A. \$247,383.

- 1 Q. Does that figure represent a reasonable estimate as to
2 the probable cost to drill and complete this well to a
3 depth of 2,050 feet?
4 A. Yes, it does.
5 Q. Is it your opinion that this well if drilled and if the
6 pooling proceeds or the application is granted will serve
7 to protect correlative rights to prevent both economic
8 and physical waste?
9 A. Yes, it will.
10 Q. Is it your opinion that this proposed well and the
11 proposed development of unit V-35 is a reasonable method
12 to be used to develop the coalbed methane resource under
13 and within that unit?
14 A. Yes, it is.

15 (Witness stands aside.)

16 MR. SWARTZ: I'd like to call Mr. Breeding for one minute
17 again.
18

19 STEPHEN G. BREEDING

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

23 DIRECT EXAMINATION
24

25 BY MR. SWARTZ:

1 Q. I need you name again.
2 A. My name is Steve Breeding.
3 Q. You are still under oath.
4 A. Yes, I understand.
5 Q. Where do you live?
6 A. In Abingdon and I work for Island Creek Coal Company in
7 the position of Coalbed Methane Coordinator.
8 Q. Specifically my question for you is whether or not you
9 have authority to represent on behalf of Island Creek
10 that OXY has consent to stimulate the coal seams below
11 the Tiller that would be stimulated through this proposed
12 well. Do you have the authority to make that representa-
13 tion to the Board?
14 A. Yes, I do.
15 Q. Can you tell the Board whether or not Island Creek
16 authorizes or consents to the stimulation of one to three
17 coal seams as proposed in the DWE and as proposed with
18 regard to the well shown on the plat for this unit?
19 A. Island Creek does grant that stimulation consent for
20 V-35.
21 MR. SWARTZ: Thank you. That's all I have.
22 MR. CHAIRMAN: Questions, members of the Board?
23 (Witness stands aside.)
24 MR. CHAIRMAN: Could you go over the escrow recommendation at
25 Exhibit G, please? We have a question particularly about

1 Curtis T. Davis showing escrow and then also on the plat
2 showing to be a lessee.

3 MR. SWARTZ: I'm sorry, Mr. Chairman, the first part of the
4 question about who now?

5 MR. CHAIRMAN: Curtis T. Davis that's listed on the escrow
6 recommendation in Exhibit G. The last one showing 52.17
7 percent royalty interest.

8 MR. WIRTH: Tract 4 consists of the John Hurt and James M.
9 McQuire heir trustees. They own the coal only. James M.
10 Perry, et al are the trustees of the Hurt McQuire trust
11 which on a royalty interest we have a coalbed methane
12 from this trust and also we have a coalbed methane lease
13 from Curtis Thurman Davis. Each of them have a claim to
14 the royalty interest. Each coal owner has a claim of
15 52.17 percent. The oil and gas has the same claim to
16 that 52.17 percent. Therefore, one-eighth royalty times
17 52.17 would be escrowed as a disputed claim with the
18 escrow agent.

19 MR. CHAIRMAN: Rosie Osborne, is that -- Mr. Osborne, is that
20 person that you are appearing on behalf of Rosie Osborne?

21 MR. OSBORNE: Yes.

22 MR. CHAIRMAN: Mr. Wirth, would you state Exhibit G and what
23 means to Rosie Osborne?

24 MR. WIRTH: Tract 3 which is Exhibit A, again the coal is
25 owned by the trust or the Hurt McQuire trust as we refer

1 to with James N. Perry, et al as the trustee. We have a
2 coalbed methane lease from the coal owners. Rosie
3 Osborne owns the oil and gas under that same tract.
4 Therefore, they'll have a disputed claim of .24 percent
5 of the one-eighth which shall be escrowed with the escrow
6 agent.

7 MR. CHAIRMAN: Any further questions?

8 MR. MCGLOTHLIN: Mr. Chairman, I move that we accept OXY's
9 application to force pool noting the objections by
10 Ashland.

11 MR. CHAIRMAN: Okay. I have a motion to approve.

12 MR. EVANS: Second.

13 MR. CHAIRMAN: A motion and a second. All in favor signify
14 by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
15 It's unanimous.

1 ITEM IV

2 MR. CHAIRMAN: The next item on the agenda a petition for the
3 establishment of a compulsory pooled drilling unit from
4 OXY, USA, Incorporated for CBM R-13. This is docket
5 number VGOB-92/03/17-0193.

6 MR. SWARTZ: Mark A. Swartz and Howard Salisbury appearing for
7 OXY, USA are pleased to inform the Board that OXY has
8 worked up a voluntary arrangement with the two respond-
9 ents, Mr. Raymond Street and Gerald McClanahan, and we
10 can therefore dismiss this petition -- or we would move
11 to dismiss it.

12 MR. CHAIRMAN: Any objection? The motion to dismiss accepted.
13
14
15
16
17
18
19
20
21
22
23
24
25

ITEM V

MR. CHAIRMAN: The next item on the agenda is a petition for the establishment of a compulsory pooled drilling under 45.1-361.22 from OXY, USA, Incorporated for CBM R-14. This is docket number VGOB-92/03/17-0194.

MR. SWARTZ: Mark A. Swartz and Howard Salisbury appearing for OXY, USA. Again, the only two respondents on docket number 92/03/17-0194 are Mr. Raymond Street and Gerald McClanahan. OXY has reached a voluntary agreement with both of the respondents and OXY would move to dismiss it's application with regard to unit R-14.

MR. CHAIRMAN: Is there anyone else in the room wishing to address the Board in this matter? Any objection? The motion to dismiss is granted.

ITEM VI

1
2
3 MR. CHAIRMAN: The next item on the agenda a petition for the
4 establishment of a compulsory pooled drilling unit from
5 OXY, USA, Incorporated for CBM S-13, docket number VGOB-
6 92/03/17-0195.

7 MR. MCGLOTHLIN: Mr. Chairman, I have a conflict of interest
8 on this unit S-13, S-14. T-13 and T-14 and would have
9 to -- feel compelled to remove myself from the Board for
10 these hearings.

11 MR. CHAIRMAN: Okay. For the record, when that occurs the
12 majority of the Board rules.

13 MR. MCGLOTHLIN: I'm stepping away from the table.

14 MR. CHAIRMAN: Fine. Anyone in the room wishing to address
15 the Board regarding docket number VGOB-92/03/17-0195?
16 Mr. Swartz.

17 MR. SWARTZ: Mark A. Swartz and Howard Salisbury appearing for
18 OXY. Some housekeeping matters that might easier to
19 start with before we get into the testimony. You will
20 notice that Gerald W. McClanahan and Raymond J. Street
21 were respondents. We would move to dismiss them as
22 respondents from this application. Exhibit B should be
23 amended to remove -- and we will file a written amendment
24 subsequent to the hearing that reflects this -- but
25 Exhibit B should be amended with regard to tract 1 to

1 simply delete the two owners shown there, Mr. Gerald
2 McClanahan and Mr. Raymond Street, and the amended one
3 you will get will just show nothing at all with regard to
4 tract 1. And tract 4 on Exhibit B also needs to be
5 amended. And once we dismiss Mr. Street and Mr. Mc-
6 Clanahan they are the only two owners listed with regard
7 to tract 4 and they will disappear. We do not plan on
8 filing a written amendment, but you need to bear in mind
9 that once we have reached an agreement with those
10 Gentlemen Exhibit A, Page 3 which deals with interests
11 outstanding obviously the percentages would change. The
12 other thing and we do have these amendments and can file
13 them with you today, this is additional housekeeping
14 with regard to the disappearance of McClanahan and Street
15 because of our agreement. Page 3 of Exhibit G which
16 shows the division of interests attributable to each
17 respondent in each longwall panel -- the two spread sheet
18 charts that look like this, We have ten copies each of
19 an amendment to Page 3 and Page 4 which Mr. Gordon is
20 pulling out right now and he will file ten copies with
21 the Board. What those amendments accomplish are under
22 tract 1. Instead of seeing those two gentlemen you will
23 see none. And under tract 4 instead of seeing those two
24 gentlemen you will see none with regard to both of these
25 longwall panels. And that's the housekeeping with regard

1 to the dismissal of those two respondents. While we're
2 talking about dismissing and adding, Mr. Gordon, could
3 you state your name for the record?
4 MR. GORDON: Samuel Edward Gordon, II.
5 MR. SWARTZ: Just with regard to this before we get into your
6 testimony, do you wish to dismiss anyone else beyond
7 these two gentlemen at this point?
8 MR. GORDON: No, we do not.
9 MR. SWARTZ: Do you wish to add anyone at this point?
10 MR. GORDON: No, we do not.
11 MR. SWARTZ: Before we start the testimony, if I could take a
12 minute or two to tell you where we're headed here so that
13 you know in advance it might make things go a little
14 easier. I think the place to start is if you would turn
15 to Exhibit G, Page 1, which is a map of a group of units
16 and it shows the two longwall panels that are under
17 consideration. Essentially what we have done -- of
18 course, we've dismissed several of them because we have
19 voluntary agreements now. But essentially what we have
20 done is we have taken the eight units which pertain to
21 the two longwall panels, 9-D and 10-D, and are effected
22 by those two longwall panels and the wells that are
23 contained in those two longwall panels and we will
24 discussing the total costs associated with those wells
25 and we will be discussing -- when you see the division

1 orders and so forth with regard to the various longwall
2 panels essentially what we are doing with regard to the
3 respondents with regard to each one of these units under
4 consideration is we are taking the respondents, meaning
5 people that we do not have a voluntary agreement with,
6 and we are calculating according to the formula that we
7 discussed and presented when we were here on the field
8 rules with regard to active gob which is really what
9 we're talking about here because there isn't any short
10 hole production contemplated at this point from these two
11 panels, but with regard to active gob we are utilizing
12 the formula that we've discussed to prorate both produc-
13 tion and costs should they elect to participate based on
14 the percentage of the panel or panels in the unit. And
15 as you go through Exhibit G, for example the second page
16 of Exhibit G, lists and shows the wells on the particular
17 units in the two panels and the surface costs associated
18 with those wells. And then the bottom section on G --
19 and there will be testimony but just to give you a feel
20 of where we're going, in terms of someone wanting to
21 participate as an participate in unit S-13, the one that
22 we're talking about, you would look to the listing for
23 unit S-13 which is 35 percent of the panels in that unit
24 times the total cost of development in that unit and it
25 gives you the unit cost associated to the unit with

1 regard to that panel. Then to calculate what someone
2 would have to contribute to participate you would simply
3 turn the page and you'll see that the next page, Exhibit
4 G, Page 3, and it shows a division of interest in the far
5 right hand column and you would take whatever division of
6 interest is reported there and multiply it times the cost
7 associated with the panel and that would be the capital
8 contribution that would be required to participate or
9 would generate the number in terms of the participation
10 interest if you elected to be carried. So that the
11 application of the formula which we went through -- I
12 guess it was several months ago now -- in the application
13 for field rules dealing with active gob. But that is how
14 it works. And there are two Exhibit G, Page 3s -- well,
15 there's a Page 3 and a Page 4. The reason there are two
16 is because we are dealing with two longwall panels here
17 and the amount of the panel in the various units is
18 different. So you will wind up with a different division
19 of interest and you make the same calculation again for
20 S-13 with regard to the second panel in terms of contrib-
21 ution or carried interest. The other thing that I want
22 to alert you to before we start and then we'll go into
23 the testimony, we are also going to request that we be
24 allowed to amend our application to provide in the
25 petition that we are seeking to have Island Creek

1 designated as designated operator. Our petition as filed
2 requested that the Board appoint OXY, USA as designated
3 operator and we are verbally amending or requesting that
4 Island Creek be designated operator for reasons that
5 there will be testimony with regard to. And the last
6 thing with regard to that, OXY, USA would continue to
7 have the working interest or at least as of today as the
8 working interest and would continue -- and the working
9 interest would not be transferred to Island Creek, but we
10 are asking that Island Creek be designated as the
11 designated operator for the operation of this well which
12 obviously penetrates and enters an Island Creek mine. So
13 I'm going to alert you that that request for amendment --
14 that you will be likely to hear that. I'd like to start
15 again with asking some questions -- based on what I've
16 just told you, I'd like to start with Mr. Gordon.

17 MR. CHAIRMAN: I just want to make sure that if there's anyone
18 else in the room that wishes to address the Board in this
19 matter, would you please come forward and identify
20 yourself. There are none.

21 MR. MASON: I'm just curious as to whether the change in the
22 designated operator has increased any notice problems
23 related in this.

24 THE CHAIRMAN: I think a lot depends on what he -- he's kind
25 of recapping what he's planning to ask us and testify to

1 and maybe we'll discover that when we hear what he has to
2 say if that's acceptable to you.

3 MR. MASON: Okay. Sure.

4 MR. MCGLOTHLIN: Concerning the regard of a corium present at
5 your meeting, I don't think that the Board would have the
6 standing to set on these hearing without the corium.

7 MR. CHAIRMAN: Where you dismissed yourself due to substantial
8 conflict of interest the forum exists whenever we have a
9 majority rule.

10 MR. CHAIRMAN: And I'd defer it to our attorney Zane Scott.

11 MR. SCOTT: What he's saying with respect to the statue,
12 Kevin, is that in the situation where you a dismissal
13 from the Board for conflict of interest, willing as in
14 your case and non-willing if someone had been challenged,
15 if that causes the Board to go below a corium then a
16 corium -- you can't defect a corium, in other words, by
17 conflicting someone off of the Board. The corium still
18 exists and the controlling interest would be a majority
19 of the people setting, the majority of the people left.
20 That's set forth in the statue.

21 MR. MASON: So what that means is you're here for the purposes
22 corium or otherwise not. I just couldn't resist.

23 MR. CHAIRMAN: He'll get even with you.

24 MR. MASON: I didn't mean to trampled on the Attorney General
25 or the Chairman's toes, but I was afraid he would get

1 away before I got that in.

2 MR. CHAIRMAN: I'm sure Kevin will return volley. Okay.

3 Proceed, please.

4 MR. SWARTZ: I'd like to call Samuel Gordon again.

5

6 SAMUEL EDWARD GORDON, II

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

9

10 DIRECT EXAMINATION

11

12 BY MR. SWARTZ:

13 Q. You need to state your name for the record.

14 A. Samuel E. Gordon, II.

15 Q. Let me remind you that you are under oath.

16 A. Yes.

17 Q. Where do you live?

18 A. Tazewell, Virginia.

19 Q. Who do you work for?

20 A. OXY, USA, Inc.

21 Q. What is your title?

22 A. Regulatory Affairs Coordinator.

23 Q. Tell the Board what involvement you had in this notice of
24 hearing and application and the exhibits regarding unit
25 S-13.

1 A. My primary function was to prepare the exhibits, to
2 prepare the notice of hearings and the mailings, publica-
3 tions, and to prepare the application.
4 Q. It sounds to me like you did all the documents.
5 A. I did.
6 Q. Okay. In the notice of hearing there is a list of
7 respondents totally some 32 people. Do you see that?
8 A. Yes, sir.
9 Q. Other than dismissing Gerald McClanahan and Raymond
10 Street and I think we've previously moved to do that, we
11 have filed an amended Exhibit B and amended division
12 order portion of Exhibit G with regard to them. Is there
13 anyone else that you want dismissed from the list of
14 respondents at this point?
15 A. Not at this point.
16 Q. Is there anyone else that you're aware of who should be
17 added to the list of respondents at this time?
18 A. Not that I am aware of.
19 MR. CHAIRMAN: Mr. Swartz, excuse me a second. The amended
20 Exhibit B references docket number 0193 on these first
21 two pages. Should it be 0195?
22 MR. GORDON: Yes, it should.
23 MR. SWARTZ: It should be 0195.
24 MR. SWARTZ: Oh, the first page is 0195 and all the rest of
25 the pages are 0193. If you will just leave them on the

1 table we'll fix them at lunch. How's that? Do you see
2 what I mean, Mr. Chairman? I think the first page shows
3 0195.

4 MR. GORDON: We took that off.

5 MR. SWARTZ: Oh, it did. Okay. So all the numbers you have
6 are wrong and it should be 0195 and we'll fix it at
7 lunch.

8 MR. CHAIRMAN: Okay.

9 Q. (Mr. Swartz continues.) With regard to this application
10 and notice of application, did you cause both the notice
11 of application and the application and the small map,
12 Exhibit A-1, to be mailed to all of the respondents?

13 A. Yes, we did.

14 Q. And how was it mailed?

15 A. Registered mail, return receipt requested.

16 Q. And have you filed proofs of mailing with Mr. Fulmer's
17 office?

18 A. Yes, we have.

19 Q. And you filed two copies as Exhibit F?

20 A. Yes.

21 Q. With Mr. Fulmer's office?

22 A. That's correct.

23 Q. Did you also cause a notice to be published in the
24 newspaper with regard to this unit?

25 A. Yes, we did. We had it published in the Virginia

1 Mountaineer.

2 Q. And on what date was it published?

3 A. February 27th I believe is correct. February 27th, 1992.

4 Q. Okay. And have you filed proofs of publication -- two

5 proofs of publication as Exhibit E with Mr. Fulmer's

6 office?

7 A. Yes, we have.

8 Q. Is OXY a Delaware Corporation authorized to do business

9 in the Commonwealth of Virginia?

10 A. Yes, it is.

11 Q. And has OXY have a blanket bond on file with regard to

12 it's oil and gas operations in the Commonwealth and is it

13 registered with the DMME?

14 A. Yes, it is.

15 Q. With regard to the various interests in this unit, first

16 of all there are two plats attached as Exhibit A, Page 1,

17 and Exhibit A, Page 2. Do you see that?

18 A. Yes.

19 Q. And are there two plats because there are two vertical

20 ventilation holes or wells that will within this 80 acre

21 unit?

22 A. That is correct.

23 Q. And do the two plats, A Page 1 and A Page 2, show the

24 location of the two well bores?

25 A. Yes, they do.

1 Q. With regard to OXY's interest in this unit and if we go
2 to Exhibit A, Page 3, as a summary, could you tell the
3 Board what interest OXY has under lease or has an
4 ownership interest in and what interest they do not have
5 under lease?

6 A. As to the coal OXY has 100 percent under lease. With the
7 agreement with Street and McClanahan we now have -- we
8 have everything except 13.04 percent of the oil and gas.

9 Q. And there is a surface interest or designation on Exhibit
10 A, is there not?

11 A. Yes, there is.

12 Q. And why have you included surface owners in this applica-
13 tion or as respondents to this application?

14 A. The surface owners on this particular tract did assert a
15 claim in standing for the coalbed methane.

16 Q. In other words, they've told you they're claiming it?

17 A. That's correct.

18 Q. With regard to the plat map that's on file with the
19 Board, are the surface owner claims related to the tract
20 that we have colored yellow, tract 5?

