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VIRGINIA OIL AND GAS CONSERVATION BOARD

HEARING OF NOVEMBER 17, 1992

9:00 A. M.

IN THE CONFERENCE ROOM

4-H CENTER

ABINGDON, VIRGINIA

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November 17, 1992

This matter came on to be heard on this the 17th day of November, 1992 before the Virginia Gas and Oil Board in the Conference Room at the 4-H Center, Abingdon, Virginia pursuant to Section 45.1-361.19.B and 45.1-361.22.B of the Code of Virginia.

MR. CHAIRMAN: I'll be standing in as Chairman for Mr. Benny Wampler today. At this time I'll ask our Board members to please introduce themselves.

(BOARD MEMBERS INTRODUCED.)

ITEM I

MR. CHAIRMAN: The first case on our docket is VGOB-92/10/20-0281. I understand that there's been a continuance asked and granted for this motion.

MR. COUNTS: That's correct, Mr. Chairman. I'm Richard Counts on behalf of Equitable Resources. We were requested by Ms. Musick and Mr. Rasnake to request as a result of some mitigating health factors regarding Mr. Rasnake that Equitable consider that for a continuance to the December docket.

MR. CHAIRMAN: Thank you, Mr. Counts. Just a second, I think I saw another one of our Board members coming in. Let's wait for him. (Pause.) We will continue now.

ITEM II

MR. CHAIRMAN: The next item on the docket is VGOB-92/10/20-0281. All parties that wish to address the Board in this matter please come forward.

MR. COUNTS: Richard Counts on behalf of Equitable Resources Exploration.

MR. CHAIRMAN: Okay. Mr. Counts, go ahead.

MR. COUNTS: Mr. Chairman, Equitable has previously provided with respect to the pooling of well 2460 a copy of the receipts to the Department of Mines, Minerals and Energy. Effectively, this is a unit where Equitable has acquired approximately 85 percent of the unit and Equitable seeks to force pool the remainder of this unit. If it please the Board, I'd like to call my first witness.

MR. CHAIRMAN: You witness will need to be sworn in.

MR. COUNTS: Thank you very much. My first witness would be Mr. Dennis Baker.

COURT REPORTER: (Swears witness.)

MR. COUNTS: Mr. Chairman, also to indicate somewhat the complexity of this unit I'd like to call the Board's attention to Exhibit A. We had somewhere in the vicinity of almost 100 different tracts which constituted this unit and obviously but for the ability to force pool this unit would not have been drilled.

1
2 DENNIS BAKER

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

5
6 DIRECT EXAMINATION
7

8 BY MR. COUNTS:

9 Q. Mr. Baker, who are you employed by and in what capacity,
10 sir?

11 A. Equitable Resources Exploration. I'm a lease acquisition
12 supervisor.

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

16 A. Yes, sir.

17 MR. COUNTS: Mr. Chairman, I move that Mr. Baker's testimony
18 as an expert witness be accepted.

19 MR. CHAIRMAN: Any objections? Okay, Mr. Counts.

20 Q. (Mr. Counts continues.) Mr. Baker, is Equitable seeking
21 to force pool the drilling rights underlying the drilling
22 spacing unit as depicted on Exhibit A of the application
23 of well 2460?

24 A. Yes, they are.

25 Q. And does Equitable own drilling rights in the unit

1 involved and the units herein?

2 A. Yes.

3 Q. And does the proposed unit depicted at Exhibit A include

4 all acreage within 2,640 feet of well 2460?

5 A. Yes, it does.

6 Q. Would you indicate for the Board the interest of Equit-

7 able in this unit?

8 A. Approximately 85.2 percent leased.

9 Q. And are you familiar with the ownership of drilling

10 rights of parties other than Equitable in this unit?

11 A. Yes, I am.

12 Q. Would you indicate the interest of others in this unit?

13 A. Approximately 14.8 percent being unleased.

14 Q. Are there any other operators in this unit?

15 A. Yes, there is. Virginia Gas, I believe, has some leases

16 in the area -- within the unit.

17 Q. And approximately what percent of the unit do they own?

18 A. 22.22 percent.

19 Q. When Virginia Gas Company's interest is backed out I

20 believe we'll find that other operators have 22 percent,

21 unleased approximately 15 percent, and Equitable with 63

22 percent leased?

23 A. Yes, that is correct.

24 Q. Are the unleased respondents set out at Exhibit B to the

25 application?

