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VIRGINIA OIL AND GAS CONSERVATION BOARD

HEARING OF APRIL 21, 1992

9:00 A. M.

AT THE SOUTHWEST VIRGINIA 4-H CENTER

ABINGDON, VIRGINIA

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1 April 21, 1992

2 This matter came on the be heard on this the 21st day of
3 April, 1992 before the Virginia Gas and Oil Board at the
4 Southwest Virginia 4-H Center, Abingdon, Virginia, pursuant to
5 Section 45.1-361.19.B and 45.1-361.23.B.

6 MR. CHAIRMAN: Good morning. My name is Benny Waspler. I'm
7 Assistant Director for Mining for the Virginia Department
8 of Mines, Minerals and Energy. And I will ask our Board
9 members to introduce themselves starting with Kevin.

10 (MEMBERS INTRODUCED.)
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ITEM I

1
2
3 MR. CHAIRMAN: Folks, I'm going to have to ask you to take a
4 seat, please, and come to order as we start our hearing.
5 The first case that we have today is docket number VGOB-
6 92/03/17-0195 and 0197.

7 MR. SWARTZ: Mr. Chairman, Mark A. Swartz and Howard Salisbury
8 appearing for OXY, USA on those two matters which are
9 listed as Item I. I would request that in the interest
10 of moving things along since Items III and IV involve
11 identical testimony and exhibits that you might consider
12 calling docket items III and IV which were also two
13 matters which were adjourned from the last hearing.
14 Testimony was offered, but there was an interest express-
15 ed by the Board on some additional information and the
16 issue with regard to those four units would be the same.

17 MR. CHAIRMAN: Okay. Is there any objection to that? Are
18 there any other parties that wish to address the Board
19 regarding these first three docket numbers? I'll read
20 them again. That's docket number VGOB-92/03/17-0195,
21 0197, VGOB-91/10/15-0154, 91/12/17-0173, 91/12/17-0 --

22 MR. SWARTZ: What you need to do is skip to and go to III and
23 IV.

24 MR. CHAIRMAN: I'm sorry. I thought I did that, but I started
25 on II, didn't I? 0195, 0197, and VGOB-92/03/17-0196,

1 VGOB-92/03/17-0198 are the docket numbers. Anyone that
2 wishes to address the Board in these matters please come
3 forward at this time.

4 MR. MCGLOTHLIN: As I did last month, I excuse myself from
5 these proceedings.

6 MR. CHAIRMAN: Okay. Any others that wish to address the
7 Board in this matter? Continue.

8 MR. SWARTZ: Mr. Chairman, by way of reminding everyone or
9 refreshing our recollection as to why these matters were
10 adjourned, there was some discussion at the last hearing
11 with regard to cost, particularly with regard to whether
12 or not a firm agreement had been reached by OXY, USA
13 and/or Buchanan Production and/or Island Creek with
14 regard to the cost of the well bores which were going to
15 be used to produce gas in these four units and the
16 matters were adjourned with the advice of the Board that
17 a firm agreement ought to be reached so that the Board
18 knew exactly what the cost information was. And I have
19 submitted this morning -- and Mr. Gordon will testify
20 with regard to it very briefly and if you have questions
21 you can obviously follow-up, but I have presented an
22 Exhibit K this morning which has all four VGOB numbers on
23 it: the four cases that we're talking about. It is a
24 contract approval abstract and what it does is summarize
25 what

1 we -- based on the kind of questions we were being asked
2 last time here, what we believe were the points of the
3 agreement that would be of interest to the Board in
4 addressing what interest was being assigned, what the
5 rights and responsibilities of the various parties would
6 be, and what the actual cost of the well bore assignments
7 would be in the contract approval act. Abstract Exhibit
8 K, we hope, sets forth the kind of information that you
9 were looking for last time. You'll notice at the bottom
10 that it has been signed -- the abstract by an Island
11 Creek representative who is the head of the division in
12 Oakwood and by the Land Department by Mr. Wirth on behalf
13 of both OXY and Buchanan Production. The second exhibit
14 that we have given you this morning which pertains to all
15 four of the units under consideration is Page 2 of
16 Exhibit G. As you may or may not recall, Exhibit G is a
17 recap of all of the cost incurred in the eight units
18 which intersect the two longwall panels that are involved
19 with these four units and the tracts those cross and
20 totals them. This exhibit is necessary for disclosing
21 what a participation interest would require, what kind of
22 a payment a participation election would require, and
23 also discloses the interests of the various units. It's
24 the same for all of the units. It has been amended only
25 so that it has moved somewhat downward because the

1 estimate which was being used last time we were here was
2 \$150,000 per well bore. So the difference, if you were
3 to compare this amended exhibit to what you saw last
4 time, is there is a difference solely attributable to
5 moving the well bore price, acquisition price or assign-
6 ment price down from \$150,000 to \$142,500. With that
7 introduction, I would like to call Mr. Gordon briefly and
8 have him comment on these two exhibits.

9 MR. CHAIRMAN: Okay.

10 COURT REPORTER: (Swears witness.)

11
12 SAMUEL E. GORDON, II

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

15
16 DIRECT EXAMINATION

17
18 BY MR. SWARTZ:

19 Q. Mr. Gordon, could you state your name for us?

20 A. Samuel E. Gordon, II.

21 Q. Tell us where you live.

22 A. Tazewell, Virginia.

23 Q. Who are you employed by?

24 A. OXY. USA. Inc.

25 Q. Did you testify at the March hearing with regard to these

1 four units?

2 A. I did, yes, sir.

3 Q. Putting Exhibit K which has been offered this morning in
4 front of you, my first question would be is this a
5 contract approval abstract?

6 A. It is that, yes, sir.

7 Q. And who prepared this?

8 A. I prepared this.

9 Q. And does your signature appear on this document?

10 A. Yes, it does.

11 Q. In the blank after "signed"?

12 A. Yes.

13 Q. And who has initialed this on behalf of Island Creek?

14 A. Mr. Shocky who is VP for the Island Creek Virginia
15 Division.

16 Q. And who has signed off on this abstract on behalf of OXY,
17 USA and/or Buchanan Production?

18 A. Martin E. Wirth.

19 Q. Does this abstract that you prepared summarize the basic
20 agreements that have been reached by Island Creek, OXY,
21 and Buchanan Production with regard to these well bores?

22 A. It does, yes, sir.

23 Q. And what is the assignment price per well bore?

24 A. The consideration would be \$142,500 per well bore.

25 Q. Now, with regard to the second exhibit -- an amended

1 exhibit that was presented this morning, I'll show you
2 what has been marked as amended Exhibit G, Page 2. Do
3 you see that?

4 A. Yes, I do.

5 Q. Who prepared this?

6 A. I prepared this.

7 Q. Is this exhibit used with regard to cost estimates and
8 participation estimates for all of the four units under
9 consideration?

10 A. Yes, it does.

11 Q. What is the difference between this amended Exhibit G,
12 Page 2 and the Exhibit G, Page 2 that we saw in March?

13 A. The one we saw in March had the per well bore estimated
14 price of \$150,000 and we have taken that out and injected
15 \$142,500 in it's place and adjusted the figures down.

16 Q. And does Exhibit G, Page 2 represent in your judgement a
17 reasonable estimate as to the cost which will be expended
18 to develop these two panels that are under consideration
19 in these four units that we have consolidated the
20 hearings for for purposes today?

21 A. It does, yes.

22 MR. SWARTZ: That's all I have.

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

24 MR. MASON: Yes, Mr. Chairman.

25 MR. CHAIRMAN: Mr. Mason.

1 MR. MASON: Sir, this is a contract approval abstract. Has
2 there actually been a complete contract signed?
3 MR. GORDON: The document is being prepared and will be
4 signed, yes.
5 MR. MASON: But there isn't one signed now?
6 MR. GORDON: Correct.
7 MR. MASON: Do you know what the term of that contract will
8 be -- for how long?
9 MR. GORDON: The term will be for the live of our development
10 in the Oakwood field.
11 MR. MASON: So the contract will run for however long that
12 there is marketable production or something like that?
13 MR. GORDON: Yes.
14 MR. MASON: Do you know what the conditions are under which
15 that Island Creek could terminate the contract?
16 MR. GORDON: No, I don't.
17 MR. MASON: What I'm curious has to do with your paying
18 \$142,500 for the use of this well bore. And, of course,
19 if Island Creek, for instance, has the right after some
20 period of time to cancel that right contractually for any
21 reason I guess what I'm curious about is what is the
22 level -- I mean, obviously there are certain things that
23 involve mine safety, I would assume, and things like that
24 that they could terminate the use of this well bore if
25 that became a problem. I guess what I'm trying to do is

1 ascertain with reasonableness of the amount that's being
2 paid for this, does -- are there sufficient core rights
3 who cannot be cut off by Island Creek to justify this
4 being a reasonable price? I would assume you all think
5 so or you wouldn't agree to pay it. But I'm curious as
6 to what that might be.

7 MR. SWARTZ: If you want to pursue specific questions with
8 regard to the overall agreement -- and really you're
9 getting into an agreement that's close to being finally
10 negotiated, the overall agreement, but has not -- Mr.
11 Beckett is here this morning and I think he might be able
12 to --

13 MR. MASON: Do you understand what I'm saying?

14 MR. SWARTZ: I understand. And I think that Mr. Beckett could
15 address the question you've just posed.

16 MR. MASON: Because to my mind the reasonableness of the cost
17 is related to how concrete an asset you're acquiring.
18 And in terms of the other party's ability to terminate
19 that relationship it seems to me that that is a very
20 material aspect of whether or not this is a reasonable
21 cost.

22 MR. SWARTZ: If we could put Mr. Beckett under oath.

23 MR. CHAIRMAN: All right.

24 COURT REPORTER: (Swears witness.)
25

1 JAMES R. BECKETT

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

5 DIRECT EXAMINATION
6

7 BY MR. SWARTZ:

8 Q. You need to state your full name for me.

9 A. James R. Beckett.

10 Q. Who do you work for?

11 A. OXY, USA.

12 Q. And where do you live?

13 A. Edmond, Oklahoma.

14 Q. Do you have a title?

15 A. Director for coalbed methane.

16 Q. You've been here while Mr. Mason has asked several
17 questions with regard to the term of the agreement and/or
18 Island Creek's ability, if any, to avoid -- or to cancel
19 the agreement or avoid it's responsibilities with regard
20 to any given well bore. Can you respond to the questions
21 that have been raised?

22 A. Yes, I can. The detailed language addressing that topic
23 has not been drafted. I can assure you that it will not
24 be a capricious right on the part of Island Creek. I can
25 assure you that if mining safety is involved they will

1 please.

2 MR. SWARTZ: The first objection, there is a contention that
3 OXY is not an owner of an interest in oil and gas or
4 lacks statutory standing. That was addressed in the
5 exhibits which were filed with each of our applications.
6 We've always addressed and did with regard to each of
7 these four units OXY's lease hold position with regard to
8 both coal and oil and gas. And in each of these units
9 there is an Exhibit A, Page 2, and an Exhibit B which
10 sets forth OXY's interests and they're in the record.
11 And there is nothing that's been offered to dispute that
12 by Mr. McGlothlin or anyone. So under the statute OXY
13 had an interest in these units when these applications
14 were filed and it's disclosed in the record. There was
15 testimony that deals with that issue. Item 2 is a
16 contention that the unit fails to comply with statewide
17 field rules. Well, it doesn't have to comply with
18 statewide field rules because it is in the Oakwood field
19 and is subject to specific field rules issued by the
20 Board. Item three is that the size and configuration of
21 the unit is not adequate to drain the gas. Well, in the
22 establishment of field rules by this Board there has been
23 a finding that these unit sizes are adequate and no
24 evidence has been offered to overcome that prior finding
25 of the Board. And that really is an issue that needed to

1 be challenged when the field rules were established or
2 needs to be challenged, I suppose, in a petition address-
3 ing whether or not the field rules are adequate. But I
4 believe there's a finding of record by this Board that
5 the size and configuration of these units are, in fact,
6 adequate. Item four says the well is not located in the
7 center of the proposed unit. Well, these are all gob gas
8 units and when the Oakwood Field Rules II were addressed
9 by this Board -- and we still don't have an order, but --

10 I mean, I recall because we were here on several
11 occasions. You will remember, I hope, that the active
12 gob units under the Oakwood Field Rule II do not have
13 drilling windows because the well drilling is often in
14 these units driven by mine design and mine plans. So
15 there are no drilling units. These wells since they're
16 draining longwall panels need to be located in the panel
17 and the center of the unit is really irrelevant to where
18 they might be located. Number five says that the plat
19 submitted by OXY with it's application fails to comply
20 with Board regulations. We have certified that we
21 believe it does. There is a certificate that is attached
22 to each one of these applications signed by an OXY
23 representative certifying that they believe the applica-
24 tion complies with the Board rules and regulations. I've
25 reviewed the plat. I think it complies. It's on the new

1 form that was approved when the regs were implemented
2 last Fall. Item 6, there is an objection to the accuracy
3 of the survey information. Testimony would have to be
4 offered to support that contention and there has been no
5 testimony. Then there is a contention that OXY failed to
6 list all the owners. Well, who? Where's the testimony?
7 We believe that we have and that due diligence was
8 exercised to locate all folks that needed to be noticed
9 or needed to be leased from. Item eight in the objection
10 is that OXY has failed to provide McGlothlin with
11 geologic or petroleum engineering data and generally it's
12 an objection that we haven't given or furnished informa-
13 tion that we're suppose to give. I am unaware of any
14 requirement for us to disclose information to anyone that
15 we haven't complied with in these applications. There's
16 a reservation of the right to submit evidence and cross-
17 examine witnesses. Obviously that hasn't occurred. With
18 regard to item nine, OXY has failed to provide McGlothlin
19 with any documentation or other evidence as to it's
20 request to be designated operator of the unit. Well,
21 there was testimony. Mr. McGlothlin could have come here
22 and cross-examined the OXY witnesses with regard to OXY's
23 ability to act as prudently or act responsibly as
24 designated operator. He didn't do that. This is really
25 a subject of testimony and none has been offered to

1 contradict what's been offered by OXY. Item ten, Mr.
2 McGlothlin objects saying that there was a failure to
3 provide projected drilling costs and supervision fees and
4 so forth. All of the financial information, the exhib-
5 its, were provided to Mr. McGlothlin and all other
6 respondents when these four applications were filed. He
7 had an opportunity to be here last month to cross-examine
8 the OXY witnesses to pursue questions. He did not avail
9 himself of that opportunity. I might point out that
10 Board Rule 10 allows a reasonable supervision fee to be
11 charged and is contemplated by the Board rules. Item
12 eleven is a contention that OXY failed to provide Mr.
13 McGlothlin with written evidence or documentation
14 concerning the conditions for participation. Well, each
15 of the applications and the financial information and
16 costs that's submitted therewith disclose what the cost
17 of participation would be. You simply take the division
18 of interests off of the Exhibit G, apply it to the total
19 cost associated with either panel, also shown on Exhibit
20 G, and you know what your participation interest is. So
21 it's our view that we have supplied that information. He
22 had an opportunity to appear, cross-examine, present
23 evidence, and he did not do that. In addition, with
24 regard to subsequent operations you will recall that we
25 have submitted proposed language that we would like to

1 see the Board incorporate in any order with regard to
2 these units dealing with subsequent operations. In other
3 words, if there is further development in these units the
4 proposed language that we submitted last time with regard
5 to each of these four units would deal with that issue
6 and would deal with what happens to a participation
7 interest if there's further development or subsequent
8 operations or a carried interest. Item twelve is just a
9 catch all reservation of the right to present evidence
10 and cross-examine witnesses and that clearly has not
11 happened. Item thirteen is a constitutional challenge.
12 I really don't think that this is the appropriate form.
13 I think that this Board needs to be aware of the require-
14 ments of the constitution from a procedural standpoint
15 and try to follow them and I think this Board does. But
16 in terms of challenging the entire Section 361.22 as
17 unconstitutional is really not an issue that this Board
18 needs to deal with. Item fourteen, I really don't know
19 what the statute cited and item fourteen have to do with
20 these proceedings. 361.11 and 361.12 are directed toward
21 coal owner objections. 361.17 deals with statewide
22 spacing. We know that statewide spacing doesn't apply
23 when you have specific field rules which we have here.
24 361.20.D also applies to coal owners. There's no
25 contention by Mr. McGlothlin in any of the paper work

1 that he submitted as a coal owner, at least as far as I
2 can tell. And in a summary fashion that would be my
3 response to each of the objections by Mr. McGlothlin.

4 MR. CHAIRMAN: Any questions, members of the Board? Any other
5 parties that wish to address the Board in this case? I'm
6 looking at the record because of the way we ended at last
7 hearing. We talked about and heard evidence on 195 and
8 the Board approved that pooling application subject to
9 the determination that the nature of the well bore that's
10 been acquired and the appropriateness of the cost being
11 paid for them and allowing participation election be made
12 by the proper parties to run from the date of the Board's
13 action in regard to such determination of cost. We
14 concluded that after the Board voted and then we called
15 196 and Mr. Swartz, I believe you asked that we continue
16 196 and 198 to next meeting at that time.

17 MR. SWARTZ: Okay.

18 MR. CHAIRMAN: I'm just making sure we keep this all straight.
19 Is that consistent with your recollection?

20 MR. SWARTZ: Well, I think we also offered testimony, though,
21 on 197.

22 MR. CHAIRMAN: You did.

23 MR. SWARTZ: And it was approved subject to the exhibits that
24 have been offered this morning.

25 MR. CHAIRMAN: You did. 196 and 198 are the ones I'm bringing

1 to your attention right now, okay?

2 MR. SWARTZ: Okay. I was frankly under the impression that we
3 had offered testimony with regard to all four of the
4 units and we adjourned them all for the same purpose.
5 But if you're reviewing the record, Mr. Chairman, I'm not
6 going to argue with what the record reflects. What I
7 would proposed to do then with regard to docket numbers
8 0196 and 0198 is spend a few minutes with Mr. Gordon on
9 the application of notices so that we have that in the
10 record and then I would move at the conclusion of that to
11 deal with all four of the cases.

12 MR. CHAIRMAN: I'd like to take a few minutes recess anyway to
13 allow you to look at the record and see if you draw any
14 different conclusion from that. But I think it's
15 important with these cases to make sure that we keep them
16 straight. So we'll take a ten minute recess.

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

19 MR. CHAIRMAN: The Board has approved the pooling application
20 subject to the determination of cost on both docket
21 number 0195 and 0197. You've heard the additional
22 evidence that the Board requested regarding the cost and
23 regarding the agreement. I think before we go forward
24 with the other two dockets and receive testimony on those
25 that it would be better, unless the Board objects to

1 doing it that way, to act on the two that we've heard the
2 evidence on.

3 MR. MASON: Would it be appropriate at this point to make a
4 motion?

5 MR. CHAIRMAN: I think it would.

6 MR. MASON: I would move the approval of these motions
7 conditioned upon several things. I think that we need to
8 bear in mind the well costs are at this stage only an
9 estimate and I think the Code sets forth the fact that
10 anyone at anytime can challenge the reasonableness of the
11 well costs by a motion of this Board. And based on that,
12 I would like to have this approved subject to the
13 petitioner furnishing the Board at such times as this
14 agreement that's in their abstract is finalized, that
15 they furnish us with three items of information. 1,
16 anything that's in the final agreement that is different
17 from what's on this abstract, if anything. 2, the actual
18 term of that agreement in terms of whether it's a term of
19 years or conditioned upon some other factor. And 3, the
20 rights of Island Creek or Buchanan Production, if any, to
21 terminate the agreement and essentially terminate the
22 rights of the use of the well bore. If they would
23 furnish us a memorandum to that effect at such time that
24 that is complete.

25 MR. CHAIRMAN: Wouldn't you think it appropriate as part of

1 that that they furnish the agreement itself for the
2 record?

3 MR. MASON: Well, I don't know. The reason I question that is
4 is that I think Mr. Swartz mentioned that this was part
5 of some sort of global agreement and it might be easier
6 to make them extract out of it what it is that's relevant
7 to us.

8 MR. CHAIRMAN: All right.

9 MR. MASON: I certainly have no objection to them furnishing
10 the agreement. I just think it would helpful if somebody
11 would abstract out the provisions that are relevant to
12 the life and legal efficacy of the well bore as, perhaps,
13 supplemented if you wish by the agreement or any legal
14 evidence where that came from. I just suggest that,
15 that that's a way to deal with this.

16 MR. CHAIRMAN: I understand.

17 MR. MASON: Which allows them to go forward with the
18 development of these wells and if anyone in the future
19 wishes to object to the reasonableness of this cost there
20 would be among the Board records sufficient evidence to
21 make a determination of whether or not they were, in
22 fact, reasonable.

23 MR. CHAIRMAN: Okay. You've heard the motion. If I can
24 summarize, approve conditioned upon the petitioner
25 furnishing the Board with a memorandum identifying

1 anything that's different in the final agreement that's
2 been represented here, the term of the agreement, and the
3 rights of termination.

4 MR. MASON: Yes, sir.

5 MR. KELLY: Second.

6 MR. MASON: Just one other thing, if I may add. Let me ask
7 Mr. Swartz a question. Do you have any idea when you
8 think this may be assigned -- this agreement may be
9 signed? And give yourself plenty of leave way.

10 MR. SWARTZ: In the next month, perhaps.

11 MR. BECKETT: I would hate to make representations to the
12 Board in that regard. It will be within the next few
13 months.

14 MR. MASON: Would six months be an unreasonable time to say
15 that it will be in place? What I'm trying to arrive at
16 is that --

17 MR. BECKETT: As far as I'm concerned six months would an
18 unreasonable -- a long length of time for that agreement,
19 yes.

20 MR. MASON: The only other thing that occurred to me in
21 talking about this that would be bad is if it were never
22 signed.

23 MR. CHAIRMAN: Right.

24 MR. MASON: And I was wondering that if it were not signed
25 within a certain period of time that we would be notified

1 of that also because I think's it's important to know
2 that a final document has been reached or final
3 agreement -- you know, whatever is a reasonable amount of
4 time, we'd just like to know what it is. Mr. Chairman,
5 do you concur in that?

6 MR. CHAIRMAN: Yes, that's important.

7 MR. MASON: Counselor, do you have any suggestions?

8 MR. SWARTZ: Why doesn't the order, perhaps, provide -- since
9 we have an obligation to notify we apparently will have
10 an obligation to notify the Board if the agreement is
11 different or not. At that point you will know whether or
12 not we have a written agreement. So I think that takes
13 care of --

14 MR. MASON: Right.

15 MR. SWARTZ: And I think that in the event that we have not
16 filed the three items of information with the Board that
17 you're interested in within six months we then need to
18 apprise the Board of the status of our negotiations,
19 something along those lines, so that it's not left
20 totally open. We could live with that.

21 MR. MASON: Mr. Chairman, would that be appropriate?

22 MR. CHAIRMAN: That's fine to amend your motion.

23 MR. MASON: I so do amend it.

24 MR. CHAIRMAN: Okay.

25 MR. KELLY: I second the amended version.

1 MR. CHAIRMAN: We have a motion and a second. Any questions?

2 All in favor signify by saying yes. (ALL AFFIRM.)

3 Opposed say no. (NONE.) It's unanimous.

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3 ITEM III

4 MR. CHAIRMAN: The next items on the agenda will be docket
5 number 0196 and 0198.

6 MR. SWARTZ: Again, Mark A. Swartz and Howard Salisbury. The
7 exhibits which were offered, the amended Exhibit G, and
8 were discussed with regard to the two docket items we've
9 just dealt with pertain to the items that you just
10 called, Mr. Chairman. And obviously the contract
11 abstract would pertain. I would just point out that
12 these two dockets and VGOB numbers are referenced on
13 Exhibit K, the contract abstract, Page 2 of the amended G
14 so that you already have those in front of you. I'll
15 just start with Mr. Gordon with 0196 which is also known
16 as unit S-14.