21 A. Yes, it is.

22 Q. And that is the 6.88 percent of the unit?

23 A. Yes, sir.

24 Q. Would you summarize for the Board the lease terms that
25 OXY regularly offers to people who own oil and gas

1 interests in an attempt to obtain leases on a voluntary
2 basis, first with regard to coalbed methane only and then
3 coalbed methane combined with oil and gas rights general-
4 ly?

5 A. OXY normally offers on coalbed methane a bonus considera-
6 tion of \$1 per acre with an one-eighth royalty provision
7 for a term of five years. As to the oil and gas, it's
8 the same except we do extend \$5 per acre bonus.

9 Q. And would you recommend that the Board incorporate those
10 terms and provisions in any order it might enter with
11 regard to election rights?

12 A. Yes, I would.

13 Q. How many acres are in this unit?

14 A. There are 80 acres in this unit.

15 Q. Is this unit subject to a field order?

16 A. Yes, it is.

17 Q. And what order would that be?

18 A. The Oakwood Field rules number two.

19 Q. Which was the subject of a hearing and the Board granted
20 the application but as of yet we do not have a written
21 order?

22 A. That is correct.

23 Q. And that hearing would have been held -- well, was in
24 regard to what petition?

25 A. Petition VGOB-91/11/19-0162.

1 Q. What is the type of production that will be occurring
2 from this unit?
3 A. This production is what is commonly termed unsealed gob
4 production.
5 Q. Will there be any fracking of an coal seams with regard
6 to this well bore -- the two well bores on this unit?
7 A. No, there will not.
8 Q. So that consent to frack would not be required since you
9 will not be fracking?
10 A. That is correct.
11 Q. With regard to the two well bores on this particular
12 unit, are we going to be talking about anything other
13 than active gob, for example, short hole?
14 A. No, we will not.
15 Q. Okay. So all we're dealing with is active gob?
16 A. Active gob.
17 Q. And what seams are we seeking to force pool with regard
18 to the respondents?
19 A. All seams below the Tiller.
20 Q. Turning to Exhibit G, Page 1.
21 A. Okay.
22 Q. Why the dark outline around unit S-13?
23 A. That is the unit which we are applying for the Board to
24 pool.
25 Q. Right now?

1 A. Right at this time, yes.

2 Q. And as we work our way through the rest of these today

3 that dark black band will move from unit to unit so that

4 it shows the one that's the subject of our inquiry?

5 A. That is correct.

6 Q. Two longwall panels are shown on Exhibit G, Page 1, as

7 intersecting portions of unit S-13. Is that correct?

8 A. That is correct.

9 Q. And what are the names of those two panels and what mine

10 are they either in or proposed to be in?

11 A. They are a part of Island Creek's mine VP-5 and they are

12 panels 9-D and 10-D.

13 Q. With regard to Exhibit G, Page 2, is this something that

14 you prepared?

15 A. Yes, it is.

16 Q. With regard to -- what is the purpose of Exhibit G-2?

17 Why is it submitted to the Board?

18 A. G-2 is submitted to hopefully clarify the percentage

19 break-out of the acreage in each of our units, in

20 particular S-13, in relationship to the whole panel.

21 Q. What portion of the VP-5 panel 9-D or percentage of that

22 panel is contained within this unit S-13?

23 A. Our calculations indicate that it's 35.85 percent of that

24 panel lies under S-13.

25 Q. And is that number shown both on the map, Exhibit G,

1 Page 1, and then again reported at the bottom of Page 2
2 of G?

3 A. Yes, it is.

4 Q. And then with regard to the other longwall panel, the
5 10-D panel that intersections S-13, what percentage of
6 that panel is within S-13?

7 A. Our calculations indicate 24.24 percent.

8 Q. And did those percents that you've generated for both
9 panels insofar as they pertain to S-13, are they used on
10 Exhibit G, Page 2, to apportion development costs?

11 A. Yes, they are.

12 Q. And the development costs as a result of that percent
13 are, in fact, reported on Exhibit G, Page 2, for this
14 unit?

15 A. That is correct.

16 Q. If one wanted to calculate the capital contribution or
17 the participation costs that would have to be tendered
18 for someone who wanted to voluntarily participate in
19 S-13 what would you do?

20 A. For S-13 you would have to take the percentage of 35.85
21 percent times the panel costs of 1.2 million rounding off
22 which would be \$443,027 and then you would have to add
23 that to S-3's part of the second panel 10-D and S-3's
24 part of that is 24.24 percent of 1.2 million, again
25 rounding it off which would amount to \$299,795. And you

1 would have to add the two together to 8-3's cost of these
2 two panel's development.

3 Q. But you would eventually have to take the division of
4 interest off of Page 3 and Page 4 because they're
5 different?

6 A. Uh-huh.

7 Q. And then multiply that for each person times the unit
8 cost shown on Exhibit G, Page 2, is that what you're
9 telling us?

10 A. That is correct. Yes, sir.

11 Q. Okay. Exhibit G, Pages 3 and 4, have you prepared that?

12 A. Yes, I did.

13 Q. And could you tell the Board just in a general sense what
14 you have done to arrive at the numbers that are reported
15 here?

16 A. The numbers that are shown here to the right of each of
17 the claimants, the first column which we've captioned
18 "net percent interest in the unit" is what our title has
19 shown these parties to own in that 80 acre unit. The
20 second column is the percentage of the panel underlying
21 that respective unit and you multiply the net percent in
22 unit times the unit percent interest in the panel and we
23 come up with their division of interest overall.

24 Q. With regard to that panel?

25 A. With regard to that particular panel, yes.

- 1 Q. And then Page 4 does the same thing with regard to the
2 other panel?
- 3 A. That is correct.
- 4 Q. Now, this division of interest, we've talked about the
5 use of division of interest in Page 2 of Exhibit G as a
6 mechanism to calculate the amount of money that a person
7 who wanted to participate would have to come up with.
- 8 A. That's correct.
- 9 Q. Is this division of interest number reported on Pages 3
10 and 4 of Exhibit G also used to prorate revenue royalty
11 if there's a working interest or if there's a royalty
12 interest?
- 13 A. That is correct.
- 14 Q. Would it be exactly the same number?
- 15 A. Yes.
- 16 Q. So if you're in for the costs in X percent you will be in
17 for a revenue as a working interest for the same per-
18 centage or for royalty depending on which way you elect
19 to go?
- 20 A. That is --
- 21 Q. The percentage would be the same for each panel?
- 22 A. That is correct.
- 23 Q. For either purpose?
- 24 A. Right.
- 25 Q. With regard to D, first the two longwall panels, is it

1 your understanding that some or all -- and I'm not going
2 to pin you down because Mr. Breeding can tell us this --
3 but is it your understanding that some or all of the
4 wells in panel 9-D have already been drilled as shown on
5 this map?

6 A. Yes, that is my understanding.

7 Q. And is it your understanding that none of the wells shown
8 as proposed for panel 10-D have as yet been drilled?

9 A. To my knowledge none have been drilled in 10-D.

10 Q. With regard to 1-D would you tell me whether or not it is
11 possible that there will be some short hole production?

12 A. To my knowledge there will be no short hole production.

13 Q. Okay. We'll have to leave that either Mr. VanGolen or
14 Mr. Breeding, right?

15 A. That's correct.

16 Q. Now, in this application are we pooling only coalbed
17 methane produced from the coal seams that we've referred
18 to? We're not talking about conventional oil and gas,
19 correct?

20 A. We're not talking about conventional oil and gas. We're
21 dealing basically with the seams from the Tiller down
22 through the Pokey 3.

23 Q. And only coalbed methane?

24 A. And only coalbed methane, that's correct.

25 MR. SWARTZ: Okay. I'd like to call Mr. Steve Breeding.

1 MR. CHAIRMAN: Any questions for Mr. Gordon.
2 MR. MASON: On Exhibit C, Page 1, those numbers are also
3 reflected on G, Page 2?
4 MR. GORDON: Also reflected on G, Page 2, that is correct,
5 yes.
6 MR. MASON: When you were testifying earlier that to finger
7 the costs the operating person making an election to be a
8 participating operator would be the percentage shown on
9 G-3 or G-4 times the costs shown at the bottom of G-2,
10 that is the 299,795 and the 443,027. How does this other
11 number at the top of the page -- wouldn't those be
12 combined?
13 MR. GORDON: I'm sorry, Mr. Mason. I've lost --
14 MR. MASON: What I'm trying to understand is what is the
15 relationship between the numbers that shown on the chart
16 at the top of the G-2 and the ones at the bottom?
17 MR. GORDON: The numbers at the top of the page deal with the
18 specific wells in each of the units and then we total
19 them together to give us the total cost of that panel
20 development.
21 MR. MASON: So the 1,236,000 and the 1,235,780 -- okay.
22 That's what's got me --
23 MR. CHAIRMAN: He's got it labeled as Q-13 here, right, and at
24 the bottom those same numbers?
25 MR. GORDON: Okay. Maybe we should back up. The panels

1 involve basically eight units here and on G-2 you're
2 looking at Q-13, Q-14, R-13, R-14, S-13, S-14 and T-13,
3 T-14. And we have to utilize all those figures to come
4 up with the total panel number for cost per panel.

5 Now --

6 MR. MASON: Are you talking about taking the wall cost for all
7 the panels, all the wells in that unit to arrive at a
8 panel cost?

9 MR. SWARTZ: No. This won't be testimony, but I'll make an
10 effort and then maybe you can ask -- at the top of G,
11 Page 2, it says "estimate of allowable cost by panel" and
12 that is really what it means.

13 MR. MASON: Which are all the wells in the panel?

14 MR. SWARTZ: In that particular panel which covers a number of
15 units. So on the left under 9-D is the total cost
16 associated with panel 9-D in all four units. And at the
17 top again under estimate of allowable costs by panel
18 under the 10-D panel again that is a listing of all the
19 costs. Now, this would be in eight units because that
20 panel overlaps in a total amount. So the top is the cost
21 by panel and the bottom half of G-2 is an apportionment
22 of the --

23 MR. MASON: I understand that, but what I'm trying to get at
24 is what the -- when you're talking about the cost per
25 panel, what you're really adding up is the cost of all

1 the wells in that panel, is it not?

2 MR. SWARTZ: Well, yes. We're going to get to costs in a
3 minute with some other testimony, but generally speaking
4 yes.

5 MR. MASON: Okay. I mean, if you look at Exhibit G, Page 1,
6 and you look at panel 9-D you've got shown four wells.

7 MR. SWARTZ: Right.

8 MR. MASON: Okay. If you look on 9-D you've got what appear
9 to four well costs and I don't understand what the
10 \$17,100 is.

11 MR. GORDON: That is unit T-13 where there is no well located
12 and that cost will be shown to you with T-13 especially
13 our title costs, filing fees --

14 MR. MASON: Which are unrelated to a specific well.

15 MR. GORDON: But related to the panel itself because they're
16 going to be drawing benefits from the production from
17 that panel.

18 MR. MASON: That's what I'm trying to reach. So you're saying
19 there are going to be costs included in here that are not
20 specifically identified to any particular well within
21 that panel but are perceived to be costs of that panel?

22 MR. GORDON: I think if I understand your question, yes.

23 MR. SWARTZ: Well, I'm not going to argue with that, but I
24 think you need to take it one step further. I think that
25 to include people in units where the panel is into the

1 unit but there is no well within the unit you have to
2 incur costs by reason of the fact that they are in
3 meaning you have to run title on that unit. So to pay
4 them production or to assess their interest in terms of
5 participation, that is a real cost that occurs in all of
6 the other units where there are wells and whether there
7 is a well or isn't a well you still have to run the kind
8 of title that we're talking about. So I agree with you
9 but I take it even one step further. I mean, it's --
10 MR. MASON: What I'm trying to arrive at, though, is as I
11 understand the way of the law and the regs all these
12 costs are all well costs.
13 MR. SWARTZ: No. We have been in DWEs and, in fact, in the
14 regs promulgated by the Board, legal and site development
15 and all this stuff --
16 MR. MASON: Right, all specifically identified to individual
17 wells.
18 MR. SWARTZ: Well, no, your legal is really your unit.
19 MR. MASON: That's correct.
20 MR. SWARTZ: I mean, you can tie it to well, but it's a unit.
21 MR. MASON: Right. See, what I'm trying to arrive at is I'm
22 trying to understand how -- but like when you have
23 multiple wells per unit or something like that, you still
24 break that cost down and it's identified as a well cost.
25 Here you've got a situation in which you're talking about

1 a panel -- or a unit that doesn't have a unit on it.

2 MR. SWARTZ: Right. And we talked about that at the field
3 rules hearing because it was obvious if you look at
4 enough mine maps it always seems like every longwall
5 panel when you start drawing lines, there is a little bit
6 of it over the edge or whatever. And it was clear to us
7 and I hope we made it clear to the Board when we were
8 talking about it that there were going to be units that
9 would be getting production and be expected to share in
10 costs that would frankly not have a well. Because the
11 economics of saying, "You've got to have a well", well,
12 it would be crazy to do.

13 MR. MASON: Okay. But where I'm going with this is, if I may
14 take it the step that I see, is in effect the cost of the
15 drainage pattern within this panel, that T-13 cost, is
16 really an associated well cost of the other wells in that
17 panel.

18 MR. SWARTZ: Correct, just like if you've got one unit that
19 had three wells and two units that each had one you would
20 total the costs and the units that each had one would
21 have the same --

22 MR. MASON: Which makes the allocation work --

23 MR. SWARTZ: Exactly.

24 MR. MASON: -- and which draws this cost back into an allocat-
25 ed well cost. That's what I'm trying to get to.

1 MR. SWARTZ: Right. We're allocating production and costs
2 very much like you've heard Consol do this morning. They
3 did it a little differently, but they're trying to track
4 production and cost and here we are.

5 MR. MASON: Okay. But what I'm leading up to -- the point I
6 am trying to make is that even though there's no well in
7 that panel that this because of the drainage pattern
8 constitutes a well cost that's associated with the other
9 wells in the panel. And the way you allocate it out, you
10 know, has the effect -- even though it appears not to be
11 a well cost it really is because of the way this is
12 allocated.

13 MR. SWARTZ: It is both a well cost and it is also an addi-
14 tional cost simply because those people are in there. I
15 mean, there is an additional --

16 MR. MASON: Well, I understand that. But --

17 MR. SWARTZ: But it is also clearly an allocational well cost
18 like --

19 MR. MASON: Because it contributes to the drainage that the
20 other wells have.

21 MR. SWARTZ: Exactly. And if they're going to share in the
22 production of the off unit wells they ought to share in
23 the cost of those wells. It's the theory.

24 MR. MASON: That's right. I'm just trying to get the grasp of
25 the fact that --

1 MR. SWARTZ: You've got it.

2 MR. MASON: You know, if somebody looked at this where there's
3 no well here why these costs are included, well, in fact,
4 this whole panel is draining through these wells and
5 there's cost associated with this unit that has no well,
6 but those costs are still a part of the cost of the
7 drainage that's associated with the wells in the other
8 panels.

9 MR. SWARTZ: Right. You've got it.

10 MR. EVANS: The units that have no wells are going to benefit
11 from the wells that are --

12 MR. MASON: Exactly. And that's what I'm saying. That's a
13 part of the cost of the wells in the other unit.

14 MR. SWARTZ: The point that we -- there are a lot of reasons
15 to do this, but one of the reasons is it spreads the
16 royalty or the working interest among the greatest acres
17 and the greatest number of people and it also spreads the
18 costs.

19 MR. MASON: I was just trying to clarify that.

20 MR. SWARTZ; You've to it.

21 MR. MASON: Thank you.

22 MR. CHAIRMAN: I'd like to go back to your question to just
23 follow up on Mr. Mason's on Exhibit C, Page 2, the
24 estimate of allowable costs is identified as unit S-13B.
25 I'm trying to make sure I understand now Exhibit G, Page

1 2. The number that's highlighted is a different number
2 than the number associated with S-13B. The number that
3 corresponds with the estimate of allowable cost, \$290,095
4 actually is R-13B if I'm following that correct. Is
5 that --

6 MR. EVANS: I'm sorry, Benny. I thought I was with you and
7 then I got lost.

8 MR. CHAIRMAN: Okay. I'm looking at two pages, Exhibit G,
9 Page 2 and Exhibit G, Page 2. When I look at Exhibit C,
10 Page 2, the estimate of allowable cost for unit number
11 S-13B shows \$290,095. When I go to Exhibit G, Page 2,
12 and I look for that \$290,095 I find that number up in
13 R-13B.

14 MR. MASON: There's an S-13 A which is Exhibit C, Page 1.

15 MR. CHAIRMAN: Right. It's shown over in the right hand
16 column. I guess I was -- you've got a 9-D and a 10-D.
17 What does that mean, that VP 5-EM 10-D? That's where I
18 thought you were heading a minute ago.

19 MR. MASON: I understand Mr. VanGolen is going to testify as
20 to C-1 and C-2. Is that correct?

21 MR. SWARTZ: Well, there's going to be a lot of testimony.
22 Mr. Breeding is going to give you a hand on that, too,
23 yes.

24 MR. MASON: The thing that addresses your question, Benny, and
25 I think is confusing me is that fact that this Exhibit C,

1 Page 1, is deemed to be a cost of unit number S-13A.

2 MR. CHAIRMAN: Right.

3 MR. MASON: That's really not correct. What it is is a well

4 cost that happens to be on that unit. Ultimately the

5 cost for unit S-13A is to be arrived at by allocation and

6 really has nothing to do with this.

7 MR. CHAIRMAN: It may something to do with it but it's not --

8 MR. MASON: This is no a unit cost. It's only a wall cost

9 that's a part of a larger panel that's allocated back.

10 MR. SWARTZ: But we needed to have some format to report these

11 costs to you and I agree with you. But what we tried to

12 do and you'll see this as we work through is for each

13 unit that the costs were inferred on --

14 MR. MASON: I understand.

15 MR. SWARTZ: -- the stuff was physically located on, that's

16 how we report them. But you're absolutely right. That's

17 why we had to show G because we had to track all of the

18 costs back in because that's really what happens.

19 MR. MASON: Well, see, and that's what I was having trouble

20 with. It's exactly what you're addressing, Benny. When

21 I looked at this it says the unit cost for S-13A is 308

22 and you come over here and it says S-13's cost is 440 --

23 in other words, it appears to be conflicting because one

24 of them is not really unit cost. It's only a component

25 of a later arrived at allocation.

1 MR. SWARTZ: Have we made any headway in answering your
2 question, Mr. Chairman, or do we need to take another
3 lick at it here?