1 A. Yes, they are.

2 Q. Prior to filing the application were efforts made to
3 contact each of the respondents in an attempt to work out
4 an agreement with regard to development of the units
5 involved herein?

6 A. Yes, they were.

7 Q. For the benefit of the Board, Mr. Baker, would you
8 indicate approximately how long it's taken to compile
9 this application and conduct all work with regard to
10 these respondents?

11 A. We've probably been working on this for in excess of nine
12 months.

13 Q. Subsequent to filing the application have you continued
14 to attempt to reach an agreement with respondents listed
15 at Exhibit B?

16 A. Yes, we have.

17 Q. And as a result of these efforts do you wish to dismiss
18 any of the respondents?

19 A. Yes, I would.

20 Q. Which of those respondents would you like to dismiss,
21 sir? This would be dismissing respondents again from
22 Exhibit B.

23 A. On Page 2, Tract 5, Curtis and Rita Wampler. Page 3,
24 Tract 16, Brian Keith Church and Jennifer Carol Church.
25 Page 5, Tract 31, Brice Sykes.

1 MR. CHAIRMAN: I'm sorry?

2 THE WITNESS: Tract 31, Brice Sykes.

3 A. (The witness continues.) On Page 10, being a part of
4 Tract 39, Junior McGee. Page 11, being a part of Tract
5 52, James R. Wampler, Jr. Page 12, being part of Tract
6 52, Charles Wampler and Lona, Roy Wampler and Vivian,
7 Julie Vance and Roger, Curtis Wampler and Rita. That's
8 all that needs to be dismissed at this time.

9 MR. COUNTS: Mr. Chairman, I've just now provided the Board
10 with a revised Exhibit B which reflects all the changes
11 to this exhibit. Mr. Chairman, does the Board have any
12 questions with respect to those parties being dismissed?

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

14 Q. (Mr. Counts continues.) Mr. Baker, were efforts made to
15 determine if the individual respondents were living or
16 deceased or their whereabouts and if deceased where
17 efforts made to determine the names and addresses of the
18 whereabouts of the successors to any deceased individual
19 respondents?

20 A. Yes, they were.

21 Q. Is it fair to say that the primary sources checked
22 included deed records, probate records, accessors's
23 records, and treasurer's records?

24 A. Yes, that is correct.

25 Q. In your professional opinion was due diligence exercised

- 1 to locate each of the respondents listed herein?
- 2 A. Yes, it was.
- 3 Q. Are the addresses set out in Exhibit B to the application
4 the last known addresses of the respondents?
- 5 A. Yes.
- 6 Q. With the exception of those parties which you are hereby
7 dismissing from this proceeding are you requesting that
8 the Board force pool all other interests listed at the
9 revised Exhibit B?
- 10 A. Yes.
- 11 Q. Is Equitable seek to force pool drilling rights of each
12 individual respondent if living and if deceased the
13 known successor or successors to any deceased individual
14 respondent?
- 15 A. Yes.
- 16 Q. Is Equitable seeking to force pool drilling rights of the
17 person designated as trustee and, in fact, in the
18 capacity of trustee and upon acting in such capacity is
19 Equitable seeking to force pool the drilling rights of
20 the successor of such trustee?
- 21 A. Yes, they are.
- 22 Q. Are you familiar with the fair market value of drilling
23 rights in this unit and the surrounding area?
- 24 A. Yes.
- 25 Q. Would you advise the Board as to what the fair market

1 value would be in this area?

2 A. \$5 per net mineral acre.

3 Q. What type of royalty, sir?

4 A. One-eighth royalty.

5 Q. And term?

6 A. Standard term being three years.

7 Q. Did you gain any familiarity by acquiring oil and gas
8 leases and other agreements involving transfer of
9 drilling rights of the units involved herein?

10 A. Yes.

11 Q. In your opinion do the terms you've testified to repres-
12 ent the fair market value of the fair and reasonable
13 compensation to be paid for drilling rights within this
14 unit?

