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VIRGINIA OIL AND GAS CONSERVATION BOARD

HEARING OF SEPTEMBER 15, 1992

9:00 A. M.

AT THE SOUTHWEST VIRGINIA 4-H CENTER

INDEX

	<u>ITEM</u>	<u>PAGE</u>
1		
2		
3		
4	<u>ITEM</u>	<u>PAGE</u>
5		
6	I	3
7	II	17
8	III	30
9	IV	30
10	V	63, 108
11	VI	87
12	VII	98
13	VIII	106
14	IX	2, 107
15	X	2, 107
16	XI	111
17	XII	154
18	XIII	154
19	XIV	223
20	XV	223
21	XVI	223
22	XVII	223
23	XVIII	181
24	XIX	181
25	XX	181
	XXI	223

1 September 15, 1992

2 This matter came on to be heard on this the 15th day of  
3 September, 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 45.1-361.22.B of the Code of  
6 Virginia.

7 MR. CHAIRMAN: Good morning. My name is Benny Wampler and I'm  
8 Assistant Director for mining for the Virginia Department  
9 of Mines, Minerals and Energy. I'll ask our Board to  
10 introduce themselves to you.

11 (MEMBERS INTRODUCED.)

12 MR. CHAIRMAN: We have twenty-one items on the agenda. We've  
13 reduced to nineteen. We have a withdrawal request for  
14 items IX and X and we'll take care of that first on the  
15 agenda.

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ITEMS IX, X

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3 MR. CHAIRMAN: Docket number VGOB-92/09/15-0274 and 0275 have  
4 been withdrawn and are removed from the agenda unless  
5 there's an objection. I'll tell you before we get  
6 started also that sometimes the acoustics with the air  
7 conditioning and everything running are not the best in  
8 the world in here. So feel free to try to situate  
9 yourself where you can hear if we're having discussions  
10 that you're interesting in and you're not able to hear.  
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3 ITEM I

4 MR. CHAIRMAN: Our first item on the agenda today, the Board  
5 on it's own motion under Sections 45.1-361.14 and 361.15  
6 of the Code of Virginia is considering modifications to  
7 the escrow provisions as it pertains to the escrow agent  
8 and the escrowing of funds for orders issued by the Board  
9 after July 1st, 1990 under Section 45.1-361.21 and 22.  
10 This is docket number VGOB-92/09/15-0276. We would ask  
11 any of the people here that wanted to address the Board  
12 in this matter to come forward at this time. I'd like to  
13 introduce to the Board members, if you haven't met him  
14 and for the representatives here, Mr. Oliver. ??? Oliver  
15 who is president of Tazewell National Bank. We're happy  
16 to have you here with us today.

17 MR. OLIVER: Thank you.

18 MR. CHAIRMAN: I would ask Sandra Riggs to give the Board an  
19 overview of what you have already received and read today  
20 in the way of modification to previous orders and  
21 supplemental orders.

22 MS. RIGGS: There are two orders under consideration today.  
23 One consists of a modification of the escrow standards  
24 that have been included in prior forced pooling orders.  
25 And the purpose of modifying all prior orders is to amend  
the escrow provisions to name Tazewell National Bank as

1 the escrow agent and to provide for the statutory escrow  
2 accounts. Up until the appointment of Tazewell National  
3 Bank as the formal escrow agent of the Board the provi-  
4 sions of prior forced pooling orders allow operators to  
5 create escrow accounts. That's now going to be changed  
6 so that all the funds being escrowed will be transmitted  
7 to the escrow agent. So the first order is the modifica-  
8 tion of the escrow standards and all prior pooling  
9 orders. We've came up with a list of prior pooling  
10 orders by operator and those will be circulated to each  
11 of the operators to make sure that we haven't missed any  
12 and that we've covered. And then what will happen is  
13 there will be an individual order entered as to each  
14 operator with a list attached of all prior pooling  
15 orders so that the escrow provisions of each of those  
16 orders are modified in that way. Are there any questions  
17 regarding the modification of the escrow standards  
18 proposed order? It's pretty straight forward and it  
19 contains the provisions that are currently being included  
20 in all new pooling orders.

21 MR. SWARTZ: I just have one comment. This is Mark Swartz for  
22 Buchanan Production and OXY, USA. I've reviewed what I  
23 think is under consideration by the Board that Sandy put  
24 together. And the only comment I had was I would ask you  
25 to give some consideration to the thirty day time period

1 or it may be a fifteen day time period order with regard  
2 to the positive funds and I would recommend that you  
3 consider a sixty day period which may seem like a long  
4 time, but you need to be aware of the fact that meter  
5 charts are pulled on a periodic basis which no more often  
6 than one month. So that as soon as you pull a meter  
7 chart you've got gas sales that are thirty days old on  
8 that chart. Those charts are then sent off and are  
9 intergraded in a data room and are read by a computer  
10 and adjusted and you get the results. Then that data  
11 goes to -- I assume most operators have the same proced-  
12 ures or similar procedures. Then that data goes to your  
13 royalty county people and it is impossible to do it  
14 within thirty days of production. Realistically, people  
15 who enter into leases get their royalty checks within  
16 sixty days. And so to provide that sixty days would be  
17 the outside -- obviously, they're going to cut all  
18 royalty checks at the same time so that when they pay  
19 people that have leases they will pay into the escrow as  
20 well as to the extend that that's required. But I would  
21 ask you to consider sixty days and that would be just  
22 with regard to the modification of escrow standards. The  
23 other comment I have is I think this is a great idea and  
24 it ought to be done and I commend you for putting this on  
25 the docket to get these orders all consistent. Thank

1           you.

2 MR. CHAIRMAN: Any other questions? Before Sandra continues,  
3 I'll tell you that I have distributed to the Board  
4 members drafts prepared by Mark Swartz and presented to  
5 the Board where the supplemental order and modification  
6 of escrow standards in the affidavit that's proposed to  
7 be submitted by the designated operator. Mark, you may  
8 want to address those as we go through this. Are there  
9 any other comments following Mr. Swartz's comment on the  
10 sixty day versus the fifteen and thirty day? Does the  
11 Board want to make any comment? Mr. Swartz, do you have  
12 any proposal as to when that sixty day period begins?

13 MR. SWARTZ: I think I took what Sandy Riggs had proposed and  
14 simply put sixty in instead of fifteen. Let me find the  
15 language that she had.

16 MR. CHAIRMAN: Okay.

17 MR. SWARTZ: For funds I just made every day at sixty days.  
18 There are a couple of provisions. One is since this is  
19 applying to orders that were entered in the past and the  
20 funds are already held in some other escrow manner,  
21 there are sixty days from the date of entry of the order  
22 to transfer all those funds to the Tazewell National  
23 Bank and those are funds that were handled under the  
24 terms of other orders that pre-existed these escrow  
25 standards. Then with regard to gas that's sold in the

1 future, it would continue thereafter -- obviously, you  
2 have the note, the entry of the order, and then the  
3 deposits would be continued to be made thereafter on a  
4 monthly basis so you would be making a deposit every  
5 month, but you would be sixty days behind.

6 MR. CHAIRMAN: Sixty days after the end of the month.

7 MR. SWARTZ: The first one would be a sixty day delay and then  
8 there would be a deposit every month also.

9 MR. MCGLOTHLIN: I'm sure it's an oversight. I didn't  
10 receive the original draft. Could I get a copy of that?

11 MR. CHAIRMAN: Okay.

12 (AFTER A BRIEF DISCUSSION OFF THE RECORD, THE PROCEEDINGS  
13 CONTINUED AS FOLLOWS:)

14 MR. CHAIRMAN: Mr. Fulmer just brought to my attention that in  
15 our regulations Article 4 on reporting that the monthly  
16 reports, Section 1.21.A says, "Each producer shall submit  
17 a monthly report on forms prescribed by the director and  
18 the format approved by the director to the Division no  
19 later than forty-five days after the last day of each  
20 month." That was for reporting purposes to the Division.  
21 If we stay on any consistency there or whether or not  
22 there's any need to stay consistent with that, I realize  
23 that the reports prepared for that are not necessarily  
24 the reports that are coming out of the county.

25 MR. SWARTZ: Well, there does need to be an addition step. I

1 mean, the report that Mr. Fulmer's office will be getting  
2 of that section is simply --

3 MR. CHAIRMAN: I understand. We'll go ahead. Sandra, if you  
4 will continue on the discussion of the other and then  
5 we'll come back to that.

6 MS. RIGGS: The second proposed order is what we refer to as a  
7 supplemental order. The original pooling orders set  
8 forth certain elections to be made by respondents or  
9 parties and give's them thirty days to make those  
10 elections. The purpose of the supplemental order is to  
11 document of public record the elections that have been  
12 made and to instruct the escrow agent regarding the  
13 various sub-accounts that must be set up to track the  
14 escrow funds. The concept under which the supplemental  
15 order was drafted is that after the entry of the pooling  
16 order and the thirty days has expired the operator would  
17 file a statement of interests under oath with the Board  
18 advising the Board as to the elections made and to the  
19 status of the various accounts. And then the Board would  
20 enter a supplemental order to the pooling order adopting  
21 the statement of interests and instructing the escrow  
22 agent to set up the escrow account and sub-accounts  
23 accordingly. And that's the purpose of the supplemental  
24 order that's been drafted together with the attached  
25 statement of interests to be filed by the operator. This

1 has been submitted to the escrow agent to make sure that  
2 the supplemental order tracks or provides sufficient  
3 information to the escrow agent to make sure they have  
4 the information required to set up the accounts. And I  
5 guess it's been discussed back and forth in various forms  
6 with the operators, too, but we felt that we needed to  
7 get both the operators and the escrow agents consistent  
8 so the information being recorded allows the escrow agent  
9 to establish the accounts and the flow of information to  
10 go smoothly so that we don't have any problems with --  
11 and we have consistency when we're reporting this  
12 information.

13 MR. CHAIRMAN: Did you want to address this, Mr. Swartz?

14 MR. SWARTZ: Mark Swartz again for Buchanan Production and  
15 OXY, USA. I have tendered a supplemental order which I  
16 think you will find very similar to Sandy's and I have  
17 also given you a draft affidavit. And the reason I have  
18 given you a draft affidavit is because the supplemental  
19 order that Sandy drafted and presumably the Board  
20 contemplated doesn't really -- the order doesn't really  
21 spell out what the elections made were or what the  
22 results of those elections were or the escrow. And it  
23 relies on an affidavit which it incorporates into the  
24 order which is a convenient way to save paper and it  
25 makes sense. But I thought -- and Sandy had also

1           apparently drafted a form affidavit and I took a look at  
2           the affidavit and re-worked it some. I haven't changed  
3           the supplemental order very much, but I re-worked the  
4           affidavit. The important parts of the draft of the  
5           affidavit -- and I think basically you'll find that the  
6           same information in Sandy's draft and my draft. But if  
7           you look at paragraph six, that's really the paragraph  
8           that deals with the meaning of any elections that were  
9           made and identifies the name of the people making an  
10          election, the type of election made or deemed to have  
11          been made. It addresses the question of whether or not  
12          there's a bonus amount, payable, if any, with regard to  
13          each person, what the royalty division interest in the  
14          unit would be with regard to each person who's made an  
15          election who's interest is subject to escrow. It deals  
16          with working interest percentage if the election was  
17          participation. It deals with carried interest and deals  
18          with the fact that you may have common owners of un-  
19          divided interest and how do you treat those interests.  
20          And that essentially is the basic information which I  
21          think the Board procedural rules require to be filed --  
22          be filed with the Board. The other thing that I did with  
23          this affidavit is something that is a related issue that  
24          I would like you to consider. What operators have been  
25          doing and what the rules and the orders contemplate is

1 you file two affidavits. And what I did was combine  
2 everything into one. The Board orders that the Board has  
3 been issuing says that seven days after the operator gets  
4 a copy of the order the operator is suppose to, within  
5 that seven day period, mail it to all respondents and  
6 then you're suppose to file an affidavit of mailing  
7 within ten days with Mr. Fulmer's office. The problem  
8 with that procedure -- and this is not a procedural Board  
9 rule. This is something that's been in the orders. The  
10 problem with that procedure is that if you file an  
11 affidavit within ten days you can't file proof of mailing  
12 because you don't have it back. What I have done in the  
13 draft affidavit, and I realize you're not considering and  
14 you haven't noticed the content of the draft affidavit  
15 for today, but what I'm suggesting to you through your  
16 supplemental order which tracks is that you might want to  
17 consider having one affidavit which would under the Board  
18 procedural rules and the terms of the orders that you've  
19 been entering, this one affidavit would be filed in  
20 relation to the thirty day period running after -- the  
21 thirty day election running from the date of record. And  
22 it would address mailing of the original order and it  
23 would address elections. So it essentially would be an  
24 affidavit of mailing of the order to begin with, an  
25 affidavit dealing with the elections, and an affidavit

1 dealing with what interests need to be escrowed and what  
2 they are. So it's a combination affidavit that deals  
3 with all of those and you only get one. And I would ask  
4 you to consider that in the future in terms of entering  
5 other orders and maybe getting us to a point where we're  
6 just filing one affidavit. The other thing that I think  
7 you need to -- and this is just a comment. When you  
8 adopt a form supplemental order and/or in the future  
9 prescribe a form affidavit you need to make sure that  
10 that affidavit clearly presents -- is organized in such a  
11 way as to clearly present the names of the people whose  
12 funds or claims are subject to escrow, the type of claim  
13 they have, and the money because your order isn't  
14 addressing those issues. It's incorporating the affi-  
15 davit. So I think it's important that you control the  
16 format of the affidavit so that it's as clear as possible  
17 because your order's only going to be as clear as the  
18 affidavit you require people to file. You need to just  
19 keep that in mind when you do that. The other comment I  
20 would have, and this is just something you need to take  
21 into consideration, my proposed supplemental order or  
22 draft supplemental order makes an effort to make this  
23 distinction but it's something you need to think about.  
24 This supplemental order will apply to two situations. It  
25 will apply to all the past orders where you probably had

1 an affidavit of mailing and you may or may not already  
2 have an affidavit of elections, but you'll be getting  
3 one. So the order will have two affidavits that it needs  
4 to refer to. In the future if we go with one affidavit  
5 presumably, we're going to use the same supplemental  
6 order. So you've got to have some alternative paragraphs  
7 in there so that if we're in the past we can strike  
8 something out and it will work and if we're in the future  
9 after today we can strike something out and it has to be  
10 in the alternative. And I'm not sure that Sandy -- I  
11 don't remember in Sandy's draft if there was any alterna-  
12 tive to begin with or not. But consider that so that  
13 you've got an order which works for both situations.  
14 Also I think this is a good idea. I think that something  
15 does need to be filed of record which commemorates  
16 elections and gives instructions to the escrow agent that  
17 people can look up in the record.

18 MR. CHAIRMAN: Any questions, members of the Board? Are there  
19 any other comments by anyone?

20 (AFTER A BRIEF DISCUSSION OFF THE RECORD, THE PROCEEDINGS  
21 CONTINUED AS FOLLOWS:)

22 MR. CHAIRMAN: As Sandra mentioned, we would circulate the  
23 listing of the prior orders prior to actually entering  
24 any such prior orders dealing with these formats. I  
25 guess the one key hurdle here is the sixty day sugges-

1           tion. What's the Board's pleasure on that?

2 MR. EVANS: If it's physically impossible or it makes it so  
3 tight on a forty-five day schedule or anything else, I  
4 don't have a problem with sixty days on the offset and  
5 then filing every month. That seems to me to be reason-  
6 able given the size of the entities involved. In other  
7 words, I can see no reason to make it so restrictive or  
8 such a tight time period limit because you increase the  
9 chance for error and the miss of a deadline.

10 MR. KELLY: Well, I think I would concur with the sixty day  
11 situation. I think it certainly fits the standard  
12 industry practice for delayed time in the chart changes  
13 which is when revenues are received. So forty-five days  
14 for consistency purposes would be better. That's still  
15 not enough time to allow for that process to take place.  
16 So I guess we need to determine that.

17 MR. CHAIRMAN: Is there anything else that you've heard that  
18 you have questions about so we can lay everything on the  
19 table? Obviously, there are some slight variations.  
20 Sixty days appears to be the most obvious distinction.  
21 There's variations on how we achieve -- I guess the  
22 supplement order -- the basic difference is that as  
23 drafted by our assistant AG it places a burden on the  
24 operator to present an affidavit. And what Mr. Swartz  
25 has done is created a format affidavit that outlines

1 those requirements, I believe. If I've misstated that,  
2 one of you correct me. But that's the essence of those  
3 two. What we could do, if it was the Board's pleasure,  
4 is adopt these subject to the -- conditioned on the  
5 Attorney General going through Mr. Swartz's proposals and  
6 picking up those relevant areas the Board may want to  
7 consider such as the affidavit from any of the suggested  
8 modifications.

9 MR. EVANS: That makes sense. Another way to do it is to  
10 review what's been presented for consistency and bring it  
11 back up at the next meeting which is probably what I  
12 would prefer to see done. We prefer to see the necessary  
13 changes made and looked at for consistency to make sure  
14 that everything is okay and can be done and at that time  
15 make a decision rather than a contention decision.

16 MR. WAMPLER: I think that would be good. It would give Mr.  
17 Oliver a chance to go through these also and see if he  
18 see's as an escrow agent anything that would present a  
19 problem in the accounting of these funds as well.

20 MR. OLIVER: One comment I would have is that when we receive  
21 these retroactive payments, the amount that's royalty or  
22 payment for production in some form needs to be separated  
23 from any interests that's been earned on those monies.

24 MR. CHAIRMAN: Well, I think what Mr. Swartz has suggests  
25 would pick that up. I believe I saw where the interest

1 -- I'm not sure if that's what you're talking about. The  
2 working interest percentage?

3 MR. SWARTZ: That's not in my affidavit. I didn't address  
4 that. I guess I was sort of focusing on the future.  
5 That's certainly not an unreasonable requirement. You  
6 ought to look at that in terms of that being something  
7 special we need to do for the past orders that weren't  
8 under the escrow system.

9 MR. CHAIRMAN: Do any of you want to put that in a motion?

10 MR. EVANS: Yes. I would like to make a motion that we have  
11 the AG's office review the changes that have been  
12 discussed here today for consistency and to prepare and  
13 draft and get it back to the Board members prior to the  
14 next meeting and defer this questioning till the next  
15 Board meeting.

16 MR. KELLY: I'll second that.

17 MR. CHAIRMAN: We have a motion and a second. Any further  
18 discussion? If not, all in favor signify by saying yes.  
19 (ALL AFFIRM.) Opposed say no. (NONE.) It's unanimous.  
20 Thank you.

1  
2  
3 ITEM II

4 MR. CHAIRMAN: The second item on the agenda today is a  
5 petition for well location exception by Virginia Gas  
6 Company for EH-115. This is docket number VGOB-92/09/15-  
7 0254. We would ask anyone present who wants to address  
8 the Board in this matter to come forward at this time,  
9 please.

10 MR. MULLINS: By way of introduction, my name is Tom Mullins.  
11 I'm with the Street law firm in Grundy, Virginia and I'm  
12 here today representing Virginia Gas Company on their  
13 application for well exception for well designated as EH-  
14 115 from the Columbia Natural Resources Well Number 9641.  
15 This witness that I will be presenting today in this  
16 matter will be Mr. Al Mueller. If I could have him  
17 sworn, please.

18 COURT REPORTER: (Swears witness.)  
19

20 ALLEN WALTER MUELLER

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

1  
2  
3 DIRECT EXAMINATION

4 BY MR. MULLINS:

5 Q. Sir, would you please state your full name?

6 A. My name is Allen Walter Mueller.

7 Q. How do you spell your last name?

8 A. M-U-E-L-L-E-R.

9 Q. What do you do for a living?

10 A. I'm a field engineer with Virginia Gas Company.

11 Q. How long have you been doing that?

12 A. Approximately two years.

13 Q. What did you do before working for the Virginia Gas  
14 Company?

15 A. I worked with the Division of Gas and I was an assistant  
16 oil and gas inspector for about two years and prior to  
17 that I worked eleven years in various capacities in the  
18 industry.

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

20 A. Yes, I have.

21 Q. And has your testimony been accepted as expert testimony?

22 A. Yes, it has.

23 MR. MULLINS: I would move that Mr. Mueller be accepted by the  
24 Board as an expert witness on this occasion.

25 MR. CHAIRMAN: So accepted.

Q. (Mr. Mullins continues.) Sir, are you familiar with the

1 well designated EH-1157

2 A. Yes, I am.

3 Q. How did you become familiar with that well?

4 A. By several visits to the site and the area and when we

5 surveyed the well site itself.

6 Q. So you are familiar with the terrain surrounding this

7 well?

8 A. Yes, sir.

9 Q. Virginia Gas is seeking a location exception from

10 Columbia Natural Resources well number 9641, is that

11 correct?

12 A. That's correct.

13 Q. Why was this site selected for EH-1157

14 A. Due to topographical reasons. The site itself is on a

15 narrow -- it's a coal strip bench. It was the only

16 logical place to put it on this hillside.

17 Q. If I could, we have handed out to the Board a map showing

18 this area. Is this the area designated as the EH-115

19 here?

20 A. Yes, it is.

21 Q. And this is the Columbia well we've been talking about?

22 A. Yes, it is.

23 Q. Now, is this north pointing up?

24 A. Yes, sir.

25 Q. Why can't this well be moved to the southeast enough to

- 1 get it out of this overlap area?
- 2 A. Due mainly because of the hillside. It's approximately a  
3 60 degree slope and also there's a narrow strip bench.  
4 There is a spoil -- a whole mine spoil below it.
- 5 Q. Now, I'll direct the Board's attention to this area  
6 immediately below the proposed well location for EH-115.  
7 It appears to be blank. Does that mean it's level  
8 ground?
- 9 A. No. Due to the fact that the contour lines would be so  
10 close together, they were just omitted on this map. It's  
11 extremely steep.
- 12 Q. Because it would just be a black spot as opposed to --
- 13 A. Yes, they would run together.
- 14 Q. This well location appears to be on a point. Is that a  
15 naturally occurring area? Is it a point on the strip  
16 job?
- 17 A. It's a point on the strip job on a little spur.
- 18 Q. What would the cost be to move the well southeast along  
19 this road or can it be done at all?
- 20 A. That would be exceedingly high because you have -- the  
21 bench itself is only 20 or 25 feet wide and you would  
22 have to cut into approximately another 20 foot high wall  
23 to make it even feasible at all and it would be un-  
24 economical.
- 25 Q. And if this well is not drilled in the location that we

1 have here is it your opinion that the well won't be  
2 drilled at all?  
3 A. That's correct.  
4 Q. If the well is not drilled at all will any of this gas in  
5 this circle designated around the EH-115 be drained?  
6 A. No.  
7 MR. MULLINS: I don't have any other questions of this  
8 witness.  
9 MR. EVANS: The well site itself, how much area do you have on  
10 that point --  
11 THE WITNESS: It's a triangular square area and --  
12 MR. EVANS: A difficult contour strip?  
13 THE WITNESS: Yeah, it is. You might have 80 by 80 by maybe  
14 120.  
15 MR. EVANS: Do you anticipate access problems to this site?  
16 THE WITNESS: No. There are existing roads going up to the  
17 bench. This bench was the Clintwood seam. It was mined  
18 approximately 20 years ago. It's overgrown with brush,  
19 but there is -- we do take bulldozers through it. I  
20 mean, it has a clear path through it.  
21 MR. EVANS: And you don't anticipate any problems with the  
22 access road? I'm assuming if it's 20 foot --  
23 THE WITNESS: The access road comes up from the bottom which  
24 would be the (Inaudible.) No.  
25 MR. MCGLOTHLIN: Mr. Mueller, your location is by a strip

1 bench?

2 THE WITNESS: Yes.

3 MR. MCGLOTHLIN: And the road that goes by that bench, how  
4 wide is that?

5 THE WITNESS: The road itself presently?

6 MR. MCGLOTHLIN: Yes.

7 THE WITNESS: It's just basically a bulldozer path. It's  
8 probably six feet/eight feet wide.

9 MR. MCGLOTHLIN: How wide is the strip bench?

10 THE WITNESS: Approximately 20 feet. 20/25 feet.

11 MR. MCGLOTHLIN: Is the road used for any other purposes?

12 THE WITNESS: No.

13 MR. MCGLOTHLIN: If you would refer to your map there. Right  
14 beside the well location, mine shows a small jeep trail  
15 road through there. Is that a road or is that the strip  
16 bench or --

17 THE WITNESS: No. Where the proposed well is, that's a road.  
18 That's what you're calling the road. This topo map was  
19 in 1982 and this map was drawn up. I mean, the original.

20 MR. MCGLOTHLIN: What elevation is the strip bench?

21 THE WITNESS: Approximately 1,800 feet.

22 MR. MCGLOTHLIN: I guess what I'm asking is is that road on  
23 the strip bench itself?

24 THE WITNESS: Yes, it is on the strip bench itself.

25 MR. MCGLOTHLIN: The strip bench is some 20 some foot in

1 width?

2 THE WITNESS: Uh-huh.

3 MR. MCGLOTHLIN: It seems to me that you could come to the  
4 southeast on that same bench. What's the problem there?

5 THE WITNESS: If you follow that bench along there you have --  
6 it's basically really not wide enough to build a  
7 location. You've got a 20/25 foot high wall and below  
8 that you've got spoil for the first 100 to 120 feet --  
9 just loose spoil and mine rocks. We looked at that and I  
10 looked below it and -- I mean, to excavate a site into  
11 the high wall it would have been --

12 MR. MCGLOTHLIN: You don't have to build a high wall, do you?

13 THE WITNESS: No, but you would have to cut into it. I mean,  
14 you'd have to cut into it to make the width for the  
15 location. You can't hardly set a site up unless you've  
16 got at least 50 feet of width for the rig to fit,  
17 preferably larger, but 50 feet is minimum.

18 MR. EVANS: Is there spoil above this site?

19 THE WITNESS: Above this site, no. Above the site what you  
20 have is rocky outcrops.

21 MR. EVANS: As I look at this, there appears to be a line.  
22 I'm not sure what it is or what it denotes. You've got a  
23 reclaimed strip up on top. There's no spoiled down  
24 slope and no haul fill in that pre-claimed strip?

25 THE WITNESS: No, there's no haul fill in that one.

1 MR. EVANS: I'll show you what I'm looking at and I'm going to  
2 ask you what that is or what that line says. Do you see  
3 this outline?  
4 THE WITNESS: Yes. Those are on the legend. Those designated  
5 as wooded areas.  
6 MR. EVANS: Thank you.  
7 MR. CHAIRMAN: Mr. Mueller, on the location where you now plan  
8 under your proposal to drill the well, are you still  
9 going to have to cut into the high wall?  
10 THE WITNESS: No, we are not.  
11 MR. CHAIRMAN: The bench is wide enough?  
12 THE WITNESS: The bench is wide enough on this point.  
13 MR. KELLY: Mr. Mueller, the situation here where you have the  
14 overlap on the circle for the Columbia 9641 well, is that  
15 a situation where in the overlap area at the current time  
16 there is no royalty being paid?  
17 THE WITNESS: It's quite possible. That well was drilled in  
18 the mid seventies, I believe. The early to mid seventi-  
19 es.  
20 MR. KELLY: So it could be a situation -- I think this would  
21 be something you need to confirm, at least in my opinion.  
22 MR. MULLINS: I think the status and the law at the time was  
23 if it was drilled and permitted at that time it was a 500  
24 foot circle is all the royalty.  
25 MR. KELLY: Because we had one in the previous hearing

1 similar to this.

2 MR. MULLINS: Correct.

3 MR. KELLY: So in that overlap area you're not overlapping on  
4 an area that currently has royalty being paid?

5 THE WITNESS: To the best of my knowledge, no.

6 MR. KELLY: Otherwise your intention here is just to try to  
7 maintain an even spacing between these wells --

8 THE WITNESS: That's correct.

9 MR. KELLY: -- or even for the Berea spacing?

10 THE WITNESS: That's correct.

11 MR. KELLY: And on your lease situation, it's a situation  
12 where you have 100 percent of the unit under lease or --

13 THE WITNESS: No. We don't have 100 percent.

14 MR. KELLY: Are we looking at a forced pooling situation here?

15 THE WITNESS: No. At this time I'm not sure.

16 MR. KELLY: Well, that's not under consideration right now  
17 anyway, but I was just trying to determine what your  
18 lease boundaries were here on your plat.

19 THE WITNESS: We're working on some agreements with Columbia  
20 on this particular unit.

21 MR. MULLINS: Has Columbia objected to the --

22 THE WITNESS: No, they haven't.

23 MR. MCGLOTHLIN: Mr. Mueller, back to the location, what would  
24 be the problem with bringing it on down toward -- into  
25 the hollow to the southeast?

1 THE WITNESS: To the southeast it's extremely steep. I  
2 physically walked down that hollow with the surveyors.  
3 MR. MCGLOTHLIN: You've got a strip bench in that hollow  
4 there. What does it look like?  
5 THE WITNESS: Narrow. I mean, where it meets at the bottom of  
6 the V. Is that what you're referring to?  
7 MR. MCGLOTHLIN: Where it says Clintwood.  
8 THE WITNESS: Yes. It's extremely narrow with small drainage  
9 running right down the middle of it.  
10 MR. KELLY: How much excavation would it take in that area?  
11 THE WITNESS: Probably similar to the same amount. It was  
12 pretty uniform width all through there. In addition to  
13 excavation you would have additional problems with  
14 drainage coming off the reclaimed job up above it. I  
15 believe that's how the drainage is directed.  
16 MR. KELLY: Mr. Mueller, what typically is your location size?  
17 THE WITNESS: They vary. Typical location size, we try to  
18 obtain at least 80 or 100 by 150 to 200. In certain  
19 circumstances you can get by with 50 or 60 by 100/150.  
20 MR. CHAIRMAN: Feet, you're talking about?  
21 THE WITNESS: Feet, yes.  
22 MR. EVANS: So in the area you have proposed here you have a  
23 large enough area for that size location?  
24 THE WITNESS: Yes, we do.  
25 MR. EVANS: If you moved on down in any direction where the

1           bench narrows you're talking about having to excavate at  
2           least half again the existing --

3 THE WITNESS: We would have to excavate into the high wall  
4           just to get material and even then I'm not sure if you  
5           could -- it would hold on the spoil bank.

6 MR. EVANS: So you can build it where you've got proposed for  
7           essentially with minimal disturbance?

8 THE WITNESS: Yes. I mean, very little excavation, very  
9           little.

10 MR. EVANS: Not disturbing the slopes above or below?

11 THE WITNESS: Right. There would not be any excavation into  
12           the high wall.

13 MR. EVANS: Thank you.

14 MR. CHAIRMAN: Other questions?

15 MR. EVANS: I don't know whether it's appropriate to ask it,  
16           but I'll ask it anyway. What formations do you plan to  
17           produce, the Berea?

18 THE WITNESS: Yes. The Berea would be our target formation  
19           with Raven Cliff, Max, and Big Lime, Weir, any production  
20           out of those.

21 MR. EVANS: Is there any mining in this area?

22 THE WITNESS: Not under this particular well. There is mining  
23           nearby in the Eagle seam, the Splash Dam. But to my  
24           knowledge right now there is none directly under this  
25           well, no.

1 MR. EVANS: Any previous mining, are you going to have to go  
2 through a works?  
3 THE WITNESS: I believe there is. I'm not sure if it's  
4 correct. The Norton seam I believe may be mined out  
5 under this area.  
6 MR. EVANS: Has the Hagy been mined? Do you know?  
7 THE WITNESS: I don't know the answer to that right now.  
8 MR. CHAIRMAN: Are you looking at the coal seams that you're  
9 penetrating as part of your process when you drill the  
10 well?  
11 THE WITNESS: As far as production?  
12 MR. CHAIRMAN: As far as if there's active mine there --  
13 THE WITNESS: Yes.  
14 MR. CHAIRMAN: -- or if there's any endangerment to workers?  
15 THE WITNESS: Yes, we are. Most of the mine maps that I  
16 obtained are from Harmon Mining Corporation. We've been  
17 working closely with them.  
18 MR. CHAIRMAN: Do you have anything else, Mr. Mullins?  
19 MR. MULLINS: No, sir.  
20 (Witness stands aside.)  
21 MR. MULLINS: I just move to -- ask the Board to consider our  
22 application.  
23 MR. CHAIRMAN: Is there anyone present that wishes to address  
24 the Board in this application? Anything else any of you  
25 want to say? The record will show there is no one. Any

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further questions, members of the Board.

MR. EVANS: Just one thing. This particular well is going to produce conventional gas, no coalbed methane?

THE WITNESS: Correct.

MR. EVANS: I make a motion that we grant the location exception.

MR. CHAIRMAN: We have a motion to grant the exception.

MR. KELLY: Second.

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

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

1  
2  
3 ITEM III, IV

4 MR. CHAIRMAN: The next item on the agenda is a petition for a  
5 well location exception by Virginia Gas Company for EH-  
6 51. This is docket number VGOB-92/09/15-0270. I would  
7 ask anyone that wishes to address the Board in this  
8 matter to come forward and identify yourself. I had some  
9 questions from those of you -- a couple of you just  
10 asked, "Well, how do we ask our questions?" And as we go  
11 through this hearing and I say, "Is there anyone else  
12 wishing to address the Board in this matter?" That's  
13 when I open the door for you to do that. What we need  
14 you to do, if you have questions is come forward and take  
15 a seat, we will arrange for you to do that, and to  
16 identify yourself and ask whatever question you have.  
17 We'll try to help you through the process if you have  
18 anything.