4 MR. CHAIRMAN: I think I understand what you're trying to do
5 here and I'd leave it at that.

6 MR. SWARTZ: Okay.

7 MR. CHAIRMAN: I do have one other question on Exhibit B, Page
8 4, and I'm going back to our amended Exhibit B just to
9 clarify for the record. My amended Exhibit B has Page 2
10 and 3 but not Page 4. And I assume because you're not
11 amending the former Exhibit B which had listed up through
12 29 individuals.

13 MR. GORDON: I think basically by dropping the Street Mc-
14 Clanahan interests off of it we were allowed to consoli-
15 date that on three pages instead of four.

16 MR. CHAIRMAN: Okay. Is that what that does? There's people
17 not identified is why I am asking the question and I want
18 to make sure for the record what we're dealing with. You
19 amended tract 5. As far as I can tell you've handed us
20 an amended tract 5.

21 MR. SWARTZ: You gave them that and they weren't suppose to
22 get that.

23 MR. CHAIRMAN: And you off four individuals from the former
24 tract 5, Exhibit B.

25 MR. SWARTZ: What I think has happened is we just gave you a

1 portion and we need to check those exhibits when we take
2 a break.

3 MR. CHAIRMAN: That's why I wanted to make sure.

4 MR. SWARTZ: Because frankly you should not have an amended
5 Exhibit B because the amended Exhibit B was wrong and it
6 sounds like somebody tore the first page off of it and
7 gave you part of it. All you should really be getting
8 right now from us are amended Pages G-3 and G-4. And if
9 you've got a B I guarantee it's wrong. Throw it away.
10 We're going to file one after the hearing. Okay?

11 MR. CHAIRMAN: Done.

12 MR. SWARTZ: Does that answer that question?

13 MR. CHAIRMAN: As long as you'll clear it up for us.

14 MR. SWARTZ: I'm trying.

15 MR. CHAIRMAN: We're going to break for lunch. Be back about
16 1:15.

17 (AFTER A LUNCHEON RECESS, THE PROCEEDINGS CONTINUED AS
18 FOLLOWS:)

19 MR. CHAIRMAN: The meeting will come to order. Mr. Swartz.

20 MR. SWARTZ: I think we have three or four items that remain
21 to deal with in terms of the testimony.

22 Q. (Mr. Swartz continues.) The first item that I would like
23 to deal with is the -- I think this may be sort of where
24 we left off with the two pages of Exhibit C, Mr. Gordon,
25 the estimate of allowable costs that accompany the

1 application.

2 A. Uh-huh.

3 Q. Did you prepare these?

4 A. Yes, I did.

5 Q. And do the Exhibit C Pages 1 and 2 that are submitted
6 with regard to this unit pertain only to costs incurred
7 on unit S-13 in terms of two well bores that are located
8 or proposed to be located on S-13?

9 A. That's correct.

10 Q. And have you listed on here all of your estimates with
11 regard to the costs that will be incurred?

12 A. Yes, we have.

13 Q. And what are the total costs that you have estimated for
14 the first well bore at Page 1?

15 A. For the first well bore we've identified as S-13A the
16 total is \$308,195.

17 Q. And with regard to Page 2 which pertains to what you've
18 identified as S-13B what is the total cost?

19 A. \$290,095.

20 Q. And is it your opinion that these costs that you have
21 estimated on Exhibit C, Pages 1 and 2, represent the
22 probable reasonable costs to produce from these two well
23 bores?

24 A. That is correct, yes, sir.

25 Q. Now, you've shown as a purchase price at the top of each

1 of these exhibits the sum of \$150,000. Is that the costs
2 to drill the well bores?

3 A. No, it is not.

4 Q. What is this purchase price related to?

5 A. It relates to a negotiated price that will be worked out
6 between Island Creek and OXY whereby we will be assigned
7 the right to use the well bore.

8 Q. So it does not reflect Island Creek's actual costs or
9 anyone's actual costs to drill these well bores?

10 A. No, they do not.

11 Q. Has this price been finally determined between Island
12 Creek and OXY?

13 A. No, it has not been final determined.

14 Q. Is the 150 your best estimate as to what you believe OXY
15 will wind up paying to use each of these well bores?

16 A. At this date and time it's our best effort.

17 Q. Are you aware of Island Creek's costs to put these two
18 well bores in the ground?

19 A. Yes. We have their estimates of costs on these two
20 wells.

21 Q. Okay. Are their estimates more or less than the
22 \$150,000?

23 A. They're more in both cases.

24 Q. Is it your opinion that the proposed development of this
25 particular unit S-13 and the two longwall panels insofar

1 as it impacts on the two longwall panels that intersect
2 is a reasonable plan to extract the gob gas from an
3 active gob or an active operation and extract the maximum
4 amount of gas at the minimum amount of cost?

5 A. Yes. I do feel like it's a very reasonable methodology.

6 Q. And is it your further opinion that the proposed develop-
7 ment of this unit 8-13 in conjunction with the other
8 units that are shown on Exhibit G is a reasonable and
9 fair method of protecting correlative rights, minimizing
10 both physical waste and economic waste?

11 A. Yes.

12 Q. There's one more thing I want to cover with you, Mr.
13 Gordon. I've put an Exhibit H in front of you, do you
14 see that?

15 A. Yes, I do.

16 Q. Is Exhibit H proposed language that OXY is offering to
17 the Board for inclusion in any forced pooling order that
18 it might enter with regard to this unit and the other
19 units that are being forced pooled today with regard to
20 these two longwall panels that are under consideration?

21 A. Yes.

22 Q. And generally, what is the purpose of this language which
23 we would ask that the Board include in any order it might
24 issue?

25 A. This will allow us to handle any subsequent operations as

1 operator that should we have to do any re-work on a well
2 or if we have to drill a new well we can approach the
3 working interest owner and with their approval preform
4 whatever needs to be done to enhance the well, restore
5 the well, or even drill another well.

6 Q. With regard to this proposed language does it address
7 situations or what happens in situations where you are
8 proposing, for example, to drill another well to produce
9 from a panel?

10 A. Right.

11 Q. And you have people who have elected not to participate.
12 Does it give them an opportunity to reconsider that
13 election and participate at a later date if there is a
14 new well drilled?

15 A. Yes, it does.

16 Q. People who have participated, does it give those people
17 an opportunity to be carried in the event that they do
18 not wish to come with additional capital to participate?

19 A. Yes, it does.

20 Q. And does it give the people in the unit in general thirty
21 days notice?

22 A. Yes, it does.

23 Q. And with regard to the costs, what is your expectation if
24 there is actually additional work to be preformed --
25 additional wells to be drilled -- what is your expecta-

1 tion as to when the people in the unit would receive this
2 notice in relation to when the work would actually be
3 done?

4 A. Our proposal would allow them to have notification thirty
5 days prior to mine through or subsequent operations.

6 Q. Thirty days before the money is spent?

7 A. Yes.

8 Q. Not a year or two years or three years?

9 A. No. Thirty days.

10 MR. SWARTZ: Unless you have some questions which you could,
11 of course, defer until later, but if you don't have any
12 questions you want to ask of Mr. Gordon right now I would
13 like to call Mr. Breeding.

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

15 MR. MASON: I have a couple I want to ask him. Sir, with
16 regard to this purchase price, you indicated that you
17 were purchasing the use of this bore. Could you expound
18 a little bit on what that means?

19 MR. GORDON: We are currently negotiating a price to use the
20 well bores that are currently there to save us from
21 having to spend \$300,000 to build another well. We --

22 MR. MASON: What I'm concerned about is is it an exclusive
23 use? I mean, you say use. You're talking about the
24 exclusive use of this bore?

25 MR. GORDON: We will use to produce methane gas from it.

1 MR. MASON: Well, I know, but is Island Creek going to retain
2 any rights in this bore itself?

3 MR. GORDON: Yes.

4 MR. SWARTZ: I think your question really -- either we need to
5 get Mr. VanGolen up here or Mr. Breeding because I think
6 they can describe exactly what it is that is being
7 purchased from Island Creek.

8 MR. MASON: I'm concerned about for how long is the
9 reverter -- I mean, we're being asked to approve an
10 expense here for the acquisition of something that I'm
11 not sure what it is. It concerns me in terms of what
12 exactly it is that we're -- that's being allocated in
13 terms of cost as to what it is that they're acquiring. I
14 mean, what are the perimeters of the rights to this bore
15 that are being acquired for this sum of money. I don't
16 see how we can make any ascertainment of the reasonable-
17 ness of that sum without knowing fairly exactly what it
18 is that's being paid for.

19 MR. SWARTZ: Mr. Gordon, other than to tell that he knows that
20 it is associated with the right to take gas, he is not
21 the witness you need to ask these questions. He's just
22 incapable of answering is what I am suggesting. I think
23 Mr. Breeding and certainly Mr. VanGolen can be very
24 specific in answering your questions and we have specific
25 questions and it's a good question. But to put that

1 questions --

2 MR. MASON: What about some of these other items like PLC,

3 what is that?

4 MR. SWARTZ: That he can answer. I know he's aware of that.

5 MR. GORDON: PLC is a programmable logic control system which

6 is kind of a state of the arts mechanism out there that

7 monitors the O2 in the gas and it tells us whether we're

8 delivering pipelining quality into the line or not.

9 MR. MASON: What about other electronic equipment here?

10 MR. GORDON: The electronic equipment that's listed here is

11 the electrical equipment that handles all of the motor

12 controls. It's our power box so to speak. It controls

13 the panels, automation systems.

14 MR. MASON: From where?

15 MR. GORDON: We've got equipment out there that if the PLC

16 says there's too much oxygen in it it shuts it down and

17 vents it to the atmosphere. It will also turn on our

18 compressors, turn them off, you know, whatever equip-

19 ment's there.

20 MR. MASON: Is this equipment there already?

21 MR. GORDON: It will be in place, yes.

22 MR. MASON: As a part of this well or as a part of the mine

23 ventilation system?

24 MR. GORDON: It is a part of the production equipment that we

25 will put on site.

1 MR. MASON: Is part of what this does related to venting? If
2 the gas can't be produced into the line, then does part
3 of this stuff have to do with venting the gas off and
4 causing that to occur?

5 MR. GORDON: If it's not pipeline quality it should kick it to
6 the atmosphere. It will not allow us to put a polluted
7 product down the line.

8 MR. MASON: Why is that a production cost or production
9 related cost?

10 MR. GORDON: We just can't deliver any --

11 MR. MASON: I understand that. But once you can't sell the
12 gas, then you've got to vent the gas because you've got
13 to get it out of the mine, isn't that correct?

14 MR. MASON: Yes.

15 MR. MASON: Well, why isn't that really a cost associated with
16 ventilating the mines and not producing the gas out of
17 this well?

18 MR. GORDON: That's a good question. I think we better let me
19 Mr. VanGolen kick in on this.

20 (Witness stands aside.)

21 MR. VANGOLEN: Glen VanGolen, OXY, USA. What the system is
22 it's basically the same system. Either the gas is going
23 down the line or it's got to be vented. The gas has got
24 to be moving. There are a couple of things involved
25 here. One is there is an oxygen sensor. There is a

1 pressure sensor with a close sensor. If the compressor
2 goes down it automatically fails, saves over into the
3 lampson, kicks on the lampson which is a normal piece of
4 equipment for this ventilation hole and starts it and
5 vents it to atmosphere. These are things that are not
6 normally associated with the venting of gas for the
7 mining industry. They are add-ons to insure safety.

8 MR. MASON: The safety of the mine.

9 MR. VANGOLEN: The safety of the mine, yes.

10
11 GLEN VANGOLEN

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

14
15 DIRECT EXAMINATION

16
17 BY MR. SWARTZ:

18 Q. Is the lampson already there?

19 A. The lampson is already there.

20 Q. And is the cost of the lampson built in to Exhibit C?

21 A. No.

22 Q. What is the function of the Lampson right now?

23 A. To vent gas from the well bore for mining purposes.

24 Q. Is it a compressor or a suction device?

25 A. It's an vacuum pump, yeah.

1 Q. And what are you adding that is different than a lampson
2 that relates to your production?
3 A. Well, there's a couple of things there. But the main
4 item there is there is a turbotrone which is a vacuum
5 pump that allows for positive pressure. Right now
6 lampsons don't allow for positive pressure. They're
7 usually vented to the atmosphere. They're built such
8 that you can only -- it combines a vacuum and not back
9 pressure. A turbotrone accommodates the back pressure
10 that we need to push the gas to a central compressor
11 point. We also have -- the electric equipment that
12 you're talking about there is the whole motor control
13 box, the electrical panel that all the wiring for motor
14 control valves and the whole electronic system is
15 connected to. From that it goes into the computer system
16 which is the PLC system. Of course, that is just to
17 operate this facility. We're not including the sum cost
18 for the main central computer system that this goes into.
19 That's going to be our (Inaudible.) That's something as
20 a corporation we're going to put in there and have to
21 have in order to make this gas producible. But this is
22 all incremental equipment. This is not normally associ-
23 ated with mining and if it was just a mining operation
24 they would just turn on these vacuum pumps and let them
25 run as hard as they can run.

1 Q. With regard to Mr. Mason's question concerning the
2 negotiations with regard to use that are ongoing between
3 OXY and Island Creek and the \$150,000 estimate as to what
4 OXY at least believes is likely to change hands to get
5 this right, could you describe where OXY is taking
6 delivery of the gas or the right to use the well bore to
7 produce gas and be as specific for Mr. Mason as to where
8 things are changing hands and what is happening and who
9 has what rights with regard to this --

10 MR. MASON: I'm just curious, what are you buying for
11 \$150,000?

12 MR. VANGOLEN: All you're buying is a well bore right -- a
13 usage right. You're not transferring the asset. I don't
14 think as a corporation OXY, USA and as any working
15 interest owners that they want participation in a well
16 bore that's direct -- can communication with a mine. So
17 all we're doing is purchasing the right to utilize that
18 well bore. At that point we have custody transfer in
19 gas. Literally there's a fence at the surface that the
20 mining equipment that's normally associated with the
21 venting of gas is contained in. They run a T outside the
22 fence and we take custody transfer at that point. From
23 that point we acquire the gas. And all we are
24 purchasing -- the reason Sam does know is because I don't
25 know what that fee is.

1 MR. MASON: I understand that the fee -- the amount of money
2 itself is still yet to be determined, but I'm trying to
3 get a handle on what it is when you pay \$150,000 for a
4 right and we have to make an ascertainment as to the
5 reasonableness of that cost or whatever the cost may be.
6 It sounds like you're saying that what you're buying is
7 essentially like an easement to bring the gas from the
8 gob area up to the surface into the T where you take
9 possession. Is that --

10 MR. VANGOLEN: Essentially that's right. All it is a contract
11 between OXY, USA and Island Creek that says that you're
12 going to make the best efforts by utilizing that well
13 bore to deliver pipeline quality gas through that T.
14 Now, some of this PLC equipment will help us and Island
15 Creek maintain pipeline quality. No throttle back,
16 suction pressures, things like that. So you're not
17 creating quite the vacuum that's normally created on
18 these wells that draws oxygen into the well bore.

19 MR. MASON: Let me ask you one other question. Why is the
20 separator skid so expensive?

21 MR. VANGOLEN: It's a facility that's about 25 feet high and 8
22 feet in diameter. It goes in between the vacuum pump and
23 the well head. And the reason it needs to be that big is
24 for the amount of flow that's going through there at that
25 low of pressures, you need that much retention time in

1 order to drop out water. If it was under high pressure
2 you would need a smaller --

3 MR. MASON: You mean this is the separator itself?

4 MR. VANGOLEN: That's the separator itself and the whole skid.

5 MR. MASON: Oh, okay. It says separator skid which sounded
6 like the mounding.

7 MR. VANGOLEN: Yeah. What that has is there is a little
8 electric pump on there also that because this vessel is
9 under vacuum you can't normally discharge water under
10 pressure like you would in a normal separator. You've
11 got to have a little electric pump that actually pumps
12 that water out of this vessel into your tank and that's
13 what's on this skid. It's got a float control within the
14 separator that kicks on that little pump when the liquid
15 level comes down and shuts off that pump.

16 MR. MASON: Do you have any idea what the term of this right
17 to take gas through the bore hole is, how long?

18 MR. VANGOLEN: As long as we can economically produce gas.
19 Once we deem that it's no longer economically productive
20 for whatever reason, operating costs or we can't deliver
21 pipeline quality gas, for whatever the period is that
22 equipment and this estimate is reclaimed, salvage value
23 imposed, credited back to the lease, and the well bore
24 goes back to Island Creek and becomes the plugging
25 liability of Island Creek as it normally would.

1 MR. MASON: I'm fascinated as to whether -- how that would be
2 accounted for, whether it would be an intangible or --
3 MR. SWARTZ: Well, we have an opinion.
4 MR. MASON: It's totally unrelated to this, but --
5 MR. SWARTZ: Well, it is and it isn't. I think it might be --
6 MR. VANGOLEN: I think we had this argument last night.
7 MR. SWARTZ: We were able to obtain some views from tax
8 counsel because we were interested in whether it could be
9 treated as a capital cost or not and I think you might
10 want to share that with us.
11 MR. VANGOLEN: It's our corporate tax opinion that it's
12 capital cost depreciated due to production just like any
13 other usage right.
14 MR. MASON: Do you know what the events of termination on
15 behalf of Island Creek would be? I mean, can they for
16 any reason just arbitrarily stop the use of this bore?
17 MR. VANGOLEN: They can't arbitrarily stop the use of the
18 bore. They can -- I'm not going to say arbitrarily
19 because all the leases in State statute allow them to
20 vent at anytime for mine safety purposes. So that's two
21 separate issues here. They can't arbitrarily stop and
22 say there's been arrangements for a few days and then --
23 well, we want it back. They have to make best efforts to
24 produce pipeline quality gas.
25 Q. (Mr. Swartz continues.) When you talk about best

1 efforts, what are some of the things that Island Creek
2 can do and that the electrical equipment at the surface
3 allows you to do to increase the likelihood that what is
4 coming out of these wells bores is, in fact, pipeline --
5 I mean, give the Board some idea of what you're doing to
6 generate pipeline quality gas as opposed to gas that has
7 an O2 speck problem.

8 A. Obviously there's been a modification of completion.
9 We're not drilling directly into the 3 seam anymore.
10 We're drilling 50 feet above. So we're creating somewhat
11 of a friction barrier. Once it's gobbled obviously it's
12 rubblized and it's in communication, but what it does is
13 create a friction barrier so that you're trying to
14 maintain just as close to zero bottom hole pressure as
15 possible at that point. Now, that's allowing all the
16 gas to desorb in the well bore. If you suck hard in
17 there you're going to start drawing mine air. If you
18 don't suck hard enough the gas is going to start going
19 the other way. Island Creek has installed methane
20 sensors in all the bleeders. That's also titled as PLC
21 system. If they see readings underground and start
22 saying that they're starting the gas off, we can do some
23 things at the surface and increase the speed of this.
24 There's a couple of things that we've got on our com-
25 pressors. There are by-pass ports that basically

1 incrementally cut production or decrease production, for
2 that matter, a twelve and a half increase. So one piece
3 of equipment can go for full capacity down to 50 percent
4 capacity and that can be further curtailed by making
5 variable actuator on the suction valve. It is basically
6 restricting or creating a pressure valve.