17 SAMUEL E. GORDON, II

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

20
21 DIRECT EXAMINATION

22
23 BY MR. SWARTZ:

24 Q. Mr. Gordon, there have been a notice of hearing and an
25 application filed with regard to unit S-14. Did you

1 prepare those documents?

2 A. Yes, I did.

3 Q. And did you cause copies of the notice and the applica-
4 tion to be mailed to the respondents who are listed?

5 A. Yes, I did.

6 Q. With regard to the notice of hearing, it is directed to
7 three individuals, correct?

8 A. On the notice of hearing, yes, Raymond Street, Gerald
9 McClanahan and B. F. McGlothlin heirs.

10 Q. So the heirs would be actually more than one?

11 A. Yes.

12 Q. Would you move at this point the Board to dismiss any of
13 those respondents?

14 A. Yes. We would move that Raymond J. Street and Gerald W.
15 McClanahan be removed.

16 Q. Be dismissed?

17 A. Be dismissed, yes.

18 Q. And why is that?

19 A. We have reached a settlement with those parties.

20 Q. You've actually acquired their interest?

21 A. We acquired their interest, yes, sir.

22 Q. You do not. I take it, want to dismiss the McGlothlin
23 heirs as listed?

24 A. No, we do not.

25 Q. Okay. Do you wish to amend your application to add any

1 additional respondents?

2 A. Yes. We do need to amend --

3 Q. No, to add any additional people.

4 A. No, not to add any additional. No.

5 Q. Attached to the notice of hearing there is an Exhibit A1
6 which has a small map showing the approximate location of
7 the unit. Was the notice of hearing and this little map
8 published in a newspaper?

9 A. Yes, it was.

10 Q. Which one?

11 A. The Virginia Mountaineer.

12 Q. And when would that have been published?

13 A. The original notice was February 27th, 1992.

14 Q. Was the original notice that was published?

15 A. Was the original notice, yes.

16 Q. And then subsequent to the hearing in March did you cause
17 the publication of the notice indicating that this matter
18 had been continued?

19 A. Yes, I did, and that publication was April 2nd.

20 Q. And have you filed proofs of publication with regard to
21 the publication that proceeded the March hearing?

22 A. Yes, we did.

23 Q. And with regard to the publication after the March
24 hearing indicating an adjournment to today's date?

25 A. Yes, we did.

- 1 Q. You filed those with Mr. Fulmer's office?
- 2 A. Yes, we did.
- 3 Q. Did you cause the notice of application and the applica-
4 tions and the exhibits that were attached to be mailed to
5 the McGlothlin heirs?
- 6 A. Yes, we did.
- 7 Q. And have you filed proof of publication and return
8 receipts with regard to the proofs of mailing with Mr.
9 Fulmer's office?
- 10 A. Yes, we have.
- 11 Q. Now, with regard to OXY's interest in this unit, if you
12 would refer to Exhibit A, Page 2, can you tell the Board
13 in summary fashion what OXY's interest, if any, is or was
14 at the time this application was filed in this particular
15 unit S-14?
- 16 A. OXY's ownership in this unit was 100 percent as to the
17 coal, oil and gas was 86.01.
- 18 Q. And subsequently you've acquired the Street/McClanahan
19 interest which was the outstanding oil and gas interest,
20 correct?
- 21 A. That is correct.
- 22 Q. So at this point, today's date, what would the interest
23 in the oil and gas be?
- 24 A. We would have 100 percent as of this time.
- 25 Q. Okay. And the outstanding interest which is what the

1 respondent's interest in the unit is in what, surface
2 oil and gas or coal?

3 A. Surface only.

4 Q. With regard to either Exhibit C or Exhibit G, we have
5 filed already today an Exhibit G, Page 2, an amended
6 exhibit. Are there any other amendments that you wish to
7 make with regard to exhibits filed with regard to S-14?

8 A. We did not file the amended Exhibit G, Page 3, in which
9 we simply dropped the Street/McClanahan interest off of
10 it. And we wish to submit that.

11 Q. And essentially what we're talking about, Exhibit G,
12 Page 3, since OXY has acquired the McClanahan and Street
13 interest, those numbers simply need to disappear from
14 Exhibit G, Page 3?

15 A. That's correct.

16 Q. With regard to the McGlothlin heirs as shown on Exhibit
17 G, Page 3, their division of interest, does that number
18 remain the same?

19 A. Yes. Yes, it does.

20 MR. SWARTZ: Hand them to the Board to be filed.

21 Q. (Mr. Swartz continues.) Also with regard to Exhibit C,
22 Page 1, this is an estimate of allowable costs on this
23 with regard to unit S-14, correct?

24 A. Correct.

25 Q. Who prepared this?

1 A. I prepared this.

2 Q. Is there an error in the total?

3 A. There is an error. There in the work-up of the title
4 costs we put in the wrong number. Instead of \$8,000
5 which is before the Board, that should have been \$12,000
6 for a total of \$21,100.

7 Q. And do you have a written amendment to Exhibit C, Page 1?

8 A. We do have an amendment that we wish to present to them.

9 Q. And you'll file that today?

10 A. Yes, sir.

11 Q. Okay. And the only changes are the title opinion goes
12 from \$8,000 to \$12,000 and consequently the total goes to
13 \$21,100?

14 A. That is correct.

15 Q. And is it your opinion that these costs are the
16 reasonable costs which will be associated with the
17 development and will spent on or within unit S-14?

18 A. That is correct.

19 Q. There is no well bore on unit S-14, correct?

20 A. That is correct.

21 Q. So that's why we don't see a well bore cost or any other
22 surface cost associated with the well, correct?

23 A. That is correct.

24 Q. Does the amended Exhibit G, Page 2, that was filed today
25 reflect the \$21,100?

1 A. It does.

2 Q. In addition do you intend to file an amended Exhibit B
3 today as well on S-147

4 A. Yes, we are.

5 Q. And does that simply delete the McClanahan and Street
6 interests?

7 A. Yes, it does.

8 Q. Although I ask you this in a general sense with regard to
9 the two previous units that you've testified to, direct-
10 ing your attention to the amended Exhibit G, Page 2, does
11 the amended Exhibit G, Page 2, represent in your judge-
12 ment the reasonable development costs associated with
13 developing the two longwall panels depicted on Exhibit G
14 insofar as they intersect the eight units which are
15 depicted on Exhibit G?

16 A. Yes.

17 MR. SWARTZ: I would also like to file -- give the Board
18 several copies of Exhibit H. As you will recall from
19 last hearing, these were filed with regard to the two
20 units that testimony was offered on. And this is a
21 proposal Exhibit H, Page 1. The language that's proposed
22 is the same in each of these units and rather than
23 burying you in copies I've just given you enough so you
24 have several to file in this application. If you want
25 more we can give them to you. But it is language that

1 OXY would propose that the Board and it's counsel include
2 in any order entered with regard to these gob units and
3 these longwall gob units. That addresses questions of
4 subsequent operations or additional operations and it
5 addresses notice, the kind of information that is
6 furnished with the notice, the times of the notice, and
7 it addresses participation rights on subsequent opera-
8 tions and rights to be carried on subsequent operations.
9 And it is, I believe, a concern that the Board has
10 expressed and it is a possible solution to the kinds of
11 issues that come up here. That concludes our testimony
12 with regard to unit S-14.

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

14 (Witness stands aside.)

15 MR. CHAIRMAN: Is there any other party in the room that
16 wishes to address the Board? This is docket number VGOB-
17 92/03017-0196.

18 MR. EVANS: I have a question on Exhibit H. It's got a docket
19 number on it, 0193.

20 MR. SWARTZ: It's the same exhibit that I've been using all
21 along and that's not a mistake. It's recycling it, I
22 guess.

23 MR. EVANS: No problem.

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

25 MR. MASON: Mr. Chairman, do we have the same conditions here

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as did in one?

MR. CHAIRMAN: Uh-huh.

MR. MASON: Then I would make the same motion as amended for approval.

MR. CHAIRMAN: Okay.

MR. KELLY: I would second it.

MR. CHAIRMAN: A motion and a second. Further discussion?

All in favor signify by saying yes. (ALL AFFIRM.)

Opposed say no. (NONE.) It's unanimous.

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3 ITEM IV

4 MR. CHAIRMAN: The next item on the agenda is docket number
5 VGOB-92/03/17-0198 continued from March. Any parties
6 that wish to address the Board please come forward.

7 MR. SWARTZ: OXY, USA appearing by Mark A. Swartz and Howard
8 Salisbury.

9 MR. CHAIRMAN: No others? Go ahead.

10 MR. SWARTZ: My witness again would be Mr. Sam Gordon.

11 SAMUEL E. GORDON, II

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. Sam, did you prepare the notice of hearing and the
19 application with regard to unit T-14?

20 A. Yes, I did.

21 Q. And does the notice of hearing list the folks to whom we
22 sent notices?

23 A. Yes, it does.

24 Q. And have you filed proof of mailing with Mr. Fulmer's
25 office with regard to mailings to each of the folks

1 listed in the notice of hearing?

2 A. Yes, we did.

3 Q. And that would be Exhibit E?

4 A. That is correct.

5 Q. Did you also cause the notice of hearing and the little
6 map, Exhibit A1, to be published in a newspaper?

7 A. Yes, we did. We had it published in the Virginia
8 Mountaineer.

9 Q. And on what date?

10 A. The original notice was published February 27th, 1992.

11 Q. After this matter was continued from the March hearing to
12 today's date did you cause a notice of the continuance to
13 be published in the newspaper?

14 A. Yes, we did, and that was published on April 2nd, 1992.

15 Q. And has proof of publication with regard to the original
16 notice and the notice of continuance, have those proofs
17 been filed with Mr. Fulmer's office as required?

18 A. Yes, they have.

19 Q. Do you wish to add any folks as respondents today with
20 regard to unit T-14 who are not listed in the notice of
21 hearing or in Exhibit B to the application?

22 A. No, we do not.

23 Q. Do you wish to dismiss anyone?

24 A. No, we do not.

25 Q. Is this an active gob gas unit to produce out of longwall

1 panels?

2 A. Yes, it is.

3 Q. And with regard to the panel or panels, if we look at
4 Exhibit G, Page 1, unit T-14 is located at the right hand
5 bottom corner of G, Page 1, correct?

6 A. That is correct.

7 Q. There is no well bore on the unit, correct?

8 A. Correct.

9 Q. A portion of VP-5 EM 10-D is located within the T-14, is
10 that correct?

11 A. It is correct.

12 Q. You have filed today an amended Exhibit G, Page 2, with
13 regard to this unit as well, have you not?

14 A. We did, yes, sir.

15 Q. Okay. And directing your attention to Exhibit C, Page 1,
16 with regard to unit T-14, is this an exhibit that you
17 prepared?

18 A. Yes, it is.

19 Q. It shows a total cost associated with unit T-14 and what
20 is that?

21 A. \$17,100.

22 Q. Does that represent in your judgement the reasonable cost
23 that it be expended specifically with regard to unit T-14
24 to develop and produce from the longwall panel in
25 question?

- 1 A. That is correct. Yes, sir.
- 2 Q. And are those costs shown on Exhibit C, Page 1, tracked
3 and reflected on your amended Exhibit G, Page 2?
- 4 A. It is, yes, sir.
- 5 Q. And with regard to this unit T-14, is it your opinion
6 that Exhibit G, Page 2, which tracks all of the costs
7 associated with the panels and the units, that that
8 represents the reasonable estimated cost to develop and
9 produce from the panels shown on Exhibit G with regard to
10 the units also shown on Exhibit G?
- 11 A. Yes, it is.
- 12 Q. With regard to OXY's interest in this unit or standing as
13 an applicant, if you would turn for a moment to Exhibit
14 A, Page 2, I believe, this recaps the interest for the
15 unit, does it not?
- 16 A. Yes, it does.
- 17 Q. Could you summarize OXY's interest and the interest of
18 the respondents as disclosed on Exhibit A, Page 2?
- 19 A. The exhibit reflects that OXY has 100 percent of the coal
20 ownership and 100 percent of the oil and gas ownership.
- 21 Q. Under lease?
- 22 A. Under lease. And the respondents are claiming surface
23 interest only and their surface interest comes to a total
24 of about 79.43 percent.
- 25 Q. Now, if we look at Exhibit G more time, the map portion,

1 there is another proposed -- actually a proposed longwall
2 unit that would intersect unit T-14 and a portion of
3 another proposed longwall panel that would intersect unit
4 T-14, do you see that?

5 A. Yes, I do.

6 Q. Are you recommending to the Board that any order entered
7 with regard to unit T-14 include the language dealing
8 with subsequent development or subsequent operations?

9 A. Yes, we would.

10 Q. And would we tender again to the Board an exhibit which
11 was originally offered in VGOB-92/03/17-0193 as Exhibit H
12 as sample of the language that we feel could be included
13 in any Board order to address subsequent operations and
14 development?

15 A. Yes, we would.

16 MR. SWARTZ: I'm going to give Mr. Fulmer a couple extra
17 copies to go in his file, but you already have a copy.

18 Q. (Mr. Swartz continues.) I know you have testified
19 previously with regard to this, but just to recap, what
20 are the lease terms that OXY has been offering with
21 regard to leasing a coalbed methane interest generally
22 looking toward royalty, the term of the lease or time of
23 the lease?

24 A. We generally have been offering an one-eighth royalty for
25 a term of five years at \$5 an acre.

1 Q. Well, is the \$5 an acre both oil and gas and coalbed
2 methane if the people happen to be leasing both?

3 A. Yes.

4 Q. And what is the bonus if it is simply coalbed methane
5 that is being leased?

6 A. \$1.

7 Q. Would you recommend to the Board that any order dealing
8 with election rights incorporate for people who might be
9 deemed to have leased under the terms of a Board order
10 incorporate a one-eighth royalty, a \$1 per acre bonus
11 for coalbed methane, and a five year term?

12 A. Yes, we would.

13 (Witness stands aside.)

14 MR. SWARTZ: Lastly, I would indicate for the record that
15 Exhibit K which is the contract approval abstract which
16 we filed shows that it's pertinent to all four units
17 including the unit that we're talking about right now, T-
18 14. And I would like to give Mr. Fulmer a couple extra
19 copies of that. But I would like the record to reflect
20 that it's part of OXY's evidence with regard to this
21 particular unit. That's all the testimony I have with
22 regard to T-14 except so that there is no confusion and
23 we're not having a little trouble shifting gears, at the
24 time this application was filed OXY, USA had the lease
25 hold interests that we have described. Subsequent to the

1 last hearing those interests have been transferred to
2 Buchanan Production and I think that's disclosed in the
3 contract approval abstract which you have in front of
4 you. I know that Mr. Fulmer's aware of this because
5 these documents have been filed with his office. But a
6 letter has gone out from OXY to the Board giving the
7 Board notice under the regulations with regard to a
8 transfer of interest from OXY, USA to Buchanan Produc-
9 tion. So to the extent that Mr. Gordon was testified to
10 OXY's interest, that was, in fact, the case when these
11 applications were filed and it is now the case that
12 Buchanan Production actually has those interests. And we
13 would propose that -- we have already requested that the
14 Board approve the transfer of ownership. We are still
15 requesting that OXY be appointed designated operator for
16 this unit just so that there's no confusion as to what
17 the state of affairs was when the application was filed
18 and what it currently is. That's all I have.

19 MR. CHAIRMAN: So OXY is the operator on behalf of Buchanan
20 Production Company?

21 MR. SWARTZ: That's true, but we are asking the Board to
22 appoint OXY as designated operator which was in the
23 application as originally filed.

24 MR. CHAIRMAN: Right.

25 MR. SWARTZ: The only difference is that we have notified the

1 Board that there's been a transfer of the lease hold
2 interest in ownership subsequent to the last hearing.

3 MR. CHAIRMAN: Any questions?

4 MR. MASON: What is Buchanan Production's relationship to OXY?
5 Is it a separate entity or is it just a fictitious name?

6 MR. SWARTZ: It is a Virginia general partnership. Not it is
7 not just a fictitious name.

8 MR. MASON: Well, we have something called a fictitious name
9 certificate as I'm sure you're aware of which is where
10 you trade as -- AKA frequently refers to that.

11 MR. SWARTZ: It is a general partnership. Buchanan Production
12 Company is a general partnership in which the partners
13 are two corporations which are, I believe, owned by
14 Oxidental. With regard to the units this afternoon
15 where Buchanan is actually the applicant, we will get
16 into the relationship and so forth. But for purposes of
17 these units and dealing with the contract approval
18 abstract the partnership Buchanan Production has delegat-
19 ed it's operating responsibilities to OXY, USA as a
20 professional manager of it's affairs. And that is a
21 private agreement. What we're asking for obviously today
22 is that OXY be appointed by the Board and we were asking
23 for that originally in the application as filed. And
24 that's a relationship between the Board and whoever it
25 designates operator.

1 MR. MASON: Have you all contemplated the effect of that on
2 the right to stimulate, whether that was given to OXY or
3 given to Buchanan Production, and if so, is it assign-
4 able?

5 MR. SWARTZ: Well, with regard to the unit under consideration
6 there will be no stimulations. So it's irrelevant to
7 this unit.

8 MR. MASON: Okay. Because it's an open well.

9 MR. SWARTZ: I could put Mr. Beckett back on the stand and he
10 could claim credit as having foreseen that problem or
11 could say, "Damn, we never thought of that." But I don't
12 think it's relevant to this unit.

13 MR. MASON: Because this well is in a --

14 MR. SWARTZ: Gob unit. So it will not be stimulated. Good
15 and interesting question.

16 MR. FULMER: Mr. Chairman, I just want to allude to that fact.
17 The problem with that consent to stimulate as far as I
18 can recognize, the Board made a condition of a person
19 being able to file for a unit to have the right to
20 consent to stimulate and aversively it ends up with a
21 permit if you have a well. So if they're going to be the
22 unit operator they're not necessarily going to be the
23 well operator.

24 MR. SWARTZ: Right.

25 MR. MASON: I haven't really thought that through in what

1 effect is has, but it just occurs to me when you shift
2 one that we made that a condition previously and I don't
3 know what effect it would have and I would really have to
4 think about it. But I just want to make sure we don't
5 stump our toe in something --

6 MR. SWARTZ: I think for conventional units the rational, as I
7 understand it, behind what the Board did on the consent
8 to stimulate, I think that remains. I think that still
9 is an important issue that there needs to be some
10 threshold showing by someone.

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

12 MR. MASON: I move to approve their motion for approval here
13 on the same conditions as for the other two wells
14 assuming, Mr. Swartz, you represent to me that all the
15 matters at issue are the same except as otherwise
16 disclosed.

17 MR. SWARTZ: Yes, I will make that representation.

18 MR. KELLY: And I would second it.

19 MR. CHAIRMAN: A motion and a second. Any further discussion?
20 If not, all in favor signify by saying yes. (ALL
21 AFFIRM.) Opposed say no. (NONE.) It's unanimous.
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ITEM II

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3 MR. CHAIRMAN: Kevin, would you like to rejoin us and go back
4 to item II? The next item on the Board's agenda, Item II
5 on the docket, is docket number VGOB-91/09/24-00142 and
6 I'll stop there and say that, I believe, has been
7 dismissed. Is that correct?

8 MR. SWARTZ: Correct.

9 MR. CHAIRMAN: So we will hear on VGOB-91/10/15-0154 and VGOB-
10 91/12/17-0173 and VGOB-91/12/17-0174 reconsidering
11 previous action of the Board. I would ask the parties
12 that wish to address the Board on these matters to come
13 forward.

14 MR. SWARTZ: Mark A. Swartz and Howard G. Salisbury for OXY,
15 USA, Mr. Chairman.

16 MR. CHAIRMAN: The record will show there are no others. You
17 may continue.

18 MR. SWARTZ: So that we all are singing from the same music in
19 terms of what happened in the past, it is my recollection
20 that the Board heard evidence with regard to each of
21 these cases and was in a position to enter an order or
22 make a decision as to whether or not to enter a pooling
23 order. But there was a question concerning the same
24 minor child in each unit whose name is Matthew Deskins.

25 MR. CHAIRMAN: Okay.

1 MR. SWARTZ: And if I could satisfy the Board that a mechanism
2 was in place to deal with his election rights, at that
3 point in time the Board would proceed to make a decision.
4 So I think that's where we are today and I think the only
5 thing I need to address is whether or not round three of
6 how do we deal with Matthew Deskins meets with your
7 approval. Is that --

8 MR. CHAIRMAN: That's correct.

9 MR. SWARTZ: I have two exhibits that I would to file. While
10 Marty is passing them around, I would just tell you what
11 we have done and then you can look at the exhibits and
12 any questions you might have Marty or I will try and
13 answer them. If you will recall, OXY came back to you
14 with regard to at least one, perhaps all three of these
15 units, I'm guessing in December or January and tried to
16 generically address what do you do with minor children in
17 units and try to propose kind of a generic solution that
18 could be inserted into a form pooling order affording
19 various options to the oil and gas operator, the parents,
20 the child, so forth. That was un-acceptable to the Board
21 and we have since gone back to the drawing boards to come
22 up another solution and this time we have simply tailored
23 it very specifically to Matthew Deskins. And what we
24 have done is we have commenced a chancery action in the
25 Circuit Court of Buchanan County. There are two ways in

1 which you can in the Commonwealth deal with the property
2 of minor children -- the real property. There is a
3 provision that allows you to commence a chancery action
4 and actually have a regular full blown lawsuit in
5 chancery with regard to the minor child's interest.
6 There is a specific provision that deals with lease hold
7 interests, new leases, surrendering leases, modifying
8 leases, renewing leases. And what this petition --
9 actually you have two petitions as a part of Exhibit I.
10 What these petitions seek to do is ask the Circuit Court
11 Judge of Buchanan County -- this case has been assigned
12 to Judge Pearson who will be handling it. Ask him to
13 appoint a Guardian Ad Litem, the recommendation being
14 that -- given what is at play in these units the recom-
15 mendation and request is that it be the mother. Whether
16 or not that happens, a guardian will be appointed on
17 behalf of the minor child. It may not be the mother.
18 It may be an attorney. But there is a petition here by
19 OXY, USA made under the provisions of the oil and gas
20 code. There is also a petition signed by Barbara L.
21 Deskins, Matthew's mother. It's a joint petition in
22 essence. Both petitions have been filed with the Court
23 and the matter is now before the Judge. The Judge has
24 two choices. He can go with the summary proceeding
25 mechanism which deals with leases or he can turn it into

1 a full blown chancery action. It has been filed as a
2 chancery action, so he has either option. The second
3 exhibit which I have filed with you all this morning is
4 Exhibit H and you will recall that the last time we dealt
5 with this issue we had a generic proposed order which
6 tried to deal with minor children generally. I have
7 backed that language out and have made this very specif-
8 ic. What we would propose that your order contain is
9 simply to carve Matthew out of the election provisions,
10 specifically provide that his election options will be
11 exercised by his Guardian Ad Litem as appointed by the
12 Circuit Court of Buchanan County in this action which I
13 have given you a copy of. And that until such time as a
14 binding election is made by the guardian there will be an
15 escrow of Matthew's interest which would be equal to the
16 amount that should be escrowed if he elected to partici-
17 pate but not less than the royalty. So if he's partici-
18 pation interest turns out to be less than the royalty in
19 any given period of time the maximum amount would be
20 escrowed. The thing you need to recall about Matthew is
21 once his election is made he is not a conflicting
22 claimant. I mean, his interest is an interest. So then
23 it provides that after election we will be back to you
24 because then we will know what his status is to get you
25 to enter an order authorizing the escrow agent to

1 disburse the funds consistent with the Court's order
2 because this is not something that has to be escrowed to
3 resolve a conflicting claim. The statute contemplates
4 and certainly the regs, I believe, contemplate that an
5 escrow agent needs an order. So you're going to see us
6 at some point in time once the election is filed with you
7 all to get whatever minor sums that have been escrowed
8 paid out consistent with the Court's order. The third
9 paragraph of the proposed addition to the pooling order
10 is kind of a nudge, if you care to give the Judge a
11 nudge, requesting that the Court direct the guardian to
12 make the elections in some reasonably short period of
13 time. They are recommending that it be done within sixty
14 days. Obviously the Judge can do whatever he wants, but
15 I think it might be prudent to try and make a recommenda-
16 tion to move things along. And then the last part of the
17 proposed language simply says that all other provisions
18 of the pooling order apply to the child unless they're
19 inconsistent with this provision and then this provision
20 would control. So essentially what has happened is there
21 is a chancery action pending. You'll notice that Page 2
22 of the pleadings that I gave you pertains to all three of
23 these units and they are specifically identified as
24 interests in these units and specifically identified.
25 And both OXY as operator or as lessee I guess, at that

1 point in time and the mother have requested that a
2 guardian be appointed. And hopefully this satisfies you
3 that a mechanism is in place to make sure that your
4 obligation as a board to have a comfort level that minor
5 children are, in fact, being protected by the judicial
6 system, that this has been started and that it's under-
7 way.