19 MR. MULLINS: Again, for the record, my name is Tom Mullins.  
20 I'm with the Street law firm and I'm here today represen-  
21 ting Virginia Gas Company in regards to their request for  
22 a well location exception on EH-51. Perhaps since well  
23 EH-55 is also on the docket and the well location we're  
24 seeking exception from is the 55, I would ask the Board  
25 to consolidate really these two applications since they  
both are going to involve each other -- each well.

1 MR. CHAIRMAN: I'll go ahead and call that. Docket number  
2 VGOB-92/09/15-0271. We'll just have to make sure that  
3 you carefully distinguish for the record the testimony on  
4 each individual well.

5 MR. MULLINS: All right. I have two witnesses today. One is  
6 Mr. Al Mueller and the other is Mr. Jim McIntyre. I  
7 would ask that they be sworn.

8 COURT REPORTER: (Swears witnesses.)

9 MR. MULLINS: I would first like to have Mr. McIntyre testify  
10 concerning our applications. The first part of his  
11 testimony will be an overview as to both of these well  
12 locations and how the Forest Service approaches it.

13  
14 JAMES F. MCINTYRE

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

17  
18 DIRECT EXAMINATION

19  
20 BY MR. MULLINS:

21 Q. Sir, if you could, please state your full name?

22 A. James Frederick McIntyre.

23 Q. What do you do for a living, sir?

24 A. I work for the U.S. Forest Service as a supervisory  
25 forester.

- 1 Q. How long have you done that?
- 2 A. Twenty-eight years.
- 3 Q. Have you testified before this Board on a prior occasion?
- 4 A. Yes.
- 5 Q. Are you familiar with the area depicted on the map as EH-
- 6 51 and EH-55?
- 7 A. Yes.
- 8 Q. Sir, how did you become familiar with that?
- 9 A. I've been to all those locations during the staking
- 10 process of the wells and probably a half a dozen times
- 11 after that.
- 12 Q. Does the Forest Service own the property or have the
- 13 right to manage the property? What interest does the
- 14 Forest Service have in areas surrounding EH-55 and EH-51?
- 15 A. We're the surface owner and the mineral owner.
- 16 Q. So the Forest Service has the authority to manage both
- 17 the surface and the mineral estates in regards to this
- 18 property for the United States Government?
- 19 A. That's correct.
- 20 Q. Have you on prior occasions been involved in gas well
- 21 location on Forest Service properties?
- 22 A. Yes.
- 23 Q. What does the Forest Service consider in regards to the
- 24 placement of gas wells on their properties?
- 25 A. The Department of Interior Bureau of Land Management

1 administers the leasing of Federal properties. We have a  
2 memorandum of understanding with that agency that we will  
3 do the document requirements which entails an environmen-  
4 tal impact statement or an environmental assessment for  
5 any activities that relate to the oil and gas explora-  
6 tion. We spend approximately a year and a half studying  
7 this project and working with the company to locate these  
8 wells on what we consider the optimum location.

9 Q. Do the well locations meet all the requirements mandated  
10 by the Government and by your agency insofar as placing  
11 gas wells on Forest Service properties?

12 A. Yes. The locations of these particular wells to a large  
13 extent were dictated by the Forest Service's concern  
14 with the visual impact of this project as seen from the  
15 overlooks of the Breaks Interstate Park. That was our  
16 number one concern for this entire project. After that  
17 we looked at -- things like the water shed were dictated  
18 by law to protect riparian zones and wet lands, farm  
19 lands, and to protect cultural resources which is an  
20 archeological field.

21 Q. Does the Forest Service request that the Board approve  
22 the locations for the well EH-51 and well EH-55 as  
23 presented on the map handed out to the Board?

24 A. Yes.

25 Q. I'd like to ask you some specific questions in regards to

1 the particular wells. First, on well EH-51. This site  
2 has also been approved by the Forest Service, is that  
3 correct?

4 A. Yes.

5 Q. And you're familiar with the fact that it's spaced from  
6 the well EH-52 and the Columbia well 9759 pursuant to the  
7 statutory guideline. That was part of your considera-  
8 tion, is that correct?

9 A. That's correct.

10 Q. There is a question of moving it down here to this area  
11 that may or may not be feasible for these wells. Why  
12 did you not even consider this area?

13 A. Well, when you move that drill site further to the south,  
14 the closer you get to the railroad and the river is just  
15 directly below the railroad line in there. You're coming  
16 down the Russell Fork River. And we floated that with  
17 members of the park commission. That was one of the  
18 concerns. It was during leaf off time, the effects and  
19 impacts that this project would have on tourism and  
20 rafters coming down the rivers. So it was desirable to  
21 screen these drill sites and these road locations from  
22 those folks on the river as well as in the park.

23 Q. Moving the well in this direction, is that what you're  
24 talking about?

25 A. Yes.

- 1 Q. And over here there is a bolder field, is that correct?
- 2 A. That's correct.
- 3 Q. What impact did that have on your decision, placing the
- 4 well here?
- 5 A. Well, any time that you would get into -- that area is
- 6 located directly above a cliff line which shows as your
- 7 1,600 foot contour on this map, that's a big bolder
- 8 field, a rubble field, and some of those rocks in there
- 9 are as large as this building and some get to the size of
- 10 an automobile and probably project out of the ground some
- 11 twenty feet high. To go in there and to do drill site
- 12 construction or road construction we felt would degrade
- 13 that site. Our geologists consider that a significant
- 14 and in the future we may want to do some interpretation
- 15 of that for public recreation.
- 16 Q. Now, there is a road depicted on the map leading up to
- 17 well EH-51. Was that part of your consideration and if
- 18 so, why?
- 19 A. Yes. It appears to be either an old logging or a narrow
- 20 gauge railroad road and that property was logged some
- 21 time around the turn of the century, probably in the
- 22 twenties.
- 23 Q. So, in essence, what you're saying is you can take
- 24 advantage of this pre-existing road without having to cut
- 25 a whole new road?

- 1 A. That's correct.
- 2 Q. It may need some work but it's already -- the disturbance  
3 has already been made?
- 4 A. Yes. That's correct.
- 5 Q. Now, the overlap between these two wells will be approxi-  
6 mately this area right in here. Whose gas is that  
7 that's overlapping?
- 8 A. That's Forest Service -- or U.S. Government.
- 9 Q. The Government's gas is the gas that will be drained by  
10 these two wells in the overlap, correct?
- 11 A. That's correct.
- 12 Q. Now, if I could ask you a few questions about EH-55.  
13 This site was picked and approved by the Forest Service,  
14 is that correct?
- 15 A. That is correct. Originally it was sited to the north  
16 and east. On the map that you gave the Commission it is  
17 hash marked. And that area was considered a wet land by  
18 the Forest Service hydrologist. And the company request-  
19 ed to locate that site to the south and west so we could  
20 avoid a stream crossing there and keep the well out of  
21 that wet area.
- 22 Q. Is it important to avoid stream crossings whenever  
23 possible?
- 24 A. We are concerned with two species. I believe the State  
25 refers to them as pets. They're threatened and en-

1           dangered species or sensitive species. And we had a  
2           green salamander and there was a grast that was involved  
3           in that. They live in that type of a habitat and we  
4           didn't -- the least we can do as far as disturbing the  
5           streams or any wet land in that area, then we're not in  
6           those suitable habitats.

7   Q.    Would this well location as depicted on the map handed  
8           out to the Board effect either one of those species?

9   A.    The survey that was done wasn't really -- we looked at  
10          the impacted area -- the area of the road and the drill  
11          site and we didn't go in there and do a study on that  
12          particular site. We just know that they live and exist  
13          in those type habitats.

14   Q.    What would happen if you moved it even beyond the wet  
15          lands area on up to this area or even over into the park?

16   A.    If we moved above the cliff line, the upper dark line on  
17          your map there, it would --

18   Q.    Just, I guess, for purposes of identification, is this  
19          the boundary line of the Forest Service Property?

20   A.    Yes.

21   Q.    And is this roughly the area of the park -- Breaks  
22          Interstate Park?

23   A.    The area above the green line, yes. Had we sited the  
24          wells on top of that cliff line there it would have been  
25          necessary then to enter the park to construct the roads

1 to get to the sites.

2 Q. So you would actually have had to build the road through  
3 the park to get there?

4 A. That's correct.

5 Q. And I believe you've already testified that as far as the  
6 park there is no visual impact --

7 A. The Forest Service had the landscape architect do  
8 computerized plot projections for those locations and  
9 we've determined that they will not visually impact the  
10 views from the park.

11 Q. Is this well location visible from the Russell Fork  
12 River?

13 A. No, sir.

14 MR. MULLINS: I don't believe I have any more questions of Mr.  
15 McIntyre on either of these wells.

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

17 MR. EVANS: Mr. McIntyre, did you say that the DIS was done or  
18 was not?

19 THE WITNESS: No. We did an environmental assessment report.

20 MR. EVANS: Okay. I understand what that means. Alternative  
21 locations, obviously the Forest Service has -- where  
22 there alternative locations to either of these two wells  
23 considered? Was there another -- this is obviously in  
24 your opinion the best site for these. Were there other  
25 suitable sites that you found that you possibly could

1 use?

2 THE WITNESS: Yes, sir. In fact, we moved several of those  
3 sites two or three different times and it was all done --  
4 the specialists that were involved from the Forest  
5 Service represented engineering, archeology, biologists  
6 and we had a landscape architect and there may have been  
7 -- the other was a soil scientist. These folks all met.  
8 We went out on the ground. We looked at the locations  
9 that the company offered and at that time we walked  
10 throughout the area and selected these locations. And  
11 later we went through a public scoping. We got input  
12 from the Park Commission, from Mr. Mullins, the park  
13 superintendent. And after we listened to that involve-  
14 ment we went back out on the ground and we selected these  
15 locations. So it was probably done over a period of  
16 about six months.

17 MR. EVANS: In other words, these are the optimal site  
18 locations for all concerned?

19 THE WITNESS: There is debate on that at this point from the  
20 Park Service, but as far as the Forest Service is  
21 concerned these are optimal and it's our contention that  
22 they will protect the view shed from the park as well as  
23 allow us to recover money from the gas wells.

24 MR. EVANS: Thank you.

25 MR. MULLINS: Sir, I've handed you a document. Just to clear

1 it up, what is that document? What does that show?

2 THE WITNESS: This is a list of preparers of the environmental  
3 assessment that was done on this particular project.

4 MR. MULLINS: Those are the names of the actual experts who  
5 prepared the reports at the request of the company or the  
6 Forest Service to show the impact that these twelve site  
7 locations would have upon the Forest Service properties,  
8 is that correct?

9 THE WITNESS: That's correct. Doug Ogle is the individual  
10 that did the actual biological work on the ground under  
11 the direction of Skip Greep for the Forest Service. He  
12 was contracted by the company and it was approved by the  
13 Forest Service.

14 MR. CHAIRMAN: Do you have any questions at this point in  
15 time?

16 CARL MULLINS: Yes. My name is Carl Mullins and I'm super-  
17 intendent at Breaks Interstate Park. I'd like to go on  
18 record as being against any and all development on this  
19 tract of land. Some concerns that I have are the EH-56.  
20 Of course, it's not been brought up today, but they're  
21 going to cross this Little Laurel branch creek where the  
22 endangered species is whenever they come back before the  
23 Board wanting an okay on it. But right now one of the  
24 major concerns is the road into 51. On the alternative,  
25 number one, they have it coming off of the existing site

1 52. And I assume there's a good possibility that they'll  
2 be able to drill 51. I don't have as much a problem with  
3 that as I do with the road coming into 51. I would like  
4 to see it come off the existing well, EH-52. Of course,  
5 they could probably give you 50 reasons why they can't  
6 do that. EH-55, when you come to access to Garden Hole  
7 or white water rafting or fishing, as you come down the  
8 road into Garden Hole EH-55, I think, will be seen. And  
9 the road going into it will be seen by the white water  
10 rafters. Is that not correct, Mr. McIntyre?

11 THE WITNESS: I'm sorry. I was talking to Tom.

12 CARL MULLINS: Is it not correct that 55 will be able to be  
13 seen from Garden Hole access road?

14 THE WITNESS: There is a possibility that during leaf off that  
15 you may be able to see a portion of that drill site.  
16 That's correct. As far as leaf on, you'll never see it.

17 CARL MULLINS: What about the road access into it?

18 THE WITNESS: The Forest Service has done it's studies from a  
19 standpoint of the visuals in the park. That was done by  
20 our landscape architect in Roanoke. To sit here and go  
21 through this entire document -- the park has already  
22 appealed to the Forest Service and has lost that appeal  
23 and it was refused to be heard in Washington office. I'm  
24 not prepared to sit here and argue that case. What I  
25 will say is that the Forest Service is satisfied that

1 we've done everything humanly possible in order to reduce  
2 the impacts of this operation on the park. And the park  
3 service had their opportunity and was heard in that  
4 process. The decision's made as far as the Forest  
5 Service is concerned.

6 CARL MULLINS: One other thing that bothers me pretty much is  
7 the width of the road, a 28 foot wide road. Dickenson  
8 and Buchanan County have got roads that are paved, state  
9 routes even though they're secondary roads that are 18  
10 and 20 foot wide. Is there any way we can narrow that  
11 road?

12 THE WITNESS: We feel as though 28 feet is what we said we  
13 would have and that includes clearing limits. We will  
14 also be installing pipeline within those. We feel that  
15 that is a minimum road surface way as well as allow us to  
16 bury a pipeline in there which is what we're going to  
17 require the company to do. And we feel like -- from a  
18 safety standpoint as well as reduce a minimum amount of  
19 opening, we feel that we've satisfied that.

20 MR. CHAIRMAN: Do you have anything else at this time?

21 CARL MULLINS: Well, I just want to thank the Board for  
22 letting me speak and I want to say one more thing. The  
23 revenue coming from this won't match the loss of revenue  
24 if it cuts down on the park visitations for Southwest  
25 Virginia and Eastern Kentucky. Dickenson and Buchanan

1 County and Kentucky will lose a lot of revenue. And I  
2 respectfully request that the EH-55 not be permitted to  
3 be drilled. Thank you, Board.

4 MR. MULLINS: Mr. McIntyre, what color is the completed  
5 machinery at the well location going to be painted, earth  
6 tones?

7 THE WITNESS: Earth tones, yes, sir.

8 MR. MULLINS: So even the well apparatus that's going to be  
9 left there is going to be configured and painted such  
10 that it will reduce, if not make it almost impossible to  
11 see from a distance that apparatus?

12 THE WITNESS: That is correct.

13 CARL MULLINS: I have one other question, if it's okay. Are  
14 you still proposing the EH-56?

15 MR. MULLINS: That's not relevant to this consideration.

16 MR. CHAIRMAN: We can't consider that, sir.

17 CARL MULLINS: Okay.

18 MR. CHAIRMAN: The one you are opposing is EH-55, is that  
19 correct?

20 CARL MULLINS: Yes. That's correct.

21 MR. CHAIRMAN: Not EH-51?

22 CARL MULLINS: I oppose 51. But, for heaven's sakes, if  
23 there's anything I have to give up I'd give up 51. I  
24 definitely wouldn't want to give up 55. The existing  
25 road like they proposed in alternative three, I'd love to

1 see that just done away with. That's destructive to the  
2 Hickory Flats area. They can come off of EH-52, the  
3 existing well. They can come off of that. Virginia Gas  
4 has said so. It's Jefferson National Forest who wants  
5 the big road down in there for future timber and develop-  
6 ment.

7 MR. MULLINS: To clear that up, Mr. McIntyre, at one time it  
8 was, in fact, proposed that you would take the road from  
9 EH-52 to EH-51, is that not correct?

10 THE WITNESS: That's correct.

11 MR. MULLINS: Why was that not done?

12 THE WITNESS: When we did the environmental document for East  
13 Pine Mountain which includes this tract that you have  
14 shown in green, it's one small tract that was considered  
15 in another environmental document for the management of  
16 that area. It goes from the Wise County line over to the  
17 Breaks Interstate Park on the south side of the mountain  
18 and it encompassed approximately 14,000 acres. At the  
19 time we did that our geologist noted that area, requested  
20 it be a special management area, that it is was geologic-  
21 ally significant, that we wanted to interpret that at a  
22 later date for recreational users and we did not want to  
23 construct roads in that particular area. There is a road  
24 coming down into gas well 52 on the map. That's correct,  
25 the road right there. The width of that road in there is

1 some 40 to 60 feet wide. Some places in the curves  
2 because of the steepness of that road it was necessary to  
3 clear a 100 feet of wide Swatha timber and everything in  
4 order to accommodate the curves. That's a very steep  
5 mountain. The grades are over 35 percent. We don't like  
6 to build roads on that type of grade especially when you  
7 can bring it in on a real gentle grade on the old road  
8 that exists going out to the well. That was our logic.  
9 We walked it and looked at it on the ground.

10 MR. MULLINS: How long has the Forest Service been reviewing  
11 this project, 55, 51, and the fact that 69 which we'll  
12 get to later --

13 THE WITNESS: Approximately a year and a half.

14 MR. MULLINS: It's been under study?

15 THE WITNESS: That's correct.

16 (Witness stands aside.)

17 MR. CHAIRMAN: Anything else, Mr. Mullins?

18 MR. MULLINS: I have some testimony from Mr. Mueller.  
19  
20

21 ALLEN WALTER MUELLER

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

1  
2  
3 DIRECT EXAMINATION

4 BY MR. MULLINS:

5 Q. Mr. Mueller, would you please state your name?

6 A. Allen Walter Mueller.

7 Q. And you testified in the previous hearing concerning your  
8 qualifications and background, is that correct?

9 A. Yes, I have.

10 MR. MULLINS: I'd like to incorporate that information.

11 MR. CHAIRMAN: That's fine. You're just reminded you remain  
12 under oath.

13 Q. (Mr. Mullins continues.) You've heard all the testimony  
14 from Mr. McIntyre. From your involvement in it, is his  
15 testimony correct from your standpoint?

16 A. Yes, it is.

17 Q. And you are also familiar with site locations, EH-51 and  
18 EH-55, is that correct?

19 A. Yes, I am.

20 Q. How did you come to be familiar with those site loca-  
21 tions?

22 A. By physically being on the site, when we staked the site.  
23 Even before we had surveyors stake the site I looked at  
24 all of the many different areas of that whole tract of  
25 land trying to find suitable areas where we could put a  
well site.

1 Q. And the well site locations have, in fact, be moved more  
2 than once for each of these two wells at the request of  
3 the Forest Service?  
4 A. 55 has. 51, it was not but 55 has.  
5 Q. But the road to 55 was redesigned?  
6 A. Yes.  
7 Q. On behalf of Virginia Gas are you requesting that the  
8 Board grant a spacing variance between these two wells?  
9 A. Yes, I am.  
10 MR. MULLINS: I don't have any other evidence to present at  
11 this time.  
12 MR. CHAIRMAN: Questions, members of the Board?  
13 MR. KELLY: I'd like to follow up just briefly on this road  
14 situation. Can you clarify again, Mr. McIntyre or  
15 whoever, are we talking about an old existing road?  
16 MR. MULLINS: It's an old logging road that was cut back, I  
17 think, into that area to log timber back in the -- and  
18 don't hold me to this -- nineteen teens or the nineteen  
19 twenties.  
20 MR. KELLY: But there's an existing road there then that will  
21 be upgraded for this?  
22 THE WITNESS: That's correct.  
23 MR. KELLY: And that continues all the way into EH-55?  
24 THE WITNESS: No, sir.  
25 MR. KELLY: Or just into 517

1 THE WITNESS: Yeah. It's 51 and then it follows across that  
2 drainage and right where you see it turn north is where  
3 it -- it then leaves that old road.

4 MR. KELLY: So from there up would be new construction?

5 THE WITNESS: Yes. We're probably looking at -- I'm not sure  
6 of the scale on this map. You might help me out. But it  
7 looks like it's probably around 3,000 feet of new  
8 construction in there.

9 MR. MULLINS: Is this the area you're talking about, from here  
10 to here?

11 THE WITNESS: Yes.

12 MR. KELLY: But essentially the old road will be upgraded to  
13 Forest Service standards and a new road will be con-  
14 structed at the site?

15 THE WITNESS: That's correct. We followed it as closely as we  
16 could. There were some places where we relocates it in  
17 order to avoid having to shoot through rock or where it  
18 was steep we put it on a little better grade. But we  
19 used probably 90 percent of it.

20 MR. MULLINS: Apparently we're outside of the spacing distance  
21 to other wells in the area, the Columbia well --

22 THE WITNESS: That's correct.

23 MR. CHAIRMAN: Have you applied to the Division of Gas and Oil  
24 for the permit for this site?

25 THE WITNESS: Yes, I have.

1 MR. CHAIRMAN: Does that application take into consideration  
2 the visual problems that Mr. Carl Mullins brought up?  
3 Has the Forest Service to the maximum extent accommodated  
4 that in the way of leaving timber in the area and minimal  
5 disturbance?

6 THE WITNESS: Yes, it does.

7 MR. McINTYRE: The permit that the Forest Service will  
8 authorize -- in fact, the company already has those  
9 permits in hand. We've gone so far as to even use dark  
10 material to cover the lime stone surface on the road. We  
11 told them that they could use either coal fines in order  
12 to reduce that visual impact of the white gravel. And we  
13 will make that determination after the roads are develop-  
14 ed in there and we take a look at it from the different  
15 view points. But we feel that very little of this  
16 project will be seen. The major overlooks in the park --  
17 they will not see these. We're talking about an access  
18 road down to a raft launch ramp where you may or may not  
19 see a few feet of road. I also might point out that  
20 there is a railroad -- the Clinchfield railroad -- that  
21 runs down there along that river and unless there's a  
22 train running on that track you can't see it from the  
23 river. And if you go up to the park it's difficult to  
24 see unless you're looking right over down onto the  
25 tracks.

1 MR. McGLOTHLIN: Mr. McIntyre, going back to the roads on EH-  
2 51 and 55 where it turns north to an existing road.  
3 First of all, what's the width of that existing road bed  
4 now?

5 MR. McINTYRE: It's probably on an average around 10 to 12  
6 feet.

7 MR. McGLOTHLIN: What has been the Forest Service's concern  
8 about the slope -- the high wall -- the bench side of the  
9 road?

10 MR. McINTYRE: Of course, we're going to re-vegetate those  
11 slopes. Basically it's relatively level. We'll have  
12 very little cutting in there. It's already on a bench.  
13 That's why we preferred to use that rather than cut a new  
14 road down south of that. Because then we would -- it's  
15 steeper ground there and then we would be having to  
16 contend with benches.

17 MR. McGLOTHLIN: This might be a question for Mr. Mueller.  
18 Where the existing road ends and you're building the new  
19 access to the EH-55, what will be the grade of that road?

20 THE WITNESS: It's been surveyed and it's in various intervals  
21 and various grades. We were mandated to keep below 10  
22 percent when possible. If we exceeded 10 percent grade  
23 it would only be on sharp stretches. Most of that road  
24 grade is between 5 to 10 percent. With some sharp  
25 stretches it probably will be greater.

1 MR. MCGLOTHLIN: If we look at a straight line -- you've  
2 supplied us with a straight line here. Why can't we  
3 build a road along that straight line rather than --

4 THE WITNESS: There is also another cliff line that runs  
5 around the 1,400 feet contour there. We've found there  
6 is a natural break in that cliff line where the road  
7 passes through it and goes up above it. It's a cliff  
8 line with hugh boulders.

9 MR. MCGLOTHLIN: What about running up Laurel Branch, you get  
10 above the cliff there, what's the problem?

11 MR. MULLINS: Mr. McIntyre, what's the consideration the Park  
12 Service has in locating roads near natural drainage?

13 MR. MCINTYRE: Our forest plan will not allow us to build  
14 roads within drainages or within 150 feet of a drain to  
15 parallel a drain. Another problem that you would have,  
16 if you were try and go in a straight line is grade on the  
17 road. Our requirements are to keep the road under a 10  
18 percent grade with the exception we will allow up to 17  
19 percent grade if it is not sustained for over 300 to 400  
20 foot distance. The area that you're looking at on the  
21 map, you just have to really go and almost see it on the  
22 ground because the road construction is almost prohibited  
23 in a lot of the area because of boulders and the rock and  
24 the cliff lines. That was another good thing about this  
25 project. It's already been impacted. The area had been

1 pretty well grew back and had healed itself over time.  
2 We do have a road in there on a really good grade and we  
3 don't have a lot of cutting to do on that grade.  
4 MR. MCGLOTHLIN: What is your maximum percentage of grade on  
5 this road?  
6 THE WITNESS: From the 51 to the 55?  
7 MR. MCGLOTHLIN: Yes, sir.  
8 THE WITNESS: I don't recall exactly what it is, but it's  
9 probably in the range of 15 to 17 percent.  
10 MR. MCGLOTHLIN: For less than 300 foot?  
11 THE WITNESS: Yes.  
12 MR. MCGLOTHLIN: Where will that take place?  
13 THE WITNESS: Probably at the area where it goes through the  
14 cliff line at the 1,400 foot contour.  
15 MR. McINTYRE: Where you see 2,300 on the map and the road  
16 takes a sharp turn?  
17 MR. MCGLOTHLIN: Yes, sir.  
18 MR. McINTYRE: That will be a raising grade right there.  
19 Anywhere you have a curve you'll have a raising grade.  
20 MR. MCGLOTHLIN: That natural break in the cliff line, how  
21 wide is it?  
22 THE WITNESS: It's not very wide. I mean, it's a jumbled mass  
23 of boulders where you would have to take the road in  
24 between boulders. I mean, we're talking boulders --  
25 MR. MCGLOTHLIN: Are we talking about widening it at that

1 point to 28 foot or lessening it or --

2 THE WITNESS: When we say 28 foot, that is a clearing limit.  
3 Your actual road bed won't be 28 feet. There are actual  
4 clearing limits. We're limited to a clearing limit of  
5 28 feet which includes your road and you ditch, ditch  
6 lines for drainage, or anything along the side of the  
7 road.

8 MR. MCGLOTHLIN: What is the width of the cliff?

9 THE WITNESS: The actual width of the road will probably be 18  
10 to 20 feet. Again, it would depend on whether your road  
11 is straight or whether you're in a curve.

12 MR. MCGLOTHLIN: If you can bring equipment in at 20 foot why  
13 do you need a 28 foot road?

14 MR. MCINTYRE: The clearing limits that we marked we use a  
15 typical road. Probably the lowest standard road that  
16 we're authorized in our forest plan is a 14 foot gravel  
17 surface. And then allowing six feet either side for  
18 ditch and slope would add another twelve feet to it. So  
19 that gives you 26 feet. 28 feet we feel is narrow. If  
20 we don't need 28 feet there's nothing in our permit that  
21 says the company can't build a 10 foot wide road in  
22 there. But we're dealing with large equipment, heavy  
23 equipment, tractor trailers. They're going to need that.  
24 They need a certain amount of distance for a turning  
25 radius. We want the road to be constructed in such a

1 manner that we have sufficient drainage that we don't  
2 have erosion problems. We're looking at this road as  
3 being in there for the next thirty years and it's going  
4 to be a maintenance problem and we can reduce that by the  
5 road standards that we set and we feel that we have a  
6 minimum standard road in there right now.

7 MR. CHAIRMAN: Other questions?

8 (Witness stands aside.)

9 MR. KELLY: It just seems to me that we've pretty well  
10 established that these appear to be the optimal locations  
11 topographically as far as the closer distances between  
12 these two locations. That doesn't appear to be so much  
13 of an issue to me with the roads. But it appears the  
14 topographic issues and the concerns of the Forest Service  
15 and so forth have been pretty well set forth here and  
16 established. The concern I have and I'm not really sure  
17 how it should be addressed or if it's even appropriate in  
18 this particular situation, but you've got a situation  
19 where for some reason at this time we aren't showing the  
20 26/40 circles around the wells -- gaps between the 26/40  
21 circles around these other wells outside the property.  
22 This has come up before and will again, I'm sure, until  
23 something's done to resolve it, if it can be resolved.  
24 As far as the correlative rights issues, on the south  
25 here we've got wells that were drilled back when we were

1 dealing with 500 foot circle which leaves even a greater  
2 gap between the 26/40 circle around these wells and the  
3 existing wells. We may have reached an optimum location  
4 topographically and visually and so forth, but I'm not  
5 sure how you deal with this from a correlative rights  
6 issue standpoint and if, in fact, you can deal with it  
7 in this particular application. But it seems that when  
8 you've got an area in here and without knowing how the  
9 royalty is being paid on these Columbia wells to the  
10 south here or -- obviously on the north you've got the  
11 Breaks Park which will fall within 26/40 of these wells  
12 and that will be another issue from the forced pooling  
13 standpoint.

14 MR. MULLINS: I don't believe that Breaks Interstate Park owns  
15 the gas.

16 MR. KELLY: And I don't know that. I'm just speculating at  
17 this point that we're looking at an issue that may or may  
18 not be able to be addressed with this particular applica-  
19 tion, but it just seems that it further creates a  
20 situation where you have gaps and areas where no royalty  
21 is being paid and potentially by drilling these wells  
22 here or anywhere else on the tract, for that matter -- or  
23 many other places on the tract you'll still have these  
24 situations. It seems like an issue that needs to be  
25 addressed at some point. And just maybe I'll ask you at

1 this point what you have considered or if you have  
2 considered these issues in the placement of these wells  
3 and --

4 MR. MULLINS: The issues that were considered in the placement  
5 of the wells were the existing statutory requirements for  
6 locations -- the spacing guidelines contained in the  
7 Code, the 26/40. If we moved it down to within whatever  
8 26/40 and 531/40 of the Columbia well, then there would  
9 be areas above there that would not be drained and  
10 probably could not be drained. Since it's so close to  
11 the park the well may not be located anywhere but in the  
12 park for an area northeast of the 55 well. You could  
13 drop the 55 well down maybe a little bit, get it even  
14 closer to where the 51 is now, but then you might be  
15 running into problems with the other -- Columbia well  
16 9760 and we'd have to be adhering another variance. So  
17 under the existing statutory guidelines, without some  
18 amendment to those guidelines, we consider what the Code  
19 requires which is 26/40 and only come in here when  
20 necessary for the topographical reasons or like we're  
21 here today for the Forest Service mandated locations, in  
22 essence. Again, I guess getting back to 55 and 51, the  
23 overlap area is United States gas. And the 500 foot  
24 area, while not shown on this area around Columbia well  
25 9759 -- if you take 1340 the area not being drained is

1 United States gas or partially United States gas. So  
2 they're not in here objecting. They're in here request-  
3 ing and have asked that these locations be approved as  
4 being the optimal locations on this tract for all the  
5 reasons that we have talked about. As far as how to deal  
6 with the problem in the future, I don't know. I don't  
7 have any proposal for the Board at this time.

8 MR. KELLY: Well, I guess my point was have you considered --  
9 was this an issue that you considered in the placement of  
10 these wells as far as trying to minimize the area --

11 MR. MULLINS: Not drained, not paid for.

12 MR. KELLY: - not drained or where royalties aren't paid. And  
13 obviously, these other issues are statutory issues that  
14 would have to be addressed otherwise, I suppose.

15 MR. MULLINS: I think we tried to stay within the parameters  
16 of the Code -- guidelines whenever possible and have  
17 only come when we couldn't do that for some other reason.  
18 And that certainly had an impact on why we moved the 51  
19 up to where it is, to get it away from EH-52, to get it  
20 away from Columbia 9759, and to get it away from the  
21 Columbia 9760. That was part, aside from all the other  
22 things we've talked about, other reasons why it was put  
23 here as opposed to moving it down south.

24 MR. KELLY: Thank you.

25 MR. CHAIRMAN: Is there anyone else who wishes to address the

1 Board in this matter? The record will show that there  
2 are none. Do you have anything to add, Mr. Mullins?

3 CARL MULLINS: Well, Breaks Park does own some gas rights, but  
4 I'm not sure exactly. But with regards to the many  
5 pieces of land and property I couldn't honestly say how  
6 much gas rights we own that close to them. We do own  
7 some that they would cover.

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

9 MR. MULLINS: Just for the record, the Steinsmann Development  
10 Company owns the gas on that portion of the Breaks Park.

11 MR. CHAIRMAN: Do you have anything further, Mr. Mullins?

12 MR. MULLINS: No, sir.

13 MR. CHAIRMAN: What's your pleasure?

14 MR. EVANS: I make a motion that we approve the location  
15 exceptions.

16 MR. CHAIRMAN: We have a motion to approve the location  
17 exceptions as presented. (Pause.)

18 MR. EVANS: Well, I can certainly withdraw the motion.

19 MR. CHAIRMAN: Okay. The motion is withdrawn. Any other  
20 motion?

21 MR. MCGLOTHLIN: Mr. Chairman, I move that we deny the  
22 location exception as presented.

23 MR. CHAIRMAN: We have a motion to deny the location  
24 exceptions.

25 MR. MCGLOTHLIN: Well, Mr. Chairman, I'd like to withdraw that

1 and move that or make a comment that if Edwards & Harding  
2 would like to come back with a different proposal I move  
3 we continue this until such time they do that.

4 MR. MULLINS: Can I address that, sir?

5 MR. CHAIRMAN: Sure.

6 MR. MULLINS: Mr. McIntyre, how long has the process been to  
7 get these site locations as far as the U.S. Forest  
8 Service is concerned? How long have you been working on  
9 this?