7 MR. MASON: Is there any provision in this -- as I understand
8 what you've told me, there are basically two choices.
9 You produce gas that has a proper oxygen component or
10 pipeline acceptance or you can vent it. Do you have any
11 other choices? Is there any installation of anything
12 here that would, for instance, scrub oxygen from the gas
13 or anything like that?

14 MR. VANGOLEN: Yes. As part of our system we have an oxygen
15 scrubber that allows us up to 1 percent oxygen.

16 MR. MASON: That you can take that much out?

17 MR. VANGOLEN: We can take that much out.

18 MR. MASON: Is that part of this cost?

19 MR. VANGOLEN: No. That's part of the cardinal states that
20 you've heard a great deal about.

21 MR. MASON: That's part of the collection system?

22 MR. VANGOLEN: That's part of the collection system. Initial-
23 ly we're going to curtail that down to 1/2 percent oxygen
24 when we get the engineering design criteria worked out
25 and make sure we're not burning up catalyst as fast as we

1 can run gas through it. So that is basically our design
2 speck, 1/2 percent oxygen. Now, any given well may go
3 over that.

4 MR. MASON: You're talking about the collection mix?

5 MR. VANGOLEN: The blend that hits the cardinal system has to
6 be 1/2 percent oxygen. And the more frack wells we bring
7 on obviously the more off speck gas we can bring in.
8 It's a constant blend in allocation.

9 MR. MASON: Let me ask one more question, if I may. I don't
10 want to overdo my time here. In regard to this proposed
11 provision to be incorporated in Board orders, as I
12 understand it, this allows the operator to drill a new
13 well or permit a VVH to produce coalbed methane within
14 the panel for a unit which we have already pooled, is
15 that correct?

16 MR. VANGOLEN: Correct.

17 MR. MASON: And what this would do would be allow you to give
18 notice and have them make the election with respect to
19 whether to participate or not and if so how. In that
20 regard with respect to the wells that we're doing now
21 there is always a Board approved cost. As I would
22 understand this to be implemented, they would be making
23 an election without that having occurred.

24 MR. SWARTZ: Up front.

25 MR. MASON: I understand that.

1 MR. SWARTZ: But there is a distinction that needs to be
2 noted.
3 MR. MASON: That's the point I'm trying to make.
4 MR. SWARTZ: Right.
5 MR. MASON: Is that in effect the time could expire for them
6 to make this election prior to the Board taking any
7 action on the allowable costs associated with that well.
8 MR. SWARTZ: I'm not sure that's true. My approach to
9 this -- I agree with your statement that there is no
10 provision for the Board to pass up front with regard to
11 the reasonableness of the cost, whether 50 percent of the
12 cost are being passed along as being justified by
13 increased production or whether all of it and whether the
14 amount of the cost is appropriate. There is no provision
15 in here for the Board to pass on that up front. The way
16 that I look at this and obviously you can turn either
17 way, the Board has continuing jurisdiction over cost.
18 And you have a choice. You can do what you heard from
19 Pocahontas this morning. I think what they represented
20 to you all is if that they were going to drill additional
21 VVH wells they would come back affirmably. Or you can
22 do it this way. A typical JOA, joint operating agree-
23 ment, that people enter into provides this. My assump-
24 tion is that if people are unhappy or dissatisfied with
25 the cost or the work that's proposed to be done or the

1 fact that there's a proposal and they need to share in
2 it, the Board has, as I understand, in the statute and
3 under regs continuing jurisdiction and it really is your
4 pleasure. But there has to some mechanism. I mean, if
5 your pleasure is that you would prefer we come back and
6 get approval up front and see every one of these even if
7 there are no objections, that's your call. Our prefer-
8 ence would be -- since we don't see the volume of
9 objections that you might expect on a lot of issues in
10 front of the Board, our preference would be to give the
11 kind of notice that's contemplated here and if somebody
12 has a problem they have a right to come in.

13 MR. MASON: Well, my follow-up question would be is you
14 believe the Board has the authority to do this.

15 MR. SWARTZ: Yes. I mean, subsequently that if somebody
16 complains you all --

17 MR. MASON: No. I'm talking about to put a person in the
18 position of having to make the election prior to the
19 Board acting on the cost, do you believe the Board has
20 the power to do that?

21 MR. SWARTZ: I think what would happen is the person would
22 come in and say the costs were unreasonable and they
23 could have not been forced to make an election. I think
24 that's what happens, Bill.

25 MR. MASON: But then they've got to take some affirmative

1 action to do that.

2 MR. SWARTZ: Absolutely, no question about it.

3 MR. MASON: At their own expense or whatever. What I'm

4 concerned about is that it is your belief that we have

5 the authority to do that and what I was going to ask you

6 is what you base that on.

7 MR. SWARTZ: The designated operator, once they are designat-

8 ed, can be given the right to operate that unit. I mean,

9 this is just my personal opinion. But you can give that

10 designated operator a big bundle of rights for the future

11 without coming back for guidance or control or you can

12 given them a little bundle of rights. I think that is a

13 policy decision. You know, do you want to do it and

14 maximize the trips back or minimize the trips back and

15 that's a choice and there are legitimate reasons to make

16 either choice. And I want you to understand that we can

17 live with either one. We would prefer the one we've

18 proposed. Once you designate an operator you're giving

19 that operator the right to drill wells and work that

20 unit if you want to. You can also get an order and say

21 that they can only do the two wells that have been

22 approved.

23 MR. MASON: I was looking at a provision in here where it

24 talks about approving costs. I guess it's C-5 under 21.

25 MR. SWARTZ: Well, sort of. The one I've always looked at is

1 G under 21, "The Board shall resolve all disputes arising
2 among gas or oil operators regarding the amount and
3 reasonableness of well operation costs, shall by regula-
4 tion establish allowable types of costs which may be
5 shared in pooled gas or oil operations." I've always
6 read that as broad enough to encompass both before,
7 after, and during costs. And there's no time limit on
8 that. I've always looked at that as a continuing
9 jurisdiction. And then the cost regs -- the permanent
10 regs --

11 MR. CHAIRMAN: Section 10.

12 MR. SWARTZ: I believe it went with the notion of continuing
13 jurisdiction. Uh --

14 MR. MASON: I just want to make sure if we do this we're not
15 running afoul of some mandated requirement that we make a
16 determination of reasonableness prior to them having to
17 make that election. That's my only concern.

18 MR. SWARTZ: Uh-huh.

19 MR. MASON: Because we're shifting the burden here from the
20 person who's seeking to be the operator or to create the
21 pooling to someone coming in and objecting.

22 MR. SWARTZ: There is much to be said for your position and I
23 can't really argue with it.

24 MR. MASON: I mean, I don't know whether it's the best thing
25 to do or not. I'm just trying to make sure whatever we

1 do we have the authority to do it.

2 MR. SWARTZ: But what I want you all to understand is it is a
3 policy decision, that I am not pretending that we have
4 the ability to make for you all. We would prefer to see
5 what we have submitted in Exhibit H because we think it
6 is administratively easier on us and perhaps on you. You
7 may not share that view and then there is another
8 solution.

9 MR. FULMER: I'll just offer this. The Board has a right for
10 increased density in any unit. It can grant that.
11 However, as far as permitting a well, the royalty owners
12 or whatever are already put on notice once the permit has
13 been submitted. So they cannot drill the well unless
14 they get a permit. So they are already put on notice and
15 at that time they have a right to object. Now, it would
16 not be in front of the Board, but it would be in front of
17 the inspector.

18 MR. MASON: So there are some things built into the system
19 that would give them an opportunity --

20 MR. FULMER: It comes in the reverse back door, but it's -- I
21 think the main thing that we're talking about here is
22 increased density within the unit.

23 MR. SWARTZ: That would be the only way you could get these
24 wells. I mean, once you're beyond one we're into
25 increased density.

1 MR. FULMER: I don't know if that clarifies anything, but
2 that's my thoughts.

3 MR. CHAIRMAN: Any other questions?

4 (Witness stands aside.)

5 MR. SWARTZ: I have a few questions of Mr. Breeding.

7 STEPHEN G. BREEDING

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

11 DIRECT EXAMINATION

13 BY MR. SWARTZ:

14 Q. Could you state your name for us again?

15 A. My name is Steve Breeding.

16 Q. I'll remind you that you're still under oath.

17 A. Yes, sir.

18 Q. Who do you work for and what's your title?

19 A. I work for Island Creek Coal Company. My title is
20 Coalbed Methane Coordinator.

21 Q. Mr. Breeding, I'm going to show you what we have had
22 marked as Exhibit G or a portion of Exhibit G with regard
23 to this unit, this active gob unit. It's Page 1 of
24 Exhibit G and there are eight well bores shown on two
25 longwall panels on that exhibit, correct?

1 A. Yes, sir.

2 Q. Which of the wells have been drilled and which have not
3 as yet been drilled?

4 A. I think the wells that have been drilled are all the
5 wells in the 9-D panel which would be our 5.284, 5.285,
6 5.286 and 5.287.

7 Q. And would it be fair to say then that all of the wells in
8 10-D have not as yet been drilled?

9 A. I'm certain that none of those wells have been drilled.

10 Q. Have you made an effort to determine either the actual or
11 proposed depth of all of these eight wells?

12 A. Yes, I have.

13 Q. And could you tell the Board, just state for the record,
14 what the depths of each of the eight wells are?

15 A. Sure. Now, again, you'll have to understand these are
16 projected depths based on our initial projects and the
17 initial location. These first four wells have been
18 drilled. However, our accounting is not up to date nor
19 is the completion information up to date. These have
20 been drilled within probably the last couple of months.
21 It's also complicated by the fact that we're going over
22 from paper authorization for drilling back into a
23 computer system and things are lagging behind now. That
24 actual drilling cost and actual completion information
25 will be available probably within the next thirty days or

1 so. What I have here are projected costs and projected
2 depths based on our initial permitting. Well 284, the
3 projected depth was 2,300 feet. Well 285, also was 2,200
4 feet. Well 286, 2,260 feet. Well 287, 2,000 feet. Well
5 288, 2,400 feet. Well 289 2,900 feet. Well 290 was
6 2,450 feet. Well 291 was 2,400 feet.

7 Q. And have you also with regard to these wells -- and I
8 understand that they've been recently drilled and you do
9 not have actual figures. Have you made an effort to
10 prepare an estimate with regard to the costs of the wells
11 that have been drilled and the wells that are yet to be
12 drilled?

13 A. Yes, I have.

14 Q. Could you tell the Board what you have done hopefully in
15 an effort to give them a reasonable estimate?

16 A. Well, we've had quite a bit of experience. We normally
17 as a part of our ventilation hole process do estimates
18 prior to any actual drilling for our own accounting
19 purposes and budgeting purposes. We do it just a little
20 bit differently. We have it broken into five or six
21 major categories. So what I've done on these well
22 estimates here is tried to break those categories into
23 more particular categories -- the type of categories that
24 actually are usually seen and you'll be familiar with.
25 I've done this through the help of our contract driller

1 who's grouped these things for me. But what we have on
2 284, and again this is a projected well cost, is a total
3 of \$242,000. On well 285 the projected cost is \$206,493.
4 Well 286 total estimated cost is \$211,993. Again, all
5 this information is a handout that Mark is handing out.
6 Well 287 is \$236,993. The total estimated cost on well
7 288 is \$228,492. The total estimated cost on well 289
8 is \$232,492. For well 290 the estimated cost is
9 \$238,492. And for well 291 the projected cost is
10 \$259,492. I want to point out again that these are
11 estimated costs, but we've had quite a bit of experience
12 in doing this. We've probably drilled over 300 of these
13 ventilation holes and our estimates are very accurate in
14 going back and comparing actual costs versus our initial
15 estimated costs. So I would expect our actual cost to be
16 very close to these.

17 Q. Do the sizes of these well bores and the associated
18 piping vary?

19 A. Yes, in most cases -- well, in some cases. Most of these
20 are nine inch holes with the exception of well 287 which
21 is an eleven inch hole. But, again, the differential
22 cost in the casing has been taken into consideration in
23 the drilling cost -- the estimated cost here.

24 Q. You were here when Mr. VanGolen testified with regard to
25 his understanding of what rights OXY was attempting to

1 negotiate in agreement with your company Island Creek,
2 were you not present?

3 A. Yes.

4 Q. Was his description of the situation that the title to
5 the well bore would not transfer, that the gas would
6 change hands across a fence? Was his description
7 generally consistent with your understanding and if not,
8 tell me how your understanding would differ?

9 A. Yes, that's consistent. It's consistent with my under-
10 standing that the possession of the gas would take place
11 at the fence line.

12 Q. And who would retain ownership of the well?

13 A. Island Creek would retain ownership.

14 Q. And is it your understanding that the right to use or
15 take delivery of the gas and the duty on Island Creek's
16 part to make best efforts to deliver pipeline quality
17 gas? Is it your understanding that those duties and
18 rights would continue either for the life of the lease on
19 the coalbed methane or for so long as the gas could be
20 produced economically -- that the well made economic
21 sense?

22 A. Yes, that is correct.

23 Q. What reason or reasons does Island Creek have to retain
24 ownership or retain a level of control with regard to
25 these well bores?

1 A. Well, I think first and foremost is the mine safety
2 concern. Mine safety has always been the prime consider-
3 ation in this project and I hope it still is. Nothing in
4 the operation of the well can compromise the safety of
5 the underground miners and I think everybody is agreeable
6 to that. The operation of the well has to be done in the
7 manner so that it doesn't compromise the underground
8 operations. And like Glen pointed out, we've developed a
9 rather extensive underground and surface monitoring
10 system. Every action has a reaction and actions on the
11 surface have reactions underground and it's very import-
12 ant to understand what each action and reaction under-
13 ground, what the cause is and what the corrective actions
14 are. And that in itself is ultimately important. Like I
15 say, we've been in the ventilation gas production
16 business really for -- right at 20 years now, over 300
17 ventilation holes and we've developed a great deal of
18 expertise in knowing what's happening underground and
19 what can be done on the surface to correct that problem.
20 As far as actually what OXY is purchasing with respect to
21 this right to use the well, essentially what you're doing
22 is offsetting the total cost of drilling the hole that
23 would have had to have been drilled if not for this
24 particular hole.

25 Q. I think you were also here when Mr. Gordon and Mr.

1 VanGolen testified with regard to the \$150,000 purchase
2 price that they hope to obtain this right for. Has that
3 price been agreed on?

4 A. No, it's not been agreed on.

5 Q. Given what you have paid for these wells, can I assume
6 that there is some effort afoot on your company's part to
7 get a higher number?

8 A. I could say you could definitely say that's a possibil-
9 ity. Of course, there's a bargaining point. We know
10 what the well cost us and OXY knows what they're willing
11 to give for it. So the negotiations are underway and
12 nothing has actually been finalized yet.

13 MR. SWARTZ: The last thing that I want to bring to your
14 attention, over lunch we had a chance to put our heads
15 together and we want to go forward with the application
16 as filed and our request is that OXY be designated the
17 operator for purposes of the unit as we have requested in
18 the papers that were filed and we will not be petitioning
19 to amend verbally or otherwise and we want to stand on
20 our application as filed and we are requesting that the
21 Board, if it should approve this application, appoint OXY
22 as the unit operator.

23 MR. CHAIRMAN: In this Exhibit I that you just handed out,
24 here again I believe the docket number should be 0195 and
25 correct me if I'm wrong. 0193 was the one that was

1 dismissed.

2 MR. SWARTZ: I'm not sure that we want to change this, Mr.
3 Chairman. We have extra copies and we are going to offer
4 this again in the other three. The numbers are the same.
5 All the wells are the same. If you want us to we can
6 change it, but if we could simply have the record reflect
7 that we submitted ten copies of an Exhibit I in 0193 in
8 this matter. If you want us to renumber it we will, but
9 this exhibit is the same for all six of these units. It
10 was prepared for one that was dismissed which we didn't
11 know at the time we did it it was going to be dismissed.
12 If you want me to renumber it I will or if we can just
13 make it a part of the record.

14 MR. CHAIRMAN: I think as long as the record is clear that
15 it's introduced in docket number 0195 regardless of what
16 you have on it.

17 MR. SWARTZ: Correct.

18 MR. CHAIRMAN: As long as we're clear on that. But at the top
19 it does say 0193 which was the case that was dismissed.
20 That's the only reason I was concerned about that. Any
21 other questions?

22 MR. MASON: Steve, what's Island Creek's relationship to OXY,
23 USA?

24 MR. BREEDING: OXY is just -- I'll use the word sister
25 corporation to Island Creek. We've both owned by

1 Occidental Petroleum.

2 MR. MASON: But they're operated separately?

3 MR. BREEDING: Separately, yes.

4 MR. MASON: Do you know of any transactions in which this type
5 of purchase of right to use the bore has been entered
6 into between arms length nonaffiliated companies? And I
7 would ask that of any of you all.

8 MR. VANGOLEN: Yeah. There's well bore usage purchase in
9 working interest and gas wells in Oklahoma, Texas,
10 Louisiana.

11 MR. MASON: Do you have some personal knowledge of that?

12 MR. VANGOLEN: Yeah.

13 MR. MASON: Do you have any idea what the pricing is on them?

14 MR. VANGOLEN: It's usually based on a percentage of year
15 production through the well bore.

16 MR. MASON: So you pay on the user basis?

17 MR. VANGOLEN: You're basically paying for a straw within a
18 straw, is the analogy.

19 MR. MASON: What I'm concerned about is is there any external
20 evidence related to third party nonaffiliated trans-
21 actions that would support the values being assigned to
22 this bore usage.

23 MR. VANGOLEN: Yeah. I know of it personally and then I had
24 some conversation with our counsel Patty Patton last
25 night that she also -- that was her analogy " A straw

1 within a straw".

2 MR. MASON: Well, I understand the analogy, but I'm interested

3 in the cost. I mean, do you know of any particular

4 situations in which -- but you're saying it's based on

5 usage rather than a single purchase?

6 MR. VANGOLEN: Yeah. If there is a usage price for a full

7 well bore then you're basically buying your percentage of

8 usage from that well bore.

9 MR. MASON: So if you were using 20 percent of the capacity of

10 the bore you would pay 20 percent of the well cost?