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

9 MR. EVANS: I've got a question. Where's Barthamsville?

10 MR. WIRTH: That's fairly close to -- in between Richmond and
11 Norfolk.

12 MR. CHAIRMAN: Does that create a problem with the resident
13 not in the county for activities occurring, Mr. Swartz?

14 MR. SWARTZ: Well, the Code provides that if the action deals
15 with real estate of a person on disability you commence
16 the action in the county where the real estate is. So
17 the Code of Virginia requires this action to be commenced
18 in Buchanan County. The only problem it causes is the
19 mother doesn't want to drive to Buchanan County to
20 participate in a hearing given the amount of money at
21 stake.

22 MR. WIRTH: She doesn't drive period. So we have been going
23 back and forth and have made available to her -- if the
24 Judge needs to see her we'll make arrangements for her to
25 get there.

1 MR. SWARTZ: You will notice, though, that one of the peti-
2 tions which was filed in chancery action 98-92 -- Exhibit
3 I was filed together. There are two petitions there, but
4 they form the basis for chancery action 98-92. The
5 mother is also petitioning the Court for the appointment
6 of a guardian to exercise these election rights. Mr.
7 Chairman, just to answer your question in terms of where
8 things ought to happen, paragraph 6 of Ms. Deskins'
9 affidavit gives the Code Section which deals with where
10 you need to commence these proceedings and it is the
11 county where the real estate is situated.

12 MR. CHAIRMAN: Other questions? Do I have a motion?

13 MR. MCGLOTHLIN: I move that we accept the proposals by OXY
14 in this matter.

15 MR. CHAIRMAN: A motion to accept the proposal which is in
16 addition to pooling orders 0173, 0174, and 0154 as
17 continued from previous hearings. Do I have a second?

18 MR. EVANS: Second.

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

22 MR. MASON: Mr. Chairman, let me just pose a question. I've
23 been sitting here thinking about this. The right to make
24 the election under here would not enure to the guardian
25 until that person has actually been appointed, is that

1 correct?

2 MR. SWARTZ: Correct.

3 MR. WIRTH: That's correct.

4 MR. MASON: So the pooling order, I suppose, would have to
5 reflect that the election be made -- the time for making
6 the election would have to be tied to the appointment.

7 MR. SWARTZ: Well, the way I've drafted it I tried to antici-
8 pate that, Mr. Mason.

9 MR. MASON: Right.

10 MR. SWARTZ: In the first paragraph of Exhibit H says, "Not
11 withstanding any provisions to the contrary Matthew
12 Deskins election rights shall be exercised as follows; by
13 his guardian as appointed in the Court action." And
14 there is not time limit at all. And then at the bottom
15 in the third paragraph -- because I really don't think
16 you can impose a time limit on the Court period. And
17 then in the third paragraph there's a provision that
18 would recommend to the Judge that once he appoints a
19 guardian to try to get them moving. But there is no time
20 limit if this language were used. If this language was
21 not used --

22 MR. MASON: Thank you.

23 MR. SWARTZ: I have a question, though. As I understood the
24 motion -- well, the summary of the motion, I'm not sure
25 that there has been a decision to enter forced pooling

1 orders with regard to these three units which I think --
2 MR. CHAIRMAN: I tried to summarize it that way as amended
3 today.
4 MR. SWARTZ: Okay. As long as that's what's ultimately going
5 to happen as a result of your action, that these units
6 will be force pooled, fine.
7 MR. MASON: I understand the order. Basically we -- they were
8 approved previously subject to the satisfaction of the
9 Board with regard to this matter. That satisfaction
10 having been reached, the forced pooling orders are
11 approved, is that correct?
12 MR. CHAIRMAN: That's correct.
13 MR. SWARTZ: Thank you.

14 (AFTER A BRIEF RECESS, THE PROCEEDINGS CONTINUED AS
15 FOLLOWS:)
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ITEM V

1
2
3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 the establishment of a compulsory pooled longwall panel
5 unit. This is docket number VGOB-92/04/21-0216. We
6 would ask the parties that wish to address the Board in
7 this regard to come forward, please.

8 MS. McCLANNAHAN: As you all know my name is Ms. McClannahan
9 representing Pocahontas Gas Partnership in it's applica-
10 tion to pool the interests in coalbed methane located in
11 active gob area underlying the south longwall 8 unit.
12 The south longwall 8 unit has been previously approved on
13 February 18th, 1992 by the Board. At that time the Board
14 approved that Pocahontas Gas Partnership could permit and
15 produce a minimum of four coalbed methane wells. PGP
16 controls 67.52 percent of the rights to develop the oil
17 and gas from the tracts that are listed on Exhibit C of
18 the application as it's been submitted and 96.07 percent
19 of the right to develop the Pocahontas #3 seam and 99.83
20 percent of all coal below the Tiller seam less the P3
21 seam. The entities that are listed on Exhibit D of the
22 application have refused to release or assign their
23 interest in the coal, oil and gas estate. What Pocahon-
24 tas Gas Partnership would propose as to any additional
25 wells that may be drilled has been previous approved by

1 the Board would be to petition the Board as to the
2 elections that would be available to participating
3 operators in those initial wells and allocation of costs
4 for additional wells. The first witness that I would
5 like to call is Les Arrington.

6 COURT REPORTER: (Swears witness.)

7
8 LESLIE K. ARRINGTON

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

11
12 DIRECT EXAMINATION

13
14 BY MS. McCLANNAHAN:

15 Q. Mr. Arrington, could you please identify the exhibit
16 marked for identification as Exhibit 1?

17 A. That's my resume of my work history.

18 Q. It reflects your educational background and qualifica-
19 tions?

20 A. Yes, it does.

21 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
22 Exhibit 1.

23 Q. (Ms. McClannahan continues.) Mr. Arrington, have you
24 been qualified as an expert witness before the Gas and
25 Oil Board?

1 A. Yes, I have.

2 Q. Have you given notice as required by Virginia Code
3 Section 45.1-361.19 to each person or entity identified
4 on Exhibit C of the forced pooling application as a
5 potential owner of the methane gas underlying the unit?

6 A. Yes, I have.

7 Q. Is the notice that you gave to each of those entities at
8 Exhibit 2?

9 A. Yes, it is.

10 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
11 Exhibit 2.

12 MR. CHAIRMAN: Okay. Without objection.

13 Q. (Ms. McClannahan continues.) Was this notice sent by
14 certified mail, return receipt requested?

15 A. Yes, it was.

16 Q. And do you have those returned receipts?

17 A. Yes, I have.

18 Q. Are copies of those returned receipts at Exhibit 3?

19 A. Yes, they are.

20 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
21 Exhibit 3.

22 MR. CHAIRMAN: Did that include all of the parties that were
23 due to receive notice?

24 MR. ARRINGTON: Yes, sir.

25 MR. CHAIRMAN: All right. Without objection.

- 1 Q. (Ms. McClannahan continues.) Were there any persons
2 whose names and/or addresses were unknown?
- 3 A. No.
- 4 Q. Did you publish notice of this in any of the local
5 papers?
- 6 A. Yes, we did. We published in the Virginia Mountaineer,
7 Bristol Herald Courier, and the Bluefield Daily Telegraph
8 on 3/27, 3/25 and 3/25 respectively.
- 9 Q. And those proofs of publications have been previously
10 submitted to the Board?
- 11 A. Yes, they have.
- 12 Q. Has a drilling permit been previously refused to PGP on
13 any of the tracts that make up this unit?
- 14 A. No, they have not.
- 15 Q. What percentage of the coal rights in the tracts that
16 comprise the south longwall 8 unit does PGP control to
17 date?
- 18 A. 96.07 percent of the Pocahontas #3 seam and 99.83 percent
19 of all coal below the Tiller seam less the P3.
- 20 Q. And what percentage of the oil and gas rights in the
21 tracts that comprise the south longwall 8 unit does PGP
22 control?
- 23 A. 67.52 percent.
- 24 Q. Have you obtained coalbed methane gas leases on any
25 portion of the acreage within the south longwall 8 unit?

1 A. Yes, we have.

2 Q. On what percentage?

3 A. 99.83 percent.

4 Q. Are the unleased owners and the lease hold owners and
5 mineral owners leased to other parties who will be pooled
6 and their percentages of ownerships in the respective
7 tracts to the south longwall 8 unit listed on the revised
8 Exhibit D to be submitted herein as Exhibit 6?

9 A. Yes, they are.

10 Q. Are the conflicting claimants whose funds are to be
11 escrowed on Exhibit E?

12 A. Yes, they are.

13 Q. Is your request that the Board pool the interest of all
14 the parties listed on Exhibit C of the south longwall 8
15 application?

16 A. Yes.

17 MS. McCLANNAHAN: Those are all the questions I have for Mr.
18 Arrington.

19 MR. CHAIRMAN: Any questions, members of the Board? We have
20 other parties at the table. I'll ask you at this time to
21 identify yourself and then give an opportunity to ask any
22 questions of Mr. Arrington.

23 MR. STEELE: Bob Steele, and this is my mother Ruth. We're
24 property owners.

25 MS. DESKINS: I'm Agnes Deskins, property owner.

1 MR. CHAIRMAN: Okay. Did you have any questions at this time?

2 MR. STEELE: Not at this time.

3 (Witness stands aside.)

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

5 MS. McCLANNAHAN: Mr. Gil Gillenwater.

6 COURT REPORTER: (Swears witness.)

7

8 WILLIAM D. GILLENWATER

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

11

12 DIRECT EXAMINATION

13

14 BY MS. McCLANNAHAN:

15 Q. Mr. Gillenwater, will you please identify the exhibit
16 marked for identification as Exhibit 4?

17 A. That's my resume.

18 Q. Does the resume in Exhibit 4 reflect your work history
19 and qualifications?

20 A. Yes, it does.

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

23 A. Yes.

24 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
25 Exhibit 4.

1 MR. CHAIRMAN: Okay.

2 Q. (Ms. McClannahan continues.) Where is your experience in
3 obtaining mineral leases been concentrated?

4 A. Coal leasing and oil and gas and coalbed methane leasing.

5 Q. In what particular areas?

6 A. Southwest Virginia.

7 Q. In your experience in obtaining leases in Southwest
8 Virginia are you familiar with the fair market value for
9 coal leases, oil and gas leases, and coalbed methane
10 leases in the south longwall 8 unit area?

11 A. Yes, ma'am, I am.

12 Q. And how many acres have you leased in Buchanan County in
13 the last year?

14 A. Oil and gas and methane acres in the excess of 40,000
15 acres.

16 Q. What are the fair market value terms for a coalbed
17 methane lease in this area?

18 A. Coalbed methane specific would be \$1 per acre per year
19 and a one-eighth production royalty.

20 Q. And what would be the standard primary term for a coalbed
21 methane lease?

22 A. Ten years.

23 Q. With regard to the unleased owners that are listed on the
24 south longwall 8 unit forced pooling application, have
25 you contacted those landowners or tried to contract them

1 to obtain a lease?

2 A. Yes, we have.

3 Q. What kind of lease have you offered each of them?

4 A. An oil and gas that would also include any claim to
5 coalbed methane that they would have.

6 Q. With the terms as you previously discussed as standard?

7 A. No, ma'am, as an annual rental payment of \$5 per acre
8 per year.

9 Q. And is the difference in that rental that you've listed
10 -- do you mean bonus or rental?

11 A. Rental.

12 Q. What bonus --

13 A. Well, what we do, ma'am, is prepay a ten year term, try
14 to get the up front dollars boosted up to allow for
15 something worthwhile for them to sign for.

16 Q. \$5 per acre is for oil, gas, and coalbed methane, is that
17 correct?

18 A. Yes, ma'am.

19 Q. And \$1 per acre is for coalbed methane interest only?

20 A. Yes, ma'am.

21 Q. By what method have you contacted each of the owners and
22 offered them a lease?

23 A. In person, verbal.

24 Q. So you have contacted all the owners in the south
25 longwall 8 unit verbally?

1 A. Yes, ma'am.

2 Q. Okay. With regard to the lease hold owners that are
3 listed on the south longwall B unit forced pooling
4 application, did you make an offer regarding an assign-
5 ment of their lease hold interests?

6 A. Yes, we have.

7 Q. And have you been able to come to an agreement as to the
8 proposed assigned acreage?

9 A. Not at this time.

10 Q. Were there any unknown owners or owners whose addresses
11 were unknown at the time of the filing of this forced
12 pooling application that you're aware of?

13 A. No.

14 MS. McCLANAHAN: Those are all the questions I have for Mr.
15 Gillenwater.

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

17 MR. MASON: Let me just make sure I understand this. You say
18 you made an offer to lease to each of these people, but
19 the offer that you made was for a full oil and gas lease
20 including coalbed methane?

21 MR. GILLENWATER: Yes, sir.

22 MR. MASON: And that you offered to pay a \$56 per acre rental
23 payable for ten years in advance?

24 MR. GILLENWATER: Yes, sir.

25 MR. MASON: Okay. But there was no bonus? I mean, it was

1 just a prepayment?

2 MR. GILLENWATER: Yes, sir.

3 MR. MASON: Thank you.

4 MR. CHAIRMAN: Other questions, members of the Board?

5 Questions, Mr. Steele?

6 MR. STEELE: I have one concerning the natural gas part of it.

7 This lease that he's wanting involved all of it. And my

8 question is if they do or when will they produce natural

9 gas along with this coalbed methane or what's going to

10 happen to the natural gas?

11 MR. CHAIRMAN: Do you want to answer that?

12 MS. McCLANNAHAN: Well, I believe that question would most

13 appropriately be directed to Mr. Albert. So perhaps we

14 should --

15 MR. CHAIRMAN: Okay. We'll reserve that until --

16 MR. GILLENWATER: Can I say one thing to that, though? In our

17 negotiations if any party has any interest in a coalbed

18 methane specific lease then we have that form and are

19 more than willing to negotiate on that form. And when I

20 stated that we leased an excess of 40,000 acres the past

21 year, the bulk of that has been coalbed methane specific

22 leases.

23 MR. MASON: Just one question. In the overall lease that you

24 offer, if you start or commence production of coalbed

25 methane does that constitute production for purposes of

1 all oil and gas? In other words, will it hold the lease?

2 MR. GILLENWATER: Yes, sir.

3 MR. MASON: The coalbed methane will hold the lease for the
4 other two minerals as well?

5 MR. GILLENWATER: Yes, sir.

6 MR. MASON: Thank you.

7 MR. CHAIRMAN: Did you have any questions, ma'am, at this
8 time? Okay.

9 (Witness stands aside.)

10 MR. CHAIRMAN: We'll get that question from Mr. Albert when he
11 gets on the stand. Okay. Call your next witness.

12 MS. McCLANNAHAN: Randall Albert.

13 COURT REPORTER: (Swears witness.)

14 MS. McCLANNAHAN: In order to assist Mr. Steele, it's okay
15 with me if it's all right with the Chairman for Mr.
16 Albert to go ahead and answer his question now that he's
17 been sworn in before we start.

18 MR. CHAIRMAN: Okay.

19 MR. ALBERT: Could I ask her to repeat the question to me from
20 the record, please?

21 COURT REPORTER: I'll have to rewind it then.

22 MR. CHAIRMAN: Mr. Steele could probably restate the question.

23 MR. STEELE: My question was, this lease you're wanting is
24 coalbed methane. I want to know if it involves the
25 nature gas when will you be producing natural gas, if you

1 do, and how are you going to distinguish between the two?

2 MR. ALBERT: I'll answer the first part first. We have no
3 plans, if I understand where your area is -- where you're
4 located at the mouth of the Lavisa, at the present time
5 we have no plans to produce any natural gas in that area.
6 That is an area that is out ahead of the active mining
7 plan and as a matter of course we do not drill deep wells
8 out ahead of our active mining area. I couldn't give you
9 any definite time table as to when or if we would produce
10 deep gas from that area. But if we did we would disting-
11 uish -- more than likely the gas would be from a differ-
12 ent well bore than from the coalbed methane well bore and
13 if it was from the same well bore then we would simply
14 isolate the two zones to meter the gas separately for a
15 variety of reasons. But we would separate and meter each
16 source separately.

17 MR. STEELE: Okay. A follow-up question on that. I've been
18 advised that this coalbed methane is a negative or
19 approximately a zero pressure. Is that true?

20 MR. ALBERT: No, sir, that is not true. As I have testified
21 before the Board on numerous occasions as well as other
22 companies, the in situ pressure of the coal seams range
23 from about 400 to 600 pounds. The Pocahontas #3 seam is
24 at about 600 pounds of reservoir pressure. I think
25 someone may have told you that it is an under pressured

1 reservoir as opposed to -- meaning that the hydrostatic
2 head is more than the reservoir pressure is. But no, it
3 is not a zero pressure.

4 MR. STEELE: No. I was advised that it was a negative
5 pressure and that's why you had to pump it. The question
6 I'm getting at is, ever since we've been in the area
7 there's gas coming up in the creeks and the ditch line
8 and everywhere.

9 MS. DESKINS: In my yard.

10 MR. STEELE: And if it's coalbed methane that's one thing, but
11 if it's the other type gas that's another thing.

12 MS. DESKINS: So it must be the other type of gas. You can
13 strike a match and it will burn.

14 MS. McCLANNAHAN: I'm not sure I -- so what difference does it
15 make if it's one or the other?

16 MR. STEELE: It wouldn't make any difference if you leased it
17 all. The issue is the forced pooling. So if you're
18 going to force pool my natural gas which you don't have
19 any say so at all over, then that's one question, if
20 that is what's coming out in the creek and ditch lines
21 and whatever.

22 MR. MASON: As I understand the forced pooling application
23 pending before us today only relates to coalbed methane,
24 is that correct?

25 MS. McCLANNAHAN: That's correct.

1 MR. MASON: So this Board pursuant to this application have
2 the right to force pool anything but the coalbed methane
3 gas. That would be the only issue before us today. In
4 any negotiations you all have had with them outside of
5 that, that issue is really not part of what we can do.
6 In other words, we're not going to force pool your
7 natural gas other than within the coal seams that they
8 have described in their petitions.

9 MR. STEELE: Well, my next question would have been, after
10 they start disturbing this gas what's going to happen if
11 it coalbed methane coming up? What's going to happen to
12 the area? Is it going to produce more gas than it has
13 been as far as -- I'm talking about a safety standpoint.

14 MR. ALBERT: Are you asking me or are you asking the Board?

15 MR. STEELE: I'm asking anybody that can answer me.

16 MR. McCLANAHAN: Mr. Albert, I think you can probably address
17 the safety --

18 MR. ALBERT: Mr. Steele, not knowing for sure where the gas
19 that you all are referencing is coming from I couldn't
20 qualify at this time whether it would be more or less or
21 exactly what the impact of gas production would be on it
22 or mining would be on it. I have no first hand knowledge
23 of the gas coming to the surface in that area or where
24 that gas is likely to be coming from.

25 MR. MASON: Randy, have you in any of the areas where you all

1 have drilled VVHs or a part of your degassification
2 program and there is surface leakage gas, have you all
3 ever noticed any increase of surface gas in an area
4 that's been drilled or have you noticed any decreases?

5 MR. ALBERT: I've never noticed any increases and I would have
6 to state the Board at this time that all the areas that I
7 have drilled in I have never seen gas coming to the
8 surface. I've seen gas come into a well bore at fairly
9 shallow depths, but I've never seen it come all the way
10 to the surface.

11 MR. MASON: But you've certainly not seen any increase in
12 surface gas as a result of --

13 MR. ALBERT: No.

14 MR. MASON: -- or any indication that that would be the result
15 of this?

16 MR. ALBERT: No, sir.

17 MR. MASON: Thank you.

18
19 RANDALL M. ALBERT

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

22
23 DIRECT EXAMINATION

24
25 BY MS. McCLANAHAN:

1 Q. Mr. Albert, could you identify Exhibit 5?

2 A. Exhibit 5 is my resume.

3 Q. Does this resume reflect your educational background,
4 work history, and qualifications?

5 A. Yes, it does.

6 Q. And have you been previously qualified as an expert
7 witness before the Gas and Oil Board?

8 A. Yes, I have.

9 Q. For what type of wells will the permits be submitted for
10 wells in the south longwall 8?

11 A. To convert one vertical ventilation hole to a coalbed
12 methane gas well and to drill additional coalbed methane
13 gas wells.

14 Q. You have indicated in the forced pooling application that
15 the mineral and lease hold owners for the south longwall
16 8 unit which are not leased or assigned to PGP are listed
17 on Exhibit D. Is that still correct?

18 A. No, it's not.

19 Q. Why is that not still correct?

20 A. Since the filing of the application one of PGP's part-
21 ners, Consolidation Coal Company, has purchased the
22 interest of Raymond Lester and PGP has secured an oil and
23 gas lease from Nancy Sisk.

24 Q. The exhibit marked for identification as Exhibit 6, that
25 shows the revised application page and also revised

1 Exhibit C, D, and E showing the additional interests
2 leased, is that correct?

3 A. Yes, it is.

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

6 MR. CHAIRMAN: Any objection? Okay. Do you folks have a copy
7 of this?

8 MS. DESKINS: No, we don't. I don't.

9 MR. CHAIRMAN: Do you have an extra copy for them?

10 MS. McCLANNAHAN: Uh-huh.

11 MR. CHAIRMAN: Thank you.

12 Q. (Ms. McClannahan continues.) Have you received any
13 written responses to the forced pooling application
14 that's been filed with the Board?

15 A. No, we have not.

16 Q. Is Pocahontas Gas Partnership the owner of the drilling
17 rights underlying the mineral tracts that are to be
18 encompassed by this unit?

19 A. Yes, we are.

20 Q. Does the plat attached to the forced pooling application
21 filed by PGP indicate the acreage to be embraced within
22 the south longwall 8 unit as approved by the Board at
23 it's February 18th hearing?