10 MR. McINTYRE: Approximately a year and a half. The only  
11 thing that I would like to submit along those lines are  
12 is if you go back to the required spacing that you would  
13 not be visually sensitive to the park, that you would  
14 really have a visual impact on the park. The locations  
15 of those wells and those roads would then be heavily  
16 impacted.

17 MR. CHAIRMAN: So you're saying that strict compliance with  
18 the law with the spacing would be more harm visually to  
19 the park?

20 MR. McINTYRE: That's correct.

21 MR. MULLINS: In essence, we could move the well to the  
22 location up here and just bulldoze the road through the  
23 park, is that correct?

24 MR. McINTYRE: That's correct.

25 MR. MULLINS: And then we could bring that road through and

1 doze out a site right on the park if we get the lease  
2 agreement from the Steinmann or on the border of the park  
3 where we have a Forest Service agreement, is that  
4 correct?

5 MR. McINTYRE: That's correct.

6 MR. MULLINS: That would have a huge impact on both the park  
7 and the Forest Service property, is that correct?

8 MR. McINTYRE: That's correct.

9 MR. MULLINS: And the present sites seek to minimize that  
10 impact, is that also correct?

11 MR. McINTYRE: That's correct.

12 MR. MULLINS: At this time I would like to again move the  
13 Board to consider our applications and request that the  
14 variance be approved.

15 MR. EVANS: Mr. Chairman, I'll again make a motion that we  
16 grant the variances as requested by Virginia Gas.

17 MR. CHAIRMAN: We have a motion to approve the applications.

18 MR. KELLY: I will second, Mr. Chairman. But I would like to  
19 -- I'm not sure it's even appropriate to amend the  
20 motion or at least to make a comment.

21 MR. CHAIRMAN: I believe it's appropriate to make a comment.

22 MR. KELLY: It appears we're in a situation here where all  
23 parties are operating under the limitations of the  
24 statutes and it's not a situation that can be dealt with  
25 in the current forum or in the application as it's

1 presented. But I think that it would be appropriate  
2 when situations like this do develop in the future, and  
3 they will until other things are done, to just be mindful  
4 of those areas in between locations and try to make the  
5 maximum effort possible to include un-drained or areas  
6 that are within these areas between circles as much as  
7 possible so that the maximum royalty can be paid until  
8 some other remedy is established.

9 MR. CHAIRMAN: You're suggesting that entire field it would  
10 have been better to have had a map of where the current  
11 future wells would be to maximize both the production and  
12 respecting correlative rights?

13 MR. KELLY: That could be one means, yes, sir.

14 MR. CHAIRMAN: We have a motion and a second. Any further  
15 comment?

16 MR. MCGLOTHLIN: Mr. Chairman, I don't have a problem with  
17 EH-51 but my problem lies with EH-55.

18 MR. CHAIRMAN: We'll take them one at a time. You did make a  
19 motion for both applications, is that correct?

20 MR. EVANS: Yes. I did.

21 MR. CHAIRMAN: For the motion on the well EH-51, docket number  
22 VGOB-92/09/15-0270, we have a motion and a second for  
23 approval. All in favor signify by saying yes. (ALL  
24 AFFIRM.) Opposed say no. (NONE.) It's unanimous.

25 MR. EVANS: Mr. Chairman, one quick question. If EH-55 is

1 denied there is no location exception request for EH-51.

2 They are --

3 MR. MULLINS: That is correct. We could have put in the 51  
4 without asking for a location exception. We brought this  
5 before the Board so the Board could be informed of the  
6 whole situation without trying really to circumvent  
7 getting around the process. We could have done it that  
8 way, but we presented both wells to the Board so you  
9 could have the full information and the full opportunity.

10 MR. CHAIRMAN: Right. The real location exception was 55?

11 MR. MULLINS: Correct.

12 MR. CHAIRMAN: Okay. That's unanimous. On the next, EH-55,  
13 docket number VGOB-92/09/15-0271 I have a motion to  
14 approve and a second. All in favor signify by saying  
15 yes. (SOME AFFIRM.) Opposed say no. (ONE DENIES.) One  
16 no. The motion is approved.

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1 ITEM V

2  
3 MR. CHAIRMAN: The next item on the agenda is a petition for a  
4 well location exception by Virginia Gas Company for EH-  
5 69. This is docket number VGOB-92/09/15-0272.

6 MR. MULLINS: Again, just for record purposes, my name is Tom  
7 Mullins with the Street law firm. I'm here today  
8 representing Virginia Gas Company on well location  
9 exception for EH-69. The witnesses I'll be presenting  
10 today will be Mr. Jim McIntyre and Mr. Al Mueller. They  
11 have already been sworn. The location exception is from  
12 current well EH-52. If I could, I'd first like to have  
13 Mr. McIntyre testify.

14 MR. CHAIRMAN: Mr. McIntyre, you're just reminded that you're  
15 under oath.

16  
17 JAMES MCINTYRE

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

20  
21 DIRECT EXAMINATION

22  
23 BY MR. MULLINS:

24 Q. Sir, you've just testified previously in regards to wells  
25 EH-51 and EH-55, is that correct?

1 A. Yes.

2 MR. MULLINS: To shorten this up I'd just ask the Board to  
3 incorporate that information into this hearing as far as  
4 his background, his job.

5 MR. CHAIRMAN: That's fine. We'll stipulated that.

6 Q. (Mr. Mullins continues.) Sir, we've had extensive  
7 testimony on the wells EH-51 and EH-55 concerning the  
8 studies and all the processes that were involved in  
9 getting those site locations approved through the Forest  
10 Service process and the Bureau of Land Management  
11 process. Is that correct?

12 A. Yes.

13 Q. Was the same considerations had for well EH-69?

14 A. That's correct.

15 Q. You had the same type of studies and the same type of  
16 time period of review. In essence, what I'm asking you,  
17 was this seen as one big project by the Forest Service or  
18 individual wells as we're taking them here today?

19 A. We looked at it as one project.

20 Q. Are you familiar with the location around EH-69?

21 A. Yes.

22 Q. Has the Forest Service reviewed this well location and  
23 approved it's location as being the optimal site for the  
24 well in this area?

25 A. We have.

- 1 Q. What were the considerations that the Forest Service had  
2 considering this well location for EH-59?
- 3 A. We considered the visual as well as the wildlife,  
4 biology, archeology, the same as we did with 51 and 55.
- 5 Q. The overlap area on this well with well EH-52 will be  
6 roughly this area here. Is that United States of  
7 America's gas?
- 8 A. Yes.
- 9 Q. Do you all have any objection to this variance request?
- 10 A. No.
- 11 Q. In fact, are you requesting this site location?
- 12 A. Yes, sir.
- 13 MR. MULLINS: I would like to incorporate some of the study  
14 material, the documentary evidence of the people who  
15 performed the study into this record also. If necessary,  
16 I will get copies. I didn't bring them today but I will  
17 get them --
- 18 MR. CHAIRMAN: Well, we'll need copies of those as exhibits if  
19 you -- anything you want to incorporate.
- 20 Q. (Mr. Mullins continues.) I don't believe I'm going to go  
21 into any more detail except to ask you, this road coming  
22 into the park here is already a pre-existing road  
23 servicing well EH-52, is that correct?
- 24 A. That's correct.
- 25 Q. And you're taking a -- I guess an off shoot of that road

1 to the site location of EH-69?

2 A. That will be new construction, yes.

3 Q. Now, does the road have to meet the same requirements  
4 that we talked about on the other road for EH-55 as far  
5 as the grade requirements, as far as the drainage  
6 requirements, as far as the surfacing requirements, and  
7 as far as even going to the extent of coloring the gravel  
8 if necessary to minimize the impact of the area?

9 A. That's correct.

10 MR. MULLINS: I don't believe I have any other questions right  
11 now of Mr. McIntyre.

12 MR. CHAIRMAN: Mr. Mullins, before you leave Mr. McIntyre, I'm  
13 going to withdraw my offer to submit exhibits later and  
14 just say that because of the opportunity for cross-  
15 examination that I need you to go ahead and put on record  
16 anything that you want on record today.

17 MR. MULLINS: All right, sir. As far as on record, I don't  
18 have ten copies. I have multiple copies of a list of  
19 preparers which is the identical document submitted in  
20 wells EH-51 and EH-55. Those are the persons who  
21 performed the studies for the environmental impact, the  
22 wildlife biologists, hydrologists, the engineer.

23 MR. CHAIRMAN: If it's the same list it's not necessary to  
24 have additional copies. You may stipulate that it is, in  
25 fact, the same. But to the extent that you were offering

1 any specifics as to what they said --

2 MR. MULLINS: No, sir. I guess with that in mind --

3 Q. (Mr. Mullins continues.) You've reviewed the reports  
4 prepared by each one of these individuals, is that  
5 correct?

6 A. Yes.

7 Q. And the site EH-69 according to the reports of the  
8 resource forester, the geologist, the landscape archi-  
9 tect, the soil scientist, the hydrologist, the wildlife  
10 biologist, the archeologist and engineer all confirm that  
11 this is a good site location for EH-69?

12 A. That's correct.

13 Q. Was it a consideration also park boundary to the Breaks  
14 Interstate Park? You didn't want to go into the park?

15 A. No. That's correct.

16 Q. Is that for the reason as already stated by Mr. Mullins  
17 earlier, that they are against any and all development in  
18 the area?

19 A. That is correct.

20 MR. MULLINS: I don't believe I have any other information  
21 from Mr. McIntyre at this time.

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

23 MR. KELLY: I guess the main question I would have is is EH-69  
24 even a feasible location based on the proximity of the  
25 lease boundary as well as the spacing distance from EH-

1 52. I looked at the 1,320 foot radius circle around EH-  
2 52. It's obviously not shown here, but it would appear  
3 to me that there's a little area that would fall outside  
4 of that circle remaining on the lease to the north  
5 circle. What were your considerations when the location  
6 was spotted in this particular area as far as spacing,  
7 drainage, correlative rights, etcetera?

8 MR. MULLINS: I'm not sure that I fully understand the  
9 question.

10 MR. KELLY: Well, you have circled -- you have a 13/20 radius  
11 around EH-52.

12 MR. MULLINS: Yes, sir.

13 MR. KELLY: You come into this area here. You've got another  
14 one over here. So it just appears you would have very  
15 little area here within your lease boundary that you're  
16 attempting to drain with that well. Is that a feasible  
17 location on that basis? I don't know without the circles  
18 there. It's obvious you can't tell exactly what the area  
19 would be.

20 MR. MULLINS: Maybe Mr. Mueller can address that in his  
21 testimony.

22 (Witness stands aside.)

23 MR. MUELLER: To answer your question, we feel it will be,  
24 yes. In the geological end of it, the EH-69 we believe  
25 will probably produce also from a different pool than the

1 EH-52. The EH-52, primarily production will be from the  
2 Berea and the EH-69 will be primarily, we feel, from the  
3 Big Lime formation.

4 MR. MULLINS: That doesn't mean that you're not seeking to  
5 produce from all those productions -

6 MR. MUELLER: That's correct.

7 MR. MULLINS: -- but the information you have is that the  
8 producers will be those different strata?

9 MR. MUELLER: That is correct.

10 MR. EVANS: How much variability are we talking about here  
11 between 51, 52, 55, 69 and even 54 over here? Are the  
12 pools that much different? Are the characteristics that  
13 much different in the Berea, the Big Lime, Raven Cliff,  
14 whatever you're going to produce from, as to be that  
15 markedly different and if so, why?

16 MR. MUELLER: Yes.

17 MR. MULLINS: Maybe we can address that if I could ask him a  
18 few questions. This area is highly faulted, is that  
19 correct?

20 MR. MUELLER: That's correct.

21 MR. MULLINS: What does that mean when an area is highly  
22 faulted?

23 MR. MUELLER: What you have in the sub-surface here is a  
24 series of faults which are coming -- an up dip and they  
25 actually expose themselves on the Kentucky side of the

1 mountain. You've got several major faults on Pine  
2 Mountain block that ramp up. What you have is -- and you  
3 may have a whole different set of circumstances as off  
4 set well. You may have repeated sections of -- say for  
5 instance, Big Lime formation at one well where your next  
6 well over you won't have any. Just because where it's  
7 been -- the whole block's been compressed and rotated.  
8 So to answer to your question the answer is yes, in this  
9 area.

10 MR. MULLINS: Was that also one of the considerations in the  
11 site location, was the tremendous amount of faulting in  
12 the area, the geologic structure?

13 MR. MUELLER: Yes. That's correct.

14 MR. EVANS: Let me ask you a question. Would this be similar  
15 to taking a deck of cards and shoving them up on an  
16 angle?

17 MR. MUELLER: Yes. You center the -- compressment, yes.

18 MR. EVANS: Okay. In that case I understand what you're  
19 talking about.

20 MR. MULLINS: In essence, the strata have been -- the strata  
21 here, they've actually been cut in half and part of it  
22 moved up

23 MR. MUELLER: You've got different layers of strata thrust on  
24 top of one another and then piled up, so to speak.

25 MR. MULLINS: In fact, one of the producing areas can be cut

1 off of one area but be present in another area?

2 MR. MUELLER: That's correct.

3 MR. MCGLOTHLIN: Mr. Mullins, are you prepared to back up that  
4 argument with physical evidence?

5 MR. MULLINS: Well, we have testimony from Mr. Mueller. Do  
6 you mean core samples or -- I don't know that I under-  
7 stand the question.

8 MR. MCGLOTHLIN: Geological survey maps of the area --

9 MR. MULLINS: I don't know that there's actually been any  
10 geological survey maps of this area. This is based on  
11 drilling experience in the field. Mr. Mueller has  
12 experience in drilling in this area around the 54 well  
13 and the 52 well and the other wells in the area based  
14 upon the information that we have on hand.

15 MR. MCGLOTHLIN: On EH-52 and 54, the existing wells there,  
16 what was the target formation?

17 MR. MUELLER: The target formation of EH-54 was the Berea.  
18 However, the well itself never penetrated the Berea. It  
19 penetrated through repeated sections of Big Lime forma-  
20 tion and the depth of the well was terminated before it  
21 reached the Berea. If it's even there.

22 MR. MCGLOTHLIN: 54 was --

23 MR. MUELLER: 54 is production primarily 100 percent from the  
24 Big Lime formation.

25 MR. MCGLOTHLIN: You're saying 52 and 54 both get their

1 production from the Big Lime basically?

2 MR. MUELLER: No. I'm sorry if I mislead you. No. The 52 is  
3 Berea and the 54 is Big Lime.

4 MR. MCGLOTHLIN: Did 52 penetrate the Big Lime?

5 MR. MUELLER: Yes, it did.

6 MR. MCGLOTHLIN: Was it fracked?

7 MR. MUELLER: Logs show there was no gas and there was no gas  
8 natural. It was not fractured.

9 MR. KELLY: I'd just like to follow up again with my question  
10 a little earlier on this. It appears to me more and more  
11 that we're placing too much emphasis on topographic  
12 issues and not enough emphasis on the correlative rights  
13 issue. And --

14 MR. MULLINS: As far as the correlative rights on this well,  
15 if I could address that, people being affected are the  
16 Government's gas. The United States of America's gas.  
17 This is the overlap area. They're in here asking for  
18 this location. As far as the protection of the cor-  
19 relative rights, maybe if they came in and objected to  
20 this overlap area that would be a consideration for the  
21 Board. Where the Forest Service who has the authority  
22 to manage both the surface and the minerals come in and  
23 ask for and agree to both this location and is asking for  
24 this location. I think the correlative rights issue has  
25 been protected by the Government through all the studies

1 and requirements that they have and they used all the  
2 standards.

3 MR. KELLY: I guess my point is what about the correlative  
4 rights on the other side of these boundaries?

5 MR. MULLINS: This has been subleased to Equitable -- farmed  
6 out to Equitable is my understanding by the Steinmann  
7 Development Company. I'm sure Equitable, like every  
8 other gas company has their disposal of all the legal  
9 rights and remedies, would be jumping up and down if they  
10 had a problem with it. But, in fact, as far as the  
11 location exception, the exception we're seeking is from  
12 well EH-52. As far as the rights up here, it's my  
13 position that those really aren't relevant to this  
14 hearing because this hearing is dealing with the location  
15 exception of EH-52 and EH-69.

16 MR. KELLY: But the question is -- or the point here to me is  
17 unless you can get this exception you wouldn't have room  
18 to put this location on this property.

19 MR. MULLINS: If you can't get this location then you're in  
20 the Park Service's property and again, we'd have to  
21 bulldoze a road through the park. We'd have to prepare a  
22 site in the park. The Park's made it's position very  
23 clear and they're opposed to any and all development, a  
24 total waste of the gas and non-recovery of the gas and  
25 perpetuity.

1 MR. KELLY: So the ability or the lack of the ability to put a  
2 location on the park --  
3 MR. MULLINS: Is dictated by the park.  
4 MR. KELLY: -- is a consideration here?  
5 MR. MULLINS: Correct.  
6 MR. KELLY: Well, let me ask you this. Why was not -- I'll  
7 make the assumption that one of the reasons the 69 was  
8 not placed farther west was that you would have had to of  
9 gotten an exception from EH-54 also?  
10 MR. MULLINS: That's correct.  
11 MR. KELLY: At the same time it would appear to me that if you  
12 moved it west it would at least made a better effort to  
13 maximize the drainage area that was within your own  
14 lease and that, to me, would seem to be a proper con-  
15 sideration. Is there sore reason, topographically or  
16 from the standpoint of the Forest Service, that that  
17 couldn't be done?  
18 MR. MULLINS: Well, I guess primarily first is the statutory  
19 guideline. We try to keep every location that we can  
20 within the statutory guidelines of 26/40. In as far as  
21 the surface locations, we can go into that and that was  
22 what I was going to get Mr. Mueller to testify to when I  
23 presented that evidence.  
24 MR. KELLY: Well, I didn't mean to jump ahead. But it just  
25 appears that the road comes up and you move that location

1 on a line back to the west you'll come real close to  
2 where that road comes up and at least it would appear to  
3 come closer to maximizing the amount of your own lease  
4 within the drainage area of the well -- spacing unit.

5 MR. MULLINS: If I understand then, you're talking about a  
6 location approximately right here, right?

7 MR. KELLY: I'm sorry. I missed that.

8 MR. MULLINS: You're talking about a location approximately in  
9 this area?

10 MR. KELLY: Right, to maximize the amount of your own lease  
11 within the spacing.

12 MR. MULLINS: And I'll have Mr. Mueller testify to that. But  
13 the reason that was not done was because of trying to  
14 keep the 26/40 distance away from that well.

15 MR. KELLY: Well, I assumed that. But at the same time if you  
16 get an exception from one you can get an exception from  
17 another -- the same reason.

18 MR. MULLINS: And, I guess, if the Forest Service approved  
19 that location then we'd have to go through the drawn out  
20 study process again to have another location approved by  
21 the Forest Service.

22 MR. EVANS: I don't believe so and, Mr. McIntyre, you correct  
23 me if I'm wrong. If you've approved the location of the  
24 road and you move that road back west it would come right  
25 along side that road?

1 MR. McINTYRE: I believe that this environmental assessment  
2 could be amended with a minimal -- a few people would  
3 have to come up and look at the site. It appears to me  
4 to be on a ridge which would be a suitable location and  
5 it would appear to me that it could be done. It might  
6 take us a matter of three weeks to a month, depending on  
7 people's schedules. But I believe that we could amend  
8 that in order to accommodate that.

9 MR. MULLINS: I'm sorry if I misrepresented that to the Board.  
10 I didn't mean to do that.

11 MR. EVANS: I would think that the environmental assessment  
12 took a look at the location of that existing road. If by  
13 -- if for no other reasons, by the fact, though, approved  
14 that location since it's already there, I see no reason  
15 why that well cannot be moved back west closer to that  
16 road. Obviously, there is nothing sensitive where that  
17 road goes through. Otherwise it wouldn't be there,  
18 correct?

19 MR. McINTYRE: That's correct.

20 MR. MULLINS: Can I present Mr. Mueller now?

21 MR. CHAIRMAN: Yes, please.

22  
23 ALLEN MUELLER

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

1  
2 DIRECT EXAMINATION  
3

4 BY MR. MULLINS:

5 Q. Sir, you've already testified today and your testimony  
6 has been accepted as an expert witness', is that correct?

7 A. Yes, it has.

8 MR. MULLINS: I would like to move the Board again to accept  
9 him as an expert witness.

10 MR. CHAIRMAN: We'll just remind him that he's under oath.

11 Q. (Mr. Mullins continues.) Mr. Mueller, there's been a lot  
12 of discussion about moving the well location to the west.  
13 Why was that not done?

14 A. Primarily because we feel that the EH-69 will produce  
15 from the same pool as the EH-54. We don't feel it's  
16 going to produce from the same pool as the EH-52 well.  
17 However, being strictly an exploratory well, we wanted to  
18 have the option of including the Berea formation in the  
19 permit. We don't feel like we're going to penetrate the  
20 Berea in the EH-69 and that is why the location was  
21 selected as such.

22 Q. You've also heard a lot of discussion about moving the  
23 well north or west as far as the lease areas in regards  
24 to the park. In the area this well will drain, if the  
25 park maintains it's stance of no development will that

- 1 area ever be drained any way?
- 2 A. No.
- 3 Q. So you're talking an area that if this well doesn't go  
4 in, if the park really has it's way, there won't be any  
5 drainage of that location -- or that strata period?
- 6 A. Correct.
- 7 Q. Now, if you moved it east, of course, you would be in the  
8 park but that would get you further away from 52. But was  
9 that the consideration of not moving it east, was being  
10 inside the park?
- 11 A. We wanted to maintain it inside the Forest Service tract  
12 and outside the Park, yes.
- 13 Q. And, in fact, you would be getting closer to well EH-51  
14 and 55 if you moved it east. I don't think 55 is a  
15 problem, but 51 may be a problem.
- 16 A. It may be. It would start to be a problem.
- 17 Q. Of course, if you moved it south you'd just be getting  
18 closer to 52?
- 19 A. Uh-huh.
- 20 Q. Again, the site was studied and approved by the Forest  
21 Service, is that correct?
- 22 A. Correct.
- 23 Q. And the area of overlap was again Unites States Govern-  
24 ment gas?
- 25 A. Correct.

1 MR. MCGLOTHLIN: Mr. Mueller, you say it's an exploratory  
2 well?  
3 THE WITNESS: Yes.  
4 MR. MCGLOTHLIN: And your target you're hoping is the Big  
5 Lime?  
6 THE WITNESS: That's correct.  
7 MR. MCGLOTHLIN: I know this is going back over the same  
8 thing. But you don't know if you're going to hit the  
9 Berea or not?  
10 THE WITNESS: That is correct.  
11 MR. MCGLOTHLIN: We are charged -- this Board is charged from  
12 the General Assembly to -- I'll read 45.1-361.15.A.1.  
13 "Encourage and promote the safe and sufficient explora-  
14 tion for the development, production, and conservation of  
15 the gas and oil reserves located in the Commonwealth."  
16 Do you not think that it's kind of an overture on the  
17 conservation part that the proximity of 1,700 feet --  
18 1,724 from 52, not knowing what you're going to hit when  
19 you're down there?  
20 THE WITNESS: You need to understand this is strictly an  
21 exploratory area. You can drill -- we have drilled off  
22 set wells. You can move over -- you can move 1,000 feet  
23 and get entirely different gas producing formations.  
24 MR. MCGLOTHLIN: My problem lies with not knowing what's in  
25 the Berea. My concern is if you would like to amend your

1 application to state that you're only aiming for the Big  
2 Lime I don't see a conservation problem. But if you're  
3 going for the Berea as well and the Devonian and Weir,  
4 Max. and Raven Cliff, then I see a problem with conserva-  
5 tion there.

6 THE WITNESS: Sure.

7 Q. (Mr. Mullins continues.) Mr. Mueller, this area, as we  
8 have already gone over, is highly faulted, is that  
9 correct?

10 A. That's correct.

11 Q. Like all gas wells, you don't even know if there's any  
12 gas down there at all, is that true?

13 A. That's correct also.

14 Q. You could drill a dry hole, is that correct?

15 A. Correct.

16 Q. That's possible in any well, isn't that true?

17 A. That's correct.

18 Q. So as far as the conservation of gas, in fact, this well  
19 may be a dry hole as far as anyone sitting here can know  
20 at this time?

21 A. Right. Correct.

22 Q. Based upon the studies that you have, this well is going  
23 to be producing from the Big Lime, is that correct?

24 A. Correct.

25 Q. You've also asked for a well -- production from the

1 Berea, is that also not correct?

2 A. Correct.

3 Q. Would it make sense to not permit this well down to the  
4 Berea, then force another well to be drilled down to the  
5 Berea, a site similar to this to produce from that seam?

6 A. That would entail drilling a whole separate well probably  
7 on the same pattern somewhere in the same area.

8 MR. MCGLOTHLIN: Mr. Mullins, does that not get back to my  
9 problem with conservation on the Berea?

10 MR. MULLINS: I really don't follow that line of reasoning at  
11 this time, sir.

12 MR. MCGLOTHLIN: Well, wells are suppose to be spaced 2,640  
13 foot --

14 MR. MULLINS: Without exception from this Board.

15 MR. MCGLOTHLIN: So we are assuming that the drainage area is  
16 1,320 foot from the center of the circles or from the  
17 well?

18 MR. MULLINS: That's correct. And I believe the testimony was  
19 that the well EH-52 was not producing from the Berea. So  
20 I don't really understand the problem with the Berea as  
21 far as 52 and 69 is concerned.

22 MR. MCGLOTHLIN: Mr. Mueller just testified that he didn't  
23 know if there was any gas at the Berea or not there.  
24 That there's a possibility --

25 MR. MULLINS: In 52 he said there is not --

1 THE WITNESS: No. 52 is producing from the Berea

2 MR. MULLINS: Oh, I thought you said it was dry.

3 THE WITNESS: No. The 54 did not penetrate the Berea.

4 MR. MULLINS: 54 was dry. Excuse me. I'm sorry.

5 MR. MCGLOTHLIN: With the assumption of it being exploratory  
6 and not knowing, he could hit a bigger play on the Berea  
7 than the Big Lime at that well and then that's over kill  
8 on the Berea.

9 MR. MULLINS: Well, I guess the problem I'm having as far as  
10 conservation, the gas in the overlap belongs to the same  
11 person. That same person is here today asking for the  
12 site location to be approved. If anybody's gas is going  
13 to wasted it's this gentleman's representative, the  
14 United States Government. The United States Government  
15 is in here today asking for this location exception  
16 because it is, as far as they are concerned, the premium  
17 location. As far as the conservation of the gas, there  
18 won't be any waste of the gas as far as I can ascertain  
19 which is my interpretation of conservation, not to waste  
20 it, to make sure it's developed properly. And that's why  
21 we're here today before the Board.

22 MR. KELLY: I'd like to get back to this EH-69 and the  
23 question of moving it. Is the concern here that you  
24 believe that 69 and 54 are potentially within the same  
25 fault block and you may pick up the same zone in the Big

1           Line or same multiple zones or --

2 THE WITNESS: That is our contention, yes.

3 MR. KELLY: Any by moving them closer you are in the same

4           reservoir?

5 THE WITNESS: That's correct.

6 MR. KELLY: You're going to have potential communication

7           between the wells, is that a concern?

8 THE WITNESS: Between the 54 and the 69, yes.

9 MR. KELLY: Do you believe that moving it to the west would

10           potentially move it out of the fault block? Because the

11           faults in this area generally run parallel to (In-

12           audible.) don't they or do they?

13 THE WITNESS: No, I don't believe that. I believe it would

14           remain in the same fault block, drain from the same

15           reservoir.

16 MR. KELLY: It's the drainage communication --

17 THE WITNESS: Yes.

18 MR. KELLY: -- concern that's the greatest for you?

19 THE WITNESS: Yes.

20 MR. KELLY: Along the same line of questioning then, you

21           apparently believe that 69 and 52 are in different

22           blocks?

23 THE WITNESS: Yes.

24 MR. KELLY: So you may have two different reservoir situa-

25           tions?

1 THE WITNESS: That is correct.

2 MR. KELLY: For the Big Lime and the Berea?

3 THE WITNESS: That is correct.

4 MR. KELLY: Well, I guess back to my other concern about  
5 drainage in the entire area here and our ability to see  
6 for ourselves -- the Board to see for itself what the  
7 drainage areas are and what the spaces are in between and  
8 to make an assessment of correlative rights issues here,  
9 it would appear to me that you need to modify this  
10 exhibit to show these circles, show these drainage areas,  
11 so we can see on the exhibit what the drainage issues  
12 are. And it's a little difficult to assess that the way  
13 it's presented here.

14 MR. MULLINS: So if I understand, you want circles around the  
15 wells to designate the anticipated drainage area or the  
16 statutory distances?

17 MR. KELLY: Statutory distances, I would assume, would make it  
18 much easier to determine what -- help assess the need for  
19 an exception or be able to determine what areas were left  
20 un-drained potentially and what areas were left where  
21 royalty was not being paid. I think that has got to be  
22 our principle consideration over and above topographic  
23 issues and Forest Service considerations and other  
24 surface related issues.

25 MR. MULLINS: I guess just to make it clear, was that for this

1 application or for future applications?

2 MR. KELLY: As far as I'm concerned, it should be for this  
3 application and future applications.

4 MR. MULLINS: All right, sir. If we can get a compass, I'm  
5 sure Mr. Mueller can put circles on here at the proper  
6 distance if we know the scale. But as far as the area,  
7 1,724 is the distance between the 69 and the 52. And, of  
8 course, there's not any loss of gas between those two  
9 wells because they, in fact, overlap. The distance  
10 between the 54 and the 69 is 2,653. That's thirteen feet  
11 more than the statutory allowable distance. So there is  
12 very minimal loss of gas between those two wells. As far  
13 as the EH-51, while the distance is not shown between the  
14 51 and the 69, the distance between the 52 and the 51 is  
15 26/47 or 47 feet. While I can't represent that that is  
16 the same distance, it will be very close to the same  
17 distance between the 51 and the 69. So as far as this  
18 pending application goes, I think the wells are pretty  
19 tightly spaced.

20 MR. CHAIRMAN: Do you have any other testimony that you want  
21 Mr. Mueller to present?

22 MR. MULLINS: No, sir.

23 (Witness stands aside.)

24 MR. CHAIRMAN: Do you think that you can redo this exhibit if  
25 we continue this to later on today and bring it back up

1 and address Mr. Kelly's concern?

2 MR. MULLINS: I'm sure.

3 MR. CHAIRMAN: Is that acceptable to the Board?

4 MR. MULLINS: In fact, I'm sure it won't take ten minutes to  
5 do. If the Board wants to take a break, we can find a  
6 rule.

7 MR. COUNTS: Mr. Chairman, if it please the Board, before the  
8 Board adjourns we have the next two matters on the  
9 docket. I have one witness that's due to be in West  
10 Virginia this afternoon and I really don't anticipate our  
11 location exceptions taking more than fifteen minutes.  
12 And, if it please the Board, we would like to consider  
13 those before the lunch break if that's possible.

14 MR. CHAIRMAN: We'll do that. We'll continue these. Do you  
15 want to come back directly after lunch then, Mr. Mullins?

16 MR. MULLINS: Sure. What time?

17 MR. CHAIRMAN: Well, depending on what time we get out of  
18 here, but somewhere around 1:15.

19 (AFTER A BRIEF DISCUSSION OFF THE RECORD, THE PROCEEDINGS  
20 CONTINUED AS FOLLOWS:)

21  
22  
23  
24  
25

ITEM VI

1  
2  
3 MR. CHAIRMAN: The next item on the agenda is a petition for  
4 a well location exception by Equitable Resources Explora-  
5 tion for V-2435. This is docket number VGOB-92/09/15-  
6 0255. Did you me to call the other one, too? Did you  
7 want to take them one at a time or --

8 MR. COUNTS: Believe it or not, Mr. Chairman, I'm not going to  
9 request the Board to consolidate these two. I'm going to  
10 have these heard separately, if it please the Board.

11 MR. CHAIRMAN: So called. I would ask anyone that wished to  
12 address the Board in this matter to come forward.

13 MR. COUNTS: If it please the Board, Mr. Chairman, I would  
14 like to provide Exhibit A to 2435. (Pause.) Mr.  
15 Chairman, this exhibit indicates the Marker mine works,  
16 the Taggart mine works, the Taggart and Marker mine  
17 reserve, and the Pierepont mine works that are all  
18 involved in this application. These wells effectively  
19 constitute in-field drilling locations to these locations  
20 dictated by existing wells as well in accommodation of  
21 interests specifically with regard to the proposed site  
22 as prepared on Exhibit A. This is a balancing of  
23 interest between the owner of the coal estate. No other  
24 parties are involved. There are no correlative rights  
25 issues here present. There are no other tracts within

1 1,320 feet. Everything within 2,640 feet is owned 100  
2 percent by Equitable Resources. In terms of the oil and  
3 gas estate, the coal and the oil gas is owned by Penn-  
4 Virginia Resources Corporation. Mr. Chairman, as  
5 witnesses I'll be calling Mr. Lee Talbott from land  
6 standpoint, Mr. Bob Dahlin from geological standpoint,  
7 and Mr. Heath Horton from Penn-Virginia Resources  
8 Corporation as the coal owner and also as the oil and gas  
9 lessor. I'd like to call my first witness, Mr. Lee  
10 Talbott.