11 MR. VANGOLEN: That's right.

12 MR. MASON: It's interesting to me -- I'm looking at Exhibit

13 I, Page 1, detailed well estimate -- that if you look at

14 the things on this list road and site construction is

15 \$35,000. Would this road and site be of any benefit to

16 Island Creek other than with respect to this gas produc-

17 tion?

18 MR. BREEDING: The total reason for construction of the road

19 and site is to deliberate gas.

20 MR. MASON: I understand that, right. But the other equipment

21 related to this VVH -- let me just get to the point.

22 It's kind of interesting to me that power -- I assume

23 that's to run power to this site.

24 MR. BREEDING: Uh-huh.

25 MR. MASON: If you add those two numbers it comes to \$35,000

1 which you take from \$206,000 is strikingly close to what
2 is being paid for the bore. It seems to me the two
3 things there that might be of continuing benefit to the
4 mine as far as a VVH is concern is about what the
5 difference between what basically the gas line -- that
6 may be coincidence because I happen to be looking at
7 this one.

8 MR. BREEDING: Now you know my bargaining position.

9 MR. MASON: I mean, even after this is no longer being able to
10 be used as a producing gas well because of the ability to
11 produce gas at a sufficiently low oxygen content and it's
12 continued use as a ventilation hole to degas the gob, the
13 road and the power will be a continuing value to that
14 operation. Maybe since the price for this is not finally
15 solidified -- I'm sort of beating at something and don't
16 know where I'm going. But my initial conclusion is the
17 \$150,000 represents a pretty significant amount of the
18 well related cost. I guess that's what I'm trying to
19 say. Thank you.

20 MR. CHAIRMAN: Thank you. Other questions for this witness?

21 I know we're treading, but I think we've put ourselves in
22 a position of having to treading into some territory we
23 typically avoid a little bit, but what kind of usage
24 rights are assigned with this well and how are the
25 attributable to the individual operator? Do they go back

1 to OXY as the successor?

2 MR. VANGOLEN: There's really a contract in place between OXY
3 and Island Creek that Island Creek has to do certain
4 things to preform and deliver gas and OXY has to do
5 certain things in order to make the best efforts to --
6 the same best effort type thing to produce this gas in
7 marketable quantity. Transfer of ownership is not taking
8 place between the two corporations. Liability is
9 retained with Island Creek for the well bore including
10 plugging liability -- am I getting to your question?

11 MR. CHAIRMAN: Could you assign usage rights to successor
12 operator?

13 MR. SWARTZ: The answer to that question had better be yes.

14 MR. BREEDING: Yeah, I think so, provided the contract
15 allowed for that.

16 MR. CHAIRMAN: Provided the contract allowed for it. Would
17 you envision any conditions on those assignable rights?
18 Well, I think that raises these kinds of questions,
19 though, of what's taking place here. I'm not trying to
20 be mean, but is this a deal that can only exist between
21 OXY and Island Creek or is this something --

22 MR. BREEDING: I don't think it's anticipated that way, Benny.
23 I think it would be something that could be transferred
24 to a -- from Island Creek's standpoint we need to treat
25 it as if they are another corporation. Although we have

1 corporate leverage, there is no guarantee that they'll be
2 there ten years from now. So we have to cut a deal now
3 that we can live with regardless of who has possession.

4 MR. SWARTZ: I think the goal having participated as counsel
5 for OXY and in looking at some of the agreements that
6 have been entered into by these two companies over time
7 the goal is always to enter into an agreement that would
8 not -- to be workable hinge upon whether or not these
9 companies remain sister companies. I mean, the agree-
10 ments are crafted -- although the negotiating may occur
11 in a corporate family, the agreements are crafted to
12 stand on their own once they're entered into as if these
13 companies had no relationship one to the other. And I
14 can assure you that the right to use this well bore from
15 OXY's standpoint is they will fight long and hard to
16 make sure that that is freely assignable.

17 MR. VANGOLEN: If Island Creek is sold we would expect to
18 still have the right to use that well bore.

19 MR. EVANS: Okay. That was my next question. Does it go back
20 the other way also.

21 MR. SWARTZ: Right. It would have to.

22 MR. VANGOLEN: If these precluding assets are sold to somebody
23 we would assume that those rights are assignable to the
24 next producer.

25 MR. MASON: Just in terms of one of the other questions and

1 I'm not certain you may not want to answer this, but in some
2 of these other wells that OXY owns and will ultimately will
3 pass through this pre-mine, mine and then gob phase, at the
4 point that they are no longer able to be utilized by OXY as
5 gas wells is Island Creek going to be willing to pay them
6 \$150,000 to use those bores

7 before --

8 MR. BREEDING: Not likely.

9 MR. SWARTZ: Depending on who you're asking you're going to
10 get two different answers.

11 MR. CHAIRMAN: Well, obviously this whole line of questioning
12 has a lot to do with our charge of protecting correlative
13 rights of individuals involved and if someone elects to
14 participate. We've got to know what they're electing to
15 participate in.

16 MR. FULMER: I don't see any difference between this and the
17 lease. There's no difference between this and the
18 lease. If you have a lease and that lease is assignable,
19 it's the same thing.

20 MR. VANGOLEN: Yeah. If there's a change in operatorship of
21 this unit there is a procedure in the regulations to
22 afford for that. Sale of an asset, there is also a
23 different proceeding for that.

24 MR. MASON: So there again, the whole part of that depends on
25 what the lease says.

1 MR. CHAIRMAN: Right.

2 MR. MASON: It within itself contains the terms of assign-
3 ability and so forth. Let me ask one other thing. As I
4 understand it, I assume the position of Occidental that
5 they by virtue in their coalbed methane lease are the
6 owners of this methane gas that will be in this gob area
7 and then that gas would be transported up this bore
8 through this mechanism into this T. At that point the
9 gas would be delivered to OXY. So basically you've got
10 this gas that's owned by OXY that's being transported
11 through this mechanism that's owned by Island Creek until
12 it's delivered to them.

13 MR. SWARTZ: Well, I'm a little disturbed about -- I'm not
14 sure we're telling anybody we own -- I mean, we may if
15 this unit is force pooled we may wind up with 100
16 percent of the working interests.

17 MR. MASON: I understand. But you're a claimant, are you not?

18 MR. SWARTZ: Right.

19 MR. MASON: That's right. I agree.

20 MR. SWARTZ: Yes. I have a claim to this gas and this is the
21 kind --

22 MR. MASON: I understand that. But you're claiming somebody
23 owns it.

24 MR. SWARTZ: Right.

25 MR. MASON: And you're one of the claimants to it.

1 MR. SWARTZ: Right.

2 MR. MASON: I guess what I'm interested in is that you've got
3 this gas and it's being transported in this foreign owned
4 vessel, if you will, up to the point that you take over
5 the transportation of it and you don't own it. I guess
6 I'm kind of fascinated by who's responsible for it while
7 it's there?

8 MR. SWARTZ* Island Creek has -- they want to be. I mean,
9 they want to responsible for the --

10 MR. MASON: Is that what this is all about?

11 MR. SWARTZ: Right.

12 MR. MASON: It's that fact that they have responsibility for
13 that gas from the time it leaves the gob as it's trans-
14 ported up through the bore through whatever and is turned
15 over?

16 MR. BREEDING: Through our mining rights we have the right to
17 ventilate that gas. We have the right to actually vent
18 it into the air.

19 MR. MASON: Well, I understand that.

20 MR. FULMER: Mr. Mason, would it help you to know that Island
21 Creek won't be able to deliver that gas to OKY until they
22 get a permit through me?

23 MR. MASON: Yes, sir.

24 MR. SWARTZ: That's true.

25 MR. MASON: Thank you. I'm just trying to get a grasp on

1 exactly the relationship of these pieces and who's
2 responsible for what and who has what when it's all over
3 with.

4 MR. EVANS: What I was asking about and looking at is the
5 ability to have a well operator and an unit operator to
6 both be different.

7 MR. SWARTZ: Correct. It's my legal opinion that the statute
8 clearly contemplates that for what it's worth to you all.

9 MR. CHAIRMAN: Have you rested your case?

10 MR. SWARTZ: Yes. I tried to a long time ago.

11 MR. MASON: Chairman, I move that this meeting be recessed
12 with the Board immediately reconvening in executive
13 closed session for the purpose of consultation with legal
14 counsel and/or briefings by staff members and attorneys
15 pertaining to actual legal matters within the jurisdic-
16 tion of the Board as permitted by Section A, Paragraph 7,
17 of the Virginia Code Section 2.1-344 of the Code of
18 Virginia. This motion is made with regard to matters
19 identified in the Board agenda number 0195.

20 MR. CHAIRMAN: We have a motion.

21 MR. EVANS: Second.

22 MR. CHAIRMAN: A motion and a second. All in favor say yes.

23 (ALL AFFIRM.) We in executive session.

24 (THEREUPON, THE BOARD WENT INTO EXECUTIVE SESSION AND
25 AFTER DELIBERATION THE PROCEEDINGS CONTINUED AS FOLLOWS:)

1 MR. CHAIRMAN: I'm going to read in the certification of
2 executive session, "whereas the Virginia Gas and Oil
3 Board has convened in executive meeting on this date
4 pursuant to an affirmative recorded vote and in accord-
5 ance with the provisions of the Virginia Freedom of
6 Information Act and whereas Section 2.1-344.1 of the Code
7 of Virginia requires a certification by this Virginia Gas
8 and Oil Board that such executive meeting was conducted
9 in conformity with the Virginia Law. Now, therefore be
10 it resolved that the Virginia Gas and Oil Board hear by
11 certifies that to the best of each member's knowledge
12 only public business matters lawfully exempted from open
13 meeting requirements by Virginia Law were discussed in
14 the executive meeting to which this certification
15 resolution applies and only such public business matters
16 as were identified in the motion convening the executive
17 meeting were heard, discussed or considered by the
18 Virginia Gas and Oil Board." I would ask each member to
19 identify yourself at role call in yes or no.

20 (ROLE CALLED.)

21 MR. CHAIRMAN: Okay. What's your pleasure?

22 MR. MASON: Mr. Chairman, after discussing various legal
23 matters in regard to this with our counsel and in looking
24 at my thoughts, I have some very strong reservations
25 about whether or not we have sufficient evidence before

1 us as to what it is that the cost related to the acquisition
2 tion of bore hole usage rights from Island Creek are and
3 the reasonableness of the amount that's being paid for
4 them. I don't have any problems really with any other
5 part of this petition and I unfortunately feel like that
6 the causes of necessity to make an election is an
7 essential part of the granting of the forced pooling
8 application, that this petition be deferred to such time
9 as the applicant could present us with a solid understanding
10 of the agreement between Island Creek and OXY as
11 to what it is that's being acquired and the reasonableness
12 of the amount being paid for that.

13 MR. CHAIRMAN: Do you have any time limit?

14 MR. MASON: I guess I would like to ask counsel for the
15 applicant if he has any feel for when we would like to
16 accommodate.

17 MR. SWARTZ: Well, if we don't do something today, as I
18 understand it and Glen may be able to tell you this and
19 Steve, the costs will all change because one of the
20 panels will probably drop out of these units because of
21 mining and venting. I don't know how long it would take
22 you all to reach a written agreement which I think is
23 what Mr. Mason is asking. But what I am suggesting to
24 the Board in response and we'll get an answer to your
25 specific question is --

1 MR. MASON: With this thing going I'm having a real hard time
2 hearing you.

3 MR. SWARTZ: I'll have Glen give you some estimate if he can
4 with regard to how long he thinks it might take. My
5 concern is that --

6 MR. MASON: We're asking you if we defer this application to a
7 date in the future what is your -- we don't want to make
8 it a date which puts an undue burden on you.

9 MR. SWARTZ: Well, what's going to happen if we defer this
10 even till the next meeting, and correct me if I'm wrong
11 or give them some guidance on this, it is my impression
12 based on discussions I've had with my clients in prepar-
13 ing for these hearings that the first longwall panel may
14 not be --

15 MR. VANGOLEN: The 9 development in the application, there
16 will be no need to pool it because it's about half way
17 mined right now. So while that's come forward and --
18 we're not even going to worry about production on the 9
19 development and just start worrying about production on
20 the 10 development. If we could satisfy your require-
21 ment, give you a number before an order is entered or
22 before an order is issued within the next week or
23 something like that would that satisfy you?

24 MR. SWARTZ: Well, I don't think he's asking for a number.
25 He's asking for a written agreement.

1 MR. VANGOLEN: I understand.

2 MR. MASON: I just don't feel like and I guess I look at my
3 other Board members --

4 MR. CHAIRMAN: We don't feel like.

5 MR. MASON: Well, we don't feel like that we're in a position
6 to ask someone to make an election to participate in this
7 based on the information we have.

8 MR. SWARTZ: Let me ask you this. I don't know the answer to
9 this question but let me ask it because the problem is
10 the gas is the number 9 panel is going to be wasted
11 between now and the next hearing if we don't have an
12 ability to produce it. Let me ask you would this be a
13 possibility because I don't sense that you're troubled
14 that I'm not asking you to respond. But because that I
15 don't sense that you're troubled with anything else other
16 than what you've raised as a group, is there anyway that
17 you could approve this so that this gas could be marketed
18 and leave open the final resolution of the one cost item
19 that we're talking by presentation of this document to
20 the next hearing so that at least this gas can be
21 marketed and escrowed and we'll have a mechanism -- I
22 mean, we have the production numbers, the funds will be
23 there, so that the gas is not wasted and yet the people's
24 election rights will not run until the next hearing when
25 we lay this signed agreement on the table so that you

1 have something to study. I mean, what I sense is you
2 can't put a seal of approval on numbers to give people
3 election rights because you're sensitive to the issues
4 you've raised. And my suggestion is can we defer that
5 one issue, have an order in place with that open and the
6 election rights not run. We know what the ownership
7 situation is and we know what we need to escrow. We know
8 what we need to hold until people elect. Can we leave
9 that open and then give people election rights to run
10 from that point forward so that we do not get in a
11 position where we cannot market the gas from the number 9
12 panel.

13 MR. MASON: So you're saying that you could enter the order,
14 but have the election time period run from the date for
15 which the costs associated are better determined?

16 MR. SWARTZ: Right. And I don't think the statute, if my
17 memory serves me right, sets the time frame for elec-
18 tions. I think the Board and the parties that have
19 appeared before the Board historically have arrived
20 at --

21 MR. MASON: It would certainly accommodate a lack of waste.

22 MR. CHAIRMAN: Yeah.

23 MR. MASON: And if it didn't prejudice anyone's rights and
24 force them to make an election without insufficient data
25 and assuming we could do that, that's assuming, I don't

1 have any problem with that. I just want to make sure
2 we're not doing something we're stumping our toe over.

3 MR. SWARTZ: Gentlemen, can we have an agreement in place in
4 advance of the next hearing? I mean, are you comfortable
5 that you can do that?

6 MR. CHAIRMAN: Well, we're obviously very concerned about this
7 and I think certainly, as Mr. Mason appropriately said,
8 that we're not going to get in the position of asking
9 people to make an election when we don't feel we have the
10 questions answered ourselves. I think it's incumbent on
11 all of us to make sure that we can answer those kinds of
12 questions as to costs --

13 MR. MASON: Well, certainly. We certainly have no desire to
14 see this gas wasted. Basically if there's room within
15 our jurisdiction to accommodate all these interests we'd
16 be very much interested in doing that.

17 MR. SWARTZ: Well, I think the election period that we've
18 established has been something of our own fashioning.

19 MR. MASON: Yeah. It's whatever the order provides, isn't it?

20 MR. CHAIRMAN: Yes, as provided by the Board in it's order.

21 (AFTER A BRIEF DISCUSSION, THE PROCEEDINGS CONTINUED AS
22 FOLLOWS:)

23 MR. SWARTZ: We have been conferring in terms of our ability
24 to respond to your request and there is a disagreement
25 among us as to what we are being asked to do which is not

1 surprising. My impression is that the concern that the
2 Board collectively has expressed is that they would like
3 to see a written agreement with regard to this well bore
4 to satisfy themselves that the \$150,000 is acquiring
5 certain specific rights. It is not my understanding that
6 there is some concern with regard to the \$150,000. It's
7 just that you don't know in a concrete sense what it's
8 associated with.

9 MR. MASON: My personal part of it is both sides of that. I
10 would certainly think the threshold is what are you
11 getting and secondly would be is there any basis for
12 establishing this value from some other source.

13 MR. SWARTZ: The only basis we could ever come up with is
14 what is a willing buyer willing to pay and what is a
15 willing seller willing to sell for. I mean, the way that
16 the -- to give you something to compare this to, when
17 Consolidated set up PGP they have told you that they
18 dumped in 100 percent of their basis in all their well
19 bores. So they all went in at two and a quarter, two
20 fifty, and PGP had the plugging liability. And what
21 you're hearing from us is this is what these wells cost.
22 This is what we think is going to be the purchase price
23 and we are not assuming the plugging liability. So in
24 comparison to some of the other things you've heard and
25 done and seen from a willing buyer/willing seller

1 standpoint, this is a lot less than cost.

2 MR. MASON: Okay. I think at least from a threshold stand-
3 point if someone took the stand qualifying themselves as
4 having sufficient expert opinion to say, "Here is what
5 we're selling and buying and in my opinion \$150,000 is a
6 reasonable price for it" I think that you would then have
7 satisfied at least some basis for us to make a determina-
8 tion. There's evidence before this Board that here is a
9 concrete bundle of rights that are being transferred and
10 here is experts opinion which anyone who wishes to appear
11 and challenge could do so, if it remains uncontroverted
12 then we have a reasonable basis for deciding that those
13 costs are reasonable and approving.

14 MR SWARTZ: I understand what you're telling me and I think we
15 can show up, if it's your pleasure, at the next hearing
16 and address those concerns.

17 MR. MASON: Because that way there is something in the record
18 that gives us an evidentiary basis for asking someone to
19 make a participation choice.

20 MR. SWARTZ: I understand.

21 MR. CHAIRMAN: Are there any other parties in the room that
22 want to address the Board on this matter? I asked that
23 earlier. I'll ask it again to make sure no one has
24 changed their mind. The record will show there are none
25 identifying themselves. There are no objections before

1 the Board in this matter and I think that needs to be
2 noted on the record, that the Board on it's own motion
3 will do whatever it does here. I don't mind talking out
4 loud and saying that I don't have a real problem with
5 approving the application and approving the production so
6 that we don't have the waste and ordering OXY and Island
7 Creek to come back at the next Board meeting with
8 definitive numbers on the costs so that the Board can do
9 a discovery on the reasonableness of those costs. And if
10 that doesn't occur we'll have to talk about the con-
11 sequences because we will have parties that could,
12 perhaps, be in a damage situation then that we would have
13 to deal with, I think, as a Board if we allow production
14 to occur in the interim.