15 A. Yes.

16 Q. You've already testified as to the fair market value of
17 acreage in this unit. Based on that do you recommend
18 that the respondents listed at Exhibit B and not dis-
19 missed at this hearing be allowed the following options
20 with respect to the ownership interest within the unit; A
21 being participation, B being a cash bonus of \$5 per net
22 mineral acre plus a one-eighth of eight-eighth royalty or
23 C, in lieu of a cash bonus and the one-eighth royalty to
24 share in the operation of the well on a carried basis as
25 a carried operator under the following conditions; that

1 such carried operator be entitled to a share of the
2 production from the tracts pooled accruing to their
3 interest exclusively with any royalty or over riding
4 reserve needs, leases, assignments thereof or assignments
5 relating thereto in such tracts but only after the
6 proceeds allocable to his share equal to either A; 300
7 percent of the share of such cost allocable to the
8 interest of a carried operator of a leased tract or
9 portion thereof or B; 200 percent of the share of such
10 cost allocable to the interest of the carried operator of
11 an unleased tract or portion thereof?

12 A. Yes, sir. That is correct.

13 Q. Do you recommend that the order provide that the elec-
14 tions by respondents be in writing and sent to the
15 applicant at the address illustrated in the application?

16 A. Yes.

17 Q. And should this be an address for all communications
18 with applicants concerning the forced pooling order?

19 A. Yes, it should.

20 Q. Do you recommend that the forced pooling order provide
21 that if not written election is properly made by a
22 respondent within such respondent shall be deemed to have
23 elected the cash royalty option in lieu of participation?

24 A. Yes.

25 Q. Do you suggest that the respondent have a 30 day period

1 of time to file such written election from the date of
2 the order?

3 A. Yes.

4 Q. And do you also recommend that if the respondent elect to
5 participate that the respondent should have 30 days in
6 which to pay the applicant for respondents proportion of
7 share of well costs?

8 A. Yes.

9 Q. Does the applicant expect the party electing to partici-
10 pate to pay in advance that party's share of completed
11 well costs?

12 A. Yes.

13 Q. How much time from the date of the order should the
14 applicant have to pay or tender any cash bonus becoming
15 due under the forced pooling order?

16 A. 30 days.

17 Q. Do you recommend that the forced pooling order provide
18 that if a respondent elects to participate but fails to
19 pay respondent's proportioned share of well cost satis-
20 factory to applicant for payment of well cost then the
21 respondent's election to participate should be treated as
22 having been withdrawn and void and such respondent shall
23 be treated just as if no initial election had been made
24 under the forced pooling order?

25 A. Yes.

1 Q. Do you further recommend the forced pooling order provide
2 that where the respondent elects to participate but
3 defaults in payment in regard to the payment of well cost
4 any cash sum becoming payable to respondent to be paid
5 within 30 days after the last date on which such respondent
6 could have paid or made satisfactory arrangements for
7 the payment of well costs?

8 A. Yes.

9 Q. Do you also recommend that the forced pooling order
10 provide that if respondent refuses to accept the cash
11 bonus or the cash bonus cannot be paid to a party for any
12 reason or there is a title defect in the respondent's
13 interest that the operator create an escrow account for
14 the respondent's benefit until the money can be paid to
15 the party or until the title defect is cured to the
16 operator's satisfaction?

17 A. Yes.

18 Q. Who are you requesting be named operator under the forced
19 pooling order?

20 A. Equitable Resources Exploration.

21 MR. COUNTS: Mr. Chairman, I'd also like to introduce at this
22 time -- I indicated that Virginia Gas Company had
23 approximately 22 percent interest in this unit. I'd like
24 to introduce as an exhibit a consent to pooling as
25 provided by Mr. Michael Edwards with Virginia Gas Company

1 with respect to the working interest owned by Virginia
2 Gas Company. I will provide the Board with additional
3 copies. Mr. Chairman, I have no further questions of
4 this witness.

5 MR. EVANS: Why do you want a 30 day limit on pay when
6 standard orders are 45?

7 MR. COUNTS: Well, we feel that the same requirement is being
8 made upon the operator in terms of the operators being
9 given 30 days for the things that the operator has to do.
10 We feel like based upon the length of time that it takes
11 to get the order effectively issued and signed and a
12 supplemental order recorded, etcetera, the fact that this
13 pooling is only for a one year period, that 30 days is a
14 fair and reasonable period of time. We would like to
15 request that the Board modify it's orders to that regard
16 in that regard.

17 MR. EVANS: Would 45 days totally inconvenience you in any
18 way, shape or form?

19 MR. COUNTS: It would be an inconvenience, but let me state
20 that the average length of time, I think, in the vast
21 majority of state conservation agencies is 20 days. So
22 we're not trying to ask for something that's not reason-
23 able. In fact, we think that 30 days is very reasonable.
24 Obviously that's up to the Board's discretion.