11 COURT REPORTER: (Swears witness.)

12  
13 LEE TALBOTT

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

16  
17 DIRECT EXAMINATION

18  
19 BY MR. COUNTS:

20 Q. Mr. Talbott, who are you employed by and in what capac-  
21 ity?

22 A. I'm employed by Equitable Resources Exploration as a land  
23 administrator.

24 Q. And have your qualifications as an expert witnesses been  
25 previously accepted by this Board?

1 A. Yes, sir, they have.

2 MR. COUNTS: Mr. Chairman, I move that Mr. Talbott be permitt-  
3 ed to testify as an expert witness.

4 MR. CHAIRMAN: Okay.

5 Q. (Mr. Counts continues.) Do your responsibilities include  
6 the lands involved here and the surrounding area and are  
7 you familiar with the application for this location  
8 exception for well 2435?

9 A. Yes, sir.

10 Q. Would you indicate for the Board the ownership of the oil  
11 and gas rights underlying well 2435?

12 A. Well 2435, the entire ownership of the oil and gas is  
13 held by Penn-Virginia Resources Corporation.

14 Q. Is that also the case with all wells within 2,640 feet?

15 A. Yes, it is.

16 Q. And all tracts within 1,320 feet?

17 A. Yes, sir.

18 MR. COUNTS: Mr. Chairman, I have no further questions of Mr.  
19 Talbott.

20 MR. CHAIRMAN: Any questions, members of the Board?  
21 (Witness stands aside.)

22 MR. COUNTS: I'd like to call now Mr. Bob Dahlin.  
23  
24  
25

1 ROBERT A. DAHLIN, II

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

4  
5 DIRECT EXAMINATION

6  
7 BY MR. COUNTS:

8 Q. Mr. Dahlin, would you state your full name for the record  
9 and the capacity in which you are employed?

10 A. My name is Robert A. Dahlin, II. I'm operations special-  
11 ist for EREX in Kingsport, Tennessee.

12 Q. And have you previously testified before this Board and  
13 have your qualifications as an expert witness been  
14 accepted?

15 A. Yes, I have.

16 MR. COUNTS: Mr. Chairman, I move this witness be permitted to  
17 testify as an expert witness in this matter.

18 MR. CHAIRMAN: Okay.

19 Q. (Mr. Counts continues.) Mr. Dahlin, would you summarize  
20 briefly for the Board from Equitable's prospective the  
21 purpose of this application from the standpoint of  
22 conservation?

23 A. EREX is attempting to develop it's gas reserves under  
24 these properties and in this case there are no locations  
25 available from a mining standpoint at current legal

1 distances for spacing.

2 Q. In the event this location exception well is not drilled  
3 can you project the estimated loss of reserves?

4 A. We anticipate 300 to 500 million cubic foot of gas would  
5 be left in place.

6 Q. And are you requesting that the Board allow all forma-  
7 tions from the surface of the ground to the total depth  
8 drilled to be covered by an order issued by the Board?

9 A. Yes, we are.

10 Q. In your professional opinion is there any other feasible  
11 location which would allow this well to be drilled  
12 without requiring a location exception?

13 A. None that were allowable for mining.

14 Q. In your opinion, Mr. Dahlin, will the granting of this  
15 location exception be in the best interest of prevention  
16 of waste, protection of correlative rights, and maximiz-  
17 ing recovery of gas reserves underlying well 2435?

18 A. Yes, sir.

19 MR. COUNTS: Mr. Chairman, I have no further questions of this  
20 witness.

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

22 MR. KELLY: Just a question as far as the reservoir. Are  
23 these the reservoirs you're projecting to be the Weir or  
24 Devonian Shell or --

25 THE WITNESS: We're currently evaluating that. We anticipate



1  
2 DIRECT EXAMINATION  
3

4 BY MR. COUNTS:

5 Q. Mr. Horton, would you state your full name for the  
6 record, please?

7 A. Keith V. Horton.

8 Q. And who are you employed by and in what capacity?

9 A. I'm vice-president of coal at Penn-Virginia Resources  
10 Corporation, Duffield, Virginia.

11 Q. Mr. Horton, have you previously testified by this Board  
12 and your qualifications as an expert witness been  
13 accepted?

14 A. Yes, sir.

15 MR. COUNTS: Mr. Chairman, I'd like to offer Mr. Horton as an  
16 expert witness in this matter.

17 MR. CHAIRMAN: Okay.

18 Q. (Mr. Counts continues.) Mr. Horton, are you familiar  
19 with the application plan for the location exception and  
20 the well permit application filed by Equitable?

21 A. Yes, I am.

22 Q. You've heard testimony as to the ownership of the oil  
23 and gas underlying well V-2435 as being 100 percent of  
24 that of Penn-Virginia Resources. Is Penn-Virginia a  
25 royalty owner as well as a working interest owner of the

1 subject wells?

2 A. Yes.

3 Q. In other words, Penn-Virginia as lessor and as a working  
4 interest owner has a great deal at stake in the drilling  
5 of this well?

6 A. That is correct.

7 Q. Is Penn-Virginia involved in the process of selecting  
8 well locations for which Equitable will operate and has  
9 Penn-Virginia approved this location exception?

10 A. Yes, we have.

11 Q. And does PVRC support Equitable's application for this  
12 specific well location exception?

13 A. Yes, we do.

14 Q. Mr. Horton, would you indicate for the Board, using  
15 Exhibit A, the reasons why this location exception is  
16 necessary based upon surrounding mining operations,  
17 topography, etcetera?

18 A. Yes. The darker shading which is identified in the  
19 legend as Taggart mine works are active mine works  
20 Westmoreland Coal Company's Holten Mine. The ventilation  
21 system, etcetera, is active in this mine and it's a  
22 longwall operation immediately to the west. The Marker  
23 mine works which are identified in Exhibit A by cross  
24 hatching are abandoned mine works but are also present in  
25 the area. The yellow outline outlines reserves that

1 remain in both the Taggart and the Marker seams in this  
2 area. Current plans are in development for operations in  
3 both of these two seams. You'll also note that the green  
4 outline of actual mine workings in the Wilson seam by  
5 Westmoreland Coal Company's Pierepont operation are  
6 present. Immediately to the west of this -- southwest of  
7 this location there are current mine plans are on file  
8 and they plan to continue longwall operations immediately  
9 to the west in successive panels. What you see outlined  
10 are existing active mine works at the current time. From  
11 this standpoint we were unable to move the location to  
12 the west to provide 2,640 foot spacing from existing  
13 wells because of both the planned and active mine works  
14 in the area. We also looked at other areas and the  
15 surface topography is extremely steep and cuppled with  
16 the underlying mining we were unable to find a location  
17 other than the one we have selected that would facilitate  
18 drilling and accommodate mining as well.

19 Q. Mr. Horton, what I understand you to say was that all the  
20 area within the yellow highlighted area indicates  
21 projected Taggart and Marker reserves for which mining is  
22 contemplated in the near future?

23 A. That is correct.

24 Q. In your professional opinion do these request for  
25 location exceptions represent the best possible location



1 MR. EVANS: I move that we approve the location exception and  
2 grant EREX's request.  
3 MR. CHAIRMAN: A motion to approve.  
4 MR. KELLY: Second.  
5 MR. CHAIRMAN: A motion to approve and a second. Any further  
6 discussion? If not, all in favor signify by saying yes.  
7 (ALL AFFIRM.) Opposed say no. (NONE.) It's unanimous.  
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ITEM VII

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3 MR. COUNTS: Mr. Chairman, the next item on the docket is Item  
4 VII. VGOB-92/09/15-0269. This is a request for a  
5 location exception with respect to well 2509. I'd like  
6 to present the Board two exhibits on this matter. I'll  
7 present Exhibit A which deals the Marker mine works and  
8 well as the Taggart mine works. Also Exhibit B which  
9 depicts the Emboden mine works. Mr. Chairman, the  
10 request for location exception on 2509 also involves  
11 another in-field drilling location which is dictated by  
12 existing wells and an accommodation of interest. In this  
13 sense it's also the coal estate. It also represents a  
14 balancing of the interest or an accommodation between the  
15 owner of the coal estate and the owner of the oil and gas  
16 estate which again is Penn-Virginia Resources Corpora-  
17 tion. Again, we submit no correlative rights issues are  
18 involved in this application as there are no other oil  
19 and gas leases or owners within 2,640 feet of this well  
20 or any other leased tracts within 1,320 feet. Again I  
21 would like to call -- my witnesses will be Mr. Lee  
22 Talbott from a land standpoint, Mr. Bob Dahlin from  
23 geology, and Mr. Keith Horton from Penn-Virginia. I call  
24 my first witness, Mr. Talbott.  
25

1 MR. CHAIRMAN: I'll just remind all three of you you will be  
2 under oath as you testify.  
3

4 LEE TALBOTT

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

8 DIRECT EXAMINATION  
9

10 BY MR. COUNTS:

11 Q. Mr. Talbott, are you familiar with the application for  
12 location exception for well 2509?

13 A. I am.

14 Q. And do your responsibilities include the lands involved  
15 here and the surrounding area?

16 A. Yes.

17 Q. Would you indicate for the Board the ownership of the oil  
18 and gas underlying well 2509?

19 A. All minerals are owned by Penn-Virginia Resources  
20 Corporation.

21 Q. All minerals including the oil and gas as well as the  
22 coal estate?

23 A. Yes, sir.

24 Q. And that is true within 2,640 feet of any adjacent wells  
25 or 1,320 into any other leased boundaries?

1 A. Yes, sir, that's correct.

2 MR. COUNTS: Mr. Chairman, I have no further questions of Mr.  
3 Talbott.

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

5 (Witness stands aside.)

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

7 MR. COUNTS: Thank you, sir. I'd like to call Mr. Dahlin,  
8 please.

9  
10 ROBERT A. DAHLIN, II

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

13  
14 DIRECT EXAMINATION

15  
16 BY MR. COUNTS:

17 Q. Mr. Dahlin, are you familiar with this application and  
18 again, is the purpose of this application to allow you to  
19 prevent the waste of the reserves that will be lost in  
20 the event this location exception were not granted?

21 A. That's correct. It's the same situation. It's a  
22 development well. And in the event this location is not  
23 drilled a substantial reserve will be left in the ground  
24 at a loss to us and our lessor.

25 Q. And will again these reserves be approximately 300 to 500

1 million cubic feet of gas?

2 A. Yes, sir.

3 Q. Are you again requesting that the Board -- should all  
4 formations from the surface of the ground to the total  
5 depth drilled be covered by any order issued by the  
6 Board?

7 A. Yes, sir. The same exact situation as the last well.

8 Q. And is this also an application for a location exception  
9 for a conventional well?

10 A. Conventional well only, yes, sir.

11 Q. In your professional opinion is there any other feasible  
12 location which would allow this well to be drilled  
13 without requiring a location exception?

14 A. No, sir.

15 Q. In your opinion will the granting of this location  
16 exception be in the best interest of preventing waste,  
17 protecting correlative rights, and maximizing recovery of  
18 the gas reserves underlying this tract of land?

19 A. Yes, it would.

20 MR. COUNTS: Mr. Chairman, I have no further questions of Mr.  
21 Dahlin.

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

23 MR. KELLY: Mr. Dahlin, the same question as before. Do you  
24 expect the location of this well to produce from the  
25 same reservoir as surrounding wells?

1 THE WITNESS: Yes, we do. Again, it's primarily a Weir  
2 reservoir. We're currently evaluating the finch on the  
3 shell and we would anticipate permitting to the shell.

4 MR. KELLY: Thank you.

5 (Witness stands aside.)

6 MR. COUNTS: I call now Mr. Keith Horton.

7  
8 KEITH V. HORTON

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

11  
12 DIRECT EXAMINATION

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14 BY MR. COUNTS:

15 Q. Mr. Horton, are you also familiar with the location for  
16 2509 and are you familiar with these locations that may  
17 relate to mining operations, topography, and effective  
18 land management practices?

19 A. Yes, I am.

20 Q. You've heard testimony as to the ownership of the oil and  
21 gas as presented by Mr. Talbott. Is Penn-Virginia a  
22 royalty owner as well as a working interest owner in  
23 these subject wells?

24 A. Yes.

25 Q. You've indicated that Penn-Virginia is involved in the

1 selection of these wells and that you support Equitable's  
2 application for this location exception?

3 A. That is correct.

4 Q. Mr. Horton, would you indicate for the Board with respect  
5 to well 2509, using Exhibits A and B, what the reasons  
6 are which dictate the well being located at this particu-  
7 lar location?

8 MR. COUNTS: Also before you start, sir, I'd like to remind  
9 the Board that the well 2447 which is located 2,471 feet  
10 due east of the 2509 was a location exception well which  
11 was approved by the Board at the last hearing.

12 A. (The witness continues.) In Exhibit A you will note that  
13 the Marker and Taggart mine works are both identified on  
14 this particular exhibit. Both seams are mined out and  
15 abandoned in this particular area. The Marker seam is  
16 full of water that has accumulated here. And as a  
17 precautionary measure we had to attempt to situate the  
18 well where we could penetrate a solid block of coal in  
19 the Emboden seam below which is active mine works. These  
20 Emboden mine works are approximately 450 feet below the  
21 Marker seam. And this was a safety precaution to  
22 preclude any transfer of water down hole into the active  
23 mine works. This limited our capability as to where we  
24 could situate the well. Also given the existing pattern  
25 that was drilled to accommodate other mining in the area

1 in these seams, you can note most of the wells off set  
2 existing mine works. This is the only location we could  
3 achieve in the area that accomplished those facts. So  
4 topography cuppled with the existing mine works precluded  
5 other locations which would get us 2,640 feet from  
6 existing wells.

7 MR. EVANS: You say there is a barrier block that you're going  
8 to --

9 THE WITNESS: Yes. That is correct. It's very difficult to  
10 show on a 1,000 foot scale map.

11 MR. EVANS: What's the size of that block? Do you know?

12 THE WITNESS: It's roughly 125 feet.

13 Q. (Mr. Counts continues.) Mr. Horton, is Westmoreland  
14 again the lessee of each of these coal seams including  
15 the Marker, the Taggart, and the Emboden?

16 A. That is correct.

17 Q. And has Westmoreland approved this location exception?

18 A. Yes, they have.

19 Q. In your professional opinion will the granting of this  
20 location exception by the Board prevent waste, protect  
21 correlative rights, and promote effective land management  
22 practices?

23 A. Yes, it will.

24 MR. COUNTS: Mr. Chairman, I have no further questions of this  
25 witness.

1 MR. CHAIRMAN: Mr. Horton, do you have an effective communica-  
2 tions system with Westmoreland in your drilling crew as  
3 they're drilling into and near active works?

4 THE WITNESS: Yes, we do. As a matter of fact, we notify  
5 Westmoreland prior to moving on each individual location  
6 or whomever our coal lessor is in a particular situation.

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

8 (Witness stands aside.)

9 MR. CHAIRMAN: What's your pleasure?

10 MR. McGLOTHLIN: I move we accept the location exception as  
11 presented.

12 MR. CHAIRMAN: We have a motion to approve.

13 MR. KELLY: Second.

14 MR. CHAIRMAN: Motion and a second. Any further discussion?  
15 If not, all in favor signify by saying yes. (ALL  
16 AFFIRM.) Opposed say no. (NONE.) It's unanimous.

17 MR. COUNTS: Thank you, Mr. Chairman and members of the Board.  
18 I also apologize for the infringement upon your lunch  
19 hour.

20 MR. CHAIRMAN: That's fine.  
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ITEM VIII

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3 MR. COUNTS: Mr. Chairman, one other thing before you adjourn,  
4 please. We also have Item VIII on the docket. We would  
5 request -- at this point in time we are trying to work  
6 out a solution on that well to make sure that the  
7 location we have proposed is the best available location  
8 and we would request a continuance until the October  
9 docket.

10 MR. CHAIRMAN: Any objection to that? Is there anyone here  
11 present today that wanted to talk to the Board about  
12 VGOB-92/09/15-0273? Any objection, members of the Board?  
13 The record will show there was no one here present. Then  
14 the Board will continue that to the next meeting.

15 MR. COUNTS: Thank you, Mr. Chairman.  
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ITEM IX, X

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3 MR. COUNTS: I would also like to confirm that Items IX and X,  
4 the Board has withdrawn those through our request for  
5 withdrawal.

6 MR. CHAIRMAN: They have been withdrawn.

7 MR. COUNTS: Thank you very much.

8 MR. CHAIRMAN: The Board will recess for lunch. Be back here  
9 at 1:15.

10 (AFTER A LUNCHEON RECESS, THE PROCEEDINGS CONTINUED AS  
11 FOLLOWS:)

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ITEM V

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3 MR. CHAIRMAN: We're back on record. The Board continued Item  
4 V on the agenda, docket number VGOB-92/09/15-0272, until  
5 the applicant could modify some maps. Have you done  
6 that, Mr. Mullins?

7 MR. MULLINS: We have done the modifications. And I guess  
8 just for the Board's -- we've also made another decision.  
9 I will hand out these maps for the Board to see how close  
10 the wells were placed in there, but we're going to  
11 withdraw our application and amend our permits to exclude  
12 the Berea and amend the permit on the 52 if necessary to  
13 exclude the Big Lime and we won't need a spacing variance  
14 as far as drilling it without the Berea seam being  
15 produced. So I guess I'm really moving to have the  
16 application withdrawn since there won't be a need for a  
17 spacing variance on well EH-69.

18 MR. KELLY: Could you say that again?

19 MR. MULLINS: Sure.

20 MR. KELLY: Which well are you not going to drill the Berea --

21 MR. MULLINS: The EH-69 we're not going to be completing down  
22 to the Berea. The reason we needed the spacing variance  
23 was because we were going -- since we're drilling a well  
24 anyway, it didn't -- as far as we were concerned we might  
25 as well drill down to the Berea. We don't have a lot

1 of --

2 MR. KELLY: Drill down to the Berea and not complete it or  
3 just not drill it at all?

4 MR. MULLINS: We're not going to drill it now and we'll amend  
5 our permit application to so reflect. And based upon  
6 that, we won't need a spacing variance. We've not  
7 completed the 52 to the Big Lime and we'll make whatever  
8 permit modification to that that we need to to get around  
9 the spacing requirement variance.

10 MR. KELLY: I'd just like to add -- I'd just like to tell you  
11 that I appreciate you doing this type of thing. I think  
12 it's beneficial to the Board to be able to see what the  
13 spacing is in the area and to be able to add this  
14 information to what we base our decision on. I would  
15 encourage you to do that in the future.

16 MR. MULLINS: Okay. So I guess there's really nothing left  
17 for us to do.

18 MR. EVANS: As I understand it you're withdrawing this --

19 MR. MULLINS: As we propose to amend our permits, we don't  
20 need a spacing variance since we'll not be -- we'll be  
21 completing this well, EH-69, to the Big Lime and we're  
22 not going to complete and we're going to exclude from our  
23 permit on the 52 the Big Lime. It will work out in the  
24 permit process, as I understand, where we won't need a  
25 spacing variance for EH-69.

1 MR. EVANS: For the purposes of our record then, you are  
2 withdrawing this variance request?  
3 MR. MULLINS: Yes.  
4 MR. CHAIRMAN: Any questions? Thank you very much.  
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ITEM XI

MR. CHAIRMAN: The next item on the agenda is Item XI, a petition for forced pooling of a drilling unit from OXY, USA for unit N-4. This is docket number VGOB-92/09/15-0256. I would ask the parties that wish to address the Board to come forward at this time, please. (Pause.) The way we'll do this, I'll ask Mr. Swartz to present his case and then you'll have an opportunity as he calls witnesses to ask questions or make statements to the Board.

MR. SWARTZ: Mark A. Swartz and Howard Salisbury appearing on a pooling application for unit N-4 on behalf of Buchanan Production who's the applicant and OXY, USA who would be the designated operator on the application. The first witness I would like to call is Sam Gordon.

COURT REPORTER: (Swears witness.)

SAMUEL E. GORDON, II

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

DIRECT EXAMINATION

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BY MR. SWARTZ:

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

A. Samuel Edward Gordon, II.

Q. And where do you live, sir?

A. Tazewell, Virginia.

Q. Do you work for OXY, USA?

A. Yes, I do.

Q. And do you also have a position with OXY insofar as the affairs of Buchanan Production, the applicant, is concerned?

A. That is correct.

Q. Have you testified before this Board before?

A. Yes, I have.

Q. And have your qualifications and credentials been accepted by the Board in the past?

A. They have.

Q. There was a notice of hearing and an application filed with the Board with regard to the pooling application for unit N-4, correct?

A. That is correct.

Q. Who prepared the notice of hearing and the application?

A. I did.

Q. And your signature appears at the end of the application,

1 does it not?

2 A. That is correct.

3 Q. Is Buchanan Production Company a Virginia general  
4 partnership?

5 A. It is.

6 Q. And are the two partners in Buchanan Production Company  
7 Appalachian Operators, Inc. and Appalachian Methane,  
8 Inc.?

9 A. That is correct.

10 Q. Are both Appalachian Operators, Inc. and Appalachian  
11 Methane, Inc. wholly owned subsidiaries of Oxidental Oil  
12 and Gas Corporation?

13 A. That is correct.

14 Q. And is OXY, USA a wholly owned subsidiary of Oxidental  
15 Oil and Gas Corporation?

16 A. That is correct.

17 Q. Is Buchanan Production Company authorized to do business  
18 in the Commonwealth of Virginia?

19 A. It is.

20 Q. Is Buchanan Production Company by it's application  
21 requesting that someone other than Buchanan Production be  
22 designated the operator for this unit if it's pooled?

23 A. Yes, it is.

24 Q. Who is it that Buchanan is requesting be designated  
25 operator?

- 1 A. OXY, USA, Inc.
- 2 Q. And OXY, USA, Inc. is a Delaware corporation?
- 3 A. That is correct.
- 4 Q. Is it authorized to do business in the Commonwealth of  
5 Virginia?
- 6 A. Yes, it is.
- 7 Q. Is OXY, USA, Inc. registered with the Department of  
8 Mines, Minerals and Energy?
- 9 A. Yes, it is.
- 10 Q. And has OXY, USA filed a blanket bond as required by the  
11 laws of the Commonwealth?
- 12 A. Yes, we have.
- 13 Q. There is a management committee of Buchanan Production  
14 Company and has that management committee delegated to  
15 OXY, USA the authority to explore, develop, and maintain  
16 the properties of Buchanan Production Company as a  
17 professional manager?
- 18 A. Yes, it has.
- 19 Q. And is there an exhibit that has been filed with the  
20 application that is documentary evidence of that appoint-  
21 ment?
- 22 A. Yes, we have. It's Exhibit J.
- 23 Q. And which page of Exhibit J?
- 24 A. Page 1.
- 25 Q. And has OXY, USA in turn delegated to specific people

- 1           it's authority to act as professional manager for  
2           Buchanan Production?
- 3   A.    Yes, it has.
- 4   Q.    And who are those people and what are the general  
5           responsibilities that have been delegated to them with  
6           regard to the affairs of Buchanan Production?
- 7   A.    Glen VanGolen as general manager, Martin E. Wirth as land  
8           manager, and myself as regulatory manager.
- 9   Q.    Has OXY, USA caused a consent to serve as unit operator,  
10           if appointed by this Board, as part of it's application  
11           package?
- 12   A.    Yes, it has.   And that's Exhibit J, Page 2.
- 13   Q.    Now, the notice of hearing identifies the people that  
14           were named as parties or respondent, correct?
- 15   A.    That is correct.
- 16   Q.    And there is also an Exhibit B which is attached to the  
17           application and that lists the respondents and also for  
18           those who have addresses sets forth their addresses,  
19           correct?
- 20   A.    That is correct.
- 21   Q.    And did you prepare both of those lists or participate in  
22           preparing them?
- 23   A.    Yes, I did.
- 24   Q.    If there are title questions, who here today is most  
25           familiar with title?

1 A. Mr. Wirth as our land manager.

2 Q. And he's down at the end of the table?

3 A. Yes.

4 Q. Do you desire to add any respondents to this application  
5 today?

6 A. No, we do not.

7 Q. Do you wish to dismiss any of the respondents that are  
8 listed in the notice or in Exhibit B?

9 A. No.

10 Q. Has OXY, USA on behalf of Buchanan Production exercised  
11 due diligence to identify and location persons having  
12 record titled oil, gas and/or coal and having identified  
13 such persons, has OXY exercised due diligence in trying  
14 to locate these people?

15 A. Yes, we have.

16 Q. What are some of the basic things that OXY, USA has done  
17 with regard to this application and other applications to  
18 identify and locate people who may have claims or may  
19 have record title and to track them down?

20 A. Well, our basic work begins in the courthouse checking  
21 the records, running the title out to identify to the  
22 best of the record's ability who owns the property or the  
23 minerals thereunder. Then we check the tax records,  
24 phone books. We ask neighbors. Anyone that could  
25 possible help us get an address of an individual, we do

- 1 run it out.
- 2 Q. Was that general procedure you've described followed with  
3 regard to unit N-4?
- 4 A. Yes, it was.
- 5 Q. Did you cause notices of the hearing and copies of the  
6 application to be mailed by certified mail, return  
7 receipt requested, as required by Section 45.1-361.19 of  
8 the Virginia Code?
- 9 A. Yes, we did.
- 10 Q. And who did you mail those notices to?
- 11 A. We mailed the notices to all respondents listed on  
12 Exhibit B.
- 13 Q. And if the list shows that you did not have an address,  
14 what did you do with regard to those people?
- 15 A. We had the publication in the Virginia Mountaineer.
- 16 Q. With regard to this application, would you identify the  
17 persons for whom you do not have and did not have current  
18 addresses?
- 19 A. Yes. We had Acey G. Anderson, George B. Anderson, James  
20 Marshall Anderson, Barbara Anderson Marshall, Glenda  
21 Anderson Edwards that had no addresses.
- 22 Q. And those were people that you could not mail to and the  
23 notice was by publication?
- 24 A. That is correct.
- 25 Q. Then were there certain people that you mailed to that

1 you had addresses for that you mailed to but the mail  
2 came back unclaimed and who were they, if there were any?  
3 A. Yes. We did have some of those parties. We received our  
4 certified mailings back on William Lips, Big Prater Creek  
5 Primitive Baptist Church.  
6 Q. Did you file a proof of mailing as required by Board  
7 regulations with Mr. Fulmer's office?  
8 A. Yes, we did.  
9 Q. And that would have been Exhibit F?  
10 A. Yes.  
11 Q. Now, you mentioned before that a notice was published in  
12 the paper. Was that notice a copy of the notice of  
13 hearing that was filed with the Board?  
14 A. That is correct.  
15 Q. And what paper was that published in?  
16 A. It was published in the Virginia Mountaineer on August  
17 27th.  
18 Q. And did you file a certificate of publication with the  
19 Board or with Mr. Fulmer's office as required?  
20 A. Yes, we did.  
21 Q. And what exhibit would that have been?  
22 A. That would be Exhibit E.  
23 Q. I'd like you to turn to Exhibit A, Page 1, of the  
24 application. What interest has OXY acquired either  
25 through ownership rights or lease rights with regard to

- 1 this 80 acre unit?
- 2 A. OXY has acquired under the coal ownership 42.19 percent  
3 and we have on the oil and gas side 1.52 percent.
- 4 Q. You're rounding it off -- the points?
- 5 A. Yes, I am.
- 6 Q. And what are the interests that are sought to be pooled  
7 by this pooling application regarding N-4?
- 8 A. We are seeking to pool the remaining 57.8 percent on the  
9 coal side and on the oil and gas 98.48 percent, again  
10 rounding off.
- 11 Q. With regard to the people that are listed as respondents  
12 here and with regard to your efforts to lease acreage in  
13 Buchanan County in general, are there certain lease  
14 terms that you offer to all people that you have a chance  
15 to talk to?
- 16 A. Yes. On coalbed methane we're offering \$1 per acre bonus  
17 with a one-eighth royalty for a term of five years.
- 18 Q. And do you actually give leases that have those terms --  
19 formed leases to people and mail them to people to give  
20 them an opportunity to consider those leases and review  
21 them and lease to you?
- 22 A. Yes, we do.
- 23 Q. With regard to this unit, did you discuss with as many  
24 potential lessors as you could what your terms were and  
25 your desire to lease?

- 1 A. Yes. We have several people on staff that do that.
- 2 Q. In terms of the Board entering an order, in the event an
- 3 order is entered in this case, would you recommend that
- 4 the lease terms that you have been offering be incorpor-
- 5 ated in that order with regard to the participation or
- 6 deemed to have participated rights?
- 7 A. Yes, we would.
- 8 Q. Now, this unit N-4 that we're going to be talking about
- 9 today is located in the Oakwood Field II, correct?
- 10 A. That is correct.
- 11 Q. And that was the field that was created by this Board to
- 12 cover short hole production from longwall panels and
- 13 active gob production after longwall mining had occurred,
- 14 correct?
- 15 A. That is correct.
- 16 Q. Is this unit going to start out as a short hole unit?
- 17 A. Yes, sir, it will.
- 18 Q. And if the members of the Board were to turn to Exhibit
- 19 G, Page 1, is this an actual copy of a mine map?
- 20 A. Yes, it is.
- 21 Q. And whose mine map would that be?
- 22 A. It's the mine plan of Island Creek Coal Company.
- 23 Q. For what mine?
- 24 A. This is the VP-3 west development.
- 25 Q. A portion of the VP-3 mine?

1 A. Yes.

2 Q. And the unit N-4 that we're talking about is outlined in  
3 the darker line? The square has dark lines around it?

4 A. That is correct.

5 Q. And essentially this unit consists primarily of barrier  
6 blocks and entries?

7 A. That is correct.

8 Q. And the portion of the unit that would be at issue with  
9 regard to the longwall panels is a tiny portion of the  
10 unit in what would be the lower left hand corner of the  
11 unit that intersects one development west panel, correct?

12 A. That is correct.

13 Q. And this map does not show any well or bore holes located  
14 in unit N-4, correct?

15 A. That is correct.

16 Q. Can I assume that it is not contemplated that there will  
17 not be any wells or bore holes from which gas is produced  
18 that are actually within unit N-4?

19 A. That is correct.

20 Q. Now, if we turn to the next page, Exhibit G, Page 2,  
21 there's a notation across from the unit number N-4 and a  
22 percentage. Do you see that?

23 A. Yes.

24 Q. What percentage of interests would unit N-4 as a whole,  
25 all the people who have leased or have claims in N-4,

- 1 have in one development west in the entire panel?
- 2 A. They would have .636 percent in the panel.
- 3 Q. And that would be everyone, all the respondents and all  
4 the people who have leased? That's the interest you're  
5 starting out with before you break it down to divide it  
6 between those folks?
- 7 A. That is correct.
- 8 Q. Then if you would turn to the next page which is Exhibit  
9 G, Page 3, does Exhibit G, Page 3, capture all of the  
10 costs which are estimated to be incurred in all units  
11 that intersect one development panel west?
- 12 A. Yes, it does.
- 13 Q. And the total cost in all units that are intersecting  
14 that panel, one development west, is what amount?
- 15 A. For one development west, \$1,100,450.
- 16 Q. If we turn backwards a little bit you have an Exhibit C  
17 which is an estimate of allowable costs?
- 18 A. That is correct.
- 19 Q. And that estimate pertains to costs that you estimate  
20 will be incurred only on unit N-4, correct?
- 21 A. That is correct.
- 22 Q. And what is the total amount of estimated costs?
- 23 A. \$179,850.
- 24 Q. And is that, in your opinion, a reasonable estimate for  
25 the costs that will be incurred to allow development of

- 1 unit N-4 to proceed?
- 2 A. Yes.
- 3 Q. Most of those costs are legal and title opinion costs,  
4 are they not?
- 5 A. That is true.
- 6 MR. SWARTZ: I would ask the Board to turn back to the plat  
7 map which is Exhibit A, Page 1, and I think if you would  
8 look at the plat map and the tracts identified thereon  
9 you will see why the title costs are extensive as they  
10 are.
- 11 Q. (Mr. Swartz continues.) Mr. Gordon, have you had to  
12 obtain or are you in the process of obtaining a title  
13 opinion for every one of the tracts identified on Exhibit  
14 A, Page 1?
- 15 A. That is correct. Yes, sir.
- 16 Q. And is the number of tracts the cause of the legal fees  
17 being estimated as they are?
- 18 A. Yes, it is.
- 19 Q. Turning back to Exhibit G, Page 3. Exhibit G, Page 3, is  
20 it an effort to apportion all of the estimated costs that  
21 would be incurred in development panel one west and to  
22 allocate those between the various units that intersect  
23 panel one west?
- 24 A. Yes, it is.
- 25 Q. And to calculate the share of total panel costs that

- 1 would be allocable to unit N-4 have you taken the .63  
2 percent that we talked about earlier --
- 3 A. Uh-huh.
- 4 Q. -- times the total costs to arrive at the unit cost?
- 5 A. That is correct.
- 6 Q. And for purpose of participation or carried interest,  
7 what would the cost allocable to unit N-4 be having done  
8 that calculation?
- 9 A. \$6,427.
- 10 Q. Now, this unit is an 80 acre unit, correct?
- 11 A. That is correct.
- 12 Q. And the pooling application addresses the pooling of all  
13 seams below the Tiller?
- 14 A. That is correct.
- 15 Q. Now, from a development standpoint the first production  
16 out of one development west will be produced how?
- 17 A. It's going to be produced through short hole production.
- 18 Q. And those are holes that are drilled into the face of a  
19 longwall panel and coalbed methane gas is extracted from  
20 those holes in the mine itself?
- 21 A. That is correct. It's a form of degassing before mining.
- 22 Q. And after short hole production ceases is there an  
23 expectation that if mining continues there will be a  
24 different kind of production that will occur here?
- 25 A. Yes, it is. As the longwall miner takes out that panel

1 we will have collapse of rubblization behind the miner  
2 and we will then eventually go into a gob production  
3 situation.