24 A. Yes, it does.

25 Q. Does the plat attached to the forced pooling application

1 filed by PGP also indicate the shape of the acreage
2 embraced within the south longwall 8 unit as it's been
3 previously approved?
4 A. Yes, it does.
5 Q. Does the unit follow the boundary lines of the longwall
6 panel and it's surrounding area for the mine that
7 comprises the south longwall 8 unit?
8 A. Yes, it does.
9 Q. Could you please identify the exhibit marked as Exhibit
10 7?
11 A. Exhibit 7 is a copy of Exhibit B-1 of the south longwall
12 8 forced pooling application.
13 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
14 Exhibit 7.
15 Q. (Ms. McClannahan continues.) Does the plat attached to
16 the forced pooling application filed by PGP indicate the
17 area within which the wells will be converted or drilled
18 on the south longwall 8 unit?
19 A. Yes, it does.
20 Q. Does this drilling unit embrace two or more separately
21 owned tracts?
22 A. Yes, it does.
23 Q. Are the costs and expenses for the wells set forth on
24 detailed well estimates attached to the forced pooling
25 application as Exhibit H through K?

- 1 A. Yes, they are.
- 2 Q. Have there been any revisions to the DWES for the wells
3 that comprise the south longwall 8 unit since they've
4 been filed?
- 5 A. No, there have not.
- 6 Q. Do these exhibits reflect the costs of drilling the wells
7 to total depth and completed for production costs?
- 8 A. Yes, they do.
- 9 Q. Generally, how did you calculate the costs that are
10 listed in the DWES attached to the application?
- 11 A. For well #122 which is Exhibit H, those are for the most
12 part actual costs from invoices. For the additional
13 wells which are I, J and K, those are estimated costs
14 based on the average cost of drilling in this area.
- 15 Q. How are the costs that are listed on the DWES divided
16 between the fracked wells and active gob wells?
- 17 A. The costs are divided between the fracked wells and
18 active gob wells on the basis of the production for each
19 type of production.
- 20 Q. Are you requesting that PGP be designated as the well
21 operator authorized to operate the south longwall 8 unit?
- 22 A. Yes, I am.
- 23 Q. And that the Board prescribe the time and manner in which
24 other mineral and lease hold owners may elect to partici-
25 pate in the operation of the wells?

1 A. Yes.

2 Q. Are you requesting that non-leasing mineral and lease
3 hold owners have reasonable access to production and
4 transportation records collected by the inspector?

5 A. Yes.

6 Q. That participating mineral and lease hold owners bear the
7 reasonable costs and expenses connected to the wells in
8 the proportion which the acreage they own has to the
9 total acreage in the south longwall B unit as determined
10 by surface acreage?

11 A. Yes.

12 Q. And that the Board make provision for the payment of all
13 reasonable costs of the operation including a reasonable
14 supervision fee by all mineral or lease hold owners who
15 elect to participate?

16 A. Yes.

17 MS. McCLANNAHAN: Those are all the questions I have for Mr.
18 Albert.

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

20 MR. MASON: On your DWE, as I understand it, one of these
21 wells, that is CBM 122, is already in existence?

22 MR. ALBERT: That's correct.

23 MR. MASON: Has it been operated as a VVH?

24 MR. ALBERT: Yes, sir. It has been operated as a VVH.

25 MR. MASON: How long has it been in existence?

1 MR. ALBERT: About four months.

2 MR. MASON: And then the other three are proposed wells?

3 MR. ALBERT: Yes, sir. That is correct.

4 MR. MASON: Who owns the well now -- the VVH?

5 MR. ALBERT: Pocahontas Gas Partnership. The VVH was drilled
6 by Pocahontas Gas Partnership.

7 MR. MASON: Does PGP have any agreement with Consolidated for
8 the use of the well bore for ventilation purposes?

9 MS. McCLANNAHAN: May Mr. Morgan address that question,
10 please?

11 MR. MASON: Sure.

12 MS. McCLANNAHAN: He hasn't been sworn in.

13 COURT REPORTER: (Swears witness.)

14 MR. MORGAN: Consolidation Coal Company as a partner in
15 Pocahontas Gas Partnership is the operating partner. So
16 therefore, they have control over operation of all the
17 well bores and all facilities on the mine plan area.

18 MR. MASON: Well, I understand that. But my question is is
19 Consolidation Coal Company has been using this well bore
20 for four months to ventilate gas, is that correct?

21 MR. MORGAN: The gas has been ventilating for four months.

22 MR. MASON: Do you have any agreement between the Partnership
23 and Consolidation Coal Company to reimburse or pay the
24 Partnership for the use of this bore?

25 MR. MORGAN: No, we do not.

1 MR. CHAIRMAN: Mr. Morgan, would you state your full name for
2 the record, please.

3 MR. MORGAN: Claude Dale Morgan.

4 MR. MASON: So the Partnership drilled this well or this bore
5 and it just lets the coal company use it until such time
6 as it's ready to use it as a gas well for production?

7 MR. MORGAN: The coal company is not using it per say. There
8 is no mine in that area at this time. This was a
9 hydraulically fractured well which is liberating gas from
10 the Pocahontas #3 seam. It is not a VVH in the tradition
11 sense that it's a gob well or anything of that sort in
12 ventilating the mine. It is removing gas from the
13 Pocahontas #3 seam.

14 MR. MASON: Is part of the degasification of the coal program
15 that the mining company has?

16 MR. MORGAN: That's originally -- in the period of 1984 to
17 1990 Consolidation Coal Company was drilling and produc-
18 ing those type holes.

19 MR. MASON: Are you telling me that Consolidation Coal Company
20 derives no benefit from the ventilation during this four
21 month period?

22 MR. MORGAN: During this four month period we have not derived
23 any benefit. There is gas being liberated from the seam.

24 MR. MASON: And the degasification of the coal that's occurred
25 during this period is of no benefit to the coal company?

1 MR. MORGAN: If the coal seam is sufficiently degassed it
2 obviously will make mining safer.

3 MR. MASON: I guess I'm just having a hard time with this
4 relationship. I mean, we've got something that costs a
5 great deal of money. It's an asset of this partnership.
6 And it seems to me that if you look at the history of
7 these VVHs and the fact that the mining companies have
8 done this to further their mining operations be degasify-
9 ing their coal -- I mean, I'm certainly not critical of
10 mine safety and degasification at all. It's one of the
11 main reasons we're involved in this. It seems to me that
12 this partnership has been, in effect, allowing a free use
13 of this asset to the coal company and then is expecting
14 to turn around and charge the full cost of that to the
15 well in which people are going to be asked to participate
16 and pay for that after that.

17 MR. MORGAN: The well has been drilled and I think under the
18 act, regardless of who drills the well, a well can be
19 vented for mine safety.

20 MR. MASON: Well, I understand that. I mean, I --

21 MR. MORGAN: Any coalbed methane well that is drilled is going
22 to liberate gas from the coal seam. And under the theory
23 that you're speaking of, you would have to back up and
24 see that any coalbed methane well drilled anywhere, what,
25 in fact, does that have on the coal seam and degasifying

1 and shouldn't, of course, be shared by whoever the coal
2 owner is.

3 MR. MASON: Well, I understand that. That's my point. I
4 mean, why shouldn't --

5 MR. MORGAN: Regardless of whether or not it's vented.

6 MR. MASON: Why shouldn't the coal company pay for the use of
7 this bore?

8 MR. MORGAN: No more so than any coal company should pay for
9 the use of a bore to remove a gas from any coalbed
10 methane well drilled anywhere. The only difference is
11 here it is being venting as allowed by the act.

12 MR. MASON: Well, I don't disapprove of that. I'm just
13 talking about economic benefits. I mean, it seems to me
14 you've got a situation where you're asking us to charge
15 this well for the full cost of this drilling when there's
16 another enterprise that's derived an economic benefit for
17 it and there's no reduction or costs or anything to
18 reflect that.

19 MR. ALBERT: If I might, we are not asking that the Board
20 charge the full cost of the well to a participating
21 operator. We are allocating that cost based on the
22 production from that well which will be from the time the
23 well begins to commercially produce.

24 MR. MASON: But you're doing an allocation between the gob
25 production and the --

1 MR. ALBERT: Frack production.

2 MR. MASON: -- frack production. But there's no part of that
3 allocation that relates to use of this well bore by the
4 mining company prior to production of the well, is that
5 not correct?

6 MR. MORGAN: What Mr. Albert is referring to, though, that
7 production is not added into our production numbers
8 either in doing that allocation.

9 MR. MASON: Well, I understand that. But there is a period of
10 use in there by the mining company that's not reflected
11 in the allocation of this cost. That's my point entire-
12 ly.

13 MR. ALBERT: I would represent that that is not a period of
14 use by the mining company. It so happened that the well
15 was drilled and rather than -- sometimes it's more
16 disadvantageous to leave a coalbed methane well shut in
17 once it is stimulated and to allow it to produce. The
18 only reason it is being vented right now is that the pipe
19 line which is being constructed Cardinal States Gathering
20 Company is not finished. We have nowhere to market the
21 gas.

22 MR. MASON: I understand that. My point is is that there's --
23 you're saying that if it weren't -- I guess what I'm
24 trying to arrive at is that you're telling me that the
25 Consolidation Coal Company derives no benefit from this

1 four month ventilation period?

2 MR. ALBERT: It would be very minimal benefit and no direct
3 benefit. I mean, that coal may never be mined.

4 MR. MASON: Let me ask you another question. This well was
5 permitted as a VVH?

6 MR. ALBERT: Yes, sir.

7 MR. MASON: By PGP partner?

8 MR. ALBERT: The well was originally permitted as a VVH by
9 Consolidation Coal Company.

10 MR. MASON: Who actually drilled it?

11 MR. ALBERT: Pocahontas Gas Partnership drilled the well. It
12 was one of the wells that fell into the end of the 1990
13 calendar year at the time frame of drilling.

14 MR. MASON: Who owned the well when it was drilled?

15 MR. ALBERT: Pocahontas Gas Partnership owned the well when it
16 was drilled.

17 MR. MASON: But Consolidation Coal Company got the permit?

18 MR. ALBERT: Right. The permit was obtained prior to the
19 formation of Pocahontas Gas Partnership.

20 MR. MASON: Was that permit transferred to Pocahontas Gas
21 Partnership?

22 MR. ALBERT: I do not believe it was.

23 MR. MASON: Well, how do you have a permit and one owner and
24 the well owned by somebody else?

25 MR. ALBERT: Well, a VVH permit is just a permit from the

1 State Mining Agency to allow any entity to drill a
2 vertical ventilation hole. The well was drilled with the
3 funds of Pocahontas Gas Partnership.

4 MR. MASON: I understand that. And you tell me that Pocahon-
5 tas Gas Partnership is the owner of the well?

6 MR. ALBERT: That's right.

7 MR. MASON: I'm not that familiar with the permitting require-
8 ments of VVHs. Mr. Fulmer, is it customary that one
9 person own the permit and somebody else be the owner of
10 the well?

11 MR. FULMER: I cannot speak to the mines. I don't know how
12 they do that. Most of the time when you drill a VVP it's
13 done by the coal company.

14 MR. MASON: And they are the owner of the well?

15 MR. FULMER: Ownership question I couldn't answer you, Mr.
16 Mason.

17 MR. MORGAN: The VVH permit is tied to the mine from a
18 permitting standpoint. The Division of Mines, Minerals
19 and Energy will require that Consolidation Coal Company
20 have a VVH permit. It does not address ownership, but
21 the fact that it is to be tied to the mine will require a
22 VVH permit.

23 MR. MASON: I understand that.

24 MR. MORGAN: PGP is not a mining company. Therefore, PGP
25 cannot obtain a VVH permit. So even wells that are

1 drilled as coalbed methane wells entirely under PGP will
2 require later if it's going to be served as a ventilation
3 hole later a VVH permit under Consolidation Coal Company.
4 There will be two separate permits -- two separate
5 entities -- from the simple fact that Consolidation Coal
6 Company is the mining company and that is the one that
7 the Division of Mines, Minerals and Energy is tied to and
8 they're the ones that are required to get that permit.

9 MR. MASON: Okay. Well, you're tell me that PGP could not get
10 a VVH permit, is that correct?

11 MR. MORGAN: I don't think they could. I don't think PGP
12 could have a VVH.

13 MR. MASON: Did they get a coalbed methane permit to drill
14 this well?

15 MR. MORGAN: No. they did not.

16 MR. MASON: So they drilled it under Consolidation --

17 MR. MORGAN: They drilled it for Consolidation Coal Company
18 under the terms of the partnership agreement.

19 MR. MASON: How can they drill the well and they don't have a
20 permit and you tell me they can't get a permit? I don't
21 understand that.

22 MR. MORGAN: Consolidation Coal Company has a permit.

23 Consolidation Coal Company is the operator of PGP. And
24 any well that we are going to be dealing with we'll have
25 dual permitting requirements as a VVH and as a coalbed

1 methane. A coalbed methane will be permitted under PGP.
2 The VVH will be permitted under Consolidation Coal
3 Company. Every well that we've done is that way.

4 MR. MASON: Well, I'm totally confused. Mr. Fulmer, when you
5 --

6 MS. McCLANNAHAN: May I just make one point here? It was
7 drilled in October of 1990. It wasn't just drilled four
8 months ago. So it was drilled before the Oakwood field
9 rules were in effect. And it just has only been produc-
10 ing for four months, but it was drilled in 1990.

11 MR. MORGAN: And it was drilled in 1990 to try to benefit PGP
12 for the gas credit standpoint and it was drilled and not
13 completed.

14 MR. MASON: PGP, when did it come into existence?

15 MR. MORGAN: September, 1990.

16 MR. MASON: Mr. Fulmer, are you familiar with these VVH
17 permits?

18 MR. FULMER: Am I familiar with them?

19 MR. MASON: Uh-huh.

20 MR. FULMER: I know of them. I get copies of them from the
21 Division of Mines, yes.

22 MR. MASON: When they issue one of those permits does it
23 normally permit someone to do something? I mean, does
24 the permit actually say we hereby permit Consolidation
25 to drill the VVH or does it -- they get a permit and

1 anybody can drill the well, do you know?

2 MR. FULMER: Still, on the ownership question I don't know --
3 all I know is that they get the permit in the name of
4 who's applying. Now, whether somebody else can drill the
5 hole under contract for them, that's just like any other
6 well.

7 MR. MASON: I understand that.

8 MR. FULMER: But the operatorship or the permit is in who
9 applies for the permit from the Division of Mines.

10 MR. MORGAN: Mr. Mason, it goes further than that. There are
11 issued tied here due to the context permitting and
12 assuming that we try to address in the regulations and it
13 was pretty complexed. I mean, not only is Consol
14 required to get a VVH permit, Consol will also since
15 that's going to be a VVH on the ones that are going to be
16 converted and the ones that are already VVHs have to get
17 a DMLR surface reclamation permit. But it's simply a
18 matter of those things are tied to the coal operator
19 permit wise. PGP does the CBM permits.

20 MS. McCLANNAHAN: Also, to answer your question with regard
21 to -- I think Mr. Kelly can even say that with regard to
22 conventional gas wells there are plenty of times when a
23 company is the permittee on a well, but there are
24 numerous owners of the well under an operating agreement,
25 isn't that correct?

1 MR. KELLY: Yeah, I'd say it probably stands as a joint
2 venture arrangement.

3 MR. MASON: I'm just trying to understand why -- my big
4 concern is the fact that the entire cost of this well
5 bore is being charged to the CBM when there seems to be a
6 period of time in here in which this asset was utilized
7 by the coal company in which no compensation is paid or
8 reduction in cost is made with regard to the -- I mean,
9 the permitting aspects of it are really irrelevant to
10 this consideration.

11 MR. MORGAN: Mr. Mason, the total reason that this well has
12 been liberating is the fact that the pipe line was not
13 finished on schedule. It was anticipated that this
14 production would be going into the pipe line. This
15 production was anticipated to benefit PGP. The pipe line
16 originally was scheduled to be completed January 1, 1992
17 at which point that production would have been going into
18 the pipeline full benefit of PGP. The regulations and
19 the act do allow venting of these wells where it cannot
20 be marketed. To the fact that it's venting, I think that
21 could be happening on any well anywhere for mine safety.

22 MR. MASON: The ventilation can only be allowed in the event
23 of mine safety considerations.

24 MR. FULMER: Right.

25 MR. MASON: I understand that.

1 MR. FULMER: Or for testing.

2 MR. MASON: Yeah, my point exactly. All of which inures to
3 the benefit of the mining company.

4 MR. MORGAN: But are we going to say then that any time a well
5 has to be vented that you have to keep track of that and
6 deduct that cost from a cost of any CBM that's done out
7 there? That any time somebody has to vent that well for
8 mine safety -- if something clogs the line upstream, I
9 mean, are we going that far to say that well, now because
10 you've got to throw that into the air that's benefiting
11 the mine so you've got to back up five years ago when
12 that forced pooling was done and reallocate that cost
13 because that cost goes to the mine?

14 MR. MASON: No, but I think you probably should allocate a
15 part of the operational costs to the mine for that. And
16 I think if the mining company derives benefit from these
17 costs they ought to pay for it and not have that burden
18 placed on the people who have to elect to participate in
19 the well.

20 MS. McCLANNAHAN: One other consideration which balances into
21 that, however, is that -- I understand from Mr. Albert
22 and he can explain this better, but the consideration
23 that you have to balance against what you're saying is
24 that the reason it's been venting for four months is that
25 in order to protect the production from that well he

1 could not shut it in four months ago which means that
2 he's actually preserving an asset of the partnership and
3 of all the owners. You also have to consider that they
4 wouldn't be doing something that wasn't advantageous to
5 everyone considering that Pocahontas Gas Partnership and
6 Consolidation Coal Company as a separate entity own
7 interests in all of these units. So they're going to get
8 paid and get charged the same costs on their acreage
9 basis as anybody else.

10 MR. MASON: Well, I understand that.

11 MS. McCLANAHAN: Okay.

12 MR. MORGAN: Mr. Mason, as far as charging the entire cost, if
13 you will recall in the past forced poolings that we've
14 had on these types units, we have not allocated the cost
15 of every potential well in those units. We have limited
16 our applications to -- on this one I think it's four
17 wells. On some of the others it was three. On some of
18 it it was one even though there may have been many more
19 VVHs in those units.

20 MR. MASON: I don't understand the relevance of that.

21 MR. MORGAN: From your standpoint that shouldn't the coal
22 operator be bearing a portion of some of these costs.
23 The oil and gas has not been burdened with all of the
24 costs associated with all the VVHs.

25 MR. MASON: Why should they be?

1 MR. MORGAN: Why shouldn't the oil and gas be burdened with
2 them?
3 MR. MASON: No, why should they?
4 MR. MORGAN: We haven't. I mean in response to your point
5 that that --
6 MR. MASON: If there's no reason why they should, then what
7 logical relevance could that have to why the coal company
8 shouldn't?
9 MR. MORGAN: I'm sorry. I don't understand your question.
10 MR. MASON: Well, you're saying that it's not logical to
11 deduce that the coal company should bear it's cost
12 related to the use of the bore of the VVH on the basis
13 that the oil and gas interests are not burdened with
14 other VVH costs. I find that not logically supportive.
15 MR. MORGAN: I was only using that to illustrate that we're
16 not burdening the oil and gas with all of the costs in
17 response to your previous question as should they be.
18 MR. MASON: Okay.
19 MR. MORGAN: And we have not.
20 MR. MASON: Okay. Thank you.
21 MR. MORGAN: And we have justified the costs on the basis of
22 economics in gas production.
23 MR. MCGLOTHLIN: Ms. McClannahan, were the surface owners
24 notified as to this project?
25 MS. McCLANNAHAN: All mineral owners.

1 MR. MCGLOTHLIN: Just the mineral owners?

2 MS. McCLANNAHAN: Right. That's what the statute requires.

3 MR. MCGLOTHLIN: I understand. Maybe I'm thinking of another
4 thing that the Board did a provision regardless of
5 notice. I could be mistaken, but I thought surface
6 owners were to be notified as well.

7 MS. McCLANNAHAN: 361.19 requires all mineral owners be
8 notified.

9 MR. CHAIRMAN: The notice of the hearing has been published so
10 that the parties that wish to contest and then we do
11 have, as I understand, this lady as a surface owner. She
12 may also be a gas owner. I don't know.

13 MR. MCGLOTHLIN: I just thought that the surface owner should
14 be notified of the permitting.

15 MR. CHAIRMAN: At the permitting stage?

16 MR. MCGLOTHLIN: Yes, sir.

17 MS. McCLANNAHAN: For the actual permit you do notify the
18 surface owners. It's within a particular amount of -- if
19 you're within the particular amount of feet of the well,
20 but not for the forced pooling unit.

21 MR. MASON: Can I ask one more question?

22 MR. CHAIRMAN: Mr. Mason.

23 MR. MASON: Let me ask you this question. Is it conceivable
24 that if the life of this bore as a CBM would be succeeded
25 or -- in other words, that the well would stop being

1 productive as a CBM well and then would continue in use
2 as a ventilation hole after that for the gob area?

3 MR. ALBERT: That is conceivable.

4 MR. MORGAN: But in all likelihood it will be just the
5 opposite. Under our plans it would be just the opposite.

6 MR. ALBERT: Let me make sure I understand your question.

7 MR. MASON: I was just asking -- in other words, there are two
8 possibilities here. You've got this period of time,
9 however long, between when the well is actually drilled
10 and used as a VVH. Then it's converted or it's produced
11 as a CBM and at some point it no longer is a CBM well.
12 It's not -- the market conditions and amount of gas,
13 quality of gas, whatever, as such as you cease producing
14 it as a CBM. Then what I'm saying is is it conceivable
15 that it would then become a VVH again? Would you not in
16 this gob area have to continue to keep the pressure down
17 even if it's sealed off?

18 MR. ALBERT: That is correct. That was my response to you,
19 that that was conceivable. I think the situation we're
20 in right now that is not conceivable is that we would
21 first operate it as a VVH and then become a CBM. Though,
22 the more likely scenario and I think what Mr. Morgan was
23 referring to was that it will be a CBM first and then a
24 VVH.

25 MR. MASON: I understand. Do you have any anticipation of any

1 recompense to the PGP if it were for the use of the bore
2 after it's life as a CBM? I mean, I'm not saying that
3 you would do it now, but -- I guess what I'm trying to
4 understand it is, you've got this asset here that's being
5 charged to this gas well that may have some future
6 benefit to the coal company. Is there anything in your
7 agreement with them that would actually reimburse them at
8 some point for this cost that's now being allocated to
9 it?

10 MR. ALBERT: Not a direct reimbursement. There is some -- we
11 have to achieve a certain economic level for our partner.
12 But there is not a direct reimbursement.

13 MR. MASON: Okay. Thank you.

14 MR. EVANS: Mr. Chairman, I'll just ask you a question to get
15 confirmation on it. It appears just in listening to this
16 that there are several laws and regulations that VVHs and
17 CBMs come under. If it's permitted as a VVH it's always
18 a VVH no matter what else it may be at any other point in
19 it's lifetime. But it will always remain a VVH under one
20 agency's consideration. So you've got a situation where
21 you've got a hole in the ground that's covered by DMLR,
22 under mining regs as far as reclamation goes, as far as
23 VVHs for mine safety, and also under our regulations. So
24 once it's drilled as a VVH it's always a VVH. We may
25 convert it for our purposes to a CBM, but another

1 agency's purposes it's still a VVH in addition to
2 whatever else it may be.

3 MR. MASON: Well, that's what I believe this gentleman is
4 referring to as the dual permits. For part of it's life
5 it basically is duly permitted both as a CBM and as a
6 VVH, is that correct?

7 MR. EVANS: I just wanted to say that. I doesn't mean too
8 much, but to make it clear in my own mind.

9 MS. McCLANNAHAN: Mr. Morgan who's already testified will be
10 my next witness and I believe he's also already been
11 sworn in.