25 MR. EVANS: If 45 days is not a problem -- because we have to

1 record that order and everything else. So for our
2 benefit 45 days --

3 MR. COUNTS: 45 days would be acceptable to Equitable. Thank
4 you.

5 MR. CHAIRMAN: Any other questions for the witness?

6 (Witness stands aside.)

7 MR. CHAIRMAN: Continue, Mr. Counts.

8 MR. COUNTS: I'd next like to call Mr. Bob Dahlin.

9 COURT REPORTER: (Swears witness.)

10

11 ROBERT A. DAHLIN, II

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

14

15 DIRECT EXAMINATION

16

17 BY MR. COUNTS:

18 Q. Mr. Dahlin, would you state your full name for the record
19 and who you're employed by and in what capacity?

20 A. My name is Robert A. Dahlin, II. I'm an operations
21 specialist with EREX employed in Kingsport, Tennessee.

22 Q. Have you testified before the Virginia Gas and Oil --

23 MR. COUNTS: I must note here, Mr. Chairman, that my witness'
24 questions indicate the Observation Board, but nonetheless
25 we will indicate the Conservation Board here this morning

1 because I suspect he does both functions.

2 Q. (Mr. Counts continues.) Have you testified before the

3 Virginia Gas and Oil Conservation Board and have your

4 qualifications as an expert witness been previously

5 accepted by the Board?

6 A. Yes, sir, I have.

7 MR. COUNTS: Mr. Chairman, I move that Mr. Dahlin's testimony

8 as an expert witness be accepted by the Board.

9 MR. CHAIRMAN: Any objections? Okay. Continue, Mr. Counts.

10 Q. (Mr. Counts continues.) Mr. Dahlin, do your responsibi-

11 lities include the lands involved herein and the sur-

12 rounding area?

13 A. Yes, sir, they do.

14 Q. And are you familiar with the proposed exploration and

15 development of the units involved herein and Equitable's

16 proposed plan of development?

17 A. I am.

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

19 Equitable's plan of development?

20 A. 4,630 feet.

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

22 common source of supply in the subject formations?

23 A. Yes, sir, it will.

24 Q. And will the initial well be a legal location?

25 A. Yes, sir, it will.

1 Q. What are the estimated reserves of the unit?
2 A. We have assigned 500 million cubic feet of gas to this
3 unit.
4 Q. Are you also familiar with the well cost for the proposed
5 initial unit well under applicant's plan of development?
6 A. I am.
7 Q. Has an AFE been prepared and reviewed and revised within
8 the last 45 days and submitted to the Board?
9 A. Yes, sir.
10 Q. And was the AFE prepared by an engineer knowledgeable in
11 the preparation of AFEs and knowledgeable in regard to
12 well costs in this area?
13 A. It was.
14 Q. Does this AFE represent a reasonable estimate of the
15 reasonable well costs for the proposed initial well under
16 Equitable's plan of development?
17 A. Yes, sir.
18 Q. Would you indicate for the Board the estimate dry-hole
19 cost of well 2460?
20 A. Dry-hole cost would be \$162,250.
21 Q. And the completed well cost?
22 A. \$279,150.
23 Q. Do these costs anticipate amount for completion?
24 A. Yes, sir.
25 Q. And does the AFE include a reasonable charge for supervi-

1 sion?

2 A. Yes, sir.

3 Q. Mr. Dahlin, in your professional opinion will granting of
4 the application be in the best interest of conservation,
5 prevention of waste, and protection of correlative
6 rights?

7 A. It would.

8 MR. COUNTS: Mr. Chairman, I have no further questions.

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

11 MR. EVANS: What formations that you plan to produce involve
12 completion?

13 THE WITNESS: We'll be TDing in the Devonian Shell producing
14 from the upper member of that, commingled with the Burea.
15 The Burea is the primary target.

16 MR. CHAIRMAN: No other questions. Continue, Mr. Counts.
17 (Witness stands aside.)

18 MR. COUNTS: Mr. Chairman, I have no further witnesses. I'd
19 request that the application for the forced pooling for
20 well 2460 be granted.