4 Q. And you'll be producing from the active gob?

5 A. Right.

6 Q. And the last portion of Exhibit G, Page 4, can you tell  
7 me whether or not Exhibit G, Page 4, in the last column  
8 on the right hand side sets forth the division of  
9 interest of each of the respondents in this unit?

10 A. The column on the left sets forth the respondents'  
11 interests in the unit. The one on the right sets forth  
12 their interest in the panel.

13 Q. The column entitled "division of interest"?

14 A. Right.

15 Q. If someone wanted to compute what capital contribution  
16 they would have to make to participate would they  
17 multiply the number that's shown under the column  
18 division of interest times the \$6,000 figure that we've  
19 just spoken about --

20 A. That's true.

21 Q. -- to determine what capital contribution they would have  
22 to make to be a participant?

23 A. That's right.

24 Q. And that percentage under division of interest would also  
25 be used for purposes of calculating carried interest

1 multiples?

2 A. That's true.

3 Q. And would it also be used to determine royalties?

4 A. Right.

5 Q. Two final questions. Is it your opinion that the  
6 Buchanan Production Company's plan of development for  
7 this unit is a reasonable plan of development for the  
8 coalbed methane resource within and under the unit for  
9 the benefit of all of the owners and claimants to said  
10 resource?

11 A. Yes, it is.

12 Q. Will the proposed development plan, that would be short  
13 hole development followed by active gob production, will  
14 that in your opinion contribute to the protection of  
15 correlative rights of the owners of methane within and  
16 under the unit in question and lessen the likelihood of  
17 both physical waste, which we'll be venting, and economic  
18 waste?

19 A. Yes, it would.

20 MR. SWARTZ: That's all I have of Mr. Gordon.

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

22 MR. McGLOTHLIN: Mr. Gordon, I'm confused. On your estimated  
23 allowable cost \$179,850, that's what it's going to cost  
24 in the N-4. If you participate you only have to come up  
25 with a percentage of \$6,4277

1 THE WITNESS: As we stated in our testimony, the amount of  
2 title work that is going in to cure the title on this 80  
3 acres is rather large. But when you prorate it across  
4 the panel and that portion of the panel into it you're  
5 only coming up with a .6 percent of it. So .6 of  
6 1,100,000 is -- it does look out of proportion, but that  
7 is the way we have been doing it up to this point.

8 MR. MCGLOTHLIN: \$179,000, is that just for N-4 or is that for  
9 the whole --

10 THE WITNESS: No. That's just for N-4. We have over thirty  
11 tracts in this 80 acre unit that we're trying to run  
12 title out on.

13 MR. SWARTZ: Believe me, if we could have asked the mining  
14 company to redraw the mine plan to get this little corner  
15 out of here and not spend 180,000 on title we would have.  
16 But you tend to follow your mine plan and you're stuck  
17 with it. That's --

18 MR. MCGLOTHLIN: I'm just confused on the difference. Again,  
19 if I want to participate in this well I've got to come up  
20 with my share of -- whatever I want to participate in --  
21 \$6.4277

22 THE WITNESS: Which is your proportion or part of the panel.  
23 And your revenues will be derived off of that small  
24 interest also.

25 MR. MCGLOTHLIN: I understand. Thank you.

1 MR. CHAIRMAN: In your relief sought, I just want to clarify  
2 what's before the Board. You've talk about establishing  
3 a formula for the division of interests and mentioned  
4 short hole gas, unsealed gob gas, and gas from increased  
5 density wells. But I believe your testimony was request-  
6 ing and your Exhibit G, Page 2, just deals with short  
7 hole gas production. Would you clarify for me what we  
8 have before us in the pool of interests here?

9 MR. SWARTZ: We are requesting relief in our application and  
10 under field rules II to allow us to proceed with short  
11 hole development which will be happening, if it's not in  
12 the foreseeable future. You can see from the mine map  
13 how far there are. And when that finishes we are at this  
14 same point requesting permission to continue right into  
15 active gob production. And you will see as we proceed  
16 through -- if you look at the map, G, Page 1, as we  
17 continue this afternoon we're going to be doing 0-4 and  
18 P-4 and so forth and will see that there are going to  
19 bore holes and other costs so that we're actually putting  
20 together all of the infrastructure in the various units  
21 to proceed with short hole production and then ultimately  
22 gob production on this one application.

23 MR. CHAIRMAN: Will the decimal percentage of interest change?

24 MR. SWARTZ: No. Like if you look at 0-2 which is the next  
25 item on your docket, I believe. No. 0-4 is the next

1 one. 0-4, Exhibit C, is \$245,000. The title costs are  
2 somewhat lease. There's a bore hole fee on that unit.  
3 And the \$1,010,450 is the total cost that we're estimat-  
4 ing at this point in time to do both short hole and  
5 active gob production from this longwall panel and these  
6 units. So we're not going to be coming back and saying  
7 there's going to be another participation or whatever.  
8 This is one stop with all the costs that we believe are  
9 reasonably attributable to the short hole production  
10 followed by active gob production.

11 MR. CHAIRMAN: In S-4, and I know that is not before us, but  
12 it's referring to Exhibit G, Page 3, it shows no costs  
13 for that unit.

14 MR. SWARTZ: Why is that, Sam?

15 THE WITNESS: Did you say S-4?

16 MR. CHAIRMAN: When you ran your totals S-4 shows zero.

17 THE WITNESS: S-4, we have already taken care of because in  
18 this mine plan you have these panels running like this.  
19 We had panels coming in like this and we force pooled and  
20 put into testimony two or three months ago all the panels  
21 running east and west on it and S-4 was one of those. So  
22 we've already captured the costs once. We aren't coming  
23 back and capturing them again.

24 MR. CHAIRMAN: All the wells that are anticipated and all the  
25 costs associated with those are included here before us

1           in the total unit costs?

2 THE WITNESS: In the total panel costs all wells -- one well  
3           per panel per unit is included in that.

4 MR. CHAIRMAN: The \$1,010,450 is the total panel costs?

5 THE WITNESS: That is correct.

6 MR. KELLY: So which of this units include costs for wells?  
7           It would appear that only two of them are in there.

8 MR. SWARTZ: Well, O-4 is one -- O-4, P-4, R-4, for sure,  
9           right?

10 THE WITNESS: Yeah.

11 MR. KELLY: Does that include the cost of the well?

12 MR. SWARTZ: Right. So there are at least three wells.

13 THE WITNESS: R-4 is another one of those where we captured  
14           legal costs under our previous testimony several months  
15           ago. And under R-4 on this page you'll see I've only got  
16           the bore hole fee, 1425.

17 MR. KELLY: I was just trying to reconcile some of the  
18           differences between the costs. N-4 apparently does not  
19           include the cost of the well.

20 THE WITNESS: No. There is no well -- we're only looking at  
21           six-tenth of a percent of a panel that just nicks that  
22           corner.

23 MR. CHAIRMAN: The least term is five years, is that correct?

24 THE WITNESS: Yes, that is correct.

25 MR. CHAIRMAN: This is a continuous development panel in

1 producing now prior to mining and then, I assume, as you  
2 mine into you'll have unsealed gob and then perhaps  
3 sealed gob. How does that change with lease terms and  
4 anything that we're approving here? What effect do you  
5 see this approval having on -- do you envision coming  
6 back to the Board at any point in the future on this  
7 panel?

8 THE WITNESS: Mr. Chairman, the only time we would come back  
9 to you, if you approved this, would be if we go into a  
10 sealed gob situation. At that time we will have things  
11 that we need to address before you that people need to  
12 know about and yes, we would be back on that. But until  
13 that occurs, if it occurs, we would not be back here.

14 MR. CHAIRMAN: What if you had a need for an additional well?  
15 You would envision that that would change the --

16 THE WITNESS: That would be addressed on the panel as a whole,  
17 not as to this unit specifically. If we do have add-  
18 itional wells to drill in the panel other than the ones  
19 we are pursuing that would fall under the increased  
20 density provisions and then our testimony on the field  
21 rules we would come back and economically justify the  
22 increased density well at that time.

23 MR. SWARTZ: If people participated. If not, there's no one  
24 to share costs with and you wouldn't see us again. If  
25 you spend additional capital and don't have partners you

1 don't have to come back in front of the Board.

2 MR. CHAIRMAN: That's what I'm trying to reconcile. All these  
3 -- consider these basics up front?

4 MR. SWARTZ: Right.

5 MR. CHAIRMAN: If we're approving the total bottom line costs  
6 of one million - that's why I was trying to really zero  
7 in on that \$1,010,000. I mean, it effects every unit in  
8 that panel.

9 MR. SWARTZ: Right.

10 MR. CHAIRMAN: Then what future effect causes us to take  
11 action just so that we and the folks can understand?

12 MR. SWARTZ: With regard to any one of these six units, if one  
13 of the respondents in any one of those six units elects  
14 to participate and Buchanan Production and/or their  
15 designated operator desires to spend additional money  
16 that they wish to pass along as a capital cost to  
17 participates, you've got to drag everybody back to do one  
18 change. If no one participates then you are not sharing  
19 costs with anyone and you're bearing 100 percent of the  
20 costs, there is no reason to come back. Now, we may have  
21 to come back to address increased density depending on  
22 how many wells there are in a given unit because there  
23 are some statutory limitations. But that's another  
24 question. It doesn't have anything to do with costs.  
25 That has to do with your authority versus Mr. Fulmer's

1 authority and in increased density wells who's got  
2 authority to do how much. But in terms of costs the only  
3 reason to come back would be if the costs were sought to  
4 be shared with other participants or other carried  
5 people. Let me ask Mr. Gordon this. Have you in  
6 estimating costs with regard to the six units in this  
7 development panel that we're talking today have you  
8 attempted to anticipate all reasonable costs to complete  
9 a short hole program for this and an active gob program?

10 THE WITNESS: Yes, we have.

11 MR. SWARTZ: I mean, have you tried to estimate costs in such  
12 a way that it is unlikely that you will come back saying  
13 you need an additional bore hole?

14 THE WITNESS: That is our primary objective, is to try to  
15 capture all reasonable costs up front.

16 MR. CHAIRMAN: Any other questions?

17 MR. MCGLOTHLIN: Mr. Gordon, the short hole production on N-4,  
18 looking at Exhibit G, Page 1, does that meet a small  
19 section -- what would be derived from a small section in  
20 the lower left hand corner?

21 THE WITNESS: That's correct. The pencil almost blocks it  
22 out. When you block in the unit it almost took it  
23 completely out.

24 MR. MCGLOTHLIN: Thank you.

25 MR. EVANS: Can you give me an estimate on the five short hole

1 production over what period of time and then active gob  
2 production over what period of time?

3 MR. SWARTZ: Mr. Breeding is here from Island Creek. If I  
4 could get Steve up to answer that question.

5 (Witness stands aside.)

6 COURT REPORTER: (Swears witness.)

7  
8 STEVEN BREEDING

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

11  
12 DIRECT EXAMINATION

13  
14 BY MR. SWARTZ:

15 Q. Steve, you need to state your name for us.

16 A. My name is Steve Breeding with Island Creek Coal Company  
17 as coalbed methane coordinator.

18 Q. Where do you live?

19 A. I live in Abingdon, Virginia.

20 Q. And you've testified before the Board before?

21 A. Yes, I have.

22 Q. And your credentials and qualifications have been  
23 accepted by them?

24 A. Yes, they have.

25 MR. SWARTZ: He did not hear your question.

1 MR. EVANS: Mr. Breeding, how long a period of time do you  
2 anticipate short hole gas being produced in this unit and  
3 then also how long after that will active gob gas be  
4 produced?

5 THE WITNESS: Well, as you know, the short holes are drilled  
6 horizontally into the coal seam into the Pocahontas #3  
7 seam only. And those holes will produce -- it varies  
8 depending on how out and advance you can get and start to  
9 drill your holes. Normally six to twelve months would be  
10 a typical time frame for short hole production. If you  
11 can get out further and get your development work caught  
12 up and get the holes in they will produce some time  
13 longer. Once the longwall miner cuts through those  
14 holes, production from the short hole will cease and if  
15 there are gob wells behind that longwall unit -- the gob  
16 production -- once the rubblization process starts the  
17 gob production will begin. And gob production, it could  
18 go on for a long period time. Normally 90 to 120 days  
19 you have a fairly high production rate and it will begin  
20 to tail off sometime there after.

21 MR. EVANS: Could it be said that -- let me paraphrase or get  
22 the gist of what you just said. So you've got twelve to  
23 eighteen months of short hole production typically, would  
24 that be a fair statement?

25 THE WITNESS: I think probably six to twelve months would be

1 a more typical time frame.

2 MR. EVANS: Okay. Six to twelve months. And then after that  
3 you have active gob production for --

4 THE WITNESS: Fairly heavy production for probably six months  
5 to a year.

6 MR. EVANS: And then you say that starts to tail off. Would  
7 you continue to produce active gob up say to the lease  
8 term or beyond the lease term? You've got five years --

9 THE WITNESS: No. I think it would depend on whether or not  
10 it was economically viable.

11 MR. EVANS: I understand, but as --

12 THE WITNESS: Typically I think yeah, you would try to recover  
13 all the gas you could.

14 MR. EVANS: So there's a potential for going beyond the five  
15 year lease term?

16 THE WITNESS: I think there's probably potential -- I think  
17 the potential will probably be in the sealed gob unit. I  
18 think your potential for gob gas is probably two years,  
19 three years maybe.

20 MR. EVANS: Thank you.

21 MR. CHAIRMAN: Other questions?

22 (Witness stands aside.)

23 MR. CHAIRMAN: Call your next witness.

24 MR. SWARTZ: That's all my witnesses.

25 MR. CHAIRMAN: Do you have a question?

1 MR. OWENS: I'm Curtis Owens, Vansant, Virginia. The only  
2 thing that I would like to bring to your attention is on  
3 Exhibit B, Page 4, in reference to the last item concern-  
4 ing the Big Prater Primitive Baptist Church which is in  
5 care of A. T. Hagy, Trustee. That, to my understanding,  
6 is a discrepancy because that's two churches. The Big  
7 Prater Baptist Church is up on Lee Master and this is the  
8 Prater Creek Primitive Baptist Church with trustees. And  
9 I can give two of them. Which two of them I have here  
10 with me is Vernon Owen, Tollie Charles and James C.  
11 Perkins.

12 MR. SWARTZ: What are their addresses, if you've got them?

13 MR. OWENS: They can give them.

14 MR. SWARTZ: They can give them to us?

15 MR. OWENS: They can give them to you.

16 MR. SWARTZ: Okay. And they're the trustees of the church  
17 that's located on the map --

18 MR. OWENS: They have the tract 30.

19 MR. SWARTZ: 30?

20 MR. OWENS: Yes. Of course, they haven't been notified of  
21 this other than me telling them about the church and I  
22 didn't even notice this until I got here.

23 MR. GORDON: Mr. Owens, is this Prater Creek Primitive  
24 Baptist Church? Is that the way it's suppose to be?

25 MR. OWENS: Yes.

1 MR. SWARTZ: So what we've got wrong is we've got Big in front  
2 of it and it shouldn't be that?

3 MR. OWENS: It should be Prater Creek Primitive Baptist.

4 MR. SWARTZ: Okay.

5 MR. OWENS: Big Prater Baptist Church is up on Lee Master.  
6 And I assume that A. T. Hagy would be the trustee of that  
7 church. So I think it's just --

8 MR. SWARTZ: Okay. I'll need to get those addresses.

9 MR. CHAIRMAN: If you don't mind, let's take the time and have  
10 each one of you state your name and your mailing address  
11 for us, please.

12 MR. OWEN: Vern Owen, Route 2, Box 270, Vansant, Virginia,  
13 24656.

14 MR. CHARLES: Tollie Charles, Route 1, Box 576, Vansant,  
15 24656. And while I'm speaking, Mr. Chairman, we would  
16 like a lease for the church instead of the pool if it's  
17 all right with OXY.

18 MR. CHAIRMAN: I'm sure they'll get with you on that.

19 MR. SWARTZ: They want a lease?

20 MR. CHAIRMAN: They want a lease. When we take a break  
21 probably in a little while this fellow at the end of the  
22 table here is Marty Wirth and he's in charge of leasing  
23 and so forth. He may have a lease form. I mean, it  
24 wouldn't be filled out, but he may have some. But he  
25 would certainly talk to you about where to send it so you

1 can consider it. So make sure before you leave that one  
2 or more of you talk to him about it.

3 MR. CHAIRMAN: And, ma'am, what was your name and address?

4 MS. OWENS: Harriet Owens, Route 1, Box 7, Vansant, Virginia.

5 MR. CHAIRMAN: Thank you. Is there any others that wish to  
6 address the Board in this matter?

7 MR. GARRETT: I would just like to ask a question.

8 MR. CHAIRMAN: Would you state your full name for the record,  
9 please?

10 MR. GARRETT: My name is David Garrett, Vansant, Virginia.

11 I'm pastor of Victory Baptist Church and I'm representing  
12 their interests.

13 MR. CHAIRMAN: If you will, just direct your questions to the  
14 Board that you have and we'll sort out how we do this.

15 MR. GARRETT: I'm not too familiar with all of this. The  
16 language is kind of way up here and so forth. I noticed  
17 on the application under the fact it says, "Applicant,  
18 which is Buchanan Production Company, owns or claims to  
19 own the oil and gas lease." And my question is this. Is  
20 there a conflict of interest here? In other words, I  
21 don't know quite understand in the law -- the pooling law  
22 here. It's a new law which states that if there is a  
23 conflict of interest that basically they can go ahead --  
24 if you say it's all right they can go ahead and take the  
25 gas out and then settle the issue of who owns it later

1 on. Am I correct in that assumption?

2 MR. CHAIRMAN: That's what this pooling hearing today is all  
3 about. That is correct.

4 MR. GARRETT: It's taken us about three weeks to figure that  
5 out. I'll be honest with you. And most of the people  
6 here from Vansant, Virginia do not understand that. The  
7 language is just -- you have to get a lawyer. And I'll  
8 be honest with you, the lawyers that we talked to don't  
9 understand it either. So I guess my -- it's not really a  
10 question. It's more or less a statement that we really  
11 didn't have time to prepare. This was delivered to us  
12 August 18th and the person that it was delivered to who  
13 is the trustee of our church, he happens to be in the  
14 National Guard and was on active duty during that time  
15 and I didn't get it until like two weeks later. And then  
16 once we got it, like I said, it's taken us this long to  
17 figure out what it's all about. The other question I  
18 have is does this give them the right to go on anybody's  
19 land in this tract to establish a well? I mean, for  
20 example, can they just go on the land that Victory  
21 Baptist Church owns? Does this permit them to go on the  
22 land that we've purchased and to tear down that building  
23 and drill a well? Will that permit you to do that?

24 MR. CHAIRMAN: Do you want to address your plans on that?

25 MR. SWARTZ: Only if the Board tells us we can do that. And I

1 don't think they're likely to tell us we can do that.

2 Let me tell you what normally happens.

3 MR. GARRETT: Okay.

4 MR. SWARTZ: As you can see from this map, there are a lot of  
5 people who own little bits and pieces. What Buchanan  
6 Production and OXY have tried to do is get leases from as  
7 many people as they can. I have not colored this map to  
8 be able to tell you where the leases that they have are  
9 or are not. But I can tell you that normally what OXY or  
10 Buchanan Production or any oil and gas company would want  
11 to do is they would want to stay on the surface of the  
12 property where they had oil and gas leases so that they  
13 would have lease rights. In other words, if you owned a  
14 tract -- let's say you owned the surface and your brother  
15 owned the oil and gas and I went out and leased the oil  
16 and gas from him, I would then have oil and gas rights to  
17 work on your surface because the oil and gas was leased  
18 on that. So you would try to limit your surface activit-  
19 ies to pieces of land that you actually had the minerals  
20 under that land under lease. So unless your church has  
21 leased to Buchanan Production they would not have lease  
22 rights. The only other way that an oil and gas company  
23 could legally come on, if they didn't have lease rights,  
24 would be if they had an ownership interest that gave them  
25 deed rights. So they would need either lease rights.

1 deed rights, or they would have to come out and say, "I'd  
2 like to cross your land. I want to buy a right of way  
3 and I'll willing to pay you X to cross your land." This  
4 Board does not typically -- I mean, they've never done it  
5 for me. They have never given me an order nor have I  
6 asked for one that gave any of my clients rights that  
7 they didn't have either under a lease or deed rights  
8 before they even got here.

9 MR. GARRETT: In other words, what you're saying is they would  
10 have to get prior approval -- prior permission?

11 MR. SWARTZ: Well, it would either have to be something that  
12 somebody else who had an interest in your land had given  
13 a lease to someone or the deeds in the past may have  
14 addressed it or they came out and rented the land --  
15 leased the land for the oil and gas or came out and said,  
16 "We need a right of way. We'd like to build a road  
17 across this. Can we work that out? We need a pipeline  
18 across." So there would be some kind of contractual  
19 arrangement. They're not going to put that in place.

20 MR. CHAIRMAN: Anything that they would have in the way of an  
21 application for a well has to be submitted to an inspect-  
22 or's office. Tom Fulmer is the gas and oil inspector.

23 MR. GARRETT: So there is some type of control.

24 MR. CHAIRMAN: And this Board's not acting on that at all.

25 The Board today is acting on the forced pooling request.

1 That's a separate right that you have on a permit  
2 application. If you have any differences on how -- the  
3 access to the permit site or the drilling activity, then  
4 you have certain rights. If you live within certain  
5 distances and are going to be affected there wouldn't be  
6 any way that -- unless there's some pre-existing lease or  
7 deed right to take down anything to do that.

8 MR. SWARTZ: I think one thing that might give you more  
9 comfort than the legal explanation, you may or may not  
10 have picked up on this but there is no well projected for  
11 this 80 acre unit. So the production --

12 MR. GORDON: The panel itself is only going to come up into  
13 this 80 acre block something like this right across that  
14 southeast corner. Your tract is right here, but bear in  
15 mind that this is approximately 2,000 feet below the  
16 surface and they've already driven the entry ways in here  
17 to mine it. So --

18 MR. GARRETT: Okay. On the subject of wells, there is a well  
19 drilled. I don't know who put it there and I don't know  
20 what it is, but there's one in tract 27, I think it is.

21 MR. SWARTZ: Which is in a unit to the south?

22 MR. GARRETT: Uh-huh. Right. It's up here in this little  
23 flat area and I don't know -- it's got a pump on it. I  
24 don't know what it's for or what the purpose -- I don't  
25 know if OXY owns it or what.

1 MR. SWARTZ: We don't own it.

2 MR. WIRTH: Do I need to be sworn in to answer his question?

3 I haven't been sworn in yet.

4 COURT REPORTER: (Swears witness.)

5 MR. WIRTH: I'm Martin E. Wirth with OXY, USA as land manager.

6 The well you're probably talking about was a methane

7 production hole drilled by a coal company which -- the

8 little pump that you're talking about is called a Lampsin

9 compressor. What it does, its sucks the methane out and

10 keeps the methane from underground mines. It was either

11 pre-drilled for -- like this unit you're seeing right

12 here. VP3 already had some mining to the north. They

13 shut that down and now they're mining around to the

14 south. So that still has to be there to control the

15 methane and the gas situation for another mine. And if

16 it is to the south it might be a new well that Island

17 Creek has permitted and drilled for the purpose of

18 degasing that mine and keeping it safe for the miners

19 down there.

20 MR. GARRETT: What you're saying is they're venting the

21 methane into the atmosphere?

22 MR. WIRTH: That's correct.

23 MR. GARRETT: Is the purpose of this Board to determine who

24 has rights or is this another issue that has to be

25 settled?

1 MR. CHAIRMAN: You mean who owns the mineral?

2 MR. GARRETT: Right.

3 MR. CHAIRMAN: That's an issue that the courts will settle one  
4 day. The law enabled companies to go ahead and develop  
5 to produce the gas and pool the interests of everyone,  
6 recoup the cost of the drilling is part of that, and  
7 then pool all interest until such time as it's determine  
8 who legally owns the mineral. The money's held in  
9 escrow along with the interest.

10 MR. GARRETT: Is there an appeal that we could issue if we  
11 decide -- if the Board says yes, it's okay for them to do  
12 this, is there an appeal process that we can go through?

13 MR. CHAIRMAN: This Board is an appeal process. This is the  
14 first line of appeal. If you're disappointed with the  
15 Board's decision then your appeal route is to circuit  
16 court in the locality where the activity is occurring.

17 MR. GARRETT: Okay. That kind of clears things up just a  
18 little. Basically that's the questions that I have.  
19 They're just more or less for clarification, just not for  
20 me but everybody else.

21 MR. CHAIRMAN: And you do understand in this panel that  
22 they're dealing with one unit and these squares are just  
23 like blocks of 80 acres and they're pooling the entire  
24 panel and then what we're talking about is the costs for  
25 one unit or one block in that panel as we're having these

1 discussions today. They have to justify their costs for  
2 that as well as how they're going to propose to dis-  
3 tribute pay-out in the effect a decision is made.

4 MR. GARRETT: Okay. I have one more question. These gas  
5 wells, are these subject to any limitations as far as the  
6 proximity of a structure, building, anything of this  
7 nature? Are there guidelines for that?

8 MR. CHAIRMAN: There are, yes. The inspector's office has the  
9 application before the actual well drilling activity  
10 occurs and is responsible for that.

11 MR. GARRETT: Okay.

12 MS. RIGGS: Under the pooling statute the funds that are paid  
13 out based on this division of interest and so forth under  
14 the Board order would go into an escrow account. And the  
15 escrow agent was here earlier today, Sirgeo Oliver, and  
16 we talked about the orders of the Board that would set up  
17 the escrow accounts and provide for the operators to turn  
18 the money over into escrow where they will be set up in  
19 sub-accounts pending on the interests held within the  
20 units. And that's based upon the exhibits that you're  
21 looking at here that identify interests within the units.  
22 So the money will go into escrow accounts with the Board  
23 appointed escrow agent which is Tazewell National Bank.

24 MR. GARRETT: So it's controlled by the State -- overseen by  
25 the State?

1 MR. CHAIRMAN: Yes. This Board actually orders this into an  
2 approved -- we have a contract with the Tazewell National  
3 Bank. They're the escrow agent for this Board. And we  
4 ordered the funds deposited into that and it will earn  
5 interest until such time as there is a resolution of who  
6 owns the minerals.

7 MR. GARRETT: I thank you very much.

8 MR. CHAIRMAN: Anyone else that wished to address the Board?

9 MR. ANDERSON: Ralph Anderson. I live in Abingdon. I'm  
10 retired right now. I have an interest in the William  
11 McKenny Anderson estate. On Exhibit B, Page 3, number  
12 13, 14, and 15, those figures there are for the percent-  
13 age of that estate. It doesn't add up right because it  
14 should add up to 3.022. You take those three and it adds  
15 up to 4.0293. In other words, number 15, Vena Anderson  
16 Edwards has got that figure in there in addition to the  
17 two figures here that cover C. W. Anderson's part on  
18 that. So those figures don't jive.

19 MR. GORDON: Well, also note that Vena's interest is the life  
20 estate and we're just making note of the life estate.

21 MR. ANDERSON: Oh. In other words, just the two James  
22 Marshall Anderson and Barbara Anderson Marshall. Okay.

23 MR. GORDON: By the way, do you possibly have their addresses  
24 or know where we can get them?

25 MR. ANDERSON. Yeah. I can get them. As a matter of fact, I

1 was talking to your man. He was down to see me the other  
2 day and I gave him part of them. He's got some more here  
3 that he didn't get. So he's going to back with me and  
4 I'll give him some more addresses.

5 MR. GORDON: Very good.

6 MR. ANDERSON: But, anyway, this thing is -- I just glanced  
7 down through there and it didn't add up.

8 MR. CHAIRMAN: Well, thank you. I'm glad we got the address-  
9 es. Anyone else?

10 MR. MATNEY: My name is Earnest Matney. I live in Vansant  
11 also. My interest in this is -- I have one question. I  
12 understand this pooling is all going to go in a trust  
13 fund like a trust fund. Are they going to draw their  
14 money out -- their operating capital straight out before  
15 any of this is distributed out to the other owners?

16 MR. CHAIRMAN: Mr. Swartz, do you want to address that?

17 MR. SWARTZ: It depends. If no one decides to be a partner  
18 then the only thing that's ever going to be paid out is  
19 royalty, right?

20 MR. MATNEY: Uh-huh.

21 MR. SWARTZ: So if there are no partners in the venture then  
22 there are no conflicting claims to the working interest  
23 and that money would not be subject to escrow. There  
24 will be conflicting claims with regard to royalty. For  
25 example, if somebody owns the coal under one piece and

1           somebody owns gas --

2 MR. MATNEY: Right.

3 MR. SWARTZ: That money has to be escrowed and that royalty  
4 has to be escrowed if there are two people saying, "No,  
5 it's mine." But unless people participate as partners or  
6 participate as a carried owner and then there's a pay-  
7 out, operating funds or cash flow in excess of operating  
8 costs is not escrowed. If there are no partners to accomp  
9 to you don't have to escrow their working interest. The  
10 royalty interest if there are conflicting claims, there's  
11 nothing you can do. That's always going to be escrowed.  
12 So it's up to the people in this unit to determine  
13 whether or not they're going to participate as a partner  
14 or as a carried interest owner.

15 MR. CHAIRMAN: And each of these individuals will have that  
16 choice to make.

17 MR. SWARTZ: Right.

18 MR. CHAIRMAN: If the Board approves this and an order would  
19 come out then you would have an opportunity to make an  
20 election. You shall have an opportunity to lease, but  
21 after that point in time you have to make some decision.  
22 If you wanted to be a partner, as he's calling it, and  
23 participate, as the order would say, then you would have  
24 to pay whatever decimal percentage of interest that you  
25 had into the total cost of that well as he was explaining

1           into this column that he was referring to earlier on that  
2           came up with a decimal percentage.

3 MR. MATNEY: Well, that's not really what I'm asking. I  
4           understand whatever capital that comes out of these gas  
5           wells or short wells, whatever you want to call them,  
6           their money comes right off the top, is that correct?

7 MR. SWARTZ: No. The royalty comes off the top.

8 MR. MATNEY: Well, we're using different language. You're  
9           saying royalty and I'm saying money.

10 MR. SWARTZ: Well --

11 MR. MATNEY: Either way, you get your money first right up  
12           front, is that correct?

13 MR. GORDON: No, sir. The royalties come off the top.

14 MR. SWARTZ: Every check the one-eighth comes off the top.

15 MR. MATNEY: But what happens to the remainder of this money?

16 MR. SWARTZ: If there are partners then it gets --

17 MR. MATNEY: What if there are not partners?

18 MR. SWARTZ: It goes to the operator.

19 MR. MATNEY: All right. Suppose you got 50 percent of them  
20           partners and 50 percent is not, is it tied up for the  
21           other 50 percent is what I'm trying to find out?

22 MR. SWARTZ: If a person decides not to be a participant, to  
23           not come up with capital to participate in the well, all  
24           that person gets is a one-eighth royalty just like if  
25           they leased it.

1 MR. CHAIRMAN: Everybody in here is not bound by the action of  
2 anybody else. Each person has an opportunity to make  
3 their own --

4 MR. MATNEY: Well, that's what I couldn't understand when you  
5 said this money was going to be pooled and then later the  
6 courts were going to decide how it was going to be  
7 distributed.

8 MR. CHAIRMAN: I didn't mean to say distributed. I'm talking  
9 about distributed based on who owns interest there.  
10 That's what the courts will decide, if you, in fact, did  
11 have an interest. They could determine that you didn't  
12 have any.

13 MR. McGLOTHLIN: If Buchanan Production brings in \$100 off of  
14 a well, \$12.50 goes directly to the escrow account, the  
15 one-eighth, and that will be disbursed. Does that make  
16 it clearer?

17 MR. SWARTZ: Assuming there are conflicting claims basically,  
18 right.

19 MR. McGLOTHLIN: Right. If you've got more than one person  
20 who says it's my money then that \$12.50 of \$100 goes into  
21 escrow. There may be situations where you don't have a  
22 dispute. One person owns everything, the coal, oil and  
23 gas. And then there's no reason to escrow that money.  
24 You give it to the people right now. But if there's more  
25 than one person saying it's mine, then it goes into

1           escrow and, like Mr. Wampler says, then the courts have  
2           to tell the Board who owns it and --

3 MR. CHAIRMAN: On any conflicting claim the court has to solve  
4           that.

5 MR. MATNEY: But the other ones that there's no conflicting  
6           claim on they'll go ahead and distribute it?

7 MR. SWARTZ: Right. Yes, sir.

8 MR. MATNEY: Okay. Thank you.

9 MR. CHAIRMAN: Any other questions?

10 MR. JACOBS: My name is Alex Jacobs. I'm from Martinsville.  
11           I only have a question -- I'm just kind of confused. We  
12           have a lease with Island Creek Coal Company and as to  
13           exactly where this lease or where all this is up through  
14           here, is there anyone that I could talk to later to kind  
15           of help me?

16 MR. CHAIRMAN: You're just trying to locate exactly where this  
17           panel that the Board's considering may be in regard to  
18           your lease?

19 MR. JACOBS: Right.

20 MR. SWARTZ: Well, can you show me where your tract is on the  
21           plat, the one you're interested in?

22 MR. JACOBS: Well, I can't tell by this.

23 MR. SWARTZ: If you want to hang around for a break, Steve  
24           Breeding or I can talk to you and see if we can't point  
25           you in the right direction.