12
13 CLAUDE D. MORGAN

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

16
17 DIRECT EXAMINATION

18
19 BY MS. McCLANNAHAN:

20 Q. Would you please the exhibit marked as Exhibit 8, Mr.
21 Morgan?

22 A. That is my resume that shows my work history and my
23 educational background.

24 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
25 Exhibit 8.

1 Q. (Ms. McClannahan continues.) Have you been previously
2 qualified as an expert witness before the Gas and Oil
3 Board?
4 A. Yes, I have.
5 Q. With regard to the costs that are listed on the DWES that
6 Randy Albert has described and submitted for the wells in
7 the south longwall 8 unit, how do you propose to allocate
8 the costs among the owners in these units?
9 A. Since the wells in question will be serving not only the
10 frack and active gob unit which is under consideration
11 today but will later serve in a sealed gob unit, we have
12 allocated the costs based on the anticipated production
13 from those two different types of units.
14 Q. And are those units described on the exhibit marked for
15 identification as Exhibit 9?
16 A. Yes, they are.
17 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
18 Exhibit 9.
19 MR. CHAIRMAN: Any objection? Okay.
20 Q. (Ms. McClannahan continues.) The exhibit marked as 10,
21 does that show the allocation as you've listed it between
22 frack, active gas, and sealed gob gas?
23 A. Yes, it does.
24 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
25 Exhibit 10.

- 1 Q. (Ms. McClannahan continues.) Could you explain this
2 particular exhibit, Mr. Morgan?
- 3 A. Based on our previous experience with this type well, the
4 production over the life of the SLW-8 unit which is about
5 nine years for the fracked, active gob, and horizontal
6 portion, that was 1380,000,000 cubic feet. This same
7 area is expected to produce 1055,000,000 cubic feet as a
8 sealed gob area. The sum of those two -- the total
9 production from this area and the four wells are included
10 in this area of 2435,000,000 cubic feet. To determine
11 the percentage of the cost of these four wells that
12 should be allocated to SLW-8 we divided the production
13 from the fracked, active, and horizontal unit by the total
14 production to get a 56.7 percent cost allocation.
- 15 Q. And using this cost allocation, for how many wells do you
16 propose to charge the unit owners in this south longwall
17 B?
- 18 A. We are proposing to charge 56.7 percent of the cost of
19 four wells drilled in this unit.
- 20 Q. And any additional wells that may be drilled, what is
21 your proposal with regard to those?
- 22 A. Any additional wells -- if we propose to include the cost
23 of any additional wells they would have to be justified
24 on the basis of further economics and drainage testimony
25 and we would have to come back before the Board to do

1 particular well bore, not the gas in place.

2 MR. STEELE: If it is, in fact, deemed that the property owner
3 owns the methane, who's responsible for what gas is
4 wasted since it's not going to be a VVH now?

5 MR. ALBERT: We are required by mining laws to vent gas for
6 mine safety. And as a coal operator Consolidation Coal
7 Company feels it has every right to vent gas for mine
8 safety.

9 MR. STEELE: I understand that. But five years ahead of time?

10 MR. ALBERT: We have to do whatever is necessary to insure the
11 safety of our workers. The Pocahontas #3 seam has a very
12 long desorption period to remove the gas. Five years is
13 not at all an improper number for degasification purpos-
14 es.

15 MR. STEELE: But you're not using it for that, right?

16 MR. ALBERT: I'm not sure I understand your question.

17 MR. STEELE: You're not using it to ventilate the gas for the
18 coal company. You're going to reclaim the gas as soon as
19 the pipeline's in place?

20 MR. ALBERT: That is correct. But the fact remains that by
21 removing that gas we are also degasifying the coal seam
22 that the coal company will someday mine.

23 MR. STEELE: Someday, but there's nothing pushing right now to
24 do that, is there?

25 MR. ALBERT: Mr. Steele, we lease the coal seam. The gas that

1 we are ventilating is contained in that coal seam. I
2 think the path you're down is an area that you or I
3 cannot resolve here today and that's who owns the gas in
4 the coal seam. And the coal company maintains that by
5 virtue of it's gas lease it has control of that and there
6 are other claimants. That is the reason the State has a
7 forced pooling statute, so that people can produce this
8 gas and escrow the royalty until the ownership is
9 determined.

10 MR. STEELE: Okay. As it stands now then, next month or month
11 after next or whenever you start pumping the gas from
12 this well, if you so desire a year from now you can class
13 it as a VVH again and just go right back as it is now and
14 just let it escape, is that right?

15 MR. ALBERT: That is correct.

16 MS. McCLANNAHAN: But it would not be to their advantage to do
17 that, would it, Mr. Albert?

18 MR. ALBERT: No, it would not be to our advantage to do that.

19 MS. McCLANNAHAN: Because Consolidation Coal Company and
20 Pocahontas Gas Partnership own interests in this particu-
21 lar unit just like you all own interests. So they're
22 going to get some economic benefit from their acreage
23 that's in the unit just like you would. So it wouldn't
24 be to their advantage to vent it if they can produce it
25 and get paid for it.

1 MR. CHAIRMAN: Mr. Albert, the pattern of the VVHs, is it
2 consistent with the drainage pattern that Consolidation
3 uses or is it further out in advance?
4 MR. ALBERT: This area we're talking about is consistent with
5 what Consolidation Coal Company has done since 1984 for
6 degasification purposes. We have been around three to
7 five years ahead of mining with the program and this
8 particular well -- I don't have a -- it's about four and
9 a half years from planned mine through.
10 MR. McCLANNAHAN: If there aren't any other questions we would
11 move the Board to approve the forced pooling application
12 for the south longwall 8 as it has been filed.
13 MR. CHAIRMAN: Ma'am, did you have a question?
14 MS. DESKINS: Yes. We live on 618 in Buchanan County and we
15 all have had natural gas for years. So now how are we
16 going to get paid for our gas? We have methane gas, gas
17 and oil, and our methane gas -- I mean our natural gas
18 just vanishes. Something's got to be pulling it out of
19 our area. And how are we going to know how much -- where
20 it's going or whatever? People heat their homes with it.
21 They cook with it. They have for years. So when they
22 sank a well here they pulled everybody's natural gas out.
23 Now, that's all together different than methane gas, if I
24 understand it right. So now where's it going?
25 MR. CHAIRMAN: Would you address that, Mr. Albert, based on

1 your knowledge of the area?

2 MR. ALBERT: Well, I'll try. That is an area that I have
3 received some calls from -- I don't know if Ms. Deskins
4 has been one of the ladies that has called, but --

5 MS. DESKINS: No, I've not called.

6 MR. ALBERT: -- I have had some calls from people in that area
7 about private wells that have stopped producing. To my
8 knowledge we have not drilled close enough to cause any
9 problems to anybody's private well. For assertion that
10 it is natural gas, you know, I don't know if I can agree
11 with that to my way of thinking that that depth -- that's
12 more likely that it's coalbed methane. If there are
13 known natural gas reservoirs above the coal formations no
14 one is producing those in Virginia at this time.
15 certainly the data that we have seen over the years would
16 indicate that the sandstones do not have porosity to
17 contain natural gas. So my contention would be that it
18 is probably coalbed methane that is migrating to the
19 surface. Route 618 is an area that's highly disturbed
20 with surface limits. It's a highly fractured area close
21 to the surface and deep. It is my professional opinion
22 at least that the gas that people see in the shallow
23 wells and allegedly at the surface on 618 is migrating
24 upwards from the deeper coal seams. That's about the
25 only answer I can give at this point.

1 MS. McCLANNAHAN: Ms. Deskins, do you have a gas well at your
2 house? Is that what you're saying?

3 MS. DESKINS: No, I don't have one. I have gas burning in my
4 yard for years and years. I'm scared to have it in my
5 home or I could have saved a million dollars by now. But
6 I'm afraid I'll get blown up with it. But I do have
7 it -- you can go out there next to my dairy which is a
8 block dairy ever since I've been there and you can see
9 the methane -- well, natural gas is what I call it --
10 burning. I sure don't want to let nobody get out there
11 and build a fire. I sure don't. But the people down the
12 road from me, all of them heat -- have been for years
13 heating their homes with gas and all that. Now, it
14 couldn't have just vanished up in the air. Something had
15 to cause it to go. It couldn't have been there twelve or
16 fifteen years and then just went away. We can't call
17 that an act of God. I don't believe it would all have
18 vanished at one time.

19 MR. CHAIRMAN: Has it gone away now?

20 MS. DESKINS: Yeah. Most -- all of it's gone as far as I
21 know.

22 MR. STEELE: They've been using for approximately thirty-five
23 years and it vanished when they drilled that hole in
24 September that they were talking about a moment ago.

25 MS. DESKINS: Well, I've lived there twenty-eight years and

1 there has been gas -- natural gas on my property burning
2 all those years and there is none now.

3 MS. McCLANNAHAN: What are the names of these individuals who
4 have gas wells on 618?

5 MR. STEELE: None of us now. We have dry holes.

6 MS. DESKINS: They have dry holes, as they say, now.

7 MS. McCLANNAHAN: Mr. Steele, you had a gas well?

8 MR. STEELE: Oh, yes. I had --

9 MS. McCLANNAHAN: Was it permitted by the Division of Gas and
10 Oil?

11 MR. STEELE: No, ma'am, it wasn't. We've already been down
12 that road. It was reported to them and they contacted me
13 and it's a vented empty hole now. There's not even any
14 water in it now.

15 MS. McCLANNAHAN: But it wasn't permitted at the time it was
16 drilled either?

17 MR. STEELE: No, ma'am, it was not. It wasn't required to
18 have a permit when that well was drilled.

19 MS. DESKINS: Well, I've got one more question. How can you
20 determine that -- if you drill a well there for this
21 methane gas, how can you determine that the life of it is
22 going to be ten years?

23 MR. ALBERT: Well, we're approaching -- that's based on the
24 fact that we are approaching having wells in operation
25 now ten years that will be connected to the pipeline that

1 were drilled in 1984. So we're pretty comfortable now
2 that we have at least eight years -- we've got eight
3 years of production we know of and we're very comfortable
4 that ten will be no problem.

5 MS. DESKINS: Well, let's go back a while. Say when I was
6 seven or eight years old Ashland Oil drilled gas wells
7 where I was raised and they're still pumping gas from
8 them. Now, I believe I'm over -- ten and eight would be
9 a little bit more -- I believe I'm a little bit older
10 than that.

11 MR. ALBERT: I would have never guessed that.

12 MS. DESKINS: Well, thank you for the comment. But I believe
13 I'm a little bit older than ten and eight. And they're
14 still pumping gas. The gas line is still operating. The
15 gas wells are still operating.

16 MR. ALBERT: Since I don't know exactly where you're talking
17 about, but I'm sure that if they're wells that Ashland
18 Oil drilled they're probably into the -- Mr. Fulmer maybe
19 could help me -- but probably into the Burea formation
20 or some known natural gas formation in a different part
21 of Buchanan County.

22 MS. DESKINS: No. They're right in the middle of Buchanan
23 County. One of them is on the upper Big Branch.

24 MR. ALBERT: I mean different than 618.

25 MS. DESKINS: Up on Keene Mountain. I could point out

1 everyone of them.

2 MR. ALBERT: But I would guess that those are in probably the
3 Burea or possibly the Ravin Cliff natural gas formations,
4 not coalbed methane wells.

5 MS. McCLANNAHAN: That is correct, isn't it, Mr. Fulmer.

6 MR. FULMER: They'd be conventional wells rather than coalbed
7 methane wells.

8 MS. McCLANNAHAN: Yes.

9 MR. STEELE: Well, since there is so much disturbance in 618,
10 who knows but what that gas that you're talking about in
11 the Burea seam is not coming into the coal or going
12 through the coal?

13 MR. ALBERT: Well, for one thing -- I mean, I can't sit here
14 today and tell you for sure that some of the gas is not
15 coming from the Burea or somewhere else. But one thing
16 we look at is the analysis of the gas. There is a
17 slightly different chemical composition between natural
18 gas and coalbed methane. So we analyze it based on it's
19 chemical composition. Also, as I testified earlier, the
20 reservoir pressure in the Pocahontas #3 seam is about 600
21 pounds. The reservoir pressure of the Burea and some of
22 the natural gas reservoirs is somewhat higher so that we
23 don't encounter any higher pressures when we drill in.
24 We're at least of the opinion that the gas is contained
25 in the #3 seam.

1 MR. CHAIRMAN: I would say, too, to both of you for your
2 information, this act doesn't add to or take away any
3 rights that you have through whatever property right or
4 mineral right that you may have. The escrow provision is
5 in this law because of the very conflict that we have
6 here. The difficulty is sort out who is the owner and
7 that is why it exists. You have every right to lease or
8 to not lease. And --

9 MS. DESKINS: Well, if we don't lease, do we lose it anyway?
10 If they pool the whole area -- I had one guy come by and
11 talk to me and try to get me to sign him a lease and he
12 said, "Well, if you don't sign one we can still drill one
13 well and we can pull it out of 80 acres on one well." So
14 how do we keep from losing?

15 MR. CHAIRMAN: Well, the provisions that are in the Board's
16 order would allow you election rights and if you don't
17 lease then there is provision in there for unleased
18 parties.

19 MS. DESKINS: Good.

20 MR. MASON: I think it's important to understand that the way
21 this act is structured that if you don't lease they still
22 have -- whoever is the designated operator and if this
23 forced pooling application is granted they still have a
24 right to take this gas and pay you according to the
25 Board's order. They're right in the sense that one way

1 or another you're either going to -- if the forced
2 pooling application is given you will either lease or you
3 will be deemed to lease by law if this is done. I mean,
4 that certainly is provided for in the act. Correct, Mr.
5 Chairman?

6 MR. STEELE: It doesn't seem hardly fair, though, if you own
7 something and you can't use it yourself, but others have
8 access to use it anyway they want to.

9 MR. MASON: Well, I like think of that as one of the sacrific-
10 ces we all make to live in an organized society.

11 MS. DESKINS: I don't know how organized it is.

12 MR. MASON: I don't mean to be flipping it off. We all give
13 up things in order to coexist. That's --

14 MS. DESKIN: I know.

15 MR. MCGLOTHLIN: Mr. Steele, under that same (inaudible.) you
16 have the right to drill the well and force pool as PGP.

17 MR. STEELE: That's what I'm going to do. I think I'm going
18 to drill a VVH to start with.

19 MS. DESKINS: Well, when you get done I'm going to drill one.
20 We'll just go into the well business here.

21 MR. STEELE: I already have a VVH. So at some time in the
22 future I may elect to change it to a gas producing well.

23 MR. ALBERT: Well, we'll probably elect to be a participating
24 operator.

25 MS. DESKINS: Well, we can drill our well and then sell our

1 gas to them, I guess.

2 MR. CHAIRMAN: And you do understand that what is before the
3 Board for the production is for the forced pooling of
4 coalbed methane gas as represented here?

5 MR. STEELE: Uh-huh. And it says in Section 45.1-361.21,
6 Section 7-C, all pooling orders entered by the Board
7 pursuant to the provisions of this Section 7 establish a
8 procedure for a gas or oil owner to receive notice of the
9 hearing and who does not decide to become a participating
10 operator may elect to either sell or lease his gas.
11 Well, we'll sell it to them.

12 MS. DESKINS: Yeah.

13 MR. CHAIRMAN: Those provisions will be in the order. I mean,
14 those protections that are in the law will be in the
15 Board's order. And then if you have any questions at
16 anytime depending on how the Board rules on any order of
17 the Board, we will be happy to discuss those with you.
18 And certainly you have rights if you are grieved by those
19 to file an appeal. Any other questions, members of the
20 Board? Are you ready to make a motion?

21 MR. EVANS: I move that we grant PGP's petition to force
22 pool this unit.

23 MR. MASON: Excuse me. Mr. Evans, I would propose an
24 amendment to your motion, if I might. If it would be
25 acceptable to you I would like, if we could, to have that

1 forced pooling order require the applicant upon the
2 discontinuance of this as a CBM that they report that to
3 us and tell us -- inform us of what they plan to do with
4 this well bore thereafter.

5 MR. EVANS: Not a problem.

6 MR. MASON: I mean, I base it on the fact that I think that
7 four months period that we've talked about here is
8 probably (Inaudible.) and not sufficient to be concerned
9 with if, in fact, there is some financial or economical
10 benefit to be derived from it later. If we know about we
11 can give somebody an opportunity to do something with it
12 if at that time it's appropriate.

13 MR. EVANS: I have no objection to that amendment.

14 MR. MASON: With that amendment I second your motion then.

15 MR. CHAIRMAN: A motion and a second. Further discussion?

16 All in favor signify by saying yes. (ALL AFFIRM.)

17 Opposed say no. (NONE.) It's unanimous.

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

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3 ITEM VI

4 MR. CHAIRMAN: The next item on the agenda a petition for the
5 establishment of a compulsory pooled longwall panel unit.
6 It's docket number VGOB-92/04/21-0217. I ask the parties
7 that wish to address the Board in this matter to come
8 forward, please.

9 MS. McCLANNAHAN: I'm Elizabeth McClannahan representing
10 Pocahontas Gas Partnership. The first witness I would
11 like to call is Mr. Les Arrington. This hearing is with
12 regard to the south longwall 9 unit which was previously
13 approved as a production unit on February 18th, 1992.

14 LESLIE K. ARRINGTON

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

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18 DIRECT EXAMINATION

19
20 BY MS. McCLANNAHAN:

21 Q. Mr. Arrington, would you please identify Exhibit 1?

22 A. Yes. It's my resume reflecting my educational background
23 and work history.

24 MS. McCLANNAHAN: Mr. Chairman, I would move the introduction
25 of Exhibit 1.

1 MR. CHAIRMAN: Okay.

2 Q. (Ms. McClannahan continues.) Mr. Arrington, have you
3 been qualified as an expert witness before the Gas and
4 Oil Board previously?

5 A. Yes, I have.

6 Q. Have you given notices as required by Virginia Code
7 Annotated Section 45.1-361.19 to each person or entity
8 identified on Exhibit C of the forced pooling applica-
9 tion?

10 A. Yes.

11 Q. The notice that was mailed to each of these individuals
12 is at Exhibit 2, is that correct?

13 A. Yes, it is.

14 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
15 Exhibit 2.

16 MR. CHAIRMAN: Okay.

17 Q. (Ms. McClannahan continues.) How were these notices
18 mailed to each of the parties on Exhibit C?

19 A. By certified mail, return receipt requested.

20 Q. And are those returned receipts at Exhibit 3?

21 A. Yes.

22 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
23 Exhibit 3.

24 MR. CHAIRMAN: Okay. Without objection.

25 Q. (Ms. McClannahan continues.) Were there any persons

- 1 whose names and/or addresses were unknown?
- 2 A. Yes.
- 3 Q. And for purpose of notice to those individuals have you
4 published a notice in the local papers?
- 5 A. Yes, we did. We published it in the Virginia Mountain-
6 eer, the Bristol Herald Courier, and the Bluefield Daily
7 Telegraph on 3/27, 3/25, and 3/25.
- 8 Q. And were those proofs of publications previously sub-
9 mitted to the Board?
- 10 A. Yes, they were.
- 11 Q. What percentage of the coal rights in the tracts that
12 comprise the south longwall 9 unit does Pocahontas Gas
13 Partnership control?
- 14 A. Pocahontas Gas Partnership controls 96.03 percent of the
15 Pocahontas #3 seam and 91.15 percent of all coal below
16 the Tiller seam less the P3.
- 17 Q. And what percentage of the oil and gas rights in the
18 tracts that comprise the south longwall 9 unit does PGP
19 control?
- 20 A. 63.34 percent.
- 21 Q. Have you obtained coalbed methane gas leases on any part
22 of the acreage that's within this unit?
- 23 A. Yes, we have.
- 24 Q. On what percentage of the acreage?
- 25 A. On 89.51 percent.

1 Q. Are the unleased owners and the lease hold owners and
2 mineral owners leased to other parties who will pooled
3 and their percentages of ownership in the respective
4 tracts for the south longwall 9 unit listed on the
5 revised Exhibit D to be submitted as Exhibit 6?

6 A. Yes, they are.

7 Q. Are the conflicting claimants whose funds are to be
8 escrowed listed on Exhibit E?

9 A. Yes.

10 Q. Are you requesting that the Board pool the interests of
11 the parties listed on Exhibit C of the south longwall 9
12 unit application?

13 A. Yes.

14 MS. McCLANNAHAN: Those are all the questions I have for Mr.
15 Arrington.

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

17 (Witness stands aside.)

18 MR. CHAIRMAN: The record will reflect that even though Mr.
19 Bobby Steele representing Ms. Ruth Steele are not here
20 they have filed with the Board an objection. I think
21 it's the same objection as on the previous case. Go
22 ahead.

23 MS. McCLANNAHAN: Mr. William Gillenwater.

24 MR. CHAIRMAN: He's been previously sworn. I just remind you
25 that you're under oath.

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WILLIAM D. GILLENWATER

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

DIRECT EXAMINATION

BY MS. McCLANNAHAN:

Q. Mr. Gillenwater, would you please identify the exhibit marked for identification as Exhibit 4?

A. Yes. That's my resume reflecting my work history and qualifications.

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

A. Yes.

MS. McCLANNAHAN: Mr. Chairman, I move the introduction of Exhibit 4.

MR. CHAIRMAN: Okay. We'll stipulate that.

Q. (Ms. McClannahan continues.) Where has your experience in obtaining mineral leases been concentrated?

A. Coal leasing in oil and gas and coalbed methane leasing.

Q. In your experience in obtaining leases in Southwest Virginia are you familiar with the fair market value for coal leases, oil and gas leases, and coalbed methane leases in the south longwall 9 unit area?

- 1 A. Yes, I am.
- 2 Q. How many acres have you leased in Buchanan County in the
3 last year?
- 4 A. In excess of 40,000 acres.
- 5 Q. What are the fair market value terms for an oil and gas
6 and coalbed methane lease in this area?
- 7 A. For an oil and gas lease it's \$5 per acre per year and an
8 one-eighth production royalty. For a coalbed methane
9 lease it's \$1 per acre per year and an one-eighth
10 royalty.
- 11 Q. And what is the standard primary term for an oil and gas
12 and coalbed methane lease?
- 13 A. Ten years.
- 14 Q. For a coalbed methane lease?
- 15 A. Ten years.
- 16 Q. With regard to the unleased owners that are listed on the
17 south longwall 9 unit forced pooling application, have
18 you contacted those land owners or tried to contact them
19 to obtain a lease?
- 20 A. Yes.
- 21 Q. Have you offered each of them a lease?
- 22 A. Yes, we have.
- 23 Q. What kind of lease have you offered each of them?
- 24 A. Oil and gas and coalbed methane lease.
- 25 Q. By what method did you contact each of the owners?

1 A. In person, verbal. Only one family was contacted by
2 certified mail on a heirship tract.
3 Q. With regard to the lease hold owners that are listed on
4 the south longwall 9 unit forced pooling application, did
5 you make an offer regarding an assignment of those lease
6 hold interests?
7 A. Yes, but we haven't worked that out yet.
8 Q. Were there any unknown owners or owners whose addresses
9 were unknown?
10 A. No.
11 MS. McCLANNAHAN: Those are all the questions I have for Mr.
12 Gillenwater.
13 MR. CHAIRMAN: Questions, members of the Board?
14 (Witness stands aside.)
15 MS. McCLANNAHAN: Mr. Albert who has also been previously
16 sworn.
17 MR. CHAIRMAN: I'll just remind you that you are still under
18 oath. You can just stipulate his qualifications.
19 MS. McCLANNAHAN: Okay. And those are listed on Exhibit 5.
20

21 RANDALL M. ALBERT

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

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BY MS. McCLANAHAN:

Q. Mr. Albert, have well work permits been submitted for the south longwall 9 unit?

A. No, they have not.

Q. For what type of wells will these permits be submitted?

A. It will be to convert an existing vertical ventilation hole to a coalbed methane gas well and to drill additional coalbed methane wells.