15 MR. MASON: There's also the other side of that, Mr. Chairman,
16 that if they went forward with this subject to the deter-
17 mination of those costs and then we decided they were
18 \$200. What would you do?

19 MR. SWARTZ: I would assume that you would never do something
20 like that having dealt with you for over a year --
21 seriously.

22 MR. MASON: I understand. But there is a risk --

23 MR. SWARTZ: I would assume that we would get a fair result.
24 So I am not --

25 MR. MASON: But you understand that there's some risk from

1 your side, too?

2 MR. SWARTZ: Yeah, but it's the risk that your view of what's
3 fair is somewhat different than ours as opposed to \$200.
4 I don't see that it's happening.

5 MR. MASON: My point is that once we make this determination
6 to go forward we are locked in one way or another to
7 going forward once this cost is determined.

8 MR. SWARTZ: Right.

9 MR. MASON: And we have the authority to do that. I'm just
10 trying to make a point. I realize that's (Inaudible.)
11 But I want everyone to understand where we are.

12 MR. CHAIRMAN: All right. I have a motion before we to defer
13 it.

14 MR. MASON: I withdraw that.

15 MR. CHAIRMAN: Okay.

16 MR. MASON: I want to make a new motion that we approve the
17 pooling application subject to a determination that the
18 nature of the well bore that's being acquired and the
19 appropriateness of the costs being paid for them and
20 allowing a participation election to be made by the
21 proper parties to run from the date of the Board's action
22 in regard to such determination of costs.

23 MR. CHAIRMAN: Okay. Motion.

24 MR. EVANS: Second.

25 MR. CHAIRMAN: A motion and a second. All in favor signify by

1 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)

2 It's unanimous.

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

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ITEM VII

1
2
3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 the establishment of a compulsory pooled drilling unit
5 from OXY, USA, Incorporated for CHM well S-14, docket
6 number VGOB/92/03/17-0196. I would ask the parties that
7 wish to address the Board in this matter to come forward,
8 please.

9 MR. SWARTZ: Mark A. Swartz and Howard Salisbury on behalf of
10 OXY, USA.

11 MR. CHAIRMAN: Are there any others that wish to address the
12 Board in this case? The record will show that there are
13 none. Mr. Swartz.

14 MR. SWARTZ: Mr. Chairman, I have a suggestion in light of the
15 Board's ruling on S-13 that I think might expedite
16 matters today. You don't need to, but if you look at
17 Exhibit G that we've just dealt with, the longwall panel
18 that is capable of producing at this point is only in
19 four units. We have a voluntary agreement with regard to
20 Q-13 so we don't need to pool that. We have dismissed
21 R-13 because we have a voluntary agreement now. We have
22 just pooled subjects coming back here next month on the
23 cost issue S-13 and all I need to pool to produce this
24 and not waste it today is T-13. With the Board's
25 permission and poling any people who might be here today,

1 I would like to move to T-13 and continue S-14 which you
2 have just called which is 0196 and also continue T-14
3 which is 0198 to the next meeting. We'll have the
4 information you've asked for and we can move, I hope,
5 quickly through those next time. Really the only one we
6 need to deal with today is T-13. That will give us all
7 the units that are effected by the panel which will be
8 capable of production in the near future.

9 MR. CHAIRMAN: Are there any objections to that from anyone?
10 Okay. They are continued. We'll go to docket number
11 0197.
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ITEM XIII, IX

1
2
3 MR. CHAIRMAN: We would ask any parties that wish to address
4 the Board regarding the petition for the establishment of
5 a compulsory pooled drilling unit from OXY, USA, Incorp-
6 orated for CBM P-13, docket number VGOB/92/03/17-0197, to
7 please identify yourself, please. There are no others.
8 Mr. Swartz.

9 MR. SWARTZ: As a housekeeping matter, Mr. Gordon is giving
10 you an amended Exhibit B because this unit contains
11 Gerald McClanahan as a respondent and Raymond J. Street
12 as a respondent and we wish to dismiss them. We have
13 reached a voluntary agreement with them. So amended
14 Exhibit B is being tendered to show that that has
15 happened and that they should no longer be respondents.
16 As a consequence, we also are tendering an amendment to
17 Pages 3 and 4 of Exhibit G which deletes any reference to
18 tract 2 which is the tract that Gerald McClanahan and
19 Raymond Street were involved in. So we are filing those
20 amendments with you all.

21 MR. CHAIRMAN: Okay.

22 MR. SWARTZ: My first witness would be Mr. Gordon again.
23
24
25

1 SAMUEL EDWARD GORDON, II

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

4
5 DIRECT EXAMINATION

6
7 BY MR. SWARTZ:

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

9 A. Samuel Edward Gordon, II.

10 Q. Who do you work for?

11 A. OXY, USA, Inc.

12 Q. Your title?

13 A. Regulatory Affairs Coordinator.

14 Q. Tell us what involvement, if any, you had with the notice
15 of hearing application and other documents that were
16 prepared with regard to the forced pooling application
17 for unit T-13.

18 A. I prepared the application, notice of hearing, did the
19 mailings and the publications. In other words, I
20 prepared these documents.

21 Q. Okay. Are you requesting that the Board dismiss Gerald
22 McClanahan and Raymond Street because OXY has reached a
23 voluntary agreement with those two gentlemen?

24 A. Yes, we are.

25 Q. And are you requesting that the Board accept the amend-

1 ments to Exhibit B and Pages 3 and 4 of Exhibit G to
2 reflect that voluntary agreement and their dismissal?
3 A. Yes, we are.
4 Q. Were notices mailed by OXY to all persons listed in the
5 notice of hearing as respondents?
6 A. Yes, they were.
7 Q. Have you filed with Mr. Fulmer's office proofs of mailing
8 with regard to the mailings that went out to those
9 respondents?
10 A. Yes, we have.
11 Q. And would that be Exhibit F?
12 A. Yes, it is.
13 Q. Have you also caused a notice of this hearing and the
14 small map which is Exhibit A-1 to be published in a
15 newspaper?
16 A. Yes, we did. We had it published in the Virginia
17 Mountaineer on February 27th, 1992.
18 Q. And have you filed proofs of publication with Mr.
19 Fulmer's office?
20 A. Yes, I did, as Exhibit E.
21 Q. Turning to the interest that OXY has in this unit which
22 would be Exhibit A, Page 2, would you tell the Board what
23 OXY's interest or interests in this particular unit are?
24 A. OXY's interest in this unit is 100 percent as to the
25 coal. As to the oil and gas we have 54.31 percent.

1 Q. Does that take into account the interest that Mr.
2 McClanahan and Mr. Street had which are not subject to
3 this application?
4 A. That is correct.
5 Q. And what are the outstanding interests, if any, that OXY
6 does not have a written agreement?
7 A. We've entered the surface interest as 4-C. We have had
8 claimants come forward that are surface owners claiming
9 the rights to the coalbed methane.
10 Q. And if I were to show the Board this copy of the well
11 location plat which does not have a well on it, right?
12 A. Right.
13 Q. But I have highlighted in yellow a tract. Is this the
14 tract that is subject to these surface claims?
15 A. Yes.
16 Q. So all the folks that are listed as surface owners who
17 are claiming coalbed methane have undivided interests in
18 tract 1, is that correct?
19 A. Tract 1, that is correct.
20 MR. CHAIRMAN: I just want to note for the record that Kevin
21 McGlothlin, a Board member, excused himself to avoid any
22 perception of conflict of interest as we proceed with
23 this case.
24 Q. (Mr. Swartz continues.) Going to Exhibit C, there are no
25 costs associated with the well shown on Exhibit C, Page

1 1, is that correct?

2 A. That is correct.

3 Q. Why is that?

4 A. There is no well physically located in this unit and the
5 only costs that we have attributed to this is the title
6 accuracy opinions, surveys, filing fees, etcetera.

7 Q. Okay. And those total what amount?

8 A. \$17,100.

9 Q. Is that amount, \$17,100, in your view a reasonable
10 estimate as to the costs of title and regulatory which
11 will be incurred with regard to this unit?

12 A. It is.

13 Q. Also with regard to this unit, is this unit shown on
14 Exhibit G-1 with a dark border around it?

15 A. It is.

16 Q. And there are percentages on Exhibit G-1 and acreage
17 contained within T-13 as depicted. Are those the acres
18 of the longwall panels shown that fall within this unit
19 T-13?

20 A. That is correct.

21 Q. And is the percentage of that acreage, for example 7.03
22 in longwall panel 9-D -- is the percentage calculated by
23 putting the acreage in the panel in T-13 over the total
24 acreage in the panel?

25 A. That is correct.

1 Q. With regard to Exhibit G, Page 2, is this the same
2 exhibit that we went over earlier today with regard to
3 unit S-13?
4 A. Yes, it is.
5 Q. And the same costs and percentages are reported here?
6 A. Yes, it is.
7 MR. SWARTZ: I would like to request that the Board incorpor-
8 ate the testimony that was given with regard to this
9 exhibit, if possible, to move things along here or
10 otherwise I can go through it again, whatever your
11 pleasure is.
12 MR. MASON: You need to specify from what.
13 MR. SWARTZ: Okay. From Mr. Gordon's testimony with regard to
14 unit S-13 that was heard today. The docket number on
15 S-13 was VGOB/92/03/17-0195.
16 MR. CHAIRMAN: Specifically as it relates to determining the
17 estimated allowable costs?
18 MR. SWARTZ: The allocation of costs, yes.
19 MR. CHAIRMAN: Okay.
20 Q. (Mr. Swartz continues.) Now, Mr. Gordon, you have
21 furnished the Board with amended Pages 3 and 4 of
22 Exhibit G.
23 A. That is correct.
24 Q. The only thing that has changed the deletion of the folks
25 who are no longer respondents?

- 1 A. That is correct.
- 2 Q. Okay. The division of interests and the other percent-
3 ages shown on the amended Exhibit G, Pages 3 and 4, are
4 still the same numbers that were reported earlier?
- 5 A. That is correct.
- 6 Q. With regard to the respondents who remain on this
7 application and with references to Exhibit G, Pages 3 and
8 4, would you tell the Board what is reported on those two
9 pages of Exhibit G?
- 10 A. Tract 1 indicated here is the surface owners that have
11 claimed the coalbed methane under tract 1. Tract 2 was
12 the respondents that we dismissed. Tract 3, these are
13 claimants that own the oil and gas rights under Tract 3,
14 3-A and 3-B.
- 15 Q. In the column "net percentage interest in unit" on both
16 Pages 3 and 4 and the other columns what other informa-
17 tion are you passing along to the Board?
- 18 A. In the first column "net interest in the unit" that is
19 the total number of acres or percentage rather than these
20 claimants have in the 80 acre unit identified as T-13.
21 The second column "unit percentage interest in the panel"
22 is 7.75 percent which represents that portion of the
23 panel underlying unit T-13. And then "division of unit
24 interest" column is simply the sum of multiplying the
25 first two columns together which would give them an

1 interest in the overall panel.

2 Q. And you have done one page, Page 3, for one panel and
3 Page 4 for the other panel, correct?

4 A. That is correct.

5 Q. And, of course, the numbers are there -- at least in the
6 second and third columns?

7 A. That is correct.

8 Q. Is the purpose for which the division of interest number
9 is to be used under the field rules a twofold purpose,
10 one to allocate costs for participation for carried
11 interest purposes and on the other hand is the same
12 number also to be used to allocate for royalty purposes
13 or working interest purposes, depending on the elections
14 that are made?

15 A. Yes, the numbers will work both ways.

16 MR. SWARTZ: In addition I would ask that the Board incorpor-
17 ate -- and I have extra copies of this exhibit so they
18 can be incorporated into the record with regard to
19 T-13 -- Exhibit I which was marked pertaining to VGOB
20 92/03/177-0193 which Mr. Steve Breeding testified to with
21 regard to the hearing that we just concluded on unit S-13
22 which was VGOB-92/03/17-0195. I would ask that that
23 exhibit be incorporated and Mr. Breeding's testimony with
24 regard to the proposed depths of the wells and the cost
25 estimates with regard to the wells be incorporated.

1 MR. CHAIRMAN: Okay.

2 MR. SWARTZ: Also OXY is making the same request with regard
3 to proposed language to be incorporated in any order here
4 that we made in the previous hearing. You have an
5 exhibit VGOB-92/03/17-0193. I have extra copies which I
6 will give Mr. Fulmer to put in this record. It's Exhibit
7 H. It's a two page proposal with regard to subsequent
8 operations and I would request that that be incorporated
9 in the record of this hearing to reflect the fact that
10 OXY is requesting that subsequent operations or addition
11 well issues be dealt with on this basis -- at least
12 recommending to the Board that it be incorporated in any
13 order that might be issued.

14 Q. (Mr. Swartz continues.) This pooling application is made
15 under what field rules?

16 A. It's under the Oakwood field rules 2.

17 Q. And those rules govern active gob production, short hole
18 production, that type of production, correct?

19 A. That is correct.

20 Q. And the production from this unit sought to be pooled in
21 this application would only be coalbed methane gas,
22 correct?

23 A. That is correct.

24 Q. And what seam or seams would the interest of the respond-
25 ents are being pooled and the gas being produced from?

1 A. We are seeking the right to produce all seams below the
2 Tiller to the Pokey 2.
3 Q. How many acres does this unit contain?
4 A. 80 acres.
5 Q. And the plat so states, correct?
6 A. Yes.
7 Q. With regard to lease terms and your recommendations to
8 the Board with regard to what terms they should include
9 in your judgment in any order that they might make with
10 regard to election rights, what would you recommend to
11 the Board in terms of bonus and royalty and why would you
12 make that recommendation?
13 A. The standard procedure in this field has been to provide
14 the royalty owner with a one-eighth royalty, a \$1 bonus
15 consideration for leasing for a five year term lease and
16 that would be my recommendation to the Board for coalbed
17 methane.
18 Q. Is OXY both a Delaware Corporation and authorized to do
19 business in the Commonwealth of Virginia?
20 A. Yes, it is.
21 Q. Has OXY registered with the DMME and does OXY have a
22 blanket bond on file with regard to it's oil and gas
23 operations in the Commonwealth?
24 A. Yes, it does.
25 Q. Is the plan of operations which is disclosed basically on

1 Exhibit G, Page 1, with regard to unit T-13 and the
2 other units that intersect the longwall panels under
3 consideration, does this in your opinion protect cor-
4 relative rights or lessen the likelihood of physical
5 waste and economic waste?

6 A. Yes, it does.

7 Q. And in your view is this proposed development of these
8 units and these longwall panels a reasonable plan to
9 develop the coalbed methane resources within and under
10 this unit?

11 A. Yes, it is.

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

13 MR. CHAIRMAN: Let me ask a question in your relief sought.
14 It's on B-3. Just for my own clarification, you're
15 talking about gas from increased density wells? The
16 second paragraph where it talks about prior to the actual
17 commencement of coal mining operations, gas from an
18 increased density well shall be deemed produced from only
19 the 80 acre drilling unit in which the well is located.

20 MR. SWARTZ: Right.

21 MR. CHAIRMAN: Could you clarify that -- what implication, if
22 any, that that has to a unit such as T-13 where there's
23 no well?

24 MR. SWARTZ: Let me give you the rational for it and then I'll
25 get to the question because I think you need the ration-

1 al.

2 MR. CHAIRMAN: Okay.

3 MR. SWARTZ: This was the exact same language that was in the
4 field rules application and the concern that we had was
5 that mine plans change. And anyone who's had anything to
6 do with mining companies knows that they are famous for
7 that. And we were concerned that you would drill a well
8 so our other businesses can't. But we were concerned,
9 what happens if you drill a well on a particular unit
10 that's located physically on a certain unit and the
11 mining never occurs and you have allocated production
12 from that well across several units on the theory that it
13 would eventually be gobbed. And we did not feel that it
14 would be prudent to allow that happen, have mine plans
15 change, get yourself in a situation where you had to
16 recoup or back production away from people. The theory
17 is that -- and I think we probably have to go with this
18 and to answer your question. If you look at T-13 the
19 theory is that there is X amount of gas absorbed on the
20 coal in T-13. I think this is not only a theory but
21 probably fairly real in terms of the real world or
22 approximately in the real world. The reason this is in
23 there is if you're going to allocate 7.75 percent of the
24 production from the total longwall, that is production
25 that can reasonably be regarded as being from this unit.

1 If you are going to drill a well, and we already have
2 field rules that say one well will drill 80 acres if you
3 don't mess with it by a mining, you really need to
4 attribute the production from any well that is on a unit
5 and not in a longwall to that unit. That's a long way of
6 sort of answering the question, but that's the rational
7 behind it. Have I answered the question? I hope so.

8 MR. CHAIRMAN: Yeah. I wanted to cover that issue. That
9 answers my question. Any other questions?

10 (Witness stands aside.)

11 MR. SWARTZ: Since I see this coming is I would request not
12 that the Board pool this and adjourn to executive
13 session, but the Board enter an order, if it is comfort-
14 able with that, comparable to the order that it entered
15 on S-13 which would require us to come back and address
16 the issues that the Board has specified in it's prior
17 order with regard to costs. In other words, pool the
18 unit and direct us to come back at the next hearing and
19 address the cost issue -- or the cost issue insofar as
20 the impact on the use of the well bore in question that
21 have came up.

22 MR. MASON: Mr. Chairman, I would make the same motion that I
23 made with regard to S-13. One point of clarification,
24 too. I don't believe that my motion with regard to S-13
25 dealt with your proposed Exhibit H at all. And I would

1 suggest that since this is sort of new to us that we
2 defer consideration for that one as well as this one
3 until next time also to have a little period of time to
4 decide what to do about this because I would like some
5 clarification if we can get it from our counsel as to
6 whether we really have the authority to do this.

7 MR. CHAIRMAN: The motion is the same as docket number 0195.

8 MR. MASON: Yes, sir. If we could retroactively add a
9 consideration of their proposed Exhibit H with regard to
10 that because I don't believe we took it up at that time
11 even though they did, in fact, propose it in regard to
12 that unit also.

13 MR. CHAIRMAN: If it's okay with you, we will go even further
14 and say that we'll come back to the Board and present
15 whatever language that we would recommended at the next
16 Board meeting and deal with both issues at one time.

17 MR. SWARTZ: Thank you.

18 MR. CHAIRMAN: Motion.

19 MR. EVANS: Second.

20 MR. CHAIRMAN: We have a motion and a second. All in favor
21 signify by saying yes. (ALL AFFIRM.) Opposed say no.
22 (NONE.) It's unanimous.