21 MR. EVANS: Mr. Chairman, I move that the application request
22 be granted for this particular docket item.

23 MR. MASON: Second.

24 MR. CHAIRMAN: We have a motion and a second. Any further
25 discussion? There are a few people that might have came

1 in late. Does anybody else here wish to address the
2 Board on VGOB-92/10/20-0281? All in favor signify by
3 saying yes. (ALL AFFIRM.) Opposed? (NONE.) So
4 carried.
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ITEM III

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3 MR. CHAIRMAN: The next item on the Board's agenda is docket
4 number VGOB-92/11/17-0286. Anybody wishing to address
5 the Board on this matter please come forward. The well
6 number is V-2372.

7 MR. COUNTS: Mr. Chairman, I'm Richard Counts representing
8 Equitable Resources Exploration. I'd like to provide the
9 Board with a revised plat to Exhibit A. This plat was
10 revised in order to be able to indicate all the surround-
11 ing wells, the vast majority of which are outside the
12 1,320 foot radius and are more than 2,640 feet away.
13 That will hopefully indicate for the Board that we're
14 really locked in with respect to this particular loca-
15 tion. I'd like to request that that be marked as
16 Exhibit A. In addition, I believe the Board members
17 have already received a copy of a letter dated November
18 10, 1992 from Virginia Iron, Coal and Coke Company with
19 respect to this well 2372 and indicated that it's
20 reviewed this site and that this site's the only site in
21 VICC's opinion as coal owner underlying this tract that's
22 acceptable to VICC. With respect to this request for a
23 location exception, Mr. Chairman, I'd like to indicate
24 that this is a situation where Equitable does own 100
25 percent of the working interest underlying this unit.

1 Therefore, we feel like the correlative rights issue is
2 not an issue with respect to this particular hearing,
3 that the issue is one of waste as a result of the
4 inability to get a location. In the middle of all these
5 wells it's basically an infield drilling location, that
6 waste would occur, and these property owners would not be
7 compensated. We are attempted to maximize the competing
8 uses from a coal and oil and gas standpoint. We have
9 severe physical constraints of locating this well due to
10 -- not only to mine works but also with respect to
11 topography. It is the infield drilling location. It's
12 really dictated by the existing wells and we're basically
13 trying to maximize drainage and prevent waste. I'd like
14 to introduce at this time with your approval, Mr.
15 Chairman, our first witness in this matter, Mr. Baker.
16 I'll remind Mr. Baker that he's previously been sworn.

17
18 DENNIS BAKER

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

21
22 DIRECT EXAMINATION

23
24 BY MR. COUNTS:

25 Q. Mr. Baker, do your responsibilities include the lands

1 involved here and the surrounding area?

2 A. Yes, they do.

3 Q. And are you familiar with the application for the

4 location exception for well 2472 and the relief request-

5 ed?

6 A. Yes, I am.

7 Q. Is this well location currently under permit?

8 A. Yes.

9 Q. Have all interested parties been notified of this hearing

10 as required by Section 4.B of the Virginia Gas and Oil

11 Board Regulations?

12 A. Yes.

13 Q. Would you indicate for the Board the ownership of the gas

14 underlying well 2372?

15 A. Yes. The ownership is Virginia Iron, Coal and Coke

16 Company, 83.34 percent, Pine Mountain Oil and Gas 16.569

17 percent, and McKinley Hamilton .88 percent.

18 Q. And all these parties have been notified and have not

19 objected, is that correct, sir?

20 A. That is correct.

21 Q. Does Equitable also have oil and gas lease covering all

22 these interests?

23 A. Yes, they do.

24 Q. In other words, 100 percent of these tracts are leased to

25 Equitable Resources?

1 A. Yes, they are.

2 Q. Mr. Baker, does Equitable operator, have the right to
3 operate, or has Equitable applied for a transfer of
4 permit to operate the receptacle and surrounding wells,
5 ie, P-104 to the northwest, V-2329 to the west, V-2709 to
6 the southwest, V-2328 to the southeast, and V-2867 to the
7 northeast?

8 A. Yes, we do.

9 MR. COUNTS: Mr. Chairman, I have no further questions of this
10 witness. I'll be presenting testimony from Mr. Bob
11 Dahlin next.

12 MR. CHAIRMAN: Any questions of this witness?

13 (Witness stands aside.)
14

15 ROBERT A. DAHLIN, II

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

19 DIRECT EXAMINATION
20

21 BY MR. COUNTS:

22 Q. Mr. Dahlin, do you responsibilities involve the lands
23 herein and are you familiar with the application for the
24 location exception for well 2372?