Q. You have indicated in the forced pooling application that the mineral and lease hold owners for the south longwall 9 unit which are not leased or assigned to PGP are listed on Exhibit B. Is that still correct?

A. No, it is not.

Q. Can you explain why?

A. Yes. Since the filing of this application we have determined the names of the A. Ferrell heirs.

Q. And those have all been listed on the revised Exhibits C, D, and E, is that correct?

A. That is correct.

Q. And those are submitted to the Board as Exhibit 6. Have you received any written responses to the forced pooling application?

A. No, we have not.

1 Q. Is PGP the owner of the drilling rights underlying the
2 mineral tracts that are being encompassed by this unit?
3 A. Yes, we are.
4 Q. Does the plat attached to the forced pooling application
5 filed by PGP indicate the acreage to be embraced within
6 the south longwall 9 unit and the shape of the acreage as
7 it's been previously approved by the Board at the
8 February 18th hearing?
9 A. Yes, it does.
10 Q. Does the unit follow the boundary lines of the longwall
11 panel and it's surrounding area for the mine that
12 comprises the south longwall 9 unit?
13 A. Yes, it does.
14 Q. Could you identify the exhibit marked as Exhibit 7?
15 A. Yes. Exhibit 7 is a copy of Exhibit B-1 of the south
16 longwall 9 forced pooling application.
17 Q. And does that indicate those boundary lines according to
18 the longwall panel?
19 A. Yes, it does.
20 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
21 Exhibit 7.
22 MR. CHAIRMAN: Okay.
23 Q. (Ms. McClannahan continues.) Does the drilling unit
24 embrace two or more separately owned tracts?
25 A. Yes, it does.

1 Q. Are the costs and expenses for the wells that are set
2 forth on detailed well estimates attached to the forced
3 pooling application as Exhibits H through K?
4 A. Yes.
5 Q. Do these exhibits reflect the costs of drilling the wells
6 to total depth and completed for production costs?
7 A. Yes, they do.
8 Q. Generally, how did you calculate these costs as they are
9 listed?
10 A. For well 125 which is Exhibit H, those costs are for the
11 most part actual costs pulled from invoices. The three
12 additional DWEs which are I, J, and K are for additional
13 wells yet to be drilled. And those are estimated costs
14 based on the average cost of drilling in this area.
15 Q. Are you requesting that Pocahontas Gas Partnership be
16 designated as the well operator authorized to operate the
17 9 unit?
18 A. Yes, I am.
19 Q. And that the Board make provision for the payment of all
20 reasonable costs of the operation including a reasonable
21 supervision fee by all mineral or lease hold owners who
22 elect to be participating operators?
23 A. That is correct.
24 MS. McCLANAHAN: Those are all the questions I have for Mr.
25 Albert.

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

2 MR. MASON: When was well 125 drilled?

3 MR. ALBERT: The well was drilled in the fall of 1990.

4 MR. MASON: October?

5 MR. ALBERT: Sometime between October and December. I can't
6 recall the exact date.

7 MR. MASON: Has it been placed in production?

8 MR. ALBERT: The well is producing since about February of
9 1992.

10 MR. MASON: When was it fracked?

11 MR. ALBERT: That well was fracked in November of 1991.

12 MR. MASON: At the time that it was fracked was there any way
13 to produce it into a pipeline?

14 MR. ALBERT: No, sir.

15 MR. MASON: Why was it fracked then?

16 MR. ALBERT: We were again anticipating the start up of the
17 pipeline originally in January of 1992. Then in February
18 of 1992 we were simply trying to get as many wells in
19 production prior to the commencement of pipeline opera-
20 tions as possible.

21 MR. MASON: But it actually didn't start to vent gas until
22 February of this year?

23 MR. ALBERT: That's correct.

24 MR. MASON: Let me ask you another question. On this DWE here
25 where it says fence, see that?

1 MR. ALBERT: Yes, sir.

2 MR. MASON: Under materials there is nothing.

3 MR. ALBERT: I can explain that. We try to reuse as much
4 material as we so that when we're finished with wells in
5 certain areas we just move a fence. The fence is built
6 for the most part in panels. We just simply move
7 material from one location to another and --

8 MR. MASON: So you don't have any material costs?

9 MR. ALBERT: It's well by well whether we will have material
10 costs.

11 MR. MASON: Yeah. I was just curious how you could build a
12 fence without any materials.

13 MR. ALBERT: That is the reason. In many instances we don't
14 incur any additional material costs for a fence.

15 MR. MASON: Do you still maintain that for the period -- as in
16 the early one -- that between the fall of 1990 and the
17 actual commencement of this as a CBM that there's no
18 benefit to the mine from this well?

19 MR. ALBERT: Actually from the time this one was drilled until
20 it was stimulated and put on production there was no
21 benefit to no one other than the fact that the well was
22 in the ground and qualified -- and as being such qualif-
23 ied for Section 26 credit.

24 MR. MASON: Okay. That's all the questions I have.

25 MR. CHAIRMAN: Was that well permitted as a VWH?

1 MR. ALBERT: Yes, sir.

2 MR. FULMER: Mr. Chairman, for your information, the number at
3 the top -- the VVH permitting number --

4 MR. MASON: Which one, the 125?

5 MR. FULMER: No. The BCH DG125.

6 MR. CHAIRMAN: Uh-huh.

7 MR. FULMER: That's the VVH permit number.

8 MR. CHAIRMAN: Okay. Other questions?

9 (Witness stands aside.)

10 MS. McCLANNAHAN: Mr. Claude Morgan.

11 MR. CHAIRMAN: I'll remind you that you are still under oath.

12 MS. McCLANNAHAN: His qualifications as also previously
13 testified to are Exhibit 8.

14

15 CLAUDE D. MORGAN

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

18

19 DIRECT EXAMINATION

20

21 BY MS. McCLANNAHAN:

22 Q. With regard to the costs that are listed on the DWSs that
23 Randy Albert has described and submitted for the wells in
24 the south longwall 9 unit, how do you propose to allocate
25 the costs between the owners that are in these units?

- 1 A. Since these wells will be utilized in the production from
2 this particular unit which includes frack production,
3 active gob production, and horizontal gas production, as
4 well as production from a later sealed gob unit, the
5 costs for the four wells are allocated between the two
6 units on the basis of estimated production from the two
7 units.
- 8 Q. Are those two units depicted on the exhibit that's on the
9 easel as well as Exhibit 9 as submitted to the Board?
- 10 A. Yes.
- 11 Q. Could you identify the exhibit that's marked as Exhibit
12 107
- 13 A. This is a calculation showing how we arrived at the
14 percentage of cost to be allocated to SLW-9 unit. This
15 exhibit shows 1327,000,000 cubic feet of production
16 during operation of the SLW-9 unit and 1055,000,000 cubic
17 feet during the production as a sealed gob area for a
18 total production of 2382,000,000 cubic feet. Dividing
19 the 2382,000,000 cubic feet by the 1327,000,000 cubic
20 feet from the SLW-9 unit provides a percentage cost
21 allocation of 55.7 percent for the SLW-9 unit.
- 22 Q. And how do you propose to charge the unit owners for any
23 additional wells that will be drilled?
- 24 A. This application is for four wells. Any additional cost
25 that we would want to try to attribute to this unit we

1 would anticipate coming back before the Board to justify
2 on the basis of economics and improved drainage.

3 Q. How did you determine the production numbers that you
4 have listed on this exhibit, the 1327 and 1055?

5 A. Based on our past history through eight years of produc-
6 tion from VVHs at the Buchanan mine.

7 MS. McCLANNAHAN: Those are all the questions I have for Mr.
8 Morgan.

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

10 MR. MASON: Yes, sir. I have one. At the time that you first
11 drilled this well did you know this was going to be a CBM
12 well?

13 MR. MORGAN: This well was drilled early in response to the
14 partnership agreement and the need to get them drilled
15 for the Chapter 29 tax credit.

16 MR. MASON: Why didn't you drill it as CBM permitted well to
17 start with?

18 MR. MORGAN: The time frame at the time our partnership
19 agreement was done in September of 1990 we thought the
20 tax credit was going to run out in December of 1990.

21 MR. MASON: Well, I understand all that. The least said about
22 that is probably the better. I'm just curious. It was
23 the timing issue. You could get a permit easier as a VVH
24 than CBM, is that correct?

25 MR. MORGAN: Yes.

1 MR. MASON: Thank you. No further questions.

2 MR. CHAIRMAN: Other questions?

3 MS. McCLANNAHAN: I would move the Board to approve the south
4 longwall 9 unit forced pooling application as it's been
5 submitted.

6 MR. CHAIRMAN: Would there be a situation, Mr. Morgan, where
7 if you made a determination not to seek to charge an
8 additional well but that you decided to produce from an
9 additional well without passing those costs on that you
10 would do that?

11 MR. MORGAN: We do not anticipate charging this unit with
12 every well drilled within the units. We are leaving the
13 option open for anything extraordinary that may come
14 about. I mean, this is a developing area. This is a
15 developing science, per say. There may be new techniques
16 available to increase recovery of gas or something of
17 that sort. And we want to leave the door open for that
18 type of -- that may require some expenditure to recover
19 additional gas to make the project more economic. But we
20 do not anticipate charging every hole drilled permitted
21 as a well to this unit.

22 MS. McCLANNAHAN: And the only request that we would be making
23 today is that the Board approve four and that we would be
24 required to come back to the Board if we wanted to charge
25 any additional well costs.

1 MR. CHAIRMAN: If you had the situation -- let me rephrase my
2 question. Would all production from the unit, regardless
3 of whether it was a well that was being charged of or
4 not, be attributed to the unit and paid by whoever
5 participated or what have you of the four wells?

6 MR. MORGAN: It would be. A perfect example of some of this
7 is the horizontal gas. We are charging nobody anything
8 for the production of the horizontal gas.

9 MR. CHAIRMAN: Uh-huh.

10 MR. MORGAN: It's going into the unit.

11 MR. MASON: This is short hole gas?

12 MR. MORGAN: Yes. And there's no allocation of costs for that
13 at all.

14 MR. CHAIRMAN: Other questions?

15 (Witness stands aside.)

16 MR. CHAIRMAN: Okay. What's your pleasure?

17 MR. EVANS: I move we grant the forced pooling.

18 MR. CHAIRMAN: Motion to approve.

19 MR. MASON: I'd like the same condition added as my previous
20 motion.

21 MR. EVANS: I have no objection to that.

22 MR. MASON: On that basis I second it.

23 MR. CHAIRMAN: A motion and a second. Further questions?
24 All in favor signify by saying yes. (ALL AFFIRM.)
25 Opposed say no. (NONE.) It's unanimous.

1 MR. ALBERT: Mr. Chairman, if I might, in light of Mr. Mason's
2 request that the order be contingent upon the fact that
3 we notify the Board if a well switches from CBM status to
4 VVH, if I understand him correctly, would it not be fair
5 that the Board adopt that provision for all forced
6 pooling orders dealing with coalbed methane wells in
7 conjunction with active mining operations?

8 MR. CHAIRMAN: Well, it may be. I mean, that's something we
9 would have to announce informally. We couldn't do it
10 here today. We would have to put that on the agenda item
11 list just like you do and open it for discussion.

12 MR. ALBERT: Okay.

13 MR. CHAIRMAN: We're bound by our own rules.

14 MS. McCLANNAHAN: We may need to consider also -- another
15 issue which I guess we can talk about later -- but in
16 connection with that amendment, there may be a situation
17 where the CBM would have to vent gas just for a short
18 time period but then would go back into production. And
19 there would be a question there about do you notify the
20 Board -- at what particular point do you notify the Board
21 if you're just venting for a short period of safety or if
22 you're turning it into a vertical ventilation hole for
23 the rest of it's life. That's just something --

24 MR. FULMER: That issue is adequately addressed in the law and
25 regulations.

1 MR. CHAIRMAN: I think they're asking Mr. Mason for some
2 clarification on what he wants to do.

3 MR. MASON: Well, as I made the amendment it would not include
4 anything other than actual -- I think I stated is was the
5 discontinuance of the well as a CBM. As I worded the
6 motion, it was just if it was discontinued as a CBM that
7 you would notify us and notify us of what you intended to
8 do with it, whether you're going to plug it or use it for
9 something else.

10 MR. CHAIRMAN: He's talking about when you finish, not when
11 you have interruptions.

12 MS. McCLANNAHAN: Permanent discontinuance.

13 MR. CHAIRMAN: Right.
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3 ITEM VII

4 MR. CHAIRMAN: The next item on the agenda is a petition for
5 the establishment of a compulsory longwall panel, docket
6 number VGOB-92/04/21-0218. I would ask the parties that
7 wish to address the Board in this matter to come forward,
8 please.

9 MS. McCLANNAHAN: The south longwall 10 unit is the next unit
10 on the agenda to also be force pooled. This unit was
11 also approved to be produced by the Board in February of
12 this year. The first witness I would like to call is Mr.
13 Les Arrington.

14 LESLIE K. ARRINGTON

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

17
18 DIRECT EXAMINATION

19
20 BY MS. McCLANNAHAN:

21 Q- Mr. Arrington, you've been previously sworn and in
22 addition your qualifications and educational background
23 are listed on Exhibit 1, is that correct?

24 A. Yes.

25 Q. And you have been qualified as an expert witness before

1 the Gas and Oil Board previously?

2 A. Yes.

3 Q. Have you given notice as required by law code and Section
4 45.1-361.19 to each person or entity identified on
5 Exhibit C of the forced pooling application as a poten-
6 tial owner of the methane gas underlying the unit?

7 A. Yes, I have.

8 Q. And the notice that you gave to each of those entities,
9 is that shown at Exhibit 2?

10 A. Yes, it is.

11 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
12 Exhibit 2.

13 Q. (Ms. McClannahan continues.) How was this notice given
14 to each of those entities?

15 A. By certified mail, return receipt requested.

16 Q. And are those copies of those returned receipts at
17 Exhibit 3?

18 A. Yes, they are.

19 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
20 Exhibit 3.

21 Q. (Ms. McClannahan continues.) Were there persons whose
22 names and/or addresses were unknown?

23 A. No, there was not.

24 Q. However, you still published a notice in the Virginia
25 Mountaineer, Bristol Herald Courier, and Bluefield Daily

- 1 Telegraph, is that correct?
- 2 A. Yes, I did.
- 3 Q. And have those proofs of publications been previously
4 submitted to the Board?
- 5 A. Yes, they have.
- 6 Q. What percentage of the coal rights in the tracts that
7 comprise the south longwall 10 unit does PGP control
8 today?
- 9 A. 96.079 percent of the Pocahontas #3 seam. 95.234 percent
10 of all coal below the Tiller seam less the Pocahontas #3
11 seam.
- 12 Q. And what percentage of the oil and gas rights in the
13 tracts that comprise the south longwall 10 unit does PGP
14 control?
- 15 A. 83.1.
- 16 Q. Have you obtained coalbed methane gas leases on any
17 portion of the acreage within the 10?
- 18 A. Yes, we have. 95.234 percent.
- 19 Q. Are the unleased owners and the lease hold owners and
20 mineral owners leased to other parties who will be pooled
21 and their percentages of ownership in the respective
22 tracts of the south longwall 10 unit listed on Exhibit D
23 of the forced pooling application?
- 24 A. Yes, they are.
- 25 Q. And the conflicting claimants are listed on Exhibit E?

1 A. Yes.

2 Q. Are you requesting that the Board pool the interests of
3 the parties listed on Exhibit C?

4 A. Yes, we are.

5 MS. McCLANNAHAN: Those are all the questions I have for Mr.
6 Arrington.

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

8 (Witness stands aside.)

9 MS. McCLANNAHAN: Mr. William Gillenwater.

10
11 WILLIAM D. GILLENWATER

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

14
15 DIRECT EXAMINATION

16
17 BY MS. McCLANNAHAN:

18 Q. Mr. Gillenwater, I would remind you that you've also been
19 sworn. Your work history and qualifications are listed
20 on your resume at Exhibit 4, is that correct?

21 A. Yes.

22 Q. And you've qualified as an expert witness before the Gas
23 and Oil Board previously?

24 A. Yes.

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

1 Exhibit 4.

2 MR. CHAIRMAN: Okay.

3 Q. (Ms. McClannahan continues.) Where has your experience
4 in obtaining mineral leases been concentrated?

5 A. Coal leasing and oil and gas and coalbed methane leasing.

6 Q. In your experience in obtaining leases in Southwest
7 Virginia are you familiar with the fair market value for
8 coal, oil and gas, and coalbed methane gas leases?

9 A. Yes, I am.

10 Q. How many acres have you leased in Buchanan County in the
11 last year?

12 A. In excess of 40,000.

13 Q. And what are the fair market value terms for an oil, gas,
14 and coalbed methane gas lease?

15 A. \$5 per acre per year with an one-eighth royalty.

16 Q. And a coalbed methane lease?

17 A. \$1 per acre per year with an one-eighth royalty.

18 Q. And what are the standard primary terms for both those
19 leases?

20 A. Ten years.

21 Q. With regard to the unleased owners that are listed on the
22 south longwall 10 unit forced pooling application, have
23 you contacted those land owners or tried to contact them
24 to obtain a lease?

25 A. Yes.

1 Q. By what method did you contact them?
2 A. In person.
3 Q. And what kind of lease have you offered each of them?
4 A. Oil and gas coalbed methane lease.
5 Q. At the terms that you've previously testified to as being
6 standard?
7 A. Yes.
8 Q. With regard to the lease hold owners that are listed on
9 the south longwall 10 unit forced pooling application,
10 did you make an offer regarding an assignment of their
11 lease hold interests?
12 A. Yes.
13 Q. And by what method did you contact them to offer the
14 assignment?
15 A. Verbal contact.
16 Q. Were you able to come to an agreement as to the proposed
17 assigned acreage?
18 A. Not at this time.
19 MS. McCLANNAHAN: Those are all the questions I have for Mr.
20 Gillenwater.
21 MR. CHAIRMAN: Questions?
22 (Witness stands aside.)
23 MR. CHAIRMAN: Okay. Call your next witness.
24 MS. McCLANNAHAN: Mr. Albert.
25

1 RANDALL H. ALBERT

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

5 DIRECT EXAMINATION
6

7 BY MS. McCLANNAHAN:

8 Q. The exhibit marked as Exhibit 5 contains your educational
9 background and work history and qualifications and you've
10 previously been qualified as an expert witness, is that
11 correct?

12 A. That's correct.

13 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
14 Exhibit 5.

15 MR. CHAIRMAN: Okay.

16 Q. (Ms. McClannahan continues.) Mr. Albert, you have
17 indicated in the forced pooling application that the
18 mineral and lease hold owners for the south longwall 10
19 unit which are not leased or assigned to PGP are listed
20 on Exhibit D. Have there been any changes to that?

21 A. No, there have not.

22 Q. Have you received any written responses to the forced
23 pooling application?

24 A. No.

25 Q. Is PGP the owner of the drilling rights underlying the

- 1 mineral tracts that are to be encompassed by this unit?
- 2 A. Yes.
- 3 Q. Does the plat attached to the forced pooling application
4 filed by PGP indicate the acreage to be embraced within
5 the south longwall 10 unit as it's been previously
6 approved by the Board on February 18th?
- 7 A. Yes, it does.
- 8 Q. Does it also indicate the shape of the acreage embraced
9 within the 10?
- 10 A. Yes, it does.
- 11 Q. And follow the boundary lines of the longwall panel and
12 it's surrounding area for the mine as shown on Exhibit B-
13 1 and Exhibit 6 as it's submitted to the Board?
- 14 A. Yes, it does.
- 15 Q. Does the drilling unit embrace two or more separately
16 owned tracts?
- 17 A. Yes, it does.
- 18 Q. Are the costs and expenses for the wells set forth on
19 detail well estimates attached to the forced pooling
20 application as Exhibit H through K?
- 21 A. Yes, they are.
- 22 Q. Do these exhibits reflect the costs of drilling the wells
23 to total depth and completed for production costs?
- 24 A. Yes, they do.
- 25 Q. How did you calculate these costs?

1 A. These are all estimated costs. None of the four wells
2 have been drilled.

3 Q. Are you requesting that PGP be designated as the well
4 operator for the south longwall 10 unit?

5 A. Yes, I am.

6 Q. That participating mineral and lease hold owners bear the
7 reasonable costs and expenses connected to the wells in
8 the proportion which the acreage they own have to the
9 total acreage in the 10 unit?

10 A. Yes, we are.

11 MS. McCLANNAHAN: Those are all the questions I have for Mr.
12 Albert.

13 MR. CHAIRMAN: Any questions?

14 MR. MASON: Just one. Did you say none of the wells have been
15 drilled?

16 MR. ALBERT: That's correct.

17 MR. MASON: Thank you.

18 (Witness stands aside.)

19

20 CLAUDE D. MORGAN

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

23

24 DIRECT EXAMINATION

25

1 BY MS. McCLANNAHAN:

2 Q. Mr. Morgan, I'll remind you that you've also been sworn
3 previously today and that the exhibit marked for identif-
4 ication as Exhibit 7 lists your educational background,
5 work history, and qualifications, is that correct?

6 A. Yes.

7 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
8 Exhibit 7.

9 MR. CHAIRMAN: Okay.

10 Q. (Ms. McClannahan continues.) Have you been qualified as
11 an expert witness previously before the Gas and Oil
12 Board?

13 A. Yes.

14 Q. With regard to the costs that are listed on the DWES that
15 Randy Albert has described and submitted for the wells in
16 the 10 unit, how do you propose to allocate the costs
17 among the owners in the unit?

18 A. Since the well contained in this unit, SLW-10, will also
19 serve the sealed gob unit later we are proposing to
20 allocate the costs for these wells proportional to the
21 estimated production from each of these units for this
22 same area.

23 Q. Are the sealed units and the frack units that you're
24 discussing shown on Exhibit 8?

25 A. Yes.

1 Q. Could you identify the exhibit marked as Exhibit 9?

2 A. Exhibit 9 shows a calculation of the percentage of cost
3 allocation to be used for allocating the costs to the
4 SLW-10 unit.

5 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
6 Exhibits 8 and 9.

7 MR. CHAIRMAN: Okay.

8 Q. (Ms. McClannahan continues.) Could you explain these
9 production numbers and how you calculated the percentage
10 that the well owners in the longwall panel unit should
11 pay?

12 A. The exhibit shows and based on our experience with this
13 type wells in this same area that an anticipated produc-
14 tion of 1234,000,000 cubic feet during operation as the
15 SLW-10 unit and 1055,000,000 cubic feet as a sealed gob
16 for a total production from this area of 2289,000,000
17 cubic feet. Dividing the 1234,000,000 cubic feet
18 production for the SLW-10 unit by the total production of
19 2289,000,000 cubic feet results in a 53.9 percent cost
20 allocation to the SLW-10 unit.

21 Q. And for how many wells do you propose to charge the unit
22 owners?

23 A. We're asking approval for four wells. Any costs that may
24 occur in the future that could be justified on the basis
25 of economics and drainage, we would anticipate having to

1 amendment.
2 MR. MASON: I wouldn't even offer it on this one because
3 it's not already drilled.
4 MR. MCGLOTHLIN: Okay.
5 MR. MASON: I think there's a difference.
6 MR. MCGLOTHLIN: Then I make a motion that we approve it.
7 MR. CHAIRMAN: Okay. Motion to approve.
8 MR. EVANS: Second.
9 MR. CHAIRMAN: All in favor signify by saying yes. (All
10 AFFIRM.) Opposed say no. (NONE.) It's unanimous.
11 (AFTER A BRIEF RECESS, THE PROCEEDINGS CONTINUED AS
12 FOLLOWS:

ITEM VIII

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 It's docket number VGOB-92/04/21-0219. I would ask the
6 parties that wish to address the Board to come forward,
7 please.