ITEM XVI

MR. CHAIRMAN: Mr. McGlothlin, you may join us. The next item on the agenda is number 16 on the agenda, a petition for the establishment of a compulsory pooled drilling unit from Virginia Gas Company for EH-65, docket number VGOB-92/03/17-0205. I would ask the parties that wish to address the Board regarding this to please come forward.

MR. MULLINS: Tom Mullins.

MR. MCGLOTHLIN: I'd like to say it's good to back.

MR. CHAIRMAN: You missed a lot of fun. Is there anyone else that wishes to address the Board in this case? The record will show that no one has been identified.

MR. MULLINS: My name is Tom Mullins. I'm with the Street law firm in Grundy and here today on behalf of Virginia Gas Company along with David Street also from the same board. I'll try and speak up. I've got a little bit of a cold. So if I don't quite make it just urge me on and I'll try to talk a little bit louder. We're here on a pooling application for a well designated as EH-65, docket number VGOB-92/03/17-0205. I'd like to call as my witness Mr. James Rasnick.

CLERK: (Swears witness.)

1 JAMES D. RASNICK

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

4
5 DIRECT EXAMINATION

6
7 BY MR. MULLINS:

8 Q. Could you please state your name, sir?

9 A. James D. Rasnick.

10 Q. What do you do for a living?

11 A. I am the Land Manager for Virginia Gas Company.

12 Q. If I could, I'd like to ask you to speak up because of
13 the ventilation system.

14 A. Okay.

15 Q. I'm James D. Rasnick. I'm with Virginia Gas Company as
16 Land Manager.

17 Q. How long have you been land manager for the Virginia Gas
18 Company?

19 A. Three months.

20 Q. Was there a predecessor to the Virginia Gas Company?

21 A. There was.

22 Q. What was that predecessor?

23 A. Edwards & Harding Petroleum Company.

24 Q. And how long were you with Edwards & Harding Petroleum
25 Company?

1 A. I began work with them in July, 1990.

2 Q. How long total time have you spent working in land and
3 mineral related positions for various companies?

4 A. Twelve years.

5 Q. Have you ever testified in proceedings before courts of
6 the Commonwealth concerning land and mineral development
7 as an expert witness?

8 A. I have.

9 Q. And were your credentials accepted as an expert witness
10 in those proceedings?

11 A. They were.

12 Q. Are you familiar with the application filed by the
13 Virginia Gas Company for the drilling unit designated as
14 EH-65?

15 A. Yes.

16 Q. Is the Virginia Gas Company seeking to force pool the
17 interest in unit EH-65 as identified on the plat filed as
18 part of the application?

19 A. Yes.

20 Q. Has notice been sent to the interested parties by
21 certified mail, return receipt requested?

22 A. Yes.

23 Q. Have copies of those mail receipts been filed with the
24 Board?

25 A. Yes, they have.

1 Q. Was there any notice by publication preformed?
2 A. Yes, in the Dickenson Star in Dickenson County.
3 Q. Was evidence of that notice filed with the Board?
4 A. It was.
5 Q. What's the size of the unit?
6 A. It's 125.6 acres.
7 Q. How much of the unit is leased and how much is outstand-
8 ing?
9 A. 82.55 percent of the unit is leased. 17.45 percent of
10 the unit is outstanding.
11 Q. What is the Virginia Gas Company's interest in the unit?
12 A. 82.55 percent.
13 Q. Is there anybody you want to dismiss that you leased
14 subsequent to filing your application?
15 A. No.
16 Q. Who owns the drilling rights in the unit?
17 A. Virginia Gas Company.
18 Q. Is this a conventional gas well?
19 A. Yes.
20 Q. What formation or formations are you asking the Board to
21 force pool?
22 A. From the Bureau Sandstones to the Devonian Shell and all
23 areas between.
24 Q. What is the proposed depth of this well?
25 A. 4,445 feet.

1 Q. Has this well been permitted?
2 A. It has.
3 Q. Have you attempted to contact each party concerning an
4 agreement prior to filing your application?
5 A. We have.
6 Q. What efforts did you make in that vein?
7 A. Our land man contacted all the known parties and offered
8 those parties leases. As you may note, there's some
9 unknown parties in this application in which there is no
10 records in the Dickenson County Clerk's Office specifying
11 who these parties may be.
12 Q. Was due diligence used in attempt to locate these
13 parties?
14 A. It was.
15 Q. Is a listing of the parties listed as unknown heirs of
16 Nancy Hill and the other parties that have not been
17 leased part of the exhibit of the application known as
18 Exhibit B?
19 A. Yes.
20 Q. What were the terms of the leases offered to these
21 unleased parties?
22 A. The terms offered were a lease for five years, \$5 per
23 acre, and a one-eighth royalty.
24 Q. Is that standard in the oil and gas industry?
25 A. Yes, it is.

1 Q. Whose interest and drilling rights are you seeking to
2 force pool today?
3 A. Those parties listed on Exhibit B of the application.
4 Q. Is the Virginia Gas Company asking to be designated as
5 drilling operator in unit EH-65?
6 A. Yes.
7 Q. Was an AFE, authority for expenditure, prepared for this
8 unit?
9 A. Yes.
10 Q. I've handed a copy of that to the members of the Board
11 and I'd like to show you a copy of it. Is that a copy of
12 the AFE that was prepared?
13 A. Yes, it is.
14 Q. Does that accurately reflect the estimated costs for the
15 well on this piece of property?
16 A. Yes.
17 Q. Was it prepared by somebody who is familiar with the
18 preparation of authority for expenditures in these types
19 of wells?
20 A. Yes.
21 Q. Based upon your experience is this a reasonable authority
22 for expenditure for this well?
23 A. Yes, it is.
24 Q. Are there any owners who have decided to be non-
25 participating operators?

1 A. No.

2 Q. Does any amount need to be escrowed by the Board?

3 A. Yes.

4 Q. What amount needs to be escrowed?

5 A. The unknown heirs of Nancy Hill which we have calculated

6 to be 11.8 percent.

7 Q. 11.8 percent of the unit?

8 A. Yes.

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

10 well?

11 A. 300,000 MCF.

12 Q. Does the Virginia Gas Company have a blanket bond as

13 required by the statute to cover plugging and reclama-

14 tion costs?

15 A. Yes.

16 Q. Is the permit number of this well 1634?

17 A. Yes, it is.

18 MR. MULLINS: I don't believe I have any other questions of

19 this witness.

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

21 MR. FULMER: Mr. Chairman, as a matter of clarity on the plat,

22 could we ask them to show what tracts we're talking

23 about on the people who are going to be force pooled?

24 MR. CHAIRMAN: Okay.

25 MR. MULLINS: I didn't hear that. I'm sorry. I couldn't

1 hear.

2 MR. FULMER: I don't see any connection on the plat to these

3 people's well rights.

4 MR. RASNICK: The Sarah Wood gas interest.

5 MR. FULMER: Both tracts?

6 MR. RASNICK: Both tracts, yes. Portions of that are persons

7 that we have identified we have leased. Those parties

8 listed on Exhibit B we have not leased.

9 MR. MULLINS: These two interests right here I've highlighted

10 them on my copy. And the unknown heirs of that section

11 total up to 11.8 percent, is that correct?

12 MR. RASNICK: That is correct.

13 MR. CHAIRMAN: Do you have the person here today that prepared

14 the authority for expenditures?

15 MR. MULLINS: That was Mr. Chad Harding and he's no longer

16 with the company and he's left.

17 MR. CHAIRMAN: Is there any way that we could determine the

18 reasonableness of these costs with anyone that you have

19 here today?

20 MR. MULLINS: Has the well actually been drilled?

21 MR. RASNICK: The well has been drilled.

22 MR. MULLINS: Were the costs associated with the well -- does

23 this accurately reflect the cost of drilling the well?

24 MR. RASNICK: From the AFEs I've previously reviewed it does.

25 MR. CHAIRMAN: So you'll have records of actual costs avail-

1 able?

2 MR. MULLINS: Yeah.

3 MR. RASNICK: I might note that this tract is drilled upon USA

4 property which has increased the costs somewhat.

5 MR. CHAIRMAN: Any other questions?

6 MR. MASON: Mr. Chairman, I think I have few questions just in

7 follow-up. It was pointed out to me that this apparently

8 was prepared in what, August, September of 1990?

9 MR. CHAIRMAN: Uh-huh.

10 MR. MASON: You all might want to be a little more attentive

11 to current information and --

12 MR. RASNICK: You're referring to the plat?

13 MR. MASON: No, to the AFE.

14 MR. CHAIRMAN: The AFE.

15 MR. RASNICK: Okay.

16 MR. MASON: You've told us that basically you've looked at

17 the actual cost of this well and believe these cost to

18 be --

19 MR. RASNICK: Yes, comparable. We don't have a final cost at

20 this point.

21 MR. CHAIRMAN: Okay. Any other questions? Do you have

22 anything else?

23 MR. MULLINS: No, sir.

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

25

1 MR. MCGLOTHLIN: Mr. Chairman, I move that we accept the
2 petition as filed.
3 MR. CHAIRMAN: A motion to approve.
4 MR. EVANS: Second.
5 MR. CHAIRMAN: A motion and a second. All in favor say yes.
6 (ALL AFFIRM.) Opposed say no. (NONE.) The motion
7 carries. Thank you.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ITEMS XVII - XVI

1
2
3 MR. CHAIRMAN: The next item on the agenda is a petition from
4 OXY, USA, Incorporated to amend prior orders and there
5 is about ten of them. To provide the time within which
6 operations may be commenced by the designated operator
7 and be extended and enlarged for a period of one year
8 after it's Circuit Court of Buchanan County, Virginia
9 enters it's final decree in appeal taken by Ashland
10 Exploration, Incorporated from the order listed above.
11 The docket number for item 17 is VGOB-90/10/10-0039.

12 MR. FULMER: Mr. Chairman, for the Board's benefit I would
13 like to refer you to a letter that was handed out
14 previously in docket numbers 191 and 192 in regards to
15 Ashland's response.

16 MR. CHAIRMAN: That is a letter dated March 16th, 1992 from
17 Grant McQuire to Mark Swartz.

18 MR. SWARTZ: Mark Swartz and Howard Salisbury appearing for
19 OXY. I would like to propose and I'm sure that MR.
20 Johnson will -- well, probably will not have any objec-
21 tion. I would propose that if there is no objection that
22 we hear all ten of these at one time. I mean, they all
23 involve the same issue, the same parties.

24 MR. JOHNSON: Right.

25 MR. SWARTZ: And let's do it once, if that's agreeable to the

1 Board.

2 MR. CHAIRMAN: As long as we can keep the record straight.

3 MR. JOHNSON: It's certainly agreeable to me. The issue is
4 the same in all the applications -- or the issues that have
5 been raised by my clients.

6 MR. CHAIRMAN: Are there any other parties in the room that
7 wish to address the Board in this matter? The record
8 will show that there are none. There's agreement for the
9 Board to hear in a consolidating fashion docket numbers
10 0205 which lists item numbers 16 through 26. Mr. Swartz.

11 MR. SWARTZ: Each of these motions concern a prior order
12 entered by this Board for force pooling a coalbed methane
13 unit.

14 MR. CHAIRMAN: I'm sorry. I need to correct something. I say
15 16 and it's 17.

16 MR. SWARTZ: Yeah, I think it's 17 through 26. But I never
17 have enough confidence in my own notes to argue with
18 anybody. Each of the ten motions seeks an order from the
19 Board amending a prior order entered by the Board. All
20 of these prior orders deal with coalbed methane gas
21 wells. All of these prior orders -- the ten that are
22 under consideration today -- were appealed by Ashland
23 Exploration to the Circuit Court of Buchanan County and
24 are still pending on appeal without a final order from
25 Judge Persin. When those matters were appealed by

1 Ashland Ashland named certain parties as defendants and
2 also noticed certain other parties who were respondents.
3 The folks that Mr. Johnson represents today, the Rogers,
4 were noticed on all of these appeals and elected not to
5 have appear and have never appeared, filed an answer or
6 any paper in any of these pending appeals and I think you
7 need to know that. They're essentially under the rules
8 in default if relief is being sought against them. But
9 they have not participated in any of those appeals
10 whatsoever. The participants or combatants in those
11 appeals have been Ashland Exploration as a petitioner,
12 OXY, USA. Island Creek is involved in some of them.
13 They have their counsel. And, of course, the Virginia
14 Gas and Oil Board has been represented first by Michael
15 Lepchitz and now I believe Scott has taken over that
16 case. But those are the people who actually appeared by
17 counsel and have participated. The only issues that have
18 been resolved by Judge Persin to date and these cases
19 have been on appeal a good while -- Ashland raised a De
20 Novo issue and they were arguing that they were entitled
21 to a new trial or De Novo review on all of these appeals.
22 Judge Persin has dealt with that issue, has ruled that
23 unless you are actually a coal company, and I think you
24 may have received copies of his decision, you are not
25 entitled to De Novo review. All of these cases -- the

1 ten that you have before you today and more that have
2 been appealed in addition to these ten have been consoli-
3 dated by agreement of the parties for the purposes of
4 hearing and resolution by Judge Persin. All of these
5 cases are set for final hearing on March 30th of this
6 month. I anticipate that Judge Persin, however, will
7 hear the case that day but will not make a decision. The
8 counsel for Ashland has already told me that he intended
9 to ask the Judge for some time to brief. I assume that
10 the Judge is going to give at least thirty days. The
11 hearing is March 30th, but there will be a briefing
12 schedule and then the Judge, I assume, will consider the
13 brief. So we're getting there. The final hearing has
14 been set, but I'm not sure when this is going to be
15 resolved but at least it seems to be moving along. I
16 think significantly -- also I would like to tell you
17 although you seem to have copies of the letter that Mr.
18 McQuire and I have talked about this and he, of course,
19 received copies of all of the motions that I filed. He
20 has told me over the telephone, he has told you in
21 writing, that the proposed language which I have suggest-
22 ed in my pleadings that I would like to see you incorpor-
23 ate in an order in the event the Board was inclined to
24 grant this motions that the proposed language which
25 starts at the bottom of Page 3 of the petition and then

1 continues on to Page 4 is acceptable to Mr. McQuire as
2 counsel for Ashland and acceptable to Ashland and this,
3 indeed, is what I am asking you to do. The language
4 requests that you enter an order stating that the order
5 you previously entered shall expire one year from the
6 date on which a final order is entered by the Circuit
7 Court of Buchanan County, Virginia with regard to the
8 appeals taken by Ashland Exploration, Incorporated or as
9 otherwise provided by the Circuit Court of Buchanan
10 County, Virginia in it's final order with regard to set
11 appeal. And in the event the Court's final order should
12 permit operations to proceed, providing that if opera-
13 tions commence during said one year period following the
14 entry of a final order this order shall remain in effect
15 so long as operations continue on the subject drilling
16 units. So Mr. McQuire has written to you and said that
17 the appellant finds this acceptable. Mr. McQuire and I
18 both, and I think all of the parties, feel that some
19 issues have been raised on all of these appeals that
20 ought to be resolved. I assume that most of you have had
21 a chance to look at my petition and the reasons set
22 forth therein, so I'm not going to read that to you.
23 But I think that the primary that you need to consider in
24 addressing this is court cases take time to resolve and
25 it is almost inevitable that this is going to happen over

1 and over again with orders. That simply by appealing an
2 order and letting the court case take it's time the order
3 will be rendered moot. And what I am asking you to do is
4 make sure that we actually get a decision and that we
5 don't get a non-decision merely by the passage of time.
6 I would suggest to also that you need to be aware of
7 Virginia Code Section 9-614.18 which is a part of the
8 administrative procedure act or the APA which deals with
9 intermediate relief at an agency level. And nothing that
10 I find is ever exactly on point, but it's close enough
11 that I think you ought to be aware of the fact that you
12 have this authority. It says in part that when judicial
13 review is instituted or is about to be, meaning threaten-
14 ed, the agency concerned may on request of any party or
15 it's own motion postpone the effective date of the
16 regulation or decision involved where it deems that
17 justice so requires. So under the APA you apparently
18 have the authority -- if litigation is threatened or
19 review is threatened you have the authority to postpone
20 your rulings, extend them, deal with them as justice so
21 requires. What I'm asking you to do today is simply to
22 amend each one of these orders to provide that it will
23 continue in the event the Board's ruling is upheld on
24 appeal for a year from that date. OXY, and I state this
25 in the petition, frankly was very reluctant to operate or

1 commence operations on these units while they're pending
2 on appeal. I see nothing and have found nothing to
3 suggest that these orders cannot be amended. We felt and
4 believe that we had to give notice to all the respondents
5 and we did, in fact, filed proofs of mailing with Mr.
6 Fulmer showing that we have mailed notices to all the
7 respondents of these motions so that if they wanted to
8 come forward and object they could which is how Mr.
9 Johnson's clients got notice and obviously how Mr.
10 McQuire got notice. So in summary we are requesting that
11 you allow the Circuit Court to make a decision with
12 regard to these matters that are on appeal by amending
13 the orders to provide that they will continue pending the
14 Court's final decision and if the decision should uphold
15 your previous order to continue for a year beyond that
16 date or so long as operations continue. Thank you.