1 MR. JACOBS: Okay. That's all I needed to know.  
2 MR. CHAIRMAN: Anyone else? Do you have anything else, Mr.  
3 Swartz? Any questions, members of the Board? What's  
4 your pleasure? Are you finished with all your witnesses?  
5 MR. SWARTZ: Yes, sir.  
6 MR. MCGLOTHLIN: I move we accept the petition as presented.  
7 MR. CHAIRMAN: A motion to approve.  
8 MR. KELLY: Second.  
9 MR. CHAIRMAN: We have a motion to approve and a second. Any  
10 further discussion? If not, all in favor signify by  
11 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)  
12 It's unanimous.

13 (AFTER A BRIEF RECESS, THE PROCEEDINGS CONTINUED AS  
14 FOLLOWS:)

15  
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ITEM XII, XIII

1  
2  
3 MR. CHAIRMAN: The next item on the agenda is a petition for  
4 forced pooling of drilling unit O-4.

5 MR. SWARTZ: Mark A. Swartz and Howard Salisbury appearing for  
6 both Buchanan Production Company and the designated  
7 operator candidate, OXY, USA.

8 MR. JOHNSON: Donald R. Johnson appearing for Commune  
9 Carriers, Inc.

10 MR. SWARTZ: Mr. Chairman, since we have two hours to go  
11 before we lose a quorum, I would like to propose -- and  
12 obviously you're going to have to find out if there's any  
13 objection. But I would like to propose that we do docket  
14 number Items XII and XIII together, that would be units  
15 O-4 and P-4, since they are both in the same panel and  
16 we'd be dealing with the same Exhibit G items. And then  
17 after we finish that I would propose that we do docket  
18 numbers XIV, XV, XVI, XVII and XXI together since all of  
19 those units are in the same panel or panels. And then I  
20 would like to finish up if we can get to it with a group  
21 of three units which are dockets XVIII, XIII and XX which  
22 are three units that are in yet another panel or panels.

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

24 MR. MCGLOTHLIN: There are some people in the audience that  
25 might be here for the hearing. I was just wondering if

1 they -- which ones they're here for. If we could hear  
2 the ones that we have public comment about?

3 MAN IN AUDIENCE: We're here concerning unit V-19.

4 MR. CHAIRMAN: That's the one you're proposing third. There  
5 is people -- is everyone here that's present in the  
6 audience here for V-19? Anyone not here for V-19?  
7 Anyone else have any others that are priorities? In  
8 other words, what they're saying is instead of taking  
9 what you proposed as number two next, take three next.

10 MR. SWARTZ: I have no problem with that. We can do that. So  
11 what we will do then is we will move to --

12 MR. CHAIRMAN: We'll take O-4 and P-4 now and then we'll go to  
13 V-19, W-19 and X-19.

14 MR. SWARTZ: Okay. So you want me to go with O-4 and P-4 and  
15 then skip to the last one next?

16 MR. CHAIRMAN: Right.

17 MR. SWARTZ: My first witness on both of these units would be  
18 Sam Gordon.

19  
20  
21 SAMUEL E. GORDON, II

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

DIRECT EXAMINATION

1  
2  
3 BY MR. SWARTZ:

4 Q. Do you want to state your name again, Sam?

5 A. Samuel Edward Gordon, II.

6 Q. I'll remind you you're still under oath. Do you under-  
7 stand that?

8 A. Yes, I do.

9 Q. Are you employed by OXY, USA?

10 A. Yes, I am.

11 Q. Did you prepare both the notice of hearing and the  
12 pooling applications that have been filed with the Board  
13 on units G-4 and P-4 which are VGOB dockets 92/09/15-0257  
14 and 0258?

15 A. Yes, I did.

16 Q. And is that one of your duties for OXY?

17 A. Yes, it is.

18 Q. The applicant on both of these applications is Buchanan  
19 Production Company?

20 A. That is correct.

21 Q. And is Buchanan Production Company a Virginia general  
22 partnership?

23 A. Yes, it is.

24 Q. Are the two partners in Buchanan Production Company  
25 Appalachian Operators, Inc. and Appalachian Methane,

- 1 Inc.?
- 2 A. That is correct.
- 3 Q. Are both of these partners in Buchanan Production Company
- 4 wholly owned subsidiaries of Oxidental Oil and Gas
- 5 Corporation?
- 6 A. That is correct.
- 7 Q. Is OXY, USA also a wholly owned subsidiary of Oxidental
- 8 Oil and Gas Corporation?
- 9 A. That is correct.
- 10 Q. Is Buchanan Production Company authorized to do business
- 11 in the Commonwealth of Virginia?
- 12 A. Yes, it is.
- 13 Q. On each of these applications is the applicant Buchanan
- 14 Production Company requesting that OXY, USA be designated
- 15 as it's operator and the Board's designated operator?
- 16 A. That is correct.
- 17 Q. Is OXY, USA a Delaware corporation?
- 18 A. Yes, it is.
- 19 Q. Has OXY, USA been authorized to do business in the
- 20 Commonwealth, has it registered with the DMME, and does
- 21 it have a blanket bond on file as required by law?
- 22 A. Yes, it does.
- 23 Q. First of all, does Buchanan Production Company have a
- 24 management committee?
- 25 A. Yes, it does.

- 1 Q. Has that management committee delegated to OXY, USA "the  
2 authority to explore, develop, and maintain the propert-  
3 es of Buchanan Production Company as it's professional  
4 manager"?
- 5 A. Yes, it has.
- 6 Q. And have you filed anything in writing with the Board to  
7 document that?
- 8 A. Yes, we have. It's attached as Exhibit J, Page 1.
- 9 Q. To both of these applications?
- 10 A. That is correct.
- 11 Q. Has OXY, USA further delegated the authority it has from  
12 Buchanan Production to certain specific named employees?
- 13 A. Yes, it has.
- 14 Q. And who are they and what are their titles?
- 15 A. Glen VanGolen as general manager. Martin E. Wirth as  
16 land manager. Myself as regulatory manager.
- 17 Q. Has OXY, USA filed a written consent to act as designated  
18 operator in the event the Board should appoint it as  
19 designated operator on both of these units?
- 20 A. Yes, it has. That is Exhibit J, Page 2.
- 21 Q. With regard to both of the applications that we're  
22 dealing with that you prepared, is there a list of  
23 respondents in the notice of hearing portion of the  
24 papers that were filed with the Board?
- 25 A. Yes, there is.

1 Q. And then is there also an Exhibit B --  
2 A. Yes.  
3 Q. -- to each application?  
4 A. That is true. Yes.  
5 Q. And did you have a hand in or were you responsible for  
6 drafting those documents?  
7 A. Yes, I was.  
8 Q. First, with regard to unit O-4, can you tell me whether  
9 or not you want to add any respondents today?  
10 A. No, we do not.  
11 Q. Do you wish to dismiss any respondents?  
12 A. No.  
13 Q. Has OXY, USA with regard to each of these two applica-  
14 tions exercised due diligence to identify and locate  
15 persons having record title to oil and gas or coal and  
16 once you have identified those persons have you used due  
17 diligence in trying to locate them?  
18 A. Yes. We have exercised, as I testified before, first  
19 with record title ownership, then trying to locate the  
20 people through the tax records, word of mouth, paper.  
21 Yes, we have exercised due diligence in trying to locate  
22 all the owners of record.  
23 Q. With regard to unit P-4 --  
24 MR. McGLOTHLIN: Excuse me. Mr. Swartz, on tract 2, Big  
25 Prater Primitive Baptist Church, is that the same one we

1           just --

2 MR. SWARTZ: Right.

3 MR. MCGLOTHLIN: You want to amend that to show the proper  
4           identification?

5 THE WITNESS: We will amend it, yes, sir.

6 MR. SWARTZ: Right.

7 THE WITNESS: If we just strike "big" on that that takes care  
8           of it.

9 MR. SWARTZ: Well, no. We've got the trustees wrong also.

10 THE WITNESS: Oh, the trustees were wrong. That's right. I'm  
11           sorry. It will be amended.

12 Q. (Mr. Swartz continues.) With regard to P-4, do you want  
13           to add any respondents to that application today?

14 A. No, we do not.

15 Q. Do you want to dismiss any?

16 A. No.

17 Q. With regard to both of these units, O-4 and P-4, did OXY  
18           cause notices to be mailed by certified mail, return  
19           receipt requested, to everyone listed as a respondent for  
20           whom you had an address?

21 A. That is correct. Yes.

22 Q. Now, just looking at the mailings with regard to unit O-  
23           4, going back to that one --

24 A. Okay.

25 Q. -- were there any people for whom you did not have

- 1 current addresses?
- 2 A. Yes. There was A. C. Anderson, Litia Anderson Lewis,  
3 George B. Anderson, James Marshall Anderson, Barbara  
4 Anderson Marshall, Venta Anderson Edwards that we did not  
5 have addresses on.
- 6 Q. And then were there some people for whom you had address-  
7 ed but the mail that you sent to them at the addresses  
8 that you had came back from the post office unclaimed?
- 9 A. Yes. We had Phyllis Jean Whitt, Earnest P. Anderson,  
10 Ruby J. Ratcliff who by the way we've made contact with a  
11 while ago, Big Prater Creek Primitive Baptist Church who  
12 again was present at the last pooling.
- 13 Q. And we now have a current address for the Prater Creek  
14 Primitive Baptist Church?
- 15 A. Yes, and their trustee.
- 16 Q. With regard to unit 0-4, can you tell me whether or not  
17 you filed a proof of mailing with Mr. Fulmer's office?
- 18 A. Yes, we did.
- 19 Q. And was a notice published with regard to both 0-4 and  
20 P-4 publishing the notice of hearing portion of these  
21 applications in a newspaper?
- 22 A. Yes, we did. On August 27th they were published in the  
23 Virginia Mountaineer.
- 24 Q. With regard to both of these units?
- 25 A. That's correct.

1 Q. Now, looking to the mailing that was accomplished  
2 specifically with regard to unit P-4, you've indicated  
3 that you mailed to everyone that you had an address for.  
4 But are there any people in unit P-4 for whom you do not  
5 have and did not have current addresses?

6 A. We did not have addresses for Emaline Anderson, Emaline  
7 Anderson estate, H. B. and C. A. Elswick estate.

8 Q. So then the notice to them would have been by publica-  
9 tion, right?

10 A. That's correct.

11 Q. Were there any people that you sent mail to at a given  
12 address but it came back unclaimed?

13 A. We had none of those.

14 Q. So everybody you mailed to got it as far as you know?

15 A. That's right.

16 Q. And were there persons to whom mail was sent but you  
17 haven't as yet received anything at all back from the  
18 post office?

19 A. No.

20 Q. And you filed a proof of mailing with regard to unit P-4  
21 as well with Mr. Fulmer's office?

22 A. That is correct, along with proof of publication on both  
23 of them.

24 Q. Now, let's look at the exhibits and we'll start, since  
25 the first in the book, with O-4. OXY's interest in unit

- 1 0-4 is summarized at Exhibit A, Page 2, is it not?
- 2 A. That is correct.
- 3 Q. And what is the interest that is sought to be pooled by  
4 this application?
- 5 A. We are seeking to pool the remainder of the coal owner-  
6 ship which is 6.365 percent and the remainder of the oil  
7 and gas ownership which is 18.8213 percent.
- 8 Q. If you would, turn to Exhibit C. Did you prepare Exhibit  
9 C?
- 10 A. Yes, I did.
- 11 Q. Did you prepare it within the last sixty days?
- 12 A. Yes, I did.
- 13 Q. And what is the estimate of allowable costs for unit 0-4  
14 shown on Exhibit C?
- 15 A. \$245,225.
- 16 Q. And how many bore holes or wells are included in this  
17 estimate?
- 18 A. One.
- 19 Q. And we see the bore hole fee?
- 20 A. Right.
- 21 Q. Is this \$245,225 figure in your judgement a reasonable  
22 estimate as to costs required to produce from this unit?
- 23 A. Yes, it is.
- 24 Q. Is this unit which is shown at Exhibit G, Page 1,  
25 overlying the mine map -- is this an actual mine map or

- 1 projection?
- 2 A. Yes, it is.
- 3 Q. And what mine is it?
- 4 A. This is the west development of the VP3 mine plan for  
5 Island Creek Coal Company.
- 6 Q. And the longwall panel one development west that we're  
7 concerned with here is shown on this map, is it not?
- 8 A. Yes, it is.
- 9 Q. And it intersects unit 0-4?
- 10 A. Yes, it does.
- 11 Q. If you turn to the next page, Exhibit G, Page 2, have you  
12 set forth on Exhibit G, Page 2, the percentage of acreage  
13 within unit 0-4 as a percentage of the total acreage in  
14 the entire panel one development west?
- 15 A. Yes, I have. And that percentage is 10.775 percent.
- 16 Q. And that percentage is used to allocate costs, allocate  
17 revenue subsequently, correct?
- 18 A. That is correct.
- 19 Q. If you would, turn to Exhibit G, Page 3. Is this the  
20 same exhibit that we saw with regard to unit N-4 that we  
21 pooled shortly after lunch today?
- 22 A. That is correct.
- 23 Q. And we're dealing with the same panel, the same  
24 \$1,010,450 in costs that we previously discussed?
- 25 A. That is correct.

- 1 Q. Now, these costs, do they anticipate short hole produc-  
2 tion followed by active gob production?
- 3 A. That is correct.
- 4 Q. And have you tried to encompass within these reasonable  
5 costs all costs which you reasonably expect will be  
6 necessary to accomplish a development program from short  
7 hole through active gob?
- 8 A. Yes.
- 9 Q. You have not, however, included costs that might be  
10 incurred in sealed gob?
- 11 A. That is correct.
- 12 Q. You conceive that you would have to come back to this  
13 Board if the sealed gob unit were to be created for them  
14 to take further action, correct?
- 15 A. Correct.
- 16 Q. Because the field rules II does not include the right to  
17 produce sealed gob?
- 18 A. Correct.
- 19 Q. If we apply the percentage that we saw on Exhibit G, Page  
20 2, the 10.775 percent, to the total costs for this panel,  
21 what is the share of costs allocable to unit 0-4?
- 22 A. \$108,876.
- 23 Q. Now, if we look we can use this same exhibit to deal with  
24 P-4, can't we?
- 25 A. Yes, we can.

- 1 Q. And P-4's acreage percentage in the total panel is  
2 exactly the same as O-4, is it not?
- 3 A. That is correct.
- 4 Q. And what is that?
- 5 A. 10.775 percent.
- 6 Q. And if we apply that times the same total cost figures,  
7 since we're dealing with the same figure, what do we come  
8 up with for the P-4 allocable cost for that unit?
- 9 A. The same dollars, \$108,876.
- 10 Q. If you would, turn the page to Exhibit G, Page 4. For  
11 purposes of a respondent trying to determine what sum  
12 would be required to be contributed to participate as a  
13 partner or to be carried as a non-participant, what  
14 figure on Exhibit G, Page 4, would be relevant to that  
15 inquiry?
- 16 A. The figure in the far right hand column adjacent to their  
17 name.
- 18 Q. Under division of interests?
- 19 A. Under division of interests, that's correct.
- 20 Q. Now, Exhibit G, page 4, that we're looking at right now  
21 pertains only to those respondents in O-4, correct?
- 22 A. That's correct. And you have the same exhibit on P-4 --  
23 or similar.
- 24 Q. And they would take the division of interest reported  
25 after their name times the allocable unit cost that we

- 1 talked about, the \$108,876, and that would give them the  
2 participation cost or the carried cost which would be  
3 applied to the multiple?
- 4 A. That's correct.
- 5 Q. Both of these units are 80 acre units?
- 6 A. That is correct.
- 7 Q. We're dealing with all coal seams below the Tiller?
- 8 A. That's correct.
- 9 Q. The short hole production would be from the Pocahontas #3  
10 seam?
- 11 A. That's correct.
- 12 Q. The active gob would be from the rubblized zone created  
13 by longwall mining in the Pokey 3 seam?
- 14 A. That is correct.
- 15 Q. There's a bore hole fee shown on this unit because there  
16 is actually a well in the unit. Have you prepared ten  
17 copies of Exhibit K to file with the Board?
- 18 A. Yes, we have.
- 19 Q. And have we written all of today's dockets on those ten  
20 copies so they can be -- so we don't have to file 110  
21 copies?
- 22 A. That is correct. Yes.
- 23 Q. Exhibit K is a contract approval abstract, right?
- 24 A. That is correct.
- 25 Q. And this is an interim document which we have been using

- 1 until Island Creek and Buchanan Production and/or OXY  
2 reached a final agreement, correct?
- 3 A. That is correct.
- 4 Q. And are you aware of the fact that there's an October  
5 21st deadline for you all to get back to the Board either  
6 with a written agreement or a status report?
- 7 A. Yes, I'm aware of that.
- 8 Q. And is it your intention, Mr. Wirth's intention, and Mr.  
9 VanGolen's intention to get back to the Board in advance  
10 of October 21st with one or the other or both?
- 11 A. That is our intention, yes.
- 12 Q. Did you file certificates of publication with Mr.  
13 Fulmer's office with regard to both of these units?
- 14 A. Yes.
- 15 Q. You have obtained leases in both of these units --
- 16 A. Yes, we have.
- 17 Q. -- and in other areas of Buchanan County? What are the  
18 terms that you have obtained coalbed methane leases on?
- 19 A. For coalbed methane we are acquiring it at \$1 per acre  
20 bonus consideration with a one-eighth royalty for a term  
21 of five years.
- 22 Q. And would you recommend those figures to the Board to the  
23 extent that they need to consider that kind of consider-  
24 ation in affording options to respondents in their order?
- 25 A. That would be my recommendation, yes.

1 Q. With regard to unit P-4, if you would turn to Exhibit C.  
2 MR. CHAIRMAN: Exhibit C?  
3 MR. SWARTZ: Yes, sir.  
4 Q. (Mr. Swartz continues.) What is your opinion as to a  
5 reasonable estimate of the costs that would be incurred  
6 on unit P-4 to pursue the course of development that you  
7 have described?  
8 A. \$280,875.  
9 Q. If you would, turn back staying in P-4 to Exhibit A, Page  
10 2. What is or are the interests that are sought to be  
11 pooled by this application to pool P-4?  
12 A. We are requesting that the difference in the remaining  
13 coal interests of 3.27 percent and the remaining differ-  
14 ence of oil and gas of 32.6335 percent be forced pooled.  
15 Q. With regard to both of these units, is it your opinion  
16 that the applicant's plan of short hole development  
17 followed by active gob development is a reasonable plan  
18 to develop the coalbed methane resource within and under  
19 the units in question for the benefit of the owners of  
20 the coalbed methane resource in those units?  
21 A. Yes, it is.  
22 Q. Is it your opinion that the short hole and active gob  
23 development that you've described and that's shown -- or  
24 that you can tell from the maps that we've filed with the  
25 application -- is it your opinion that following these

1 plans would contribute to the protection of the cor-  
2 relative rights of owners of the methane within and  
3 under the units in question and would at the same time  
4 lessen the likelihood of physical waste, specifically  
5 venting, and lessen the likelihood of economic waste?

6 A. Yes.

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

8 MR. CHAIRMAN: On Exhibit K, your agreement between Island  
9 Creek and OXY, USA, has that been finalized?

10 MR. SWARTZ: No.

11 MR. CHAIRMAN: We had the Board stipulate it October 21st?

12 MR. SWARTZ: Right. The alternative are to either give you a  
13 written agreement by that date, which surprised me that  
14 it's after the date of the next hearing -- I figured it  
15 would be at the next hearing -- or tell you where we  
16 stand. The recommendation of the people in this room  
17 today representing Buchanan Production and OXY is,  
18 although it is clear to us we will not have a complete  
19 final agreement with Island Creek by that date, that we  
20 do have something which is a final agreement for your  
21 purposes with these bore holes and it is our intention  
22 to show up with a written agreement. We don't have  
23 control over everyone that we cross paths with. We're  
24 optimistic that we'll have a written agreement. We would  
25 prefer not to operate with you with agreements that are

1 not final. I mean, the price is final and it's always  
2 been final and it will still be final, but the other  
3 details have been subject to negotiation. So it's my  
4 expectation we'll be back to you by the deadline with a  
5 written final agreement that deals with this part of the  
6 problem that you're interested in. I can't guarantee  
7 that, but that's what we're shooting for.

8 MR. CHAIRMAN: We might just footnote for the Board's atten-  
9 tion on the agenda next time to bring that up. Any  
10 questions, members of the Board?

11 MR. JOHNSON: Mr. Wampler, members of the Board, I am here for  
12 a corporation Communi Carriers, Inc. which owns a very  
13 small piece of the 0-4 unit and they own the coal, oil  
14 and gas, and surface. My client has been talking with  
15 OXY, USA in terms of putting together a lease of this  
16 small area. I have already filed with the Board written  
17 objections. What I'd like to do, if it's acceptable to  
18 OXY and with the Board, is to ask the Board to accept  
19 those written objections and we will not make any further  
20 representation to the Board at this time being hopeful  
21 that we can put together a lease. We want to be able to  
22 preserve our rights in the event that we do not put a  
23 lease together.

24 MR. CHAIRMAN: Did you have anything else?

25 MR. JOHNSON: I have with me Mr. James Clevenger who's the

1 agent for my client.

2 MR. CHAIRMAN: We had written objections on N and O-4. Of  
3 course, this one brings in N. But on O-4 from Richard  
4 Huffman and Minnie Warts. Mr. Swartz, do you want to  
5 respond to that?

6 MR. SWARTZ: I'm not sure I've seen that objection.

7 MR. CHAIRMAN: I'll read it into the record. It's a couple of  
8 paragraphs. This is to the Division of Gas and Oil.  
9 "This is to advise you that this office represents Minnie  
10 Warts of 19 Lambrook Road, Cruble, Connecticut with  
11 regard to above captioned matter." And that captioned  
12 matter is units O-4 and N-4. "My client hereby makes  
13 formal objection to the proposal by OXY Company with  
14 regard to the development of gas and oil rights in the  
15 above mentioned units. However, should the OXY Company  
16 present a firm offer with respect to outright purchase of  
17 said rights or a guaranteed royalty at a set amount she  
18 would be more than happy to entertain the same. Under no  
19 circumstance will my client be willing to extend any of  
20 her out of pocket funds for the development of gas and  
21 oil rights in this property. If there is any future  
22 communication, please forward same to this office."

23 MR. WIRTH: Is that our copy? Could we have a copy?

24 MR. CHAIRMAN: You hadn't seen this?

25 MR. WIRTH: No, sir.

1 MR. CHAIRMAN: She's going to make copies.

2 MR. SWARTZ: Well, my only comment, I guess, with regard to  
3 this letter is it doesn't state a basis for objecting. I  
4 guess it needs to be in the file. It needs to be noted.  
5 We'll certainly make note of it so that we communicate  
6 with this law firm with future correspondence. But I  
7 don't think there's anything to respond to, from me  
8 anyway.

9 MR. CHAIRMAN: Do you have anything to say regarding Mr.  
10 Johnson's --

11 MR. SWARTZ: Yes. As you can tell from the mine plan, mining  
12 is approaching these units and we need to be able to  
13 produce this gas instead of throw it away. I really feel  
14 like I need a final decision from you all today. Where  
15 did he go? Is he history or --

16 MR. WIRTH: No. He went in there to talk to another client.

17 MR. SWARTZ: I think that there is a possibility that Buchanan  
18 Production and Mr. Johnson's client will enter into a  
19 lease and these objections may go away. But that hasn't  
20 happened. I think there's some reason to be optimistic,  
21 but I can't continue this and wait for that to happen. I  
22 have gone through Mr. Johnson's motion to dismiss. I've  
23 gone through his objections. I feel like you need to  
24 rule on them today. I can through them very, very  
25 quickly. Motion to dismiss, number one, he says we

1 haven't demonstrated an ownership interest. I think our  
2 Exhibit A, Page 2, does that. We're telling you the  
3 position we have in the unit, what needs to be pooled.  
4 He says our plat fails to comply with Board regulations.  
5 Well, it's on a Board form and he needs to tell us what's  
6 wrong with it and he hasn't done that. Number three,  
7 CCI did not receive adequate notice. They signed the  
8 card for the mail on August 19th, almost a month ago, and  
9 they had plenty of time to hire Mr. Johnson. Four, BPC  
10 does not have the consent of CCI as coal owner to frack  
11 any stimulation of coal. Mr. Johnson doesn't understand  
12 this application apparently. There's no fracking or  
13 stimulating contemplated. When you do short hole  
14 production you don't frack, when you do active gob you  
15 don't frack. That just misses the boat completely. Item  
16 five in the motion to dismiss, provisions of Virginia  
17 Code are violations of due process and constitute a  
18 taking. He needs to go to court to raise that argument.  
19 This body, as I understand it, is not going to resolve  
20 constitutional issues. The objections to the pooling  
21 application -- and this comes up again maybe on another  
22 unit so I won't do it again. I'll just do it this time.  
23 But he has the same thing demonstrating an ownership  
24 interest. I've addressed that. Our Exhibit A, Page 2,  
25 does that. Consent to frack is irrelevant because there

1 isn't going to be no fracking or stimulation here. Item  
2 three, he says it fails to comply with statewide field  
3 rules. Statewide field rules have nothing to do with  
4 this application. We have specific field rules in the  
5 Oakwood Field dealing with short hole and active gob  
6 production. Then he talks something about a coal lease.  
7 You'll notice that we are not making any claim that  
8 we're pooling or have an interest under a coal lease.  
9 We've got oil and gas rights and CBM rights. This is an  
10 Ashland type of argument that they are making in front of  
11 Judge Persin. We're not relying on a coal lease here. I  
12 don't know what we're talking about when we're talking  
13 about coal leases. They said that our request violated  
14 the terms and conditions of the coal lease. Again, why  
15 is this relevant? We're not seeking to pool on any  
16 interest we claim under a coal lease. He says the size  
17 and configuration of the unit is not adequate to drain  
18 the gas. This is the wrong hearing. He should have been  
19 at the hearing that created the Oakwood Field Rules or he  
20 should move the court or the Board to modify that. This  
21 is not the time or place to raise that issue. And  
22 certainly, if you're going to raise that kind of an issue  
23 you need to show up with a geologist, a petroleum  
24 engineer, or some expert witness. Item seven, he says  
25 the well or wells may not be located at or near the

1 center of the proposed unit. My response to that is "so  
2 what". Some of these units don't even have wells on  
3 them. We're talking about short hole and active gob.  
4 The location of wells is totally irrelevant. You drain  
5 the unit as dictated by the mine plan. He says the plat  
6 submitted by the applicant BPC with it's application  
7 fails to comply with regulations of the Board. Well,  
8 it's on a form approved by the Board. He needs to tell  
9 us specifically what's wrong with it. I look at it.  
10 We've used it. I don't see anything wrong with it. He  
11 says our survey may be inaccurate or he objects to it.  
12 Well, where's his survey? Our's is certified by a  
13 surveyor. He says we've fail to list all the owners in  
14 the coal, coalbed methane, and oil and gas. Well, we  
15 don't have to do that. We only have to list the people  
16 we are naming as respondents who we are seeking to pool.  
17 We don't have to list people we have leases from. There  
18 is no legal requirement or Board requirement to do that.  
19 He says CCI did not receive adequate notice. That's  
20 bologna. The card that's been filed with Mr. Fulmer says  
21 they got notice on August 19th. They've had time to hire  
22 Mr. Johnson. And although Mr. Johnson is such a stickler  
23 for rules and regulations, he had time to file this  
24 application yesterday. The Board rules, as I understand,  
25 they require them to do in ten days in advance. For some

1 reason or another he sent you seven copies. He should  
2 send you ten. In any event, he's here. Number twelve,  
3 applicant has failed to provide CCI with any geological  
4 petroleum engineer data. We have no obligation to  
5 provide that. If they want that kind of data or if Mr.  
6 Johnson wants to review it, there is data available at  
7 Mr. Fulmer's office with regard to the field rule  
8 hearings that were held on several occasions with regard  
9 to the Oakwood Field. He says we have failed to provide  
10 CCI with any documentation or other evidence as to it's  
11 request to have OXY designated operator. Well, the  
12 notice and the application say that that's what's going  
13 to happen. Fourteen, applicant has failed to provide CCI  
14 with any documentation of drilling costs. That's what  
15 Exhibit C is. Fifteen, we failed to provide CCI with any  
16 documentation submitted as conditions for participation.  
17 Both the notice and the application specifically state  
18 the conditions for participation, formulas for allocation  
19 of income and cost. It's in there. In addition, the  
20 statute is pretty clear and both the application and the  
21 notice follow the terms of the statute. Sixteen, CCI  
22 objects to the establishment of a unit for a longwall  
23 panel development in that would violate their correlative  
24 rights and fail to adequately compensate them. Well, we  
25 need some witnesses here. This was addressed when these

1 field rules were created and he's really arguing with the  
2 field rules as opposed to this pooling application. If  
3 he's not going to like the field rules, maybe he needs to  
4 bring a motion for this Board to modify those field  
5 rules. Seventeen, CCI reserves the right to present  
6 evidence, to cross-examine witnesses, matters not listed  
7 above. Well, this is a catch-all, in case I forget  
8 something I can raise it later. He needs to tell us what  
9 he's talking about in seventeen. We can't tell.  
10 Eighteen, provisions of Virginia Code violate due process  
11 rights, constitute a taking of tangible property. This  
12 is a constitutional issue. This is the wrong forum to  
13 raise that. He needs to go to court. CCI reserves the  
14 right to object to any well. The objection remedies are  
15 there. They're present. If there's a well permit  
16 issued, if they're entitled to notice they'll get notice  
17 and they can look at the statutes and give their objec-  
18 tion. I mean, this is not something this Board is going  
19 to give or take away. I would respectfully request that  
20 you act on or make a decision on Mr. Johnson's motions to  
21 dismiss and his objections because as you can tell from  
22 the mine plan mining is approaching this area, we need to  
23 be able to produce this gas, and there seems to be no  
24 reason to delay. Obviously, if Mr. Wirth and Mr. Johnson  
25 can reach an agreement that's acceptable and they have a

1            lease we'll let you know. We'll dismiss these folks as a  
2            respondent. But I don't think we're going to reach that  
3            agreement today and we need a decision.

4 MR. CHAIRMAN: Anything else from any one? Questions, members  
5            of the Board? I think we need to make a decision on the  
6            motion to dismiss.

7 MR. EVANS: I make a motion that we deny the motion to  
8            dismiss.

9 MR. KELLY: Second.

10 MR. CHAIRMAN: A motion and a second. Any further discussion?  
11            All in favor signify by saying yes. (ALL AFFIRM.)  
12            Opposed say no. (NONE.) It's unanimous. On the  
13            objections to the application -- we'll consider the  
14            objections as part of the motion to dismiss for the  
15            record. For the unit 0-4.

16 MR. MCGLOTHLIN: Mr. Chairman, I make a motion that we accept  
17            the application as filed.

18 MR. CHAIRMAN: A motion to approve.

19 MR. KELLY: Second.

20 MR. CHAIRMAN: A motion and second to approve and a second.  
21            All in favor signify by saying yes. (ALL AFFIRM.)  
22            Opposed say no. (NONE.) It's unanimous. On P-4.

23 MR. MCGLOTHLIN: I make a motion we approve.

24 MR. CHAIRMAN: A motion to approve as presented.

25 MR. EVANS: Second.

1 MR. CHAIRMAN: A motion to approve and a second. Any further  
2 discussion? If not, all in favor signify by saying yes.  
3 (ALL AFFIRM.) Opposed say no. (NONE.) It's unanimous.

4 MR. FULMER: Mr. Chairman, the two application that were  
5 approved by us were conditioned upon the submittal of  
6 record -- the exhibits --

7 MR. CHAIRMAN: Correct the exhibits, yes. That's part of the  
8 record.

9 MR. FULMER: Also with regard to the plan for submittal by  
10 Buchanan and OXY's agreement, do you want that second on  
11 the list?

12 MR. CHAIRMAN: Well, we've already set that date. I just want  
13 it footnoted. I mean, it will just be footnoted as part  
14 of the -- I don't think it has to be a docket item per  
15 say. It's just footnoted. If they want to put anything  
16 on. We've already put it on as far as the agreement. If  
17 they bring it, there's no discussion. If they don't,  
18 we've got a problem with all the other orders. They have  
19 to address it. The reason we set the 21st was intention-  
20 ally after the Board date so you'd have an opportunity as  
21 a trigger date to get something done.

XIX  
ITEMS XVIII, ~~XIX~~, XX

1  
2  
3 MR. CHAIRMAN: For the convenience of the other parties here  
4 we agreed to go to Items XVIII, XVIII and XX next.  
5 That's units V-9, W-19, and X-19. We would ask the  
6 parties that wish to address the Board in that matter to  
7 come forward, please.

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

10 MR. CHAIRMAN: You folks just want to reserve the right to  
11 ask questions after we exam the witnesses? Okay. Do you  
12 have any statements you want to make as we start?

13 MEMBER OF AUDIENCE: After.

14 MR. CHAIRMAN: Okay.

15 MR. SWARTZ: By agreement of the parties and I think with the  
16 consent of the Chairman we're taking up three units, V-  
17 19, W-19 and X-19. These all share the same panel or  
18 panels. My witness will be Mr. Sam Gordon.

19  
20  
21 SAMUEL E. GORDON, II

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. Do you want to state your name again, Sam?