8 MR. SWARTZ: Mark A. Swartz and Howard Salisbury appearing for
9 OXY, USA.

10 MR. CHAIRMAN: The record will show there are no others
11 appearing. GO ahead, Mr. Swartz.

12 MR. SWARTZ: We have three active gob units this afternoon.
13 This is the first. Their docket numbers are 8, 9, and
14 10. They essentially involve the same longwall panels
15 and they're a collection of units that cover some of
16 those panels that require forced pooling. These three
17 applications differ slightly from what you have seen in
18 the past because the applicant here is actually Buchanan
19 Production Company. And one of the things that we'll
20 deal with early in Mr. Gordon's testimony is who is
21 Buchanan Production Company and what is their relation-
22 ship -- who are their partners, what authority, if any,
23 have they delegated. I have given you in advance some
24 documents, some of which are familiar, but we are filing
25 the contract approval abstract as Exhibit K. It has the

1 VGOB numbers of the three cases we're going to be
2 considering this afternoon and it pertains to this unit
3 219, 220, 221. We have also given you an amended Exhibit
4 G which pertains to these three units including the one
5 we're talking about right now which is 0219. The only
6 difference between -- I think Mr. Gordon will tell you
7 this, but I will alert you that it's similar to what we
8 heard this morning. The only difference should be
9 between Exhibit G, page 2, as amended and the one that
10 you have in the application packet is the fact that we
11 have a firm price now with regard to the well bores and
12 to the extent there was a well a unit on Exhibit G, page
13 2, previously, that cost has gone down to represent the
14 difference between \$150,000 which was the estimated cost
15 and \$142,500 which is the actual cost. I'd like to call
16 Mr. Gordon as my first witness.

17 MR. CHAIRMAN: You can just remind him he's been previously
18 sworn and stipulate his qualifications, if you like.

19 MR. SWARTZ: Okay.

20
21 SAMUEL E. GORDON

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

DIRECT EXAMINATION

1
2
3 BY MR. SWARTZ:

4 Q. You do recall being sworn this morning and you understand
5 you're still under oath?

6 A. Yes.

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

8 A. Samuel E. Gordon.

9 Q. And where do you live?

10 A. Tazewell, Virginia.

11 Q. Who are you employed by?

12 A. OXY, USA.

13 Q. Your responsibilities with OXY include what?

14 A. Regulatory affairs, preparation of the forced pooling
15 hearings, permitting.

16 Q. Are you, in fact, the person who prepared the notice of
17 hearing, the application, and the exhibits to this
18 application regarding unit R-5?

19 A. Yes, I am.

20 Q. Have you testified before the Board before?

21 A. Yes, I have.

22 Q. And have your qualifications been accepted by the Board
23 and have you been allowed to testify?

24 A. They have and I have.

25 Q. Okay. Is Buchanan Production Company a Virginia general

1 partnership?

2 A. It is.

3 Q. And did OXY, USA at some point assign it's interests
4 generally in Buchanan County in coalbed methane leases
5 and other interests to Buchanan Production Company
6 recently?

7 A. Yes, they did.

8 Q. When did that assignment occur in the sense that the
9 assignment went to be recorded?

10 A. The assignment went to record approximately March 20th of
11 this year.

12 Q. So shortly after the hearings on the 17th?

13 A. That's correct.

14 Q. There are two partners in Buchanan Production Company of
15 that partnership, is that correct?

16 A. That is correct.

17 Q. And what are the two corporations that are partners in
18 Buchanan Production?

19 A. Appalachian Operators, Inc. and Appalachian Methane, Inc.

20 Q. And who owns the stock in those two companies that are
21 the partners in Buchanan Production.

22 A. Oxidental Gas Corporation.

23 Q. Is Buchanan Production Company -- that partnership
24 authorized to do business in Virginia?

25 A. Yes, it is.

1 Q. Has the Department of Mines, Minerals and Energy and Mr.
2 Fulmer's office specifically and his role as the oil and
3 gas inspector been informed or advised of this transfer
4 of assets from OXY, USA, Inc. to Buchanan Production?
5 A. Yes, he has.
6 Q. In fact, has OXY attempted to comply with the Board
7 regulations concerning notice to the Department of
8 transfers of interests?
9 A. Yes, to my knowledge we have. Yes, sir.
10 Q. And a list has been tendered to Mr. Fulmer and the Board?
11 A. Yes, it has.
12 Q. Who does this application contemplate would be designated
13 as unit operator by the Board? Who is it that Buchanan
14 Production is asking be appointed as designated operator?
15 A. OXY, USA, Inc.
16 Q. Have we submitted some exhibits with the application that
17 address a delegation of authority or responsibility from
18 Buchanan Production Company to OXY, USA?
19 A. Yes, we have. And they are Exhibit J, page 1, page 2.
20 Q. What is Exhibit J, page 1?
21 A. Exhibit J, page 1, is the resolution of management
22 committee of Buchanan Production Company.
23 Q. And what does this resolution accomplish or do?
24 A. It delegates that OXY, USA, Inc. be the operator.
25 Q. Well, why don't you read the portion of it that -- the

- 1 authority that's granted? Just read it.
- 2 A. Okay. "The authority granted is to explore, develop and
3 maintain the properties and assets of Buchanan Production
4 Company now owned or hereafter acquired and is hereby
5 delegated to OXY, USA, Inc."
- 6 Q. And page 2 of Exhibit J, what is that document?
- 7 A. The document is consent to appointment as designated
8 operator.
- 9 Q. In essence, is this a consent by OXY, USA that if it is
10 appointed by the Board pursuant to this application as
11 designated operator that OXY will so serve and will
12 faithfully discharge the duties imposed on it by statute
13 and regulation as designated operator?
- 14 A. It is.
- 15 Q. Has OXY, USA determined who it is in their organization
16 that will fulfill certain responsibilities concerning
17 Buchanan Production?
- 18 A. Yes, it has.
- 19 Q. What individuals have been delegated by OXY, USA to
20 fulfill certain responsibilities and generally, what are
21 those responsibilities?
- 22 A. OXY has delegated Glen VanGolen to be general manager,
23 Martin E. Wirth to be land manager, and Samuel Gordon to
24 regulatory manager.
- 25 Q. And those three people have those general responsibilit-

1 les with regard to fulfilling the professional management
2 duties that have been delegated by Buchanan Production to
3 OXY, USA, Inc., is that correct?
4 A. That is correct.
5 Q. Is OXY, USA authorized to do business in the Common-
6 wealth?
7 A. Yes, it is.
8 Q. Does OXY have blanket bonds on file with the Department
9 and is OXY registered with the Department?
10 A. Yes, it is.
11 Q. And OXY, USA is incorporated in what state?
12 A. Delaware.
13 Q. There are two people listed in the notice of hearing,
14 Effie S. Looney and Delores S. Horne, correct?
15 A. That is correct.
16 Q. Do you wish to add any persons as respondents today?
17 A. No, we do not.
18 Q. Do you wish to dismiss either of those two people as
19 respondents?
20 A. No, we do not.
21 Q. Do you know where these two people are?
22 A. No, we do not.
23 Q. Have you made efforts to try and locate them or find
24 addresses for them?
25 A. Yes, we have.

1 Q. Have you exhausted all remedies that you can think of to
2 try and track these people down?
3 A. Yes, we have.
4 Q. Can I assume then that you have not mailed notices since
5 you have no addresses for these two folks?
6 A. We have not mailed notices, no.
7 Q. Have you published with regard to this notice of hearing?
8 A. Yes, we have published. We published the notice of
9 hearing in the Virginia Mountaineer on April 2nd.
10 Q. What was published was a copy of the notice of hearing
11 and the little map, A-1, that went with it?
12 A. That is correct, yes.
13 Q. With regard to OXY's standing in this unit, if you would
14 turn to Exhibit A, page 2, what percentage of the coal is
15 leased by OXY?
16 A. There is 100 percent.
17 Q. And what percentage of the oil and gas interests have
18 been leased by OXY?
19 A. We have a gross of 100 percent, we believe we do, with
20 the possible net of 85.43.
21 Q. Is there a mistake on section 1 of Exhibit A, page 2,
22 where it says 14.57 percent?
23 A. Yes, it is. That should be stricken and 85.43 inserted.
24 Q. And the 14.57 outstanding that is shown under oil and
25 gas owners, is that correct?

1 A. That is correct.

2 Q. And then there is also a potential conflicting claim on
3 the coal interest -- even though you believe you've
4 leased 100 percent of it, a potential conflicting claim
5 in these same people of 14.87 percent?

6 A. That is correct, yes.

7 Q. Now, with regard to the unit and the costs, Exhibit G,
8 page 1, shows how many wells or VWHs on Exhibit R-5?
9 A. We show one well.

10 Q. And how many longwall panels are partially within unit R-
11 5?

12 A. There is two panels underlying that unit.

13 Q. And for purposes of calculation either of royalty
14 interest or participation interest or carried interest do
15 you show both the acreage in the unit and in the panel
16 and the percentage?

17 A. Yes, we do.

18 Q. With regard to Exhibit C, page 1, the exhibit as origin-
19 ally filed showed a purchase price of \$150,000 for the
20 assignment of the well bore, do you see that?

21 A. Yes.

22 Q. And what is that price now?

23 A. That price now is \$142,500.

24 Q. Have you adjusted on amended Exhibit G, page 2, for the
25 decrease in costs associated with acquiring the use of

- 1 these well bores?
- 2 A. Yes, we have. And it's in the form of an amended
3 estimate which we have already given to the Board.
- 4 Q. That we gave them today?
- 5 A. Right.
- 6 Q. With regard to R-5, the amount as amended is what?
- 7 A. The amount as amended would be \$390,625 in the first
8 panel and in the second panel it would be \$334,889.
- 9 Q. And both of those amounts are slightly less because of
10 the decrease in costs than in the original estimate?
- 11 A. That is correct.
- 12 Q. With regard to Exhibit G, page 2, the amended exhibit, is
13 it your opinion that the costs set forth on that exhibit
14 with regard to the -- actually ten units shown on Exhibit
15 G, page 1, and the development associated with the
16 longwall mining and gas production from these two
17 longwall panels, that those costs are reasonable esti-
18 mates of the actual costs that will be required to
19 produce from these two panels?
- 20 A. Yes, I do.
- 21 Q. You have not, I take it, because you can't locate these
22 people been able to try to obtain voluntary agreements
23 from them?
- 24 A. That is correct.
- 25 Q. With regard to the Board's order that might be issued

1 here and in terms of election rights and in terms of a
2 recommendation of what lease terms might be incorporated
3 in the order, could you tell the Board what a typical
4 offer that OXY makes simply for coalbed methane leases
5 now, has been and continues to be, and what you would
6 recommend that they include from an election standpoint
7 if someone elects to lease?

8 A. Okay. Typically for coalbed methane it's an one-eighth
9 royalty for a five year lease at \$1 per acre bonus.

10 Q. This unit is an eighty acre unit?

11 A. Yes, it is.

12 Q. And the application indicates the production anticipated
13 would be all coal seams below the Tiller?

14 A. That is correct.

15 Q. And you have tendered today with regard to this unit and
16 prior units Exhibit K which is an abstract of the
17 agreement between Island Creek and OXY regarding this
18 well bore and other well bores and the use of those well
19 bores?

20 A. That is correct, yes.

21 Q. And is that contract approval abstract actually a summary
22 of terms that have been agreed upon by Island Creek, OXY
23 and Buchanan Production?

24 A. To the best of my knowledge that is correct.

25 Q. In fact, you drafted that summary, did you not?

1 A. Yes, I did.

2 Q. On Exhibit G as amended do we have the costs associated
3 or allocated to unit R-5 for purposes of someone who
4 wanted to participate calculating what his participation
5 percentage would be or what his cost multiple would be
6 from a carried standpoint?

7 A. Yes, we do.

8 Q. With regard to page 3 of Exhibit G, have you set forth
9 the division of interest that would be associated with
10 both of these individuals that we cannot locate with
11 regard to both panels in this unit?

12 A. Yes, I have.

13 Q. We have previously tendered today an Exhibit H from VGOB-
14 92/03/17-0193 and I have given Mr. Fulmer some extra
15 copies of that that he can incorporate in this record.
16 This Exhibit H which we're incorporating here, does it
17 set forth certain provisions that you would invite the
18 Board to include in any pooling order it might enter for
19 this unit to deal with subsequent operations?

20 A. Yes. Yes, it does.

21 MR. SWARTZ: That's all the questions I have.

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

23 MR. KELLY: Mr. Chairman, I have a couple of questions related
24 to the DWE. The first three items there, the equipment,
25 do you want to elaborate on what that relates to? I

1 assume the PLS is something to do with the pipeline or is
2 it -- what is it?

3 MR. GORDON: It stands for programmable logic control system.
4 That's the big electronic device that assists us in
5 monitoring the gas and what's in the gas. The electronic
6 equipment, there again, that works hand in hand with the
7 PLC system. And the separator skid, I think Mr. VanGolen
8 testified to that last month. It's just a big -- I think
9 you all call it knock outs.

10 MR. KELLY: Okay.

11 MR. GORDON: And it is a huge skid.

12 MR. KELLY: It must be for \$44,000.

13 MR. GORDON: Mr. Wirth probably gave you the dimensions on it,
14 but it is a large, large tank.

15 MR. KELLY: Okay. Thank you.

16 MR. CHAIRMAN: Other questions? I'd like to ask you -- if
17 you're not the appropriate person just tell me. But I'd
18 like to go back into the designation of the new company
19 and everything and ask a few questions. The management
20 committee, is there a formal document establishing this
21 that we can -- you identified Mr. VanGolen's position as
22 general manager, is that correct, as far as being on the
23 management committee here? Is he general manager for
24 what?

25 MR. GORDON: He's general manager for Buchanan Production

1 Company.

2 MR. CHAIRMAN: Okay. And authorized as part of the management
3 committee?

4 MR. GORDON: Yes, he is part of the management committee.

5 MR. CHAIRMAN: Mr. Beckett, what's his title?

6 MR. WIRTH: Can I help you?

7 (Witness stands aside.)

8 MR. SWARTZ: I suppose we can have copies made here today. As
9 I understand it from documents that I have -- And Marty,
10 perhaps, can correct me if I'm wrong, but there are three
11 members of the management committee of Buchanan Produc-
12 tion, are there not?

13 MR. WIRTH: That's correct.

14 MR. SWARTZ: And who are those three people?

15 MR. WIRTH: I am not sworn in yet.

16 MR. SWARTZ: Okay. We need to put him on.

17 COURT REPORTER: (Swears witness.)

18

19 MARTIN E. WIRTH

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

22

23 DIRECT EXAMINATION

24

25 BY MR. SWARTZ:

1 Q. Mr. Wirth, you need to state your name.

2 A. Martin E. Wirth.

3 Q. Where do you live?

4 A. I live in Lebanon, Virginia.

5 Q. Who do you work for?

6 A. OXY, USA, Inc.

7 Q. Do you also have some functions that have been delegated

8 to you to perform as professional manager or at least in

9 part as professional manager for Buchanan Production

10 Company?

11 A. They haven't designated me as land manager being able to

12 commit, drill, anything -- an authority needed for

13 Buchanan Production Company as OXY, USA being the

14 designated operator.

15 Q. Well, let's back up. You told us before you were under

16 oath, so let's ask it again and see if your answer

17 changes now that you're under oath. How many members of

18 the management committee of Buchanan Production Company

19 are there?

20 A. There are three.

21 Q. And who are those three people?

22 A. Joe Crosby who is vice-president of the mid-continent

23 region of OXY, USA. Also Glen VanGolen, as you're aware,

24 is project manager for the coalbed methane project. And

25 Dr. James R. Beckett is the coalbed methane director for

1 OXY, USA for the project.

2 Q. And those three people are the management committee of
3 the partnership of Buchanan Production Company, correct?

4 A. Resolution of the management committee, Appalachian
5 Methane, Inc., Appalachian Operators, Inc., which are the
6 two partners owning Buchanan Production Company. The set
7 up the management committee and these are the management
8 committee partners.

9 Q. I think the Chairman asked a further question in addition
10 to who might be the management committee of Buchanan
11 Production Company. It might be helpful to be a little
12 more specific with regard to what the general manager,
13 the land manager, and the regulatory manager have been
14 authorized to do by OXY, USA in performing the duties
15 that OXY has assumed on behalf of Buchanan Production
16 Company. Again, are you taking this from a resolution?

17 A. The resolutions and the document itself has been filed
18 with the principal executive of the staff and also with
19 the oil and gas inspector the document itself. Resolu-
20 tion by OXY, USA, Inc. effectively gave certain authorit-
21 ies delegated to Buchanan Production. It shall be
22 delegated as Sam has alluded to, too, the general
23 manager being Glenn M. VanGolen. He will supervise and
24 manage the day by day activities and have the respon-
25 sibility for the production company's properties and

1 assets. Also a delegated authority as land manager is
2 myself, Martin E. Wirth. The responsibilities are
3 acquiring leases, disposal of leases, the payment of
4 royalty, negotiations of any royalties. And also Samuel
5 E. Gordon will be delegated as the regulatory manager,
6 being that his responsibilities for pooling all the
7 regulatory duties before this Board and also Mr.
8 Fulmer's department or any such agency that we need to
9 deal with.

10 MR. CHAIRMAN: I'm just trying to stay with this. I want to
11 make sure I understand it -- and I apologize if there's
12 documents been presented that we don't have, but that
13 very well could be the case. The resolutions as present-
14 ed here are resolutions of the management committee of
15 Buchanan Production Company and then a consent to appoint
16 as designated operator assigned by you as project land
17 mager for OXY, USA, Inc., right?

18 MR. WIRTH: Yeah. We're accepting the responsibility.

19 MR. CHAIRMAN: All right. Now, what I'm missing and what I'm
20 trying to probe here is what kind of resolution or what
21 kind of minutes of a meeting or what have you came from
22 Appalachian Operators, Incorporated and Appalachian
23 Methane, Incorporated that authorize this? If they're
24 the partners -- I'm trying to explore to make sure we
25 have the appropriate authority before the Board before we

1 grant something here.

2 MR. SWARTZ: I don't know whether or not you have this, but --
3 I can give you a copy now, it's my only copy, and then I
4 need to borrow it back and I'll get you photocopies. But
5 there is a consent to selection of professional manager
6 which was signed by Joe Crosby as president of Appala-
7 chian Operators, Inc. and by Joe Crosby as president of
8 Appalschian Methane, Inc. on January 17th, 1992 that
9 appointed the management committee of Buchanan Produc-
10 tion. Okay. And the partners actually consented to the
11 appointment by Buchanan's management committee. In other
12 words, the management committee made the appointment and
13 then there is an actual consent, which I can let you see,
14 on behalf of the two --

15 MR. CHAIRMAN: Well, I think we'd like to have a copy for the
16 record.

17 MR. SWARTZ: Well, I'll give it to you and then when I get it
18 back I'll get you a copy. The two corporate partners in
19 Buchanan Production have consented to the resolution by
20 the management committee to appoint OXY, USA, Inc. as
21 professional manager and operator which I think is the
22 paper trail that you were, perhaps, looking for.

23 MR. CHAIRMAN: And then one final piece, the partnership
24 agreement. Is that a part of the document that has been
25 filed or do you have --

1 MR. WIRTH: The document itself has not been filed before the
2 Board or the DMME. It is a matter of record before the
3 State in Richmond.

4 MR. CHAIRMAN: You filed that with the Corporation Commission?

5 MR. WIRTH: That is correct.

6 MR. CHAIRMAN: And that has the appropriate officials with
7 OXY, USA and --

8 MR. WIRTH: It has all the officers of the two corporations
9 and then being a partnership there is no officers, but it
10 delegates the authority of who the general managers and
11 everything would be.

12 MR. CHAIRMAN: And you're accepting the appointment of
13 operator --

14 MR. WIRTH: That is correct.

15 MR. CHAIRMAN: -- on behalf of OXY, USA?

16 MR. WIRTH: OXY, USA. That is correct. Being that part of
17 the Virginia Gas and Oil Act, we need to responsibility
18 and notify Mr. Fulmer's office and the Board that we
19 accept this responsibility.

20 MR. CHAIRMAN: And you're authorized as project land manager
21 to make that accepted?

22 MR. WIRTH: That is correct.

23 MR. CHAIRMAN: Any other questions?

24 MR. MASON: One. The basis for all this is that this property
25 that's subject -- the estate that's subject to this

1 particular well has been transferred to Buchanan Produc-
2 tion, is that correct?

3 MR. SWARTZ: Well, it's not just this -- from now on unless
4 something changes the applicant is always going to be
5 Buchanan Production. It's not just this particular
6 property, Mr. Mason.

7 MR. MASON: Well, I'm just trying to understand what's going
8 on. Basically it's OXY, USA's properties in this Oakwood
9 field?

10 MR. WIRTH: That is correct. And in Buchanan and Dickenson
11 County and in Virginia all properties have been assigned
12 into Appalachian Methane and Appalachian (Inaudible.)
13 who in turn then signed into Buchanan Production Company
14 because each had a 50 percent interest of all OXY's
15 asset. And they in turn assigned to Buchanan Production
16 Company.

17 MR. SWARTZ: The partnership.

18 MR. WIRTH: That's correct.

19 MR. MASON: I'm just trying to get a handle on it. So we'll
20 be dealing with this Buchanan --

21 MR. WIRTH: As of just about thirty days ago all the paper
22 work was filed of record with Buchanan County. It has
23 been filed with the State, but we had to get it in record
24 to transfer real estate interests.

25 MR. CHAIRMAN: Well, I wanted to make sure we understood what

1 was going on here because this is an important transi-
2 tion.

3 MR. SWARTZ: We assumed that you would have some questions.

4 MR. CHAIRMAN: The effective date was November 1st, 1991 of
5 the authority to explore, development and maintain
6 properties and assets of Buchanan Production Company?

7 MR. SWARTZ: Right.

8 MR. CHAIRMAN: The consent to stimulate and those other
9 documents that's heretofore been filed with the Board
10 authorizing OXY, USA to do certain things, does the
11 acceptance or the appointment as designated operator
12 carry with it all the rights that were heretofore granted
13 to OXY, USA, is that the intent?

14 MR. SWARTZ: Well, I think we need to draw a distinction to
15 the extent that OXY, USA was designated operator by this
16 Board with regard to units that were going to be fracked
17 and a consent was filed --

18 MR. CHAIRMAN: Un-huh.

19 MR. SWARTZ: -- those consents authorized OXY. OXY will
20 continue to be the designated operator. We are not
21 petitioning the Board to somehow change OXY from it's
22 status as designated operator as it was appointed in the
23 past.

24 MR. CHAIRMAN: That's what I want to make sure.

25 MR. SWARTZ: Any my view which may or may not be consistent

1 with your understanding is that OXY, USA had a consent as
2 operator to frack or stimulate a coal seam and OXY
3 continues to be the operator which is going to happen,
4 that consent ought to be good. I mean, I don't see that
5 anything needs to be done.

6 MR. WIRTH: And record title did not pass into -- record
7 title internally and with the State we have filed all
8 documents and a legal entity, but to pass record title
9 real estate interest which the Board is doing and
10 everything did not get filed in record of title until
11 like thirty days ago. Like I said, March 19th or 20th.
12 Therefore, everything's still valid and we would still be
13 designated operator from the previous units before the
14 Board and any future before the Board.

15 MR. MASON: Is it fair to say what the end result of this is
16 is that OXY will continue as operator in the past as an
17 operator for their own properties or operate under a
18 agency relationship with Buchanan Production?