17 MR. CHAIRMAN: Thank you, Mr. Swartz. Mr. Johnson.

18 MR. JOHNSON: Members of the Board, what we have said in the
19 motions to dismiss that I have filed with the Board as
20 well as the objections that I filed with the Board set
21 forth pretty simple legal principle. And that is that
22 the orders that the Board entered over a year ago in each
23 of these matters, each of those orders is now void by the
24 terms of the orders. The issue here is whether or not
25 the procedures have been filed and whether or not there

1 is an order even in effect at this time. What I would
2 say to the Board is that the procedures that OXY had to
3 extend the time of the order, those procedures were not
4 followed and now 365 days after the entry of the order
5 the order by the terms of each order voided the orders.
6 The orders are void and do not exist which regard to
7 their effect. OXY did not follow what the APA provided.
8 OXY has not gone to the Circuit Court nor to this Board
9 and asked for relief, but waited until the orders had
10 expired. There was one application or one motion that
11 they did file within the one year period, but knowing it
12 could not be heard until it had expired. What the Rogers
13 interests are saying is is that these orders have expired
14 and OXY has not followed the procedural rules. I do not
15 think it is relevant to this proceeding what the status
16 of the litigation is of Buchanan County. It's not
17 relevant as to whether or not my clients are actively
18 participating in the litigation or not. The issue is
19 whether or not the orders are void and whether or not
20 this Board can now revive the orders and amend them. Mr.
21 Swartz points to some things and I wish to point to the
22 regulations in the Board's orders. I'm looking at the
23 one now for well E-34 and I believe they're all consist-
24 ent with that, the Board's orders state in paragraph 10,
25 "If the well involved herein has not been commenced as of

1 the date of this order shall commence or cause to be
2 commenced operations on such well within 365 days from
3 the date of this order and in any event shall continue or
4 cause to be continued operations under this order with
5 due diligence. Otherwise the provisions thereof shall
6 be inoperative and this order shall terminate except for
7 any cash sums becoming payable hereunder unless the time
8 of commencement of such operations is extended by an
9 order of the Board." That's what the Board said in the
10 orders that were entered. The rules and regulations that
11 were adopted and I guess there may be an argument as to
12 what -- I haven't looked to see what the prior rule was.
13 The current rule 15.B once states, "All orders issued by
14 the Board under 45.1-631.21 and 45.1-631.22 Code of
15 Virginia shall remain in effect: #1, for a period of one
16 year from the date of issuance if gas or oil operations
17 have not commenced on the well or wells in the unit or
18 units established by the order." The APA which Mr.
19 Swartz cites to I believe also shows the Board that OXY
20 failed to do what they could have done to protect the
21 orders that this Board has entered. And they just
22 haven't followed these rules either. Section 9-6.14:18
23 intermediate relief. What I'm saying is they're not
24 asking for intermediate relief. They're asking for
25 relief after the orders are dead. "When judicial review

1 is instituted, that is the time the suit is filed or is
2 about to be, the agency concerned may on request of any
3 party or of its own motion postpone the effective date
4 of the regulation or decision involved where it deems
5 that justice so requires." Now, the effective date of
6 these orders was when the orders were entered and the
7 orders had a one year fuse on them. Otherwise the Court
8 may -- I'm quoting again from the statute -- "The Court
9 may on proper application and with or without bond
10 deposits in Court or other safeguards or assurances as
11 may be suitable issue all necessary and appropriate
12 process to postpone such effective dates or preserve
13 existing status or rights pending conclusion of the
14 review proceedings if the Court finds the same to be
15 required to prevent immediate unavoidable and irrefutable
16 injury and that the issues of law or fact presented are
17 not only substantial but that there is probable cause for
18 it to anticipate the likelihood of reversible error in
19 accordance with Section 9-6.14:17. Such action by the
20 Court may include; #1, the state of operation of agency
21 decisions of injunctive nature or those requiring payment
22 of money or suspending or revoking license or other
23 benefit. And #2, continuation of previous licenses in
24 event until timely applications for review are duly
25 determined by the agency." I have read you the entire

1 statute. It would have been OXY's opportunity to do a
2 couple of things. They could have come to this Board
3 when the appeal was filed or they could have gone to the
4 Court and said, "Judge, we have this problem." They did
5 neither. And then they waited until the orders had
6 expired and came back here and said, "Now, bail us out."
7 I believe if they wish to be bailed out they should talk
8 to Judge Persin and not to this Board. I believe the
9 Board gave them one year to drill a well and they failed
10 to do that. I believe that the opportunities that they
11 had, the opportunities that this Board had, have all
12 passed and have put these orders to bed. If they wish to
13 (Inaudible.) the units, that's certainly their ability
14 and their own decision. With regard to the units
15 themselves, no wells have been drilled. I think only one
16 well permit's even been applied for on all the units that
17 are involved here. This thing has just been sitting
18 there and OXY filed these applications late. That's
19 where it stands and my clients ask that the Board dismiss
20 this application to amend.

21 MR. CHAIRMAN: Thank you, Mr. Johnson. Members of the Board,
22 you heard the opening arguments. Are there any ques-
23 tions?

24 MR. MASON: I just wanted to ask Mr. Johnson whether he has
25 any authority for the fact that -- I assume that he's

1 saying the Board doesn't have the right to retroactively
2 extend the due date on these orders. Is that what you're
3 saying?

4 MR. JOHNSON: Right, because the orders are void. They have
5 terminated.

6 MR. MASON: Well, what's your authority for that?

7 MR. JOHNSON: My authority is that the Board orders themselves
8 have terminated and they state the specific terms. If
9 it's void it's void. It cannot be revised. If something
10 is dead you can't pump back life into it. The authority
11 to do this exists in the APA, Section 18, that I just
12 read to you.

13 MR. MASON: Well, I understand the APA gives you the right to
14 go to Court and have something done, but that didn't
15 happen. What I'm asking you is where does it say that
16 the Board does not have the right to extend the date of
17 these orders after the date of the expiration?

18 MR. JOHNSON: There is none, but there is nothing in the
19 statute that says the Board has any such right. There is
20 no statute that says that, no regulation that says that.

21 MR. MASON: What about the fact that 45.1-361.15B says,
22 "Without limiting it's general authority the Board shall
23 have the specific authority to issue rules, regulations
24 or orders pursuant to the Administrative Procedure Act to
25 take such actions as are reasonably necessary to carry

1 out the provisions of it's chapter."

2 MR. JOHNSON: I don't believe that a provision like that, Mr.
3 Mason, would extend an order which has already void which
4 the applicant failed to comply with the terms of the
5 order. What this applicant is saying is we don't want
6 to come back in here and reapply. We want the Board to
7 say, "Okay. You failed to comply with the order and now
8 we're going to retroactively amend the order." I don't
9 believe the Board has the authority to retroactively
10 amend orders.

11 MR. MASON: Well, that's what I'm saying. I mean, I under-
12 stand there are two prongs to this in my mind. One is
13 whether we have the right to do that and the second one
14 is do we choose to do so. And I understand and I accept
15 the argument that we can choose to do so or not. What
16 I'm concerned about is your argument that we don't have
17 that authority.

18 MR. JOHNSON: I don't believe that you do when an order is
19 dead. When the Board issues an order and the order is
20 terminated on it's own terms, can the Board then decide
21 that no, it's going to retroactively amend an order that
22 has already been voided? I don't know whether there's an
23 authority to that.

24 MR. MASON: Well, we have the authority here to take such
25 actions that are reasonably necessary to carry out the

1 provisions of this chapter. Now, that's a very broad
2 ground of authority to do what we think is proper and
3 appropriate under this act in part which relates to these
4 forced pooling orders and you're saying that that's a
5 general provision. What I want to know is is there any
6 specific provision that you're aware of that tells us we
7 can do it?

8 MR. JOHNSON: I don't know of anything that says that you can
9 do it other than what you're saying is some general broad
10 power that the Board has been given. I see nothing that
11 gives you the authority to extend it. I see that the
12 Administrative Process Act provides the relief and see
13 that they have not complied with that act.

14 MR. MASON: I think that relief generally relates to where you
15 can't get the Board to do anything you can then go to
16 Court and do something about it. Thank you.

17 MR. JOHNSON: But let me also say this. When it says that the
18 Board can do something about it is when the appeal has
19 been filed -- when the appeal has been instituted. The
20 word instituted cannot mean a year later. It's when the
21 appeal has been instituted they can come to this Board
22 and ask for some other relief. I believe that the relief
23 that is in the APA section relates to the Circuit Court
24 really deciding to hold this thing in advance if there is
25 need to do that. I think that that's what should have

1 happened. I did not participate in the litigation and I
2 don't think that really is an issue here. But that was
3 not done.

4 MR. MASON: Thank you. Thank you, Mr. Chairman.

5 MR. CHAIRMAN: Thank you, Mr. Johnson. Do you have any
6 additional comments, Mr. Swartz?

7 MR. SWARTZ: A couple of comments. I suppose we could have
8 taken the position that participating in this litigation
9 was commencement of operations and I am suggesting to you
10 that we could take that position. It's kind of a crazy
11 argument, but I mean we were in there spending money and
12 doing things to defend our right to proceed on these.
13 I'm not willing to concede these orders are totally dead
14 and that we didn't commence operations. On the other
15 hand, I don't want to get into a nitpicking here. I want
16 viable orders because I think that Ashland has clearly
17 acknowledged they would like a decision on some of these
18 issues that have been raised and would like a decision
19 from a Court of record. My client would like a decision
20 from a Court of record. I think the AG's office would
21 like a decision from a Court of record with regard to
22 some of these issues that are up there right now and I
23 think the Board -- the other point that I would like to
24 make is when somebody tells me I can't do something my
25 first question is, "Show me where it says I can't do it."

1 And my view is that this Board has very, very broad
2 powers and that absent some provision or some case that
3 somebody brings to your attention you have extremely
4 broad powers. And I see nothing in this act to prevent
5 you from doing what I'm asking you to do. The last point
6 that I would like to make is Mr. Johnson has suggested
7 that I should have done different things or gone differ-
8 ent places. I can assure you that in my view, regardless
9 of what I did, he would have suggested I should have been
10 somewhere else in that forum. The reason I am here
11 instead of the Circuit Court, though, is an issue I need
12 to tell you. It is my view that the term of this order
13 is not on appeal. Okay. And it is my view that if I
14 actually want an order amended as opposed to stayed I
15 have to come back to this Board. So I thought this
16 through and made a decision because I am of the opinion
17 that if I went to Judge Persin and said, "I want you to
18 amend this order" his answer would be, "I'm here to pass
19 on the validity of the order. The term of the order is
20 not on appeal. I have no authority to amend the order."
21 So I am here asking you all to exercise your discretion
22 essentially, to make a decision whether or not in the
23 interest of the Board, in the interest of the parties, in
24 the interest of getting some case law to afford some
25 certainty whether or not it makes sense to amend these

1 orders, give them a specific term running as I have
2 proposed so that there is no confusion as to whether
3 defending a law suit involving a unit is enough to
4 commence operations with regard to that unit. I don't
5 want to be in the position where I have to make that
6 argument. I'd rather have an amended order so we all
7 know where we stand.

8 MR. CHAIRMAN: Could you amend your court case in the event
9 that the Board didn't grant this to request relief from
10 the Court to --

11 MR. SWARTZ: I would have to argue and I think this really
12 illustrates the reason why I'm not in court. Let's
13 assume you deny my motion today and you say, "No, we're
14 not going to amend these orders." That is a new order
15 that in theory could be appealed, but it's subject to,
16 you know, is it an abusive discretion and clearly it
17 isn't. I mean, I can't take that up with any hope of
18 prevailing in front of Judge Persin. If I want to amend
19 these orders I believe I'm in the right place. If I want
20 guidance on appeal claiming somebody made a mistake -- I
21 mean, that's what these appeals are that Ashland has
22 taken. They have made allegations with regard to things
23 that happened in the prior order. But it's not going to
24 do me any good -- the Judge is going to say to me, "Mark,
25 the order has expired by it's own terms and I cannot

1 breath new life into it. If you want new life into you
2 you have to go back to the Board." I know he's going to
3 tell me that.

4 MR. MASON: Let me ask you this because I don't know enough
5 about these appeals. Are these appeals related to
6 specific decisions of the Board on applications?

7 MR. SWARTZ: Yes.

8 MR. MASON: If this order expires --

9 MR. SWARTZ: I think those appeals are removed which is why
10 this is important.

11 MR. MASON: So the whole case, that's just gone down the
12 toilet.

13 MR. SWARTZ: Right. And all the time and energy that the AG's
14 invested, that we've invested -- we'll be back here
15 repooling all these units. I mean, think about judicial
16 economy.

17 MR. MASON: Well, I mean, that's the problem I have.

18 MR. SWARTZ: Right.

19 MR. MASON: Let me ask you one other question. This applica-
20 tion for amendment, was the notice of these applications
21 given to all of the people who were originally noticed on
22 the applications?

23 MR. SWARTZ: I'll let Marty answer that question because I
24 think he needs to. Except for people that we may have
25 obtained leases from since then. Marty, do you want to

1 tell --

2 MR. MASON: Any person that would have had a standing to
3 receive notice -- I guess what I'm --

4 MR. SWARTZ: No, the respondents is what I'm saying.

5 MR. MASON: I understand that. But the key thing I'm after
6 here is do we prejudice anybody's interest --

7 MR. WIRTH: No, sir.

8 MR. MASON: -- who did not know that this order may be
9 extended who would be a party that would be a noticed
10 party under a pooling application currently filed?

11 MR. WIRTH: In the original when we force pooled it was
12 mostly all Lon Rogers. But there was a 46 acre tract,
13 they have been noticed also. They've also many of them
14 signed leases with me, but they have received notice. We
15 just took the original respondents and went off of it.

16 MR. MASON: So everyone that would be entitled to notice under
17 a new forced pooling order as to this tract has received
18 notice of this application to extend the order?

19 MR. WIRTH: That is correct.

20 MR. JOHNSON: I think inquiry needs to made as to whether or
21 not they've gone back and checked to make sure there
22 hasn't been any changes. My client have changes. Lon B.
23 Rogers, Bradshaw Trust #2 now has the coal interest on
24 the tract and that has changed since the application.

25 MR. MASON: Well, you're here on their behalf.

1 MR. JOHNSON: Yes, sir.

2 MR. MASON: You're here on their waiving of notice so --

3 MR. JOHNSON: Yes, sir, I am. And I'm not complaining about
4 that, Mr. Mason. I'm just saying I think inquiry ought
5 to made as to whether or not titles have been checked to
6 see if there have been any changes since the orders were
7 issued as well as any publication that may have occurred
8 with regard to this particular application.

9 MR. MASON: Thank you, Mr. Chairman.

10 MR. SWARTZ: With regard to publication we have filed two
11 copies of notices of publication with regard to these
12 issues with Mr. Fulmer. So not only did we mail but we
13 also published. We treated this as if it was a real
14 motion effecting the respondents rights and gave the
15 statutory kinds of notice that are called for in any
16 motion or petition that you bring to the Board.

17 MR. JOHNSON: Mr. Wampler, I'd like to say one more thing. If
18 there's not any other questions or anything I have just
19 one thing I want to say. I don't waive any of the points
20 that I've already made and argued here, but I just want
21 to say to the Board I feel that if the Board is inclined
22 to grant this application that the Board ought to set a
23 date certain for the effective date of the new order. I
24 don't think if the Board is just going to sit there and
25 let this litigation go on and there are two parties that

1 are intensely involved in that who apparently want you to
2 agree to this amendment, I believe that what would be
3 proper would be to set a date certain and amend the order
4 and give them an additional year or six months or
5 whatever the Board feels is adequate. The reason I say
6 that is is if these units are tied up effectively,
7 nothing's going on on them, there aren't any wells being
8 drilled, and the parties need to be encouraged to
9 complete the litigation rather than to allow the litigation
10 to determine the effective date of the order.

11 MR. CHAIRMAN: Any other questions or comments?

12 MR. MCGLOTHLIN: Mr. Swartz, other than just trying to be a
13 nice guy, was there any other circumstances that caused
14 the drilling not to be done?

15 MR. SWARTZ: Yeah. What if we lost the appeal? I mean, we're
16 talking about spending a couple thousand dollars where
17 the case in on appeal. That's why these wells weren't
18 drilled. It had nothing to do with being a nice guy at
19 all. Okay. It was the prudent thing to do under the
20 circumstances if you were about to spend 250,000 plus
21 dollars. That's what drove the decision.

22 MR. CHAIRMAN: You know, the troubling thing is for me just
23 talking as we're suppose to do in front of everyone is
24 we're dealing with orders after the fact -- after they
25 did expire -- and I think that is troubling. I don't

1 particularly like having to be dealing with that issue
2 which spreads the issue of the Board's authority, you
3 know, how far does it reach, where does it end, can it
4 breath life back into expired orders, can it really
5 legally grant that without a new order. And I'm just
6 troubled by that. I don't like having to deal with that
7 part of our authority. I think it could have been
8 avoided. I'm not trying to beat you, but I am admonish-
9 ing you for us being in this situation to begin with. At
10 the same time I recognize there's been extensive litiga-
11 tion ongoing in this matter so I'm kind of torn between
12 this. I think it's a critical issue for the Board in
13 it's decision. I think anytime that the Board were to
14 consider breathing life into an order it certainly should
15 have carefully thought out the consequences on all sides.
16 I certainly feel like that if we do entertain a motion to
17 resurrect and extend these orders that we ought to have a
18 quick end date and some provision to require you to get
19 the Court involved if you get any further relief.

20 MR. FULMER: Mr. Chairman, I just want to note to the Board,
21 the Board was also named a party of this appeal. So they
22 have the same obligation or the same rights under their
23 own motions to either extend it or kill it, whatever they
24 want to do, but bear in mind that the Board is part of
25 the appeal process now. So it is wrapped up in the same

1 process. And whether it can amend or kill it's own
2 order, I don't know. I'll leave that to the legal
3 people. But that's where you stand on this issue.

4 MR. MASON: Mr. Chairman, I think one of the things, too, to
5 take into consideration is that this act, I think, has a
6 number of things about it which constitute that this
7 Board has continuing jurisdiction over the things that we
8 create by virtue of our orders. Even though the order
9 itself may have a date with respect to certain things
10 included in it, I think one of the real major parts of
11 this act is some of the concept of ongoing jurisdiction
12 and responsibility to deal with things that relate to
13 these wells and these force pooled units. I also think
14 that the -- I'm deeply troubled by the idea that the
15 failure to act on this matter affirmatively would have
16 the effect of potentially terminating the appeals in
17 Circuit Court which is pending in which we ourselves are
18 defendants. I find that somewhat (Inaudible.) from a
19 responsibility standpoint. Although at the same time I
20 do feel a great deal of sympathy with you for admonishing
21 the applicants for putting us in that position. I think
22 perhaps that I would like to make a motion to the effect
23 that these extensions be granted for 180 days from today
24 with the understanding that we would not be particularly
25 deceptive to some other Board extension unless directed

1 from Circuit Court bearing in mind that this, in fact, is
2 a very unusual set of circumstances that we would
3 hopefully not have to deal with again.

4 MR. CHAIRMAN: We have a motion. I'll just make a statement.
5 I think I got my admonishment from Mr. Fulmer as well as
6 far as that we shared some burden in dealing with the
7 order since the Commonwealth was a party to this. So
8 that's just duly noted and received, accepted. I have a
9 motion.

10 MR. EVANS: Second.

11 MR. CHAIRMAN: Motion and a second. Any further discussion?
12 No further discussion. All in favor signify by saying
13 yes. (ALL AFFIRM.) Opposed say no. (NONE.) It's
14 unanimous. Thank you.

15
16 (End of Proceedings for
17 March, 17, 1992)
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

COMMONWEALTH OF VIRGINIA
COUNTY OF WASHINGTON

I, Tamara L. White, Notary Public in and for the Commonwealth of Virginia, at Large, do hereby certify that the foregoing proceedings of the Virginia Gas and Oil Board meeting held on March 17, 1992 at the Southwest Virginia 4-H Center, Abingdon, Virginia, were taken by me and that the foregoing is a true and correct transcript of the proceedings had as aforesaid to the best of my ability.

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

GIVEN under my hand this 13th day of April, 1992.

TAMARA L. WHITE
NOTARY PUBLIC

My commission expires June 30, 1996.