5 A. Samuel Edward Gordon, II.

6 Q. I'll remind you you're still under oath. Do you under-  
7 stand that?

8 A. Yes, I do.

9 Q. Who do you work for?

10 A. I work for OXY, USA.

11 Q. Did you prepare both the notices of hearing, the applica-  
12 tions, and most if not all of the exhibits for V-19, W-19  
13 and X-19?

14 A. Yes, I did.

15 Q. And you signed all the applications?

16 A. Yes, I did.

17 Q. The name of the applicant on all three applications is  
18 Buchanan Production Company?

19 A. That is correct.

20 Q. And is Buchanan Production Company a Virginia general  
21 partnership?

22 A. Yes, it is.

23 Q. Are the two partners in Buchanan Production Company  
24 Appalachian Operators, Inc. and Appalachian Methane,  
25 Inc.?

- 1 A. That is correct.
- 2 Q. And both of those corporate partners are wholly owned  
3 subsidiaries of Oxidental Oil and Gas Corporation, is  
4 that correct?
- 5 A. That is correct.
- 6 Q. Is OXY, USA, Inc. also a wholly owned subsidiary of  
7 Oxidental Oil and Gas Corporation?
- 8 A. That is correct.
- 9 Q. Is Buchanan Production Company authorized to do business  
10 in the Commonwealth of Virginia?
- 11 A. Yes, it is.
- 12 Q. On all three of these applications have you requested  
13 that some one other than Buchanan Production Company be  
14 designated to operate these three units?
- 15 A. Yes, we did. We requested that OXY, USA be the designat-  
16 ed operator.
- 17 Q. Is OXY, USA a Delaware corporation?
- 18 A. Yes, it is.
- 19 Q. Is it authorized to do business in the Commonwealth of  
20 Virginia?
- 21 A. Yes, it is.
- 22 Q. And is OXY registered with the DOME?
- 23 A. Yes, sir.
- 24 Q. And does OXY have a blanket bond on file as required by  
25 laws of the Commonwealth?

1 A. Yes, it does.

2 Q. Does Buchanan Production Company have a management  
3 committee?

4 A. Yes, it does.

5 Q. Has that management committee delegated to OXY, USA "the  
6 authority to explore, develop, and maintain the propertie-  
7 es of Buchanan Production Company" as it's professional  
8 manager?

9 A. Yes, it has. And that is also reflected in Exhibit J,  
10 Page 1.

11 Q. And there's a J, Page 1, with regard to each one of these  
12 three applications?

13 A. That is correct. Yes, sir.

14 Q. Has OXY, USA delegated specific authority to it's  
15 employees in discharging the duties that Buchanan  
16 Production has delegated to OXY?

17 A. Yes, it has.

18 Q. Who are those employees and what are their duties?

19 A. Glen VanGolen as general manager, Martin E. Wirth as land  
20 manager, and myself as regulatory manager.

21 Q. Has OXY, USA filed a written consent to serve as unit  
22 operator if appointed with regard to all three of these  
23 applications?

24 A. Yes, it has. And that is Exhibit J, Page 2, of all  
25 three.

- 1 Q. Do each of these applications have a list of respondents  
2 in the notice of hearing portion?
- 3 A. Yes, it does.
- 4 Q. And is there also an Exhibit B to each of these applica-  
5 tions which lists names and addresses by tracts of the  
6 people whose interests are sought to be pooled?
- 7 A. That is correct.
- 8 Q. Getting to notice and interest, let's start with V-19  
9 first. Do you want to amend to add any respondents?
- 10 A. No.
- 11 Q. Are there any respondents that we can dismiss from V-19  
12 or that you would like to dismiss from V-19?
- 13 A. No.
- 14 Q. Let me direct your attention to Exhibit B, tract 4.
- 15 A. Okay.
- 16 Q. This is V-19.
- 17 A. Oh, the W. S. Ellis heirs.
- 18 Q. Did it turn out that Pocahontas Gas Partnership had a  
19 lease with the W. S. Ellis heirs?
- 20 A. Yes, they do.
- 21 Q. Have you determined who those heirs are?
- 22 A. Yes, we have.
- 23 Q. Does this application seek to force pool the lessee,  
24 Pocahontas Gas Partnership?
- 25 A. Yes, it does.

1 Q. So the W. S. Ellis heirs or lessors are not necessary  
2 respondents, correct?

3 A. That is correct.

4 Q. In any event, did you mail a courtesy copy of the notice  
5 of hearing and the application to all of the W. S. Ellis  
6 heirs that were identified to you by their lessee,  
7 Pocahontas Gas Partnership?

8 A. That is correct. Pocahontas gave us the information we  
9 received in our office on September 1st and I turned  
10 around and under certification mailed a courtesy copy to  
11 each one of the parties they gave us on September 1st.

12 Q. And have you filed copies of any of that with Mr.  
13 Fulmer's office?

14 A. Yes, we have.

15 Q. So he has copies of that courtesy mailing as well?

16 A. Yes.

17 Q. Now, with regard to the mailing on unit V-19, did you  
18 mail the information required to every one for whom you  
19 had an address?

20 A. Yes, we did.

21 Q. And were there any folks that you did not have an address  
22 for?

23 A. Yes.

24 Q. And that was whom?

25 A. Just the W. S. Ellis heirs which we have now taken care

1 of. So no, we had addressed for everybody.

2 Q. Then with regard to the same mailing on V-19, did you  
3 sent any mail but it came back unclaimed and, if so, from  
4 whom?

5 A. Yes. We had two come back unclaimed. They were Diane  
6 Graham and James Huffman.

7 Q. Did you file a proof of mailing with regard to unit V-  
8 19?

9 A. Yes, we did.

10 Q. Now, going with regard to amendments or dismissals and  
11 mailing going to unit W-19, okay?

12 A. Okay.

13 Q. Did you mail notices to every respondent for whom you had  
14 an address the notice of hearing and application with  
15 exhibits?

16 A. Yes.

17 Q. Is there anyone that you want to amend -- do you want to  
18 amend your application on W-19 to add anyone as a  
19 respondent?

20 A. Yes, we do. We need to add Pauline Ratcliff Brown as a  
21 respondent.

22 Q. Have you already filed an amended exhibit with the Board  
23 or have you furnished them with an amended exhibit B  
24 today that would add her?

25 A. W-19?

1 Q. Yes.

2 A. Yes.

3 Q. Now, when you added Pauline Ratcliff Brown you also  
4 amended the plat, did you not?

5 A. Yes, we did.

6 Q. And Pauline Ratcliff Brown -- the 2-D tract is actually a  
7 part of what you have listed as 2-B before?

8 A. That's correct.

9 Q. And that's shown on the amended tract?

10 A. That's correct.

11 Q. Or the amended plat, Exhibit A, Page 2. Now, did you  
12 have to adjust any percentage interests when you added  
13 Pauline Brown besides the percentage interest of tract  
14 2-B?

15 A. No, we did not.

16 Q. So those are the only numbers that are changed on the  
17 amended Exhibit B and that was the only adjustment you  
18 had to make?

19 A. That's correct.

20 MR. MCGLOTHLIN: Mr. Swartz, before we get too far, on V-19 on  
21 your respondents you had two that were unclaimed?

22 THE WITNESS: Right.

23 MR. MCGLOTHLIN: What were those names again?

24 THE WITNESS: Diane L. Graham and James Huffman.

25 MR. SWARTZ: James Huffman is one of the people, I believe, on

1 the courtesy mailing if I'm not mistaken.

2 MR. MCGLOTHLIN: I don't show him on my list as a respondent  
3 in Exhibit B.

4 MR. EVANS: What's the address for James Huffman?

5 THE WITNESS: I've got 1538 Atta Cable Drive, Akron, Ohio.

6 MR. SWARTZ: Marty, was he one of the people that Pocahontas  
7 brought to your attention in the second mailing? Do you  
8 remember? Yeah, he is.

9 THE WITNESS: James W. Huffman. He's one of the respondents  
10 from the Ellis heirs from Pocahontas Gas --

11 MR. SWARTZ: He's not a respondent. We dismissed the Ellis  
12 heirs. He was one of the Ellis heirs. And it turned out  
13 they leased to PGP. So that came back as part of this  
14 courtesy mailing to the lessor saying --

15 MR. EVANS: Okay. I didn't see his name on there.

16 MR. SWARTZ: Well, you wouldn't have. It took us a minute to  
17 figure it out. But that's where he came from.

18 Q. (Mr. Swartz continues.) Now, with regard to the amended  
19 Exhibit B and Pauline Ratcliff Brown, unit W-19, she's  
20 tract 2-D, okay?

21 A. 2-D.

22 Q. And you're amending it to add her, correct?

23 A. Correct.

24 Q. Has she signed a lease with OXY, USA?

25 A. Yes.

1 Q. But we're amending to add her and we want to keep her a  
2 party because -- what has she done with that lease? What  
3 has she told us?  
4 A. She's told us that she wants to -- she has executed lease  
5 but she does want the right through her legal counsel  
6 first.  
7 Q. But she signed it in the presence of one of your people  
8 and said can I show this to my lawyer and has kept it,  
9 correct?  
10 A. That is correct. Yes.  
11 Q. And when did she sign the lease?  
12 MR. SWARTZ: Marty, do you know when she signed the lease?  
13 Was it yesterday?  
14 MR. WIRTH: I believe it was yesterday.  
15 MR. SWARTZ: So what we are asking the Board is to keep her as  
16 a respondent till we actually physically get the lease  
17 back. When that happens we will notify the Board and she  
18 can be dismissed. But I think it's prudent to keep her  
19 on until that happens.  
20 Q. (Mr. Swartz continues.) Do you wish to dismiss any  
21 respondents on W-197  
22 A. Yes. We do wish to dismiss Julie C. McCoy. She'd  
23 deceased and her interest will go to Nettie -- on what I  
24 just handed you -- Nettie Currothers and Nettie is under  
25 lease.

1 MR. EVANS: What now?

2 MR. WIRTH: You better swear me in.

3 (Witness stands aside.)

4 MR. SWARTZ: You're already under oath, I think.

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

6

7

MARTIN E. WIRTH

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

10

11

DIRECT EXAMINATION

12

13

BY MR. SWARTZ:

14

Q. State your name, please.

15

A. Martin E. Wirth, land manager with OXY, USA. Ms. McCoy  
16 was identified as an heir in the title records and there  
17 was no will that we could find. We were advised last  
18 week that there was a will in the chancery actions. We  
19 did find a copy of the will. She passed away leaving the  
20 will to a party to which we have already had on the lease  
21 and is not a named respondent. So we're just asking to  
22 dismiss her because her interest has been leased.

23

Q. And that person that you had the lease with I think was  
24 Nettie Currothers, right?

25

A. Yes. It might throw them off. She's not a respondent.

1 MR. SWARTZ: Correct, because you have a lease and it turned  
2 out that this party's interest was under lease and that's  
3 why there's a dismissal and no substitution.

4 MR. GORDON: You might add, the second amendment I just handed  
5 you dropped McCoy from it for that reason.

6 MR. CHAIRMAN: Okay.

7 (Witness stands aside.)  
8

9 SAMUEL E. GORDON, II

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

13 DIRECT EXAMINATION  
14

15 BY MR. SWARTZ:

16 Q. Now, with regard to -- we're staying with W-19 -- you  
17 mailed to everyone you had an address for, correct?

18 A. That is correct.

19 Q. And the only person you didn't have an address for was  
20 Julie C. McCoy and we have asked that she be dismissed.  
21 So we've taken care of that?

22 A. That's correct.

23 Q. Then we had certain mail for certain people that we  
24 mailed to that we had an address but then that mail came  
25 back unclaimed, correct?

1 A. That is correct.

2 Q. One of the people that it came back unclaimed was Pamela  
3 Darnell, correct?

4 A. That is correct.

5 MR. SWARTZ: Mr. Wirth, did you send Pamela Darnell and her  
6 husband Tom a lease and a bonus check?

7 MR. WIRTH: That is correct.

8 MR. SWARTZ: And what did they do with the check?

9 MR. WIRTH: They cashed it.

10 MR. SWARTZ: What did they do with the lease?

11 MR. WIRTH: They kept it.

12 MR. SWARTZ: So we are joining them as respondents, correct?

13 MR. WIRTH: That's correct.

14 MR. SWARTZ: And it may turn out ultimately that we'll get a  
15 lease, but we don't have it yet?

16 MR. WIRTH: That's correct.

17 MR. SWARTZ: But we know they have your money?

18 MR. WIRTH: That's correct.

19 Q. (Mr. Swartz continued.) Now, with regard to Carol  
20 Barnett and Sparky --

21 A. Their original notices were returned to us also.

22 Q. But you have new addresses for these folks, correct?

23 A. That is correct.

24 Q. And the amended Exhibit B shows those new addresses and  
25 there was another mailing to them?

1 A. That's correct.

2 Q. And those mailings were accomplished on September 11th,  
3 correct?

4 A. Correct.

5 Q. Now, you did get back some mail from the post office  
6 regarding whom?

7 A. Diane Graham, the same as the other unit.

8 Q. Now, with regard to the last of these three units that  
9 we're working on, X-19, again, just looking at respond-  
10 ents and the notices. X-19, did you mail to everyone for  
11 whom you had an address -- every respondent?

12 A. That is correct. Yes.

13 Q. Did you file proofs of mailing with Mr. Fulmer's office?

14 A. Yes, we did.

15 Q. It looks like you got a signed green card back from  
16 everybody on this unit.

17 A. We did.

18 Q. Do you recommend that anybody be added by way of amend-  
19 ment or anyone be dismissed by way of dismissal on this  
20 unit, X-19?

21 A. No.

22 Q. If we could, we'll try to work through the costs once  
23 with unit V-19 which is VGOB number ending in 0264.  
24 Let's start with the interest. Exhibit A, Page 2,  
25 discloses what interests you're seeking to pool in unit

1 V-19, correct?

2 A. That is correct.

3 Q. And that is what?

4 A. As to the coal we're seeking no interest. We have 100  
5 percent. On the oil and gas we're requesting a pooling  
6 of 90.19 percent.

7 Q. Exhibit G, Page 1, shows a mine map, correct?

8 A. That is correct.

9 Q. Is this an actual mining map?

10 A. Yes, it is.

11 Q. Whose is it?

12 A. It belongs to Island Creek Coal Company.

13 Q. And what mine are we talking about? Is that stated up  
14 there, VP#6?

15 A. That is correct.

16 Q. And the unit V-19 is highlighted in dark?

17 A. That is correct.

18 Q. If you turn back one page we've got Exhibit C, do you see  
19 that?

20 A. Yes.

21 Q. Is Exhibit C something you prepared?

22 A. Yes, it is.

23 Q. Within the last sixty days?

24 A. Yes.

25 Q. Is the \$770,200 total your best estimate as to the

- 1 reasonable costs that will be expended with reference to  
2 unit V-19 to pursue the development through short hole  
3 and/or active gob production from development panels two  
4 and three?
- 5 A. Yes, it is.
- 6 Q. Now, in this incidence if we got to Exhibit G, Page 1,  
7 the percentages of the three units that we're talking  
8 about here are all known on this map, aren't they?
- 9 A. Yes, they are.
- 10 Q. So if you look at V-19 with regard to development panel  
11 two it has 6.417 percent of the total acreage in panel  
12 development two, correct?
- 13 A. That is correct.
- 14 Q. And V-19 had 5.134 percent of development panel three,  
15 correct?
- 16 A. Correct.
- 17 Q. And then the other two units that we're talking about,  
18 X-19 is 39.931 percent of development panel two?
- 19 A. Correct.
- 20 Q. 31.946 percent of development panel three?
- 21 A. Correct.
- 22 Q. And then W-19 is the same percentages that we had for  
23 X-19, correct?
- 24 A. That is correct.
- 25 Q. So all three of these units that we're dealing with have

- 1 their percentages expressed on Exhibit G, Page 1?
- 2 A. Correct.
- 3 Q. Then the panel costs, if you turn to Exhibit G, Page 2,  
4 for V-19, W-19, X-19 and, of course, there's a unit which  
5 we are not force pooling today, W-19, the costs on all  
6 those units with regard to each panel are summarized at  
7 the top of Exhibit G, Page 2, correct?
- 8 A. That is correct.
- 9 Q. There are no headings over those columns. Is the total  
10 \$593,200 the cost for panel development three?
- 11 A. That is correct.
- 12 Q. So the one is right is development panel three and the  
13 one on the left is development panel two, correct?
- 14 A. Correct.
- 15 Q. To calculate the allocable costs for the short hole  
16 and/or active gob production for unit V-19 you would take  
17 the percentage in the unit with regard to panel develop-  
18 ment three, which we've already talked about, times  
19 \$593,200 and you come up with a unit cost for that  
20 particular panel, development three, of \$30,454, correct?
- 21 A. Correct.
- 22 Q. And you do the same thing for development panel two. And  
23 the cost for that panel allocable to unit V-19 is  
24 \$27,433, correct?
- 25 A. Correct.

- 1 Q. If someone was trying to make a determination of what  
2 their participation cost would be in this unit they would  
3 add those two numbers together, correct?
- 4 A. Correct.
- 5 Q. And then they would turn to Exhibit G, Page 3?
- 6 A. Correct.
- 7 Q. And would they use the division of interest reported in  
8 the far right hand column as the percentage to multiply  
9 times the allocable cost to figure out their participa-  
10 tion share?
- 11 A. That is correct.
- 12 Q. And they would also use that division of interest to  
13 figure out what their carrying percentage might be before  
14 they applied a multiple if they were going to be a non-  
15 participant?
- 16 A. Correct.
- 17 Q. And this division of interest would be relevant to  
18 royalty calculations?
- 19 A. Correct.
- 20 MR. EVANS: Are you sure you said that right? Are you sure  
21 that you're saying that right? You've got two different  
22 percentages, two different panels, with this unit. Would  
23 you necessarily add both --
- 24 MR. SWARTZ: Oh, no. You're right.
- 25 MR. EVANS: You would have to do each one separately and add

1 the result.

2 THE WITNESS: Yeah, right.

3 MR. SWARTZ: You do the addition last. You're absolutely  
4 right.

5 THE WITNESS: Good catch. Thank you.

6 MR. SWARTZ: Exhibit G, Page 3, reports two numbers for each  
7 person, one for development panel three and one for two.  
8 And you need to apply the respective number to the cost  
9 that you lift off of Exhibit G, Page 2. You're right.

10 Q. (Mr. Swartz continues.) For the other two units that  
11 we're talking about here, W-19 and X-19, you will find  
12 this same exhibit in those applications and the alloca-  
13 tion of costs, at least, per panel is reflected on this  
14 exhibit. Is there an Exhibit G, Page 3, for both units  
15 X-19 and W-19 that sets forth a division of interest for  
16 development panel two and development panel three for  
17 both of those units?

18 A. Yes, there is.

19 Q. The number that you would need for each panel to calcu-  
20 late costs in terms of allocating it to the unit and to a  
21 given individual?

22 A. Correct.

23 MR. EVANS: Again, since you amended your notification on some  
24 of these on who is to be notified, who is a respondent  
25 and who is not, do you need to also amend your Exhibit Gs

1 where it's necessary to include those being dismissed and  
2 to change any percentages that requires? And also the  
3 fact that your Exhibit A, Page 2, where it doesn't effect  
4 those exhibits?

5 MR. CHAIRMAN: Any anywhere else it may effect it?

6 MR. SWARTZ: Well, I think we only had one change that effects  
7 someone other than a name disappearing or being added. I  
8 mean, there's only been one division of interest number  
9 that changed and we'll definitely do that. We'll either  
10 white it out and it will just disappear or -- we'll amend  
11 it in some fashion so that when Sandy is trying to do the  
12 orders -- we'll file the exhibits. So you have exhibits  
13 what happened in terms of this dismissals.

14 MR. EVANS: That's fine. As long as they have correct  
15 information.

16 Q. (Mr. Swartz continues.) Were notices with regard to each  
17 of these three units published in the paper?

18 A. Yes, they were.

19 Q. And what paper and what date?

20 A. Virginia Mountaineer August 27th.

21 Q. Did OXY, USA on behalf of Buchanan Production exercise  
22 due diligence in trying to identify everyone as a  
23 potential owner or potential claimant and then try and  
24 track them down to get addresses?

25 A. Yes, we did.

- 1 Q. Did OXY. USA on behalf of Buchanan Production attempt to  
2 lease from as many people as you could track down?
- 3 A. Yes, sir.
- 4 Q. And you did lease quite a bit of acreage in all three of  
5 these units?
- 6 A. Yes. That's correct.
- 7 Q. What were the terms and conditions of those leases that  
8 you'd like the Board to be aware of and to consider in  
9 entering any order with regard to elections here?
- 10 A. On the coalbed methane it was \$1 per acre bonus with a  
11 one-eighth royalty, and a five year term.
- 12 Q. My last two questions, is it your opinion that the plan  
13 of development that's shown on the map mines and that  
14 we've talked about today with regard to these three units  
15 is a reasonable way to develop the coalbed methane  
16 resource within and under these units?
- 17 A. Yes, it is.
- 18 Q. And is it your opinion with regard to these three units  
19 and the mine plan that they share that the plan of  
20 development that we've described today would contribute  
21 to the protection of the correlative rights of the owners  
22 and claimants to the methane, lessen the likelihood of  
23 physical waste and economic waste?
- 24 A. Yes, it is.
- 25 MR. SWARTZ: That's all I have.

1 MR. CHAIRMAN: Any questions, members of the Board?  
2 (Witness stands aside.)  
3 MR. CHAIRMAN: Regarding unit V-19, is Connie Ratcliff here?  
4 I had a letter voicing an objection to the hearing today.  
5 Did you have anything specific, Ms. Ratcliff, that you  
6 wanted to --  
7 MS. RATCLIFF: No.  
8 MR. CHAIRMAN: Also I don't guess Madeline Hunt is her, but I  
9 have a letter -- well, that's regarding W-19. X-19 from  
10 Madeline Hunt who advised that "I have some concerns  
11 about these applications, further advise if any facts  
12 appear to negate my interest in above I hereby appear  
13 with protest." Do you have anything to say about either  
14 of those?  
15 MR. SWARTZ: I've heard the one you've read to me. I know  
16 that Mr. Wirth wrote back to Madeline Hunt. So I assume  
17 we have a copy of that.  
18 MR. CHAIRMAN: It shows you with a copy. I don't know that  
19 you received it.  
20 MR. SWARTZ: Why don't you tell the Board, Mr. Wirth, that you  
21 did respond to her concerns and what you told her?  
22 MR. WIRTH: Ms. Hunt did provide us with a carbon copy of the  
23 letter to Mr. Fulmer and I have advised her that the  
24 applications that pertained to -- she is with the G. W.  
25 Mullins estate. I'll go quickly through the title. They

1 own more than just the tract in subject. The concern was  
2 was I pooling all the acreage she has in Buchanan County.  
3 A; No, it only dealt with the 84 acre tract. B; She  
4 was concerned that all the interest was not shown. She  
5 owns a 33 percent interest and we're only showing -- I  
6 don't know -- 10 percent and that's just because she  
7 only has 10 percent of the unit. She was confused as to  
8 what she really had -- how much she had it that. So I  
9 also just wrote her a letter that the oil and gas estate  
10 is different from the coal estate so there will be an  
11 escrow. There was some questions from the estate as to  
12 the escrow and that if is she would contact my office if  
13 she had further concerns I would happy to help or contact  
14 Mr. Fulmer's office.

15 MR. CHAIRMAN: Did you have any additional testimony?

16 MR. SWARTZ: No, sir.

17 MR. CHAIRMAN: Mr. Ratcliff, do you wish to address the Board?

18 MR. RATCLIFF: I'm Wyatt Ratcliff from Oakwood, Virginia. I  
19 have property both in -- a small portion in V-19. Most  
20 of my property adjoins V-19 and U-19. And my purpose for  
21 being here is to make the Board aware of the circum-  
22 stances that are taking place at this time when they  
23 permit the V-19 to be operated by OXY. What I would  
24 like to bring out is that I have a producing gas well  
25 that has been in use since about 1972. The well lies

1 within 100 foot of the line of V-19 over in the unit of  
2 U-19. It is pulling gas from both V-19 and U-19. The  
3 well is supplying gas right now to approximately 225  
4 people, 85 homes. What we have is something that might  
5 be like a nonprofit public utility maintained and kept up  
6 by the citizens in unit U-19 and V-19. All the people in  
7 both these units own all of the oil and gas. They have  
8 all the rights to it and they have had -- when my  
9 grandfather sold the coal he sold only the coal with very  
10 few rights to get it out. My well lies directly above  
11 the Pocahontas #3 seam that Beatrice has already mined  
12 out in our area. Therefore, we're contending that what  
13 my grandfather sold was the coal. Once that coal is gone  
14 we own everything all the way down and the minute the  
15 coal is taken out all of their rights have been depleted.  
16 Ownership of gas or oil or any other mineral that might  
17 be down there would belong to the landowners in unit U-19  
18 and V-19. With the permitting of V-19, that's the  
19 subject we're on. I don't know what effect it will have  
20 on this well. All these people depend on the gas for  
21 heat, hot water, and other uses that they have or that  
22 they make of it. We've been operating the well for  
23 approximately eighteen or twenty years. We've never had  
24 an accident. We've got a perfect safety record. We're  
25 saving thousands of dollars to the people -- the home-

1 owners in our area that they would have to pay out for  
2 alternate energy. This well -- if you need to know the  
3 history of it and you all would like to ask questions,  
4 I'll try to answer those. But we have always contended  
5 that the owners of the property own everything except in  
6 coal underneath this. If you permit the gas companies to  
7 use their system of extracting the gas from the property,  
8 to my knowledge, they use high vacuum pumps with tremend-  
9 ous vacuum that will pull gas not only from V-19 but also  
10 the other units surrounding V-19. If there is an opening  
11 right up at the line of V-19 and U-19, it's going to pull  
12 the gas also from U-19. I'm not positive of that, but I  
13 believe that and I'm not expert. We would like to have  
14 the Board consider all the people that I represent by  
15 coming over here and the consequences of what will happen  
16 to them if this gas is permitted to be vacuumed out and  
17 sold to customers up north. It rightly belongs to us.  
18 We do not charge one family one dollar for any gas that's  
19 being used. Everybody helps to keep up their line,  
20 maintain it. And all the people in this unit have access  
21 to the gas. A few of them are afraid of it and have not  
22 hooked on. But everybody that wants it does have it and  
23 there's about 85 families using it.

24 MR. MCGLOTHLIN: Mr. Swartz, would it be all right to ask Mr.  
25 Breeding some questions concerning the mining in this

1 area? Do you have any objection to that?

2 MR. SWARTZ: Well, I'd rather offer a little testimony which I  
3 think might simplify things and then if you want to ask  
4 some questions. I've got two or three questions for him  
5 which I think address some issues.

6  
7 STEVE BREEDING

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

10  
11 DIRECT EXAMINATION

12  
13 BY MR. SWARTZ:

14 Q. Mr. Breeding, would you please state your name?

15 A. Steve Breeding.

16 Q. And you're still under oath.

17 A. Yes, sir.

18 Q. Who do you work for?

19 A. Island Creek Coal Company.

20 Q. Are you familiar generally with the well that Mr.  
21 Ratcliff has been describing?

22 A. Yes, I am.

23 Q. Do you know where it produces from?

24 A. That would be from the old Beatrice mining operation.

25 Q. From the works of that old mine?

1 A. Yes.

2 Q. And is that old mine in communication with the VP6 mine  
3 we're talking about on these three applications?

4 A. There should be an un-mined barrier of coal between those  
5 two particular operations that are left there for safety  
6 purposes. The exact dimension of it, I don't know. 100  
7 to 200 feet barrier. So I wouldn't think that there  
8 would be any direct communication or any kind of compres-  
9 sor or vacuum in that longwall section that would have  
10 any impact on that particular mine.

11 Q. So is it your testimony that there is a solid coal  
12 barrier between these two mines, the one that we're  
13 taking about on these three applications?

14 A. Yes.

15 Q. And the old Beatrice works that Mr. Ratcliff's well is  
16 producing from?

17 A. Yes. There's a solid block of coal.

18 Q. And are you comfortable it's at least 100 feet?

19 A. Yeah, I think so. It's at least 100 feet.

20 Q. Is Mr. Ratcliff's well within the boundaries of V-19? He  
21 seemed to indicate it was not.

22 A. I couldn't give you the exact location. I think he said  
23 it was on the boundary between V-19 and U-19.

24 MR. RATCLIFF: That's right. It's not completely in unit U-  
25 19. It's about 100 feet from V-19.

1 THE WITNESS: And I think it's located directly over one of  
2 the old Beatrice longwall panels.  
3 MR. RATCLIFF: That's right.  
4 THE WITNESS: So, in effect, it's a gob well over an old  
5 longwall panel.  
6 MR. SWARTZ: I don't know if that helps you, Mr. McGlothlin,  
7 in terms of understanding where these things are and  
8 whether or not they're --  
9 MR. MCGLOTHLIN: I understand.  
10 MR. KELLY: Let me just ask while you're on the barrier  
11 question. Would that be the white area shown here  
12 generally --  
13 THE WITNESS: It would be to the north of --  
14 MR. KELLY: -- of the V-19 unit?  
15 THE WITNESS: Yes. Actually, there are some old works in the  
16 V-19 unit that are not shown, but there's a solid barrier  
17 of coal between those.  
18 MR. KELLY: The barrier is farther on north of V-19 or it's  
19 part of this white area within V-19?  
20 THE WITNESS: It's located in V-19.  
21 MR. KELLY: So it's this white area that's about -- the  
22 northern 60 percent of the unit shown here or --  
23 MR. WIRTH: Part of it.  
24 THE WITNESS: Part of it, yes.  
25 MR. KELLY: Part of that white area?

1 THE WITNESS: Part of that white area, yeah.

2 MR. KELLY: And that barrier extends --

3 MR. SWARTZ: By law it has to extend between the mines. You  
4 cannot have old works and communication with an active  
5 mine.

6 MR. KELLY: Right.

7 MR. RATCLIFF: Is there any possible chance that your short  
8 hole type drilling has penetrated this barrier?

9 THE WITNESS: Absolutely none whatsoever. All of the short  
10 hole drilling is done within the longwall panel itself  
11 and the purpose of that is to degas the VP3 seam prior to  
12 longwall production and to also inject water into the  
13 coal seam for dust suppression purposes.

14 MR. SWARTZ: You said VP3.

15 THE WITNESS: VP6. Excuse me.

16 MR. RATCLIFF: Okay. I understand it's blocked that way. In  
17 my experience with living over the Beatrice is every few  
18 hours at a certain given time we have tremendous earth  
19 tremors, rocks falling. The same thing will occur over  
20 number six when that is mined out. On each side of this  
21 barrier we're talking about I think a geologist would  
22 say that once these rocks were breaking it's going to  
23 break over top of your wall, leaving an opening, and the  
24 gas will be pulled from the beatrice into #6. There's a  
25 very good possibility since the --

1 THE WITNESS: There are mains that are kept open and actually  
2 traveled that separate the longwall panels we're talking  
3 about from even that barrier that separates VP6 and  
4 Beatrice. Those mains are kept open. They do not --  
5 there's no rubblization over top of those.

6 EUGENE RATCLIFF: Is this the actual copy of the mains right  
7 here?

8 THE WITNESS: Yes.

9 EUGENE RATCLIFF: How many feet approximately do you think  
10 that is?

11 THE WITNESS: I'm just going to guess -- probably say in the  
12 neighborhood of about 300 or 400 feet right there.

13 EUGENE RATCLIFF: Before you get to the barrier?

14 THE WITNESS: Before you even get to the barrier. Then  
15 there's a solid barrier of coal past that before you get  
16 to the old Beatrice works. And all these have to be kept  
17 open as travel ways and as much as for ventilation  
18 purposes also. So there's no rubblization. Rubblization  
19 will occur down in the actual longwall areas. Again, you  
20 talk about the bumps and vibrations. You have to  
21 remember that the Beatrice was mined fifteen/twenty years  
22 ago with older technology and older pillars. Everything  
23 has been updated and we've done a lot of redesign on the  
24 pillar work to take care of a lot of those vibrations.  
25 We just, you know, in the past three years really haven't

1 experienced that much of a vibration problem.

2 MR. CHAIRMAN: Mr. Breeding, did you say this producing well

3 that Mr. Ratcliff has is located in V-19?

4 THE WITNESS: No. I think you said it was -- I'm not exactly

5 sure where it is.

6 MR. RATCLIFF: It's across the line from V-19, 100 foot over

7 in U-19.

8 THE WITNESS: It's in U-19.

9 MR. RATCLIFF: The well was there before this unit map was

10 developed. And when they developed the map then my well

11 happened to be in an illegal position.

12 THE WITNESS: As I understand it, your well is an old ventila-

13 tion hole, is that correct?

14 MR. RATCLIFF: That's correct. That's the history of it.

15 THE WITNESS: One of the very old ventilation holes that

16 Island Creek had for the Beatrice.

17 MR. MCGLOTHLIN: Steve, the longwall sections of the Beatrice,

18 do they also go in a north/south direction or a east/west

19 or could you speculate on that?

20 THE WITNESS: I can't. I can't tell you exactly which way

21 they run right now.

22 EUGENE RATCLIFF: I've got a map if you care to look at it.

23 It's a certified map.

24 THE WITNESS: If you've got a map I can tell you real quickly.

25 MR. CHAIRMAN: Did you gentlemen have anything to add to what

1 Mr. Ratcliff has to say?

2 MR. BOYD: Jackie R. Boyd, Route 5, Abingdon, Virginia.

3 THE WITNESS: Those panels run in an east/west.

4 MR. MCGLOTHLIN: East/west. Thank you.

5 MR. CHAIRMAN: Okay. Go ahead and ask your question. Just  
6 ask it to us and we'll get somebody to answer the  
7 question.