19 MR. WIRTH: Basically yes. We're not quite an agency, but we
20 are going to be the professional manager. Buchanan
21 Production Company has no staff and they have retained us
22 as professional manager jacked onto that.

23 MR. MASON: But they're doing it for Buchanan Production
24 Company?

25 MR. WIRTH: That is correct, on behalf of Buchanan Production

1 Company.

2 MR. CHAIRMAN: I'm just trying to follow -- on the same line
3 of thinking here, I'm trying to follow back the signific-
4 ance of the November 1st, 1991 designation. The manage-
5 ment committee resolved that effective November 1 the
6 authority to explore, develop and maintain the properties
7 and assets of Buchanan Production now owned and hereafter
8 acquired is hereby delegated to OXY, USA, Inc.

9 MR. SWARTZ: Right. What I think you're tripping over, Mr.
10 Chairman, just to anticipate -- since this is the second
11 time we've come at this, Buchanan Production had no
12 assets until March 19th or 20th of this year. So
13 although there was a delegation of authority and this
14 deal was put in place -- and I'll be frank with you. I
15 think there was an expectation that the transfer would
16 occur sooner than it wound up occurring. There was
17 authority in place in November to do all of this stuff,
18 but Buchanan Production had no assets to be managed by
19 anyone until the record title changed handed which was
20 the 19th or 20th of March. Does that help at all?

21 MR. CHAIRMAN: Yeah, I'm just trying to get enough on record
22 here that we understand the significance of November 1 so
23 if we get challenged we don't just say, "Well, somebody
24 submitted a document and we accepted it." I'm trying to
25 see what effect that November 1 date means. What does it

1 really mean in trying to see whether or not the authority
2 existed for Buchanan Production Company to, in fact, make
3 this delegation retroactive to November. And you just
4 represented that the authority did exist for that
5 delegation to occur effective November 1st, 1991. I
6 believe you did. Is that correct?

7 MR. SWARTZ: Well, essentially what I was saying was whether
8 or not it was retroactive -- the authority --

9 MR. CHAIRMAN: Uh-huh.

10 MR. SWARTZ: -- is really irrelevant because Buchanan Produc-
11 tion had no assets in November for anybody to manage.
12 And this document -- at least one of them is dated
13 January 17th -- the transfer occurred after the delega-
14 tion. I mean, even after the date of it. I don't know
15 why it was retroactive. I can't tell you that. But I
16 can tell you and there has been testimony before you
17 today that the transfer of assets that we're interested
18 in occurred March 19th or 20th of this year which was
19 certainly after the delegation of authority was dated and
20 after it was dated to be effective.

21 MR. CHAIRMAN: And you're not trying to take any action here
22 today other than what's presented before us with this one
23 well and subsequent --

24 MR. SWARTZ: We have no hidden agenda. We are presenting --
25 we are not attempting to go back into the past to

1 accomplish anything and this document is not intended to
2 do that. This document was offered to demonstrate to you
3 that the paper work is in place to authorize the manage-
4 ment committee to do what it did to authorize Mr.
5 Gordon, Mr. Wirth, and so forth. And we are really only
6 attempting to create a paper trail on a testimonial trail
7 which shows the authority and the various components of
8 this enterprise to force pool this unit, designate OXY as
9 an operator, and develop it.

10 MR. CHAIRMAN: Other questions?

11 MR. MASON: When was this partnership organized?

12 MR. WIRTH: It was basically formed just -- I think right
13 after November 1st, 1991. We go back to the effective
14 date and everything, that was for accounting purposes and
15 the assets were getting set up on the book and the
16 agreement was going through being signed by the appropri-
17 ate authorities, presidents, and corporations and the
18 whole Oxidental Petroleum Corporation system.

19 MR. MASON: The only thing that is troubling me about this is
20 the fact that this resolution obviously in order for it
21 to be -- I mean, I have some difficulty with a document
22 that's signed on January 17th being effective on November
23 1st. I've tried to sell similar things to the IRS
24 without a lot of success.

25 MR. WIRTH: I assure you that all documentation, the articles

1 of incorporation, and everything were filed before this.

2 MR. MASON: I know. I'm not trying to give you a hard time
3 about that.

4 MR. WIRTH: We understand.

5 MR. MASON: My concern is is that the partnership was in
6 existence and had the authority to enter into this --

7 MR. WIRTH: That is correct.

8 MR. MASON: -- and you represent to us that this is, in fact,
9 a valid document, is that correct?

10 MR. WIRTH: That is correct.

11 MR. MCGLOTHLIN: Mr. Wirth, when did the State recognize the
12 corporate entity?

13 MR. WIRTH: I believe is was November 1, 1991 also, I will
14 really have to check with the State papers. I don't
15 believe I brought a copy with me.

16 MR. SWARTZ: When you say a corporate entity, though, are you
17 asking about Buchanan Production?

18 MR. MCGLOTHLIN: Buchanan Production.

19 MR. WIRTH: That is not a corporate. This is a partnership.

20 MR. MCGLOTHLIN: Or Appalachian?

21 MR. WIRTH: It was formed shortly thereafter, yes, it was.
22 The two corporations formed -- comprise Buchanan.

23 MR. MCGLOTHLIN: Okay. When were they incorporated by the
24 State?

25 MR. WIRTH: Like I said, I believe that was right at November

DIRECT EXAMINATION

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BY MR. SWARTZ:

Q. Mr. Beckett, could you state your name again?

A. James R. Beckett.

Q. I'll remind you that you are still under oath. Do you have some internal documents that you can refer to to give us a fix on the date of incorporation of the two partners in Buchanan Production?

A. I just happen to have them.

Q. Why don't you enlighten us?

A. Our internal documents indicate that Appalachian Operators, Inc. was organized on August 8th, 1991 in the state of Delaware. Appalachian Methane, Inc. was organized on August 8th, 1991 under the laws of the state of Delaware.

MR. MCGLOTHLIN: When did the state of Virginia recognize the corporations?

MR. SWARTZ: Well, I'm not sure that they have to.

MR. MCGLOTHLIN: For an out of state corporation to be licensed to do business in the state of Virginia, do they not --

MR. SWARTZ: Well, I don't see that they're doing business in the state of Virginia. I don't want to argue.

Q. (Mr. Swartz continues.) Do you know whether or not those two corporations have applied or filed to be authorized

1 to do business or transact business in the Commonwealth?

2 MR. CHAIRMAN: I had understood the partnership was doing
3 business, correct?

4 MR. SWARTZ: Right.

5 MR. WIRTH: That's correct.

6 MR. SWARTZ: That's sort of where I'm coming from, but --

7 A. (The witness continues.) I do not have records to that
8 effect.

9 Q. Are either of those corporations doing business in the
10 Commonwealth in their own name as far as you know?

11 A. Not to my knowledge.

12 Q. The partnership which they have formed is, however, doing
13 business?

14 A. That is correct.

15 Q. And that you have filed in Richmond and is of record
16 with the Secretary of State, correct?

17 A. That is my understanding.

18 Q. Okay.

19 MR. CHAIRMAN: On that same role, the partnership records that
20 are on file with a certificate, do they establish and
21 identify this management committee?

22 MR. WIRTH: (Inaudible.) procedure, Mr. Chairman, I think we
23 have what we call a designated agent for service is
24 probably the one thing that's been on that document
25 itself.

1 MR. SWARTZ: Is that CT?

2 MR. WIRTH: Yeah, CT.

3 A. (The witness continues.) The partnership agreement does
4 lay out the management committee. That it will consist
5 of three people. I believe it designates the specific
6 three individuals.

7 MR. MASON: Without belaboring this, I know that's a strange
8 comment coming from me, but if Mr. Swartz is willing to
9 represent to us that this entities had their authority to
10 do this -- I mean, I don't know that it's appropriate for
11 us to try to make a legal determination as to whether
12 they are and whether or not they haven't -- I realize
13 that we need to have some documentation to know who we're
14 dealing with and it certainly helps us to understand
15 this, but I feel like we want to be careful and not
16 attempt to pass upon the legal efficacy of any of these
17 entities.

18 MR. CHAIRMAN: Absolutely. That's why Mr. Swartz earlier
19 represented to the Board that they were legally and duly
20 authorized to do business.

21 MR. SWARTZ: Well, I think my clients have just testified to
22 that now, so you don't really have to rely on what I'm
23 telling you. I think we know as a matter of testimony
24 that the corporations were incorporated in August and
25 that there was an internal -- I think Mr. Wirth testi-

1 fied -- bookkeeping formation of the partnership essent-
2 ially. So I think they're telling you that in testimony,
3 but I'm also representing that to you for what it's
4 worth. But I think the testimony is better than the
5 representation.

6 MR. MASON: Well, I just want to make the point that I don't
7 think we're -- you know, we're making no attempt to
8 adjudicate or in any way determine the legal efficacy to
9 this, but it helps us to understand what we're trying to
10 do.

11 MR. SWARTZ: And if you tried I would be quite upset. But the
12 best of my knowledge based on the paper work I have seen,
13 based on what I have heard today which is consistent with
14 what I have been shown in the past, these companies
15 existed at a point in time prior to the formation of the
16 partnership and the partnership exists.

17 MR. MASON: So for summary purposes what you're telling us is
18 is that basically most of the real estate or lease hold
19 assets of OXY, USA in Virginia were divided in half,
20 transferred to these two corporations, and from these
21 corporations into this partnership and now reside in
22 Buchanan Production Company and then turned around and
23 created a delegation of operating authority in OXY, USA?

24 MR. SWARTZ: So that OXY can continue to do what it's been
25 doing all along. And that is in a nut shell what has

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2
3 ITEM IX, X

4 MR. CHAIRMAN: The next item on the agenda is a petition for
5 the establishment of a compulsory pooled drilling unit.
6 It's docket number VGOB-92/04/21-0220. I would ask all
7 the parties that wish to address the Board in this
8 matter to come forward, please.

9 MR. SWARTZ: Mark A. Swartz and Howard G. Salisbury represent-
10 ing OXY. USA.

11 MR. CHAIRMAN: The record will show there are no other parties
12 requesting to address the Board.

13 MR. SWARTZ: Could I suggest to the Board since S-7 involves
14 the same respondent, neither units have a well on them, I
15 believe, and since we're dealing with the same people,
16 could we perhaps consolidate these for hearing? I think
17 it would save probably twenty minutes.

18 MR. CHAIRMAN: If there is no objection we'll do that. We'll
19 just need to keep the docket numbers straight. I'll go
20 ahead and say we'll also consider docket number VGOB-
21 92/04/21-0221. If there are any parties in the room that
22 wish to address the Board on this matter come forward.

23 SAMUEL S. GORDON

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

1
2 DIRECT EXAMINATION
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4 BY MR. SWARTZ:

5 Q. Mr. Gordon, you need to state your name again.

6 A. Samuel E. Gordon.

7 Q. I will remind you you're under oath. Who do you work
8 for?

9 A. OXY, USA, Inc.

10 Q. Did you prepare the notice of hearings and the applica-
11 tions for both units S-6 and S-7?

12 A. Yes, I did.

13 Q. Have we filed today with the Board an amended Exhibit G,
14 page 2, that pertains to both of these units?

15 A. Yes, we have.

16 Q. And if we were to compare the amended Exhibit G, page 2,
17 to the original in each of the applications regarding S-6
18 and S-7 what would the difference, if any, be?

19 A. The purchase prices we had indicated on the original
20 estimate was for \$150,000. The revised reflects
21 \$143,500.

22 Q. And that's the purchase price of the assignment of rights
23 in the well bore?

24 A. That is correct.

25 Q. In addition, today have we filed an Exhibit K with the

1 Board with regard to units S-7 and S-6?

2 A. Yes, we have.

3 Q. And that's the contract approval abstract?

4 A. That is correct.

5 Q. Which summarizes the arrangement between Buchanan
6 Production Company, Island Creek Corporation, and OXY,
7 USA with regard to the well bores and who's responsible
8 for what and, in fact, fixes the purchase price at
9 \$142,500, correct?

10 A. That is correct.

11 Q. And have we also filed with the Board today -- well,
12 actually given to Mr. Fulmer several copies of Exhibit H
13 from VGOB-92/03/17-0193 which is language that we would
14 propose that the Board consider incorporating into any
15 order it might enter dealing with the question of
16 subsequent operations?

17 A. That is correct.

18 Q. And with regard to Exhibit H, would you recommend that
19 the Board include either the language which we propose or
20 something comparable to deal with the question of
21 subsequent operations in these units?

22 A. Yes, I would.

23 Q. Who is the named party respondent in both of these
24 applications?

25 A. In both applications the named respondent is the Buchanan

- 1 County School Board.
- 2 Q. Has the Buchanan County School Board been represented by
3 counsel during negotiations that you all have had with
4 them?
- 5 A. To the best of my knowledge, yes.
- 6 Q. What law firm would that be?
- 7 A. Street, Street, Street, Street.
- 8 Q. Did you mail a notice of hearing with regard to both of
9 these applications to the Buchanan County School Board?
- 10 A. We mailed to the Buchanan County School Board as well as
11 their counsel.
- 12 Q. You sent a courtesy copy to their counsel?
- 13 A. Yes, we did.
- 14 Q. The Street firm?
- 15 A. Yes.
- 16 Q. And have you filed proofs of mailing with regard to both
17 units S-6 and S-7?
- 18 A. Yes, we have.
- 19 Q. And you filed those with Mr. Fulmer's office?
- 20 A. That's correct.
- 21 Q. And did you publish both notices and the small map,
22 Exhibit A-1?
- 23 A. Yes, we did. Both of them were published on April 2nd,
24 1992.
- 25 Q. In what newspaper?

- 1 A. In the Virginia Mountaineer.
- 2 Q. And have you filed proof of publication with Mr. Fulmer?
- 3 A. Yes, we have on both.
- 4 Q. Have you attempted to negotiate a lease with the School
5 Board?
- 6 A. Yes, we have.
- 7 Q. Have you furnished the School Board and their counsel
8 with a proposed lease?
- 9 A. Yes, we have.
- 10 Q. And what's the status of those negotiations?
- 11 A. They have not signed our lease.
- 12 Q. Have they ever gotten back to you with a counter proposal
13 as far as you know?
- 14 A. As far as I know, no.
- 15 Q. Turning to Exhibit S-6, if we go to Exhibit B -- actual-
16 ly, let's go to Exhibit A-1, page 2. What is OXY's
17 interest in this unit S-6?
- 18 A. In unit S-6 OXY has 100 percent on the coal with a net of
19 89.62. The oil and gas ownership, we have 100 percent
20 gross with a net of 89.62.
- 21 Q. And what is the respondent's interest in the unit?
- 22 A. 10.38 percent.
- 23 Q. Of both oil and gas and coal?
- 24 A. To the best of our knowledge, yes.
- 25 Q. In unit S-6?

- 1 A. That's correct.
- 2 Q. So essentially you're seeking to force pool the School
3 Board's coal and oil and gas interests or claims in unit
4 S-6 which you calculate as being 10.38 percent of both?
- 5 A. That is correct.
- 6 Q. Has that number been carried through on Exhibit G, page
7 3, and do you show a division of interests associated
8 with the School Board's claims or interests in unit S-6?
- 9 A. Yes, we do.
- 10 Q. And the amended Exhibit G, page 2, does that show the
11 participation number which you would multiply times the
12 division of interests to determine what the participation
13 amount would be if the School Board elected to partici-
14 pate or what the multiple of costs would be if the
15 School Board elected to be carried?
- 16 A. Yes, it does.
- 17 Q. So that both of those numbers can be calculated from the
18 documents that have been submitted to the Board?
- 19 A. That is correct, yes.
- 20 Q. Again with regard to S-6, did you yourself prepare
21 Exhibit C, page 1?
- 22 A. Yes, I did.
- 23 Q. Does that exhibit represent the costs -- the reasonable
24 costs which you estimate will be expended either on or
25 for the development of unit S-6?

- 1 A. Yes, it is.
- 2 Q. And there is no well on unit S-6 and that's why this is
3 considerably lower than we've seen?
- 4 A. That's correct.
- 5 Q. And what is your estimate with regard to the costs that
6 will either be expended on S-6 or associated with the
7 development of S-6?
- 8 A. \$17,100.
- 9 Q. Is it your opinion that that is a reasonable estimate of
10 those costs?
- 11 A. Yes, it is.
- 12 Q. Now, with regard to the amended Exhibit G, page 2, does
13 that capture all of the costs expended on all of the
14 units?
- 15 A. Yes, it does.
- 16 Q. With regard to both panels?
- 17 A. With regard to both panels, yes.
- 18 Q. And are the cost estimates shown on amended G, page 2, in
19 your opinion reasonable estimates as to the total sums
20 that will be expended to develop both of the panels
21 under consideration?
- 22 A. Yes, it is.
- 23 Q. With regard to unit S-7, again we're dealing with the
24 School Board?
- 25 A. That is correct.

- 1 Q. Is their interest different in unit S-7 on a percentage
2 basis or on a ownership basis than we've just seen with
3 regard to S-6?
- 4 A. Yes, it is. In regard to S-7 our title work shows that
5 they have no coal interest and they have 2.89 percent in
6 the oil and gas interest.
- 7 Q. And what is OXY's position or what is OXY's position as
8 assigned to Buchanan Production with regard to coalbed
9 methane leases from coal owners?
- 10 A. We show that to be 100 percent.
- 11 Q. And what is Buchanan Production's by reason of the
12 assignment from OXY interest in coalbed methane leases
13 from oil and gas owners?
- 14 A. 97.11 percent.
- 15 Q. Let's look at Exhibit G, page 1. With regard to S-7,
16 does that show the acreage within panel 15-D that is also
17 contained within unit S-7?
- 18 A. Yes, it does.
- 19 Q. And the percentage of the panel in that unit?
- 20 A. Yes, it does.
- 21 Q. And the third page of Exhibit G, does that calculate the
22 division of interest associated with the School Board's
23 claim pertaining to unit S-7?
- 24 A. Yes, it does.
- 25 Q. Also with regard to S-7 there is an Exhibit C, page 1,

1 which estimates costs associated with that unit, correct?

2 A. That is correct.

3 Q. Did you prepare this exhibit?

4 A. Yes, I did.

5 Q. And what is the total amount that you show on Exhibit C,
6 page 17?

7 A. \$21,100.

8 Q. Why is it more than the costs estimated with regard to
9 the other unit, the one we've just talked about, S-6?

10 A. We have additional title opinions that had to be prepared
11 in that because there's actually three tracts or four
12 tracts -- three tracts in the particular 80 acre unit
13 that had to be cured.

14 Q. So there's more title and that accounts for the differ-
15 ence?

16 A. More title work, yes.

17 Q. Is the \$21,100 figure in your judgement a reasonable
18 estimate as to the costs that either will be spent on the
19 unit S-7 or with regard to the unit S-7 to develop
20 that's contemplated in this application?

21 A. Yes.

22 Q. With regard to both units S-67 and S-7, does Buchanan
23 Production Company by virtue of an assignment from OXY,
24 USA have the lease hold interests with regard to the
25 leases that you've described with regard to coalbed

- 1 methane, either leases taken from coal owners or from oil
2 and gas owners?
- 3 A. Yes, it does.
- 4 Q. And with regard to both units S-6 and S-7 have we filed
5 an Exhibit J indicating or commemorating the appointment
6 of OXY, USA as professional manager and delegating
7 certain authority to OXY, USA by the partnership Buchanan
8 Production?
- 9 A. Yes, we have.
- 10 Q. And that's Exhibit J, page 1?
- 11 A. That's correct.
- 12 Q. And then have we also filed with regard to these partic-
13 ular units, being S-6 and S-7, signed consents on behalf
14 of OXY to act as designated operator if appointed?
- 15 A. Yes, we have.
- 16 Q. The lease that you indicated that has been tendered to
17 the School Board and other leases, what terms has OXY and
18 Buchanan Production been offering generally in Buchanan
19 County to lease coalbed methane interests?
- 20 A. Our terms are an one-eighth royalty, five year term, with
21 a \$1 per acre bonus.
- 22 Q. And would you recommend that the Board include such
23 provisions in any order it might enter with regard to an
24 election to lease?
- 25 A. Yes, I would.

1 Q. With regard to both of these petitions regarding unit S-6
2 and S-7 do you wish to add any respondents?
3 A. No, we do not.
4 Q. And I take you don't wish to dismiss the School Board as
5 the sole respondent?
6 A. No, we do not.
7 MR. SWARTZ: That's all I have.
8 MR. CHAIRMAN: Any questions?
9 MR. EVANS: I've got one question. Under Exhibit C, page 1,
10 for S-6 and S-7. State permit fee under regulatory,
11 what's the \$250 for?
12 MR. GORDON: That's what the State charges us to permit wells.
13 MR. KELLY: There's no wells in either of these units.
14 MR. GORDON: You're right. The old form got caught again.
15 That \$250 should be deleted off of there.
16 MR. EVANS: The pooling fee?
17 MR. SWARTZ: We spent that. That's what they paid us. That's
18 how we got here. That's the price of our ticket.
19 MR. KELLY: So would you like to amend this exhibit here?
20 MR. SWARTZ: What might be better, Mr. Evans, if we amend --
21 it's pretty easy to subtract \$250 from Exhibit C on both
22 of these, but once we start fooling with G-2 we're going
23 to have more significant calculations. So yes, we would
24 be willing to file an amendment that could be incorporat-
25 ed into the record to reflect -- the \$250 change which

1 will translate into some other number on the other form,
2 we'd certainly be willing to do that, but I don't want
3 him guessing at numbers right now.

4 MR. KELLY: That's fine.

5 MR. CHAIRMAN: Other questions?

6 (Witness stands aside.)

7 MR. MCGLOTHLIN: I move that we accept this application
8 contingent upon the amendments.

9 MR. CHAIRMAN: These two applications?

10 MR. MCGLOTHLIN: These two applications, yes, sir.

11 MR. CHAIRMAN: Motion.

12 MR. MASON: I second it.

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. That concludes the items on the agenda.
16 Anything further?

17 MR. MCGLOTHLIN: Could I request information on the regulatory
18 change on notices? What do I need to do on that?

19 MR. CHAIRMAN: To request what?

20 MR. MCGLOTHLIN: Changes dealing with notice -- who gets
21 notice.

22 MR. CHAIRMAN: Oh, you're just asking who do you go about
23 making a regulatory change?

24 MR. MCGLOTHLIN: Yes, sir.

25 MR. CHAIRMAN: If you'll consider this, why don't you let us

1 do some background work on what's in the law versus --
2 what you're trying to accomplish is notice to surface
3 owners, is that correct?

4 MR. MCGLOTHLIN: Yes, sir.

5 MR. CHAIRMAN: Okay. Let us do some background work on
6 whether or not that's feasible for -- practical in the
7 law, whether we need a law change or whether anything
8 can be done for the regulatory. We'll get that to you
9 and then go from there. I'll try to have you loaded for
10 a motion next time.

11 MR. MCGLOTHLIN: Okay. Thank you.

12 MR. FULMER: Mr. Chairman, I would want to mention one thing.
13 We had planned on putting on the agenda for the next
14 hearing is dealing with the civil penalties. That will
15 be one of the agenda items.

16 MR. MCGLOTHLIN: Do what now?

17 MR. CHAIRMAN: An agenda item for next meeting is going to be
18 a proposal before the Board from the inspector on how he
19 would make recommendations and how the Board would deal
20 with penalties -- the penalty provisions in the law.
21 He's got some procedures worked out to recommend to the
22 Board. Thank you.

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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 April 21, 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 15th day of April, 1992.

Tamara L. White
TAMARA L. WHITE
NOTARY PUBLIC

My commission expires June 30, 1996.