25 A. Yes, sir.

- 1 Q. Would you summarize briefly to the Board from Equitable's
2 prospective the purpose of this application?
- 3 A. We're in the development phase of completing Burea upper
4 shell reserves in this region. This is an infield
5 drilling location. We have considered spacing, topo-
6 graphy, and have found and arrived at this drilling site
7 to produce these reserves.
- 8 Q. In the event this location exception well is not drilled
9 can you project the estimated waste that would occur in
10 terms of loss of reserves?
- 11 A. It would be the sum of 400 million cubic feet of gas to
12 this drilling unit.
- 13 Q. Should all formations from the surface of the ground to
14 the total depth drilled be covered by any order issued by
15 the Board?
- 16 A. Yes, sir. It is again a conventional gas well. We're
17 producing conventional reserves only.
- 18 Q. In your professional opinion in considering the surround-
19 ing wells as depicted on the revised plat submitted this
20 morning to the Board is there any other location which
21 would allow this well to be drilled without requiring a
22 location exception?
- 23 A. No, sir.
- 24 Q. In your opinion will granting of this location exception
25 be in the best interest in prevention of waste, protect-

1 ing correlative rights, and maximizing recovery of the
2 gas reserves underlying 2372?

3 A. It would.

4 MR. COUNTS: Mr. Chairman, I have no further questions of this
5 witness.

6 MR. CHAIRMAN: Any questions of this witness?

7 MR. EVANS: Mr. Counts, this letter from VICC, are we to that
8 yet? Is this the proper witness to ask about that?

9 MR. COUNTS: The letter was received -- was, of course,
10 addressed to Mr. Wampler, was received by my office, and
11 I had communications with VICC.

12 MR. EVANS: I've just got a real quick question on that. I
13 understand that VICC can speak for VICC. But what does
14 Pittston proposed to do in this area? It says, "In
15 addition, Pittston coal group has proposed a longwall
16 mine in adjacent reserves to the north."

17 MR. COUNTS: I had the same question. What I was advised by
18 Mr. Ed Burns with VICC was that Pittston did anticipate a
19 longwall operation coming in from the southwest and that
20 in the event that operation did come through that VICC
21 would be effectively contributing it's acreage and as a
22 result the longwall operation would come under this
23 particular tract as well.

24 MR. EVANS: Has Pittston been given notice of this particular
25 well?

1 MR. COUNTS: No, sir. Under this well Pittston would not have
2 been required to be noticed under this particular unit.
3 MR. EVANS: But Pittston does have reserves and according to
4 this they do plan to develop?
5 MR. COUNTS: That's only based on my conversation with VICC.
6 I have not had a discussion with Pittston. I think
7 really, Mr. Evans, that obviously --
8 MR. EVANS: They're not here that's okay.
9 MR. COUNTS: We really want to get in every situation the
10 input from the coal owner. Obviously before you even get
11 here we have to have the coal owner's approval with
12 respect to the location. But in this situation we don't
13 really feel like all of the coal is in consideration.
14 The primary consideration obviously in this situation is
15 the fact that if a location exception cannot be obtained
16 there's simply going to be a large area of uncompensated
17 reserves that are going to be lost in the event the
18 location exception is not granted.
19 MR. EVANS: I guess my question was was Pittston specifically
20 notified of this --
21 MR. COUNTS: Pine Mountain did obtain notice with respect to
22 this particular hearing and Pikes Resources.
23 MR. CHAIRMAN: Mr. Counts, I'm concerned in your application
24 that there is no mention of ongoing mine works or
25 proposed mine works and then you come before the Board

1 with an updated Exhibit A and a letter from Virginia
2 Iron, Coal and Coke Company saying that this is the only
3 location that's acceptable. Could you support that with
4 some further evidence?

5 MR. COUNTS: No, sir. I'm not aware of any requirement that
6 requires in terms of the application that we indicate
7 what types of mine workings are proposed in an area.
8 This is simply something that came about as a result of
9 our conversation with VICC.

10 MR. CHAIRMAN: Is there any ongoing mine activity in the area?

11 MR. COUNTS: No, sir, not based upon -- I mean, there is past
12 mining activity. There is proposed future mine activity.
13 There is no active mine that I am aware of, sir.