8 MR. BOYD: Okay. I need to know how Mr. Gordon obtained each  
9 of these parties addresses and title of ownerships on  
10 these properties?

11 MR. WIRTH: Let me answer. This is Marty Wirth. On this  
12 tract we obtained a titled opinion from an attorney that  
13 listed all the heirs that were known of record of  
14 Buchanan County. As to addresses, we went basically with  
15 the tax records or any way we could. And recently I've  
16 been talking with Wyatt and he's assisting us on updating  
17 some of the addresses and everything.

18 MR. BOYD: Now, directing your attention to tract 1F. Can you  
19 give an estimation of approximately how many acres we're  
20 talking about there?

21 MR. WIRTH: Sure. What unit are we --

22 MR. SWARTZ: V-19. Exhibit A, Page 1.

23 MR. WIRTH: 1F, is that your question?

24 MR. BOYD: Yes, sir.

25 MR. WIRTH: 1F, it shows has .44 acres or .55 percent of that

1 tract inside that 80 acre unit block. That is not the  
2 whole tract. That just falls within the V-19 unit.

3 MR. BOYD: Now, I have a question for Mr. Gordon. As a rule,  
4 do you recheck each of these dockets before you send them  
5 -- assign them or mail them to the parties?

6 MR. GORDON: Yes, sir.

7 MR. BOYD: So, in your words, this is accurate to the best of  
8 your knowledge?

9 MR. GORDON: Yes, sir.

10 MR. BOYD: There's a question of titleship to the properties  
11 concerning me and that's why I'm asking did you double  
12 check this thing and where you got your information from?  
13 The properties I own over there consist of fourteen  
14 acres.

15 MR. GORDON: Are we talking surface or are we talking mineral?

16 MR. BOYD: I'm talking surfaces that I own.

17 MR. GORDON: Well, we're addresses minerals here, Mr. Boyd.  
18 We're not talking about the surface on these plats.  
19 We're addressing minerals.

20 MR. BOYD: Okay. Now, on tract 1F, could you tell me to the  
21 best of your knowledge where it is located?

22 MR. GORDON: Well, on our plat here 1F is in the upper left  
23 hand corner. And as it shows -- it's dashed in. Only a  
24 part of 1F is inside the unit boundary. There's a  
25 portion that lies to the west that lies outside of our

1 unit boundary. So those dashed in lines should depict  
2 your tract there.

3 MR. BOYD: I understand what you're saying, but I'm asking  
4 where in the general area of Buchanan County does this  
5 lie?

6 MR. GORDON: Just south of Route 627.

7 MR. BOYD: Is that on Harrington Creek specifically?

8 MR. GORDON: Young's Branch -- maybe Marty can address this  
9 better than I can.

10 MR. WIRTH: I don't have the titled opinion, but according to  
11 what we're showing from the surveyor, which is Mr.  
12 VanMeter, Garden Creek, Young's Branch, Route 627, on or  
13 near -- if you see the dash mineral lines and then the  
14 dash lines over there, there's a partial. You'll see  
15 Route 627 lies -- I don't know if it separates your  
16 property or not. Maybe you can tell us, Henry. We don't  
17 have the complete tract located on here. We're showing  
18 how much is falling in that unit. And it might be all  
19 fourteen areas. You may extend up into U-19. It looks  
20 like it's also going to go into V-18 and probably would  
21 go into U-18.

22 MR. GORDON: It's kind of hard to read there, but Route 624  
23 and Route 627 junction just north of our boundary line  
24 there -- or the unit line.

25 MR. RATCLIFF: Mr. Chairman, since I live there, let me tell

1 Mr. Boyd exactly where this property is. It's located on  
2 Garden Creek Road, off Garden Creek Road two miles, up  
3 Garden Creek. You come to Young's Branch. That's Rout  
4 627. And the property that Marty is showing here is  
5 right in the center of the Ratcliff property. That has  
6 never been sold to anyone. Therefore, it's just an  
7 error. I think he's got the property. You've just got  
8 it located in the wrong unit. That's my thinking. You  
9 all need to clear that up. He has property in Harring-  
10 ton.

11 MR. BOYD: To make the point clear, if they're accurate, which  
12 I have asked and they've assured me they are accurate and  
13 double check these before they mail them, if they're so  
14 sure of accuracy of this map and me and Mr. Ratcliff have  
15 discussed that we think this may not even be my property,  
16 how can they be so sure the walls aren't going to crack  
17 and cipher the gas out of somebody else's property next  
18 door? If they can't be accurate of the surface location,  
19 how can they be accurate of something underground?

20 MR. RATCLIFF: Let me add one other thing. My aunt Stella  
21 Ratcliff is a widow. She's about 90 years old, lives on  
22 this property, and it would be very easy to check out --  
23 Marty, check out the Harvey Ratcliff property, see if he  
24 ever sold his gas rights at any time to the Boyd heirs.  
25 If he did, that would answer the question. I don't think

1           it was ever sold. But if it was --

2 MR. WIRTH: Harvey Ratcliff heirs?

3 MR. RATCLIFF: The Harvey Ratcliff tract. If he sold his gas

4           at any time to the Boyds, that could be -- would solve

5           your problem.

6 MR. CHAIRMAN: The gentleman in the center, did you have

7           anything that you wanted to address?

8 EUGENE RATCLIFF: No. I just want to say --

9 MR. CHAIRMAN: Can I get your name, please, sir?

10 EUGENE RATCLIFF: Eugene Ratcliff, Wytheville, Virginia. They

11           claim to have 9.09 percent of the gas and oil and the

12           property owners have 90.91 percent. You would think the

13           property owners would have the control of interest of

14           what goes with the gas and oil. 90 to 9 is a big

15           difference.

16 MR. CHAIRMAN: Of course, the law allows a claimant to come

17           forward. The law itself allows a claimant to come

18           forward and be designated as an operator and produce and

19           pool interests.

20 EUGENE RATCLIFF: In other words, Wyatt and I could start us a

21           corporation and we could do the same thing and mark us

22           off some 80 acre tracts and drill us some wells?

23 MR. CHAIRMAN: Is your well permitted, Mr. Ratcliff?

24 MR. RATCLIFF: My well is not permitted under the new law

25           effective March, 1990 --

1 MR. CHAIRMAN: July of 1990.

2 MR. RATCLIFF: July of 1990. No, sir. I attempted to get it  
3 permitted. As soon as I learned in the paper of the new  
4 law I called the Oil and Gas Board immediately and asked  
5 them to register me as an owner of a gas well. They  
6 did. And Mr. Jay Henderson came within a week after that  
7 to see me. He was the inspector at that time, I think,  
8 and informed me as to what I would have to do to comply  
9 with the new law. I immediately went to work on it. In  
10 the unit U-19, I went to every landowner and got a signed  
11 notification that there was an existing well on our  
12 property. I had the engineering office that deal -- that  
13 does OXY's work for them. I can't think of their name  
14 right off -- to come in there and do the plat work that  
15 would satisfy the Board. That's all been completed.  
16 Everything has been completed except the -- I'm not sure  
17 what I have to do. Come before the Board and possibly  
18 put up a bond. The fact is I checked out five different  
19 bonding companies at that time. Not one bonding company  
20 would issue a bond in the words that the Gas and Oil  
21 Board -- no. The law of Virginia, the way it was  
22 written, they wouldn't issue it because they could never  
23 cancel it even if I didn't make the payment on it. They  
24 have no right of cancelling it. They said they would not  
25 issue it until those words were changed where they could

1 cancel it in case I didn't pay the bonding fee. Okay. I  
2 got that far and about time -- there's not been any  
3 further progress on it because my thinking is that this  
4 well would come under the grandfather clause. There's no  
5 way that it would meet the Virginia law that was enacted  
6 July of 1990 because I'm --

7 MR. CHAIRMAN: There's no grandfather clause in that well.

8 Every well in the Commonwealth has to be permitted,  
9 vented or plugged. There's no grandfather to that.

10 MR. RATCLIFF: Anyway, I started to say that my well is thirty  
11 foot from a highway, thirty foot from a stream, less than  
12 150 foot from the railroad. Dwellings are within 50 feet  
13 and on out -- there's no way that it can comply with the  
14 new law. There would have to be a -- I don't know the  
15 name of it. In real estate if you've got some kind of an  
16 odd building in an area and the law has been passed  
17 later, that building comes under a certain law. Some of  
18 you attorneys probably can think of what I'm trying to  
19 say. This well, I think, should come under that and it  
20 should be -- if we have to go ahead and permit it --  
21 there's not any money being made with the well. It's not  
22 a well for profit. It is strictly a well being used by  
23 the people in our community for their energy needs with  
24 no cost whatsoever to any home or any party. If a person  
25 does go ahead -- and I have been out quite a bit of money

1 myself that I have put out myself and so forth. And if  
2 we have to go ahead with the permitting according to the  
3 law of 1990 there will have to be some type of public  
4 utility permitted to where you can bill these people in  
5 order to just pay the insurance, the cost of maintaining  
6 lines, and the cost of permitting the well which is  
7 thousands of dollars.

8 MR. MCGLOTHLIN: Mr. Ratcliff, your main concern, though, is  
9 the barrier between the two mines?

10 MR. RATCLIFF: That's all I am concerned with right. That  
11 that barrier will remain in there, that it won't have any  
12 short holes or whatever the gas companies calls those --  
13 bore holes in the coal. One other thing I'd like to  
14 mention is my well has 320 pounds of pressure at the well  
15 head and has had ever since the day that it was drilled  
16 and the rate of flow of gas is somewhere near and above  
17 one million cubic feet per day. It's not an ordinary  
18 well. This is a real gas well that requires a lot of  
19 care and I do all the supervising myself, maintain most  
20 all of the lines at my own expense for our people in the  
21 community. We've got three or four families where they  
22 are about 80 -- better than 80 years old. 90. We have  
23 sick people that are using it, some of them on the  
24 dialysis machines, some of them have Alzheimer's. These  
25 people are in need and we would like to see whatever this

1 Board can do -- use some compassion. That these people's  
2 gas will not be taken away from them.

3 MR. EVANS: Do you feel comfortable with the reactions you  
4 got from Buchanan Production, that the barrier will  
5 remain intact and there's enough face there not to draw  
6 from your --

7 MR. RATCLIFF: Yes. With what their engineer, Mr. Breeding,  
8 has said. He would be capable of answering that correct-  
9 ly.

10 MR. CHAIRMAN: Any other comments or questions?

11 MR. RATCLIFF: I do want to add one other thing. We are happy  
12 to have OXY in our county doing what they're doing. I  
13 really support them in every way that I can, but this  
14 situation of mine is unique. They're doing a lot of work  
15 in the mountains, putting their pipelines through there,  
16 have put miles and miles of power line in remote areas  
17 that some day will be utilized as home sites, I feel.  
18 They've cleared and opened up mountain tops that never  
19 had access to it. They're sewing it in grass. Right now  
20 it looks rugged, but within a couple of years I feel that  
21 we'll have beautiful home sites on the mountain. And we  
22 want to praise them for what they're doing. I'm not  
23 against them as a whole. I just want to protect these  
24 people's rights that I've been talking about.

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

1 MR. EVANS: Did I understand you, Mr. Ratcliff, to say that  
2 the explanation of the barrier pillars was sufficient?  
3 Did that answer your questions?

4 MR. RATCLIFF: He assured me that the pillars between VP6 and  
5 Beatrice is wide enough to support the earth above it to  
6 where it won't crack. Was that your statement, Mr.  
7 Breeding?

8 MR. BREEDING: What I was saying is that I don't think there  
9 would be impact -- anything from those north/south  
10 longwall panels because there are developments works to  
11 the north of that area, there's a barrier pillar section  
12 between that, as well as addition developments in the  
13 Beatrice area. So I don't think his well will be  
14 impacted by anything that VP6 would do.

15 MR. EVANS: And no short holes in the barrier pillars. Are  
16 you okay with that, the fact that there aren't going to  
17 be any?

18 MR. RATCLIFF: The fact that there's not going to be any.  
19 That's one of the things I thought that might have  
20 already been done.

21 MR. EVANS: Mr. Chairman, I make a motion that we approve  
22 OXY's request for these three particular units with the  
23 changes that are necessary as far as what's been --

24 MR. CHAIRMAN: I have a motion to approve unit V-19, W-19  
25 and X-19 with the modifications necessary on the

1           exhibits.

2 MR. KELLY: Second.

3 MR. CHAIRMAN: A motion and a second. Any further discussion?

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

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

6 MR. WIRTH: I'm having Sam look it up. Ms. Geraldene Daniel  
7           was here and had to leave and she made a note that there  
8           was a typo in her address. Instead of 243, it should be  
9           234. I don't know if these were the units and she did  
10          not know.

11 MR. CHAIRMAN: Geraldene what?

12 MR. WIRTH: Geraldene Daniel and Roger E. Daniel.

13           (AFTER A BRIEF DISCUSSION OFF THE RECORD, THE PROCEEDINGS  
14 CONTINUED AS FOLLOWS:)

15  
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ITEMS XIV, XV, XVI, XVII, XXI

1  
2  
3 MR. CHAIRMAN: I have a Board member that has to leave. We'll  
4 do what we can and if we get to a decision, fine. If  
5 not, I hope you understand we'll just have to punt and  
6 start over. But I don't want anyone to feel that we're  
7 trying to dive on a quicky decision here.

8 MR. WIRTH: What we have, Mr. Chairman, as the mine plan  
9 dictates, they're going to go ahead and production will  
10 commence. I don't want to be held in violation. Can I  
11 capture this and suspend all this until the hearing?

12 MR. CHAIRMAN: I don't see any way.

13 MR. WIRTH: Then we'll be wasting the gas.

14 MR. SWARTZ: We'll lets get started here. We're talking about  
15 N-3, O-3, P-3, R-3, S-3. They're all in the same panel.  
16 If you take a look at the map that's attached to N-3,  
17 which is docket number --

18 MR. CHAIRMAN: It's Items XIV, XV, XVI, and XXI.

19 MR. SWARTZ: And N-3 is Item XIV. 0260 is the docket number.  
20 If you look at Exhibit G which has the panels on it, the  
21 units we're talking about are N-3 starting at the top, O-  
22 3, P-3. We don't need to force pool Q-3. And then we  
23 would be talking about R-3 and S-3. So that's the  
24 location of those units. Those are the two development  
25 panels that are impacted by those units. If you look at

1 Exhibit G, Page 2, with regard to unit N-3, it sets forth  
2 the percentages that are relevant to allocation of costs  
3 and allocation of income for N-3 in both of the develop-  
4 ment panels for O-3, for P-3, for R-3, and for S-3 and  
5 they're all reported and obviously each one of these  
6 exhibits appears in each of these units. The panel  
7 costs are shown at Exhibit G, Page 3. That's part of  
8 the application. They show a total panel cost in the  
9 two panels, one of \$1,010,450 which is one development  
10 panel west. And the other panel is \$877,600 which would  
11 be the total cost for two development panel west. The  
12 percentages that we just tall ' about for each of the  
13 units in each of the panels are reported on Exhibit G,  
14 Page 3. The total costs for that panel are reported and  
15 you can calculate the unit cost per panel. And then  
16 there is a formula for division of interests which is  
17 reported for each of these units for each of the two  
18 panels. The last column reports the division of interest  
19 number that a person would use to apply to calculate his  
20 cost for each of the panels. So you would pick the  
21 number that's reported on Exhibit G, Page 3, and you  
22 would use those numbers.  
23  
24  
25

1 SAMUEL E. GORDON, II

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

5 DIRECT EXAMINATION  
6

7 BY MR. SWARTZ:

8 Q. Mr. Gordon, on Exhibit G, Page 3, does that reflect your  
9 opinion as to a reasonable estimate as to the total costs  
10 that would be incurred to develop short hole and active  
11 gob in development panels one and two that involve these  
12 five units?

13 A. Yes, sir.

14 Q. And does each of the exhibits contain an Exhibit C that  
15 reports a total estimated cost for each unit that's also  
16 shown on Exhibit G, Page 3? I mean, that's where these  
17 numbers come from?

18 A. That is correct.

19 Q. And you prepared each one of those?

20 A. Yes, I did.

21 Q. You prepared all of them within the last 90 days?

22 A. Yes, sir.

23 Q. You prepared all of the exhibits?

24 A. Yes, I did.

25 Q. In each one of these five applications is Buchanan

1 Production the applicant?

2 A. Yes, it is.

3 Q. Is it requesting that OXY be designated operator?

4 A. Yes, it does.

5 Q. Has OXY filed a consent to act as designated operator,  
6 submitted the statutes and Board regs and rules?

7 A. Yes, it has.

8 Q. And that's filed in writing?

9 A. That's right. Exhibit J.

10 Q. Do recommend certain lease terms to the Board to be  
11 incorporated with any orders that might be entered with  
12 regard to these five units?

13 A. Yes. We recommend the same \$1 per acre bonus, a one-  
14 eighth royalty, a term of five years.

15 Q. With regard to each of these five units we're talking  
16 about, was there a publication in the newspaper?

17 A. Yes, there was.

18 Q. Which one and where?

19 A. Virginia Mountaineer, August 27th.

20 Q. With regard to each of these units, if you mailed  
21 anything at all, did you file affidavits of mailing?

22 A. Yes, we did.

23 Q. With Mr. Fulmer's office?

24 A. That's correct.

25 Q. With regard to each unit, is there an Exhibit A, Page 2,

1           which sets forth OXY's interest in the unit and then sets  
2           forth the interest that needs to be pooled?

3   A.    Yes.

4   Q.    Starting with unit N-3, do we need to add any respond-  
5           ents?

6   A.    No.

7   Q.    Do we wish to dismiss any?

8   A.    Yes.

9   Q.    Who is that?

10   A.    We wish to dismiss Harold G. VanDyke.

11   Q.    And why are we going to dismiss him?

12   A.    His agent, Mary S. VanDyke, has signed a lease with us.

13   Q.    He's the agent for Mary S. VanDyke, correct?

14   A.    Yes, correct.

15   Q.    And lease has been recorded?

16   A.    Yes, it has been.

17   Q.    So what is the percentage interest that OXY has acquired  
18           under that lease?

19   A.    27.7125 percent.

20   Q.    Of the unit?

21   A.    Of the unit, yes.

22   Q.    So Exhibit A needs to be amended and OXY's interest needs  
23           to be increased with both -- is this both with regard to  
24           coal and oil and gas?

25   A.    Yes, it is.

1 Q. So OXY's interest would have to be increased by 27.7125  
2 percent and the interest to be pooled would be reduced by  
3 a comparable amount. Also the other exhibits, Exhibit B  
4 and so forth, have to be amended to track this dismissal  
5 of Mr. VanDyke. With regard to Exhibit 0-3, do we want  
6 to add anybody or dismiss anybody?  
7 A. No.  
8 MR. CHAIRMAN: Excuse me. You mean unit 0-3.  
9 MR. SWARTZ: Unit 0-3. I'm sorry.  
10 Q. (Mr. Swartz continues.) With regard to unit 0-3 you  
11 don't want to add anybody or dismiss anybody?  
12 A. No.  
13 Q. With regard to unit P-3, do you want to add anybody or  
14 dismiss anybody?  
15 A. No.  
16 Q. With regard to unit R-3, do you want to add anybody or  
17 dismiss anybody?  
18 A. No.  
19 Q. With regard to unit S-3, do we want to add anybody or  
20 dismiss anybody?  
21 A. No.  
22 Q. With regard to each of these five units, have proofs of  
23 publication been filed to the extent that you had  
24 addresses and mailings were made?  
25 A. That is correct.

- 1 Q. So of record are green cards that have been signed and  
2 returned?
- 3 A. Correct.
- 4 Q. Of record with regard to each of these units would be a  
5 return by the post office of everything you gave them  
6 indicating that nobody got anything?
- 7 A. Right.
- 8 Q. To the extent that you may have made additional mailings  
9 because you got better information, people were contact-  
10 ing you, would that be in the proof of publication and  
11 the publication records that were filed with Mr. Fulmer  
12 as well?
- 13 A. That is true.
- 14 Q. Buchanan Production and OXY are both licensed to business  
15 in the Commonwealth, correct?
- 16 A. That's correct.
- 17 Q. OXY has a blanket bond that's required and is registered  
18 with the DMME, correct?
- 19 A. Correct.
- 20 Q. OXY is designated by Buchanan Production to exercise  
21 certain rights and duties on Buchanan Production's  
22 behalf, correct?
- 23 A. That is correct.
- 24 Q. And Exhibit J, Page 1, sets that forth?
- 25 A. That's correct.

- 1 Q. And you and Mr. VanGolen and Mr. Wirth have certain  
2 specific duties that OXY had given you to look out for  
3 Buchanan Production's interest?
- 4 A. That is correct.
- 5 Q. And you are the regulatory manager?
- 6 A. Right.
- 7 Q. In each of these units is the target formation the  
8 Pocahontas #3 seam?
- 9 A. That is correct.
- 10 Q. And it's about 2,000 feet deep?
- 11 A. That's correct.
- 12 Q. They're all 80 acre units?
- 13 A. Correct.
- 14 Q. We're talking about all coal seams below the Tiller?
- 15 A. Correct.
- 16 Q. Initial short hole production would be simply from the  
17 Pokey 3 seam from short holes drilled into that seam?
- 18 A. Correct.
- 19 Q. And subsequent production would be from the rubblized  
20 zone created when the Pokey 3 seam was mined?
- 21 A. Correct.
- 22 Q. Have you anticipated that the costs that you've projected  
23 would be the costs required to both do short hole  
24 development and active gob development?
- 25 A. Correct.

1 Q. Is it your opinion that the plan of development for these  
2 two longwall panels that effect these five units that  
3 we're talking about today -- that this plan is a reason-  
4 able plan to develop coalbed methane resource on and  
5 under the various -- these several units?

6 A. That is correct.

7 Q. And will this proposed plan in your judgement and  
8 opinion protect the correlative rights of the people  
9 that are respondents here and people who have leased,  
10 lessen the likelihood of physical waste and economic  
11 waste?

12 A. Yes.

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

14 (Witness stands aside.)

15 MR. CHAIRMAN: Any other witnesses?

16 MR. SWARTZ: No.

17 MR. CHAIRMAN: Okay. Mr. Johnson.

18 MR. JOHNSON: Mr. Wampler, I'm here for the Green Charles  
19 heirs as are listed in the objections and motions to  
20 dismiss application who are named in that pleading. And,  
21 as I understand, my clients are involved in three of  
22 these units, N-3, O-3, and T-3. The motions and objec-  
23 tions which I filed are in the P-3 case. We've got  
24 several objections to the well applications as are stated  
25 in the motion which I've filed. And I also have with me

1 Mr. John Baird who is familiar with the Green Charles  
2 heirs, who they are, and what their interest is, and is  
3 also familiar with the information which we supplied OXY  
4 concerning the names and addresses of those various  
5 heirs. And what I thought would probably be the best  
6 thing to start with would be to put Mr. Baird on the  
7 stand and let him advise the Board with regard to who's  
8 involved and with regard to the notices that have been  
9 received by them, and also to let you know what informa-  
10 tion was available by OXY with regard to their ability to  
11 give actual notice to the parties.

12 MR. CHAIRMAN: That's fine.

13 COURT REPORTER: (Swears witness.)

14  
15 JOHN BAIRD

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

18  
19 DIRECT EXAMINATION

20  
21 BY MR. JOHNSON:

22 Q. Mr. Baird, would you please state for the record your  
23 full name and your occupation and where you reside?

24 A. My name is John H. Baird. I'm an attorney practicing law  
25 in Pikeville, Kentucky. My full mailing address is P.O.

1 Box 351, Pikeville, Kentucky, 41501. My telephone number  
2 is 606-437-6276.

3 Q. Mr. Baird, it is my understanding that the Green Charles  
4 heirs are involved in three of these units. Is that your  
5 understanding?

6 A. Yes, sir. They're involved in units O-3, N-3, and P-3.

7 Q. Would you please tell the Board briefly how it is that  
8 you know the details about this particular family group  
9 and also state, just very briefly, what property owner-  
10 ship that family has in this area where these units are  
11 being proposed?

12 A. I'll try to be brief. My father, until he passed away in  
13 October five years ago, more or less took care of the  
14 Green Charles estate in receiving royalty income and  
15 making distributions to the various heirs. When he  
16 passed away in October of 1987 I took over that job  
17 function. In this particular case the Green Charles  
18 heirs own an undivided one-half interest in a 276 acre  
19 tract on Prater Creek.

20 Q. And these three unit applications cover portions of the  
21 Green Charles heirs tract, the 276 acres or -- more or  
22 less the tract that is located in Buchanan County, is  
23 that correct?

24 A. According to the applicant, yes.

25 Q. Now, would you tell the Board briefly what conversations

1 and communications you've had with OXY, USA with regard  
2 to your family's group and the people in the family who  
3 do own an interest in this property?

4 A. I had some discussions with Mr. Jim Bruner, land agent  
5 with OXY, in 1991 and also 1992 -- a very nice gentleman  
6 to work with.

7 Q. And what information did you give to Mr. Bruner?

8 A. I gave Mr. Bruner a list of the heirs and ownerships  
9 along with their addresses in anticipation of preparing a  
10 final lease agreement.

11 Q. And can you tell the Board approximately when that was  
12 that you gave Mr. Bruner that list?

13 A. I don't recall the exact date, but I would say it would  
14 be early or mid 1991.

15 Q. With regard to the applications which have been filed by  
16 OXY, USA, can you tell the Board first what persons are  
17 included on the applications which you would consider to  
18 be heirs in this Green Charles heirs tract? Who's listed  
19 on there who shouldn't be and then tell the Board who's  
20 not listed on there that should be?

21 A. I'm referring to the P-3 unit application. The first  
22 item that I see that's incorrect is Nancy Justice is  
23 identified on there in item five as having an interest.  
24 She has no interest in this tract. The next item I see,  
25 I see my brother William J. Baird, III listed, myself, my

1 brother: Charles J. Baird, as well as my sister Jane C.  
2 Baird. We have no interest in this tract. The next one  
3 I see is Jack May following the name of Eloise May. Jack  
4 May has no interest in this tract. The next one I see is  
5 Ralph Clevenger following Betty Jane Clevenger's name.  
6 He is deceased. The next one I see is Emma Jo Johnson  
7 and that should be Emma Jo Conner as previously furnished  
8 to Mr. Bruner along with her husband who's name is Owen  
9 who is not identified in the application. The next one I  
10 see is Item 15, Thelma Charles. Ms. Charles is deceased  
11 and she left two children. Uh --

12 Q. When did Ms. Charles die? How long has she been dead?

13 A. She just died in the last three months.

14 Q. All right.

15 Q. The one that I see that has been omitted from the  
16 application is my mother, Florene J. Baird. That name  
17 was supplied to Mr. Bruner in 1991. My mother's interest  
18 in this Green Charles estate is an undivided one-twelfth.  
19 I would like to make it clear for the record that I'm not  
20 representing the individuals not served nor am I entering  
21 an appearance for those individuals that have been  
22 improperly identified in this application.

23 Q. And it's your testimony that OXY has had this information  
24 with the possible exception of the death of Ms. Charles.  
25 They have had that information for well over a year, is

1 that correct?

2 A. That's true to the best of my knowledge.

3 Q. And when you furnished the information to the represent-  
4 ative you also gave him the names and addresses and phone  
5 numbers and all that information, is that correct?

6 A. I don't recall giving the phone numbers. I know that  
7 when we worked on the first draft of the lease we had the  
8 names and addresses in the lease.

9 MR. JOHNSON: That's all I've got of Mr. Baird as far as this  
10 issue.

11  
12 CROSS-EXAMINATION

13  
14 BY MR. SWARTZ:

15 Q. Do you have a copy of the list you gave Mr. Bruner with  
16 you?

17 A. I can research my file. This is only about half the  
18 files that I have on this tract and I do not have that.  
19 Mr. Bruner would have the lease that we prepared and he  
20 would have that information. Mr. Wirth should have that  
21 because all our negotiations, Mr. Wirth was furnished a  
22 copy of everything.

23 MR. CHAIRMAN: Let me just say that we're not going to be able  
24 to solve it within the time frame. Do you have any  
25 suggestions? What if we vote on the others and exclude

1 this one, continue it till the next hearing -- the other  
2 three? This is the only one we have an objection to in  
3 this group.

4 MR. JOHNSON: There's three that we have an objection to and  
5 then two that we do.

6 MR. SWARTZ: Would you guys be agreeable to letting them force  
7 pool this subject to our entering into a lease with your  
8 interest?

9 MR. JOHNSON: If the Board feels it's got the authority to do  
10 that. That's --

11 MR. SWARTZ: Well, if we don't we'll come back. What I'm  
12 saying is if we enter into a lease we've got a forced  
13 pooling order with regard to everybody else.

14 MR. JOHNSON: We've got no objection to that.

15 MR. BAIRD: I think that's okay.

16 MR. SWARTZ: I mean, Marty, is that something that you can  
17 live with?

18 MR. WIRTH: Sure.

19 (AFTER A BRIEF DISCUSSION OFF THE RECORD, THE PROCEEDINGS  
20 CONTINUED AS FOLLOWS:)

21 MR. CHAIRMAN: All right. Let me ask you this and I don't  
22 even know if I'll get a motion to approve. If we approve  
23 this subject to lease and notification, that that has  
24 occurred within fifteen days and you've withdrawn the  
25 objection, is that going to cause enough pressure and

1           relieve enough pressure? Is that going to be a proper  
2           balance here that everyone can gulp and swallow?

3 MR. SWARTZ: Well, you can see where the development is. Time  
4           is of the essence. Fifteen days, to us, is a great idea.  
5           I mean, we've got to do this. We don't want to wait  
6           thirty.

7 MR. WIRTH: Do you think we can get all parties to sign in  
8           fifteen days? Is that the stipulation you're asking us,  
9           Mr. Chairman?

10 MR. CHAIRMAN: Yes. I'm stipulating that you lease -- get  
11           the objection withdrawn and get the lease.

12 MR. BAIRD: It would be physically impossible to get all  
13           parties to sign within fifteen days.

14 MR. WIRTH: They're scattered out throughout the country.

15 MR. SWARTZ: Can you get a hold of everybody in fifteen days  
16           to either say yes, they would sign the lease or they  
17           wouldn't?

18 MR. BAIRD: Yeah. I believe I could do that.

19 MR. SWARTZ: Could we leave it that way? That he would advise  
20           the Board within fifteen days that we had not agreed?

21 MR. EVANS: You're going to predicate our decision on --

22 MR. SWARTZ: No. You're going to force pool everybody else on  
23           the assumption that we will obtain a lease from them and  
24           you don't need to force them.

25 MR. EVANS: And if you don't sign a lease you'll be back here?

1 MR. SWARTZ: We'll be back.

2 MR. CHAIRMAN: Yeah. They have to be back here --

3 MR. SWARTZ: We have to be back.

4 MR. CHAIRMAN: -- because we've got the notice question if the  
5 lease is not obtained.

6 MR. SWARTZ: Right.

7 MR. CHAIRMAN: Either have it -- in other words, this order  
8 had to be subject to that lease or you don't have an  
9 order. You've got a continued hearing and it has to be  
10 on record that way because we don't have the authority  
11 otherwise.

12 MR. SWARTZ: Right.

13 MR. EVANS: Can we do what we're talking about doing?

14 MR. CHAIRMAN: I think we can. I mean, it's a conditional  
15 order is what it is. It's conditioned upon follow  
16 through. And that means before it's final it's secured  
17 or it's continued.

18 MR. SWARTZ: And that would be with regard to the three and  
19 the other two will be approved.

20 MR. CHAIRMAN: I'm sorry?

21 MR. SWARTZ: That would be with regard to the three he's  
22 concerned about and the other two, presumably, we could  
23 have whether or not you approve them without a --

24 MR. CHAIRMAN: I have to have them on motion, but yeah.  
25 We're talking about these three he's raised an issue on.

1 MR. SWARTZ: Okay.

2 MR. CHAIRMAN: Okay. Let's get the two out of the way that  
3 are not subject to this discussion. Those are R-3 and S-  
4 J. Do I have a motion on those two?

5 MR. MCGLOTHLIN: I make a motion that we accept the  
6 applications as submitted for unit R-3 and S-3.

7 MR. KELLY: Second.

8 MR. CHAIRMAN: Motion and a second. All in favor signify by  
9 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)  
10 It's unanimous. Now, in regard to units N-3, O-3 and P-  
11 3, what's your pleasure?

12 MR. EVANS: I make a motion that we conditionally approve  
13 OXY's request for forced pooling based upon the signing  
14 of a lease with the Green Charles heirs as represented  
15 and by the objections to the pooling by Mr. Johnson  
16 representing John Baird and those heirs within fifteen  
17 days of today's date.

18 MR. CHAIRMAN: Right. And on Mr. Johnson's withdrawal of the  
19 objections.

20 MR. EVANS: And subject to that Mr. Johnson withdraw his  
21 objections to said three applications.

22 MR. CHAIRMAN: Motion.

23 MR. KELLY: Second.

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

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It's unanimous.

(End of Proceedings for  
September 15, 1992.)

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CERTIFICATE

COMMONWEALTH OF VIRGINIA  
COUNTY OF WASHINGTON

I, Cleadys D. Griffin, 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 September 15, 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 30th day of Septemeber, 1992.

  
CLEADYS D. GRIFFIN  
NOTARY PUBLIC

My commission expires March 30, 1993.