14 MR. CHAIRMAN: So you're asking for an exception from four
15 wells?

16 MR. COUNTS: No, sir. We're asking for an exception to one
17 well, P-104. All the other wells, Mr. Chairman, are
18 outside the 2,640 foot distance requirement mandated by
19 631.17. The wells have been put on this plat due to the
20 fact that I want to be able to indicate for the Board
21 that there was no direction this well could be moved
22 which would not require a location exception. Effective-
23 ly it's an infield location drilled inst among a number
24 of other wells in the area and if this well is not
25 allowed then the owners of the oil and gas rights -- not

1 only Equitable but also Pine Mountain and VICC and the
2 other private interest owner will not be produced and as
3 a result they will receive no compensation for their
4 mineral interest.

5 MR. CHAIRMAN: I think I'm confused. You say you're asking
6 for an exception for P-104?

7 MR. COUNTS: Correct.

8 MR. CHAIRMAN: What about V-2867?

9 MR. COUNTS: That is not -- I do stand corrected. I should
10 have explained that one. That is a staked location. It
11 is not presently one which has been brought before the
12 Board or permitted because in order to bring that one in
13 which would constitute a location exception it would be
14 necessary to have this application in place first. This
15 particular location represents that of an infield
16 drilling location. If it's not approved by the Board
17 those reserves simply will not be recovered.

18 MR. CHAIRMAN: Okay. Any other questions from the Board?

19 MR. HARRIS: Let me just ask one question. Mr. Counts, how
20 would you expect that the royalty -- well, I probably
21 shouldn't say it that way. But the gas that would have
22 normally gone to the other well -- you're saying 400,000
23 cubic feet?

24 MR. COUNTS: Yes, sir. Mr. Dahlin testified that approximate-
25 ly 400 million cubic feet of gas will be wasted in the

1 event that this location exception well is not drilled.

2 MR. DAHLIN: Those are the reserves that are assigned to that

3 particular drilling unit based on our engineering data in

4 the field.

5 MR. HARRIS: And the coverage from the others will not

6 overlap?

7 THE WITNESS: This is according to state spacing and how we

8 have assigned to this drilling unit.

9 MR. HARRIS: But in reality -- I mean physically speaking,

10 not circles on a map, but in reality when you're actually

11 pumping these wells --

12 MR. COUNTS: Mr. Harris, let me interrupt for one second. Mr.

13 Dahlin can improvise on this. I think that what's really

14 considered is whether or not those other wells can

15 economically recover the reserves that would be left in

16 place there. I think that would be the testimony of Mr.

17 Dahlin, that those reserves would not be economically

18 recovered be any adjacent wells.

19 THE WITNESS: That would be an accurate statement.

20 MR. HARRIS: Thank you.

21 MR. FULMER: Mr. Chairman, for the benefit of the Board I will

22 tell you there's a denotation on R-12. That's a pre-

23 existing permit. It's already issued. So it's been a

24 certified location for a long time and I suspect they're

25 trying to satisfy state spacing in this petition.

1 MR. CHAIRMAN: Any other questions?

2 (Witness stands aside.)

3 MR. CHAIRMAN: What's your pleasure?

4 MR. EVANS: Mr. Chairman, I make a motion that we grant the
5 spacing exception for this well.

6 MR. KELLY: Second.

7 MR. CHAIRMAN: We have a motion and a second. Any further
8 discussion? All in favor on approving VGOB-92/11/17-0286
9 say yes. (ALL AFFIRM.) Opposed? (NONE.) So carried.

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3 ITEM IV

4 MR. CHAIRMAN: The next item on our docket is VGOB-92/11/17-
5 0287, well V-2266. All parties wishing to address the
6 Board in this matter please come forward.

7 MR. EVANS: Mr. Counts, just as a matter of my own personal
8 information do you have a geologist with you today?

9 MR. COUNTS: Yes, sir.

10 W.C. COLLEY: I'm W. C. Colley with Kenny Colley, my son.

11 MR. CHAIRMAN: Mr. Counts, you may proceed.

12 MR. COUNTS: This is an application for forced pooling for
13 well V-2266 and I'd like to call as my first witness Mr.
14 Dennis Baker. Mr. Baker has been previously been sworn.

15 DENNIS BAKER

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

18
19 DIRECT EXAMINATION

20
21 BY MR. COUNTS:

22 Q. Mr. Baker, do your responsibilities include the lands
23 involved underlying unit 2266 and are you familiar with
24 the application for the establishment of a drilling unit
25 pooling order for this particular well?

1 A. Yes.

2 Q. Is Equitable seeking to force pool the drilling rights
3 underlying the drilling and spacing unit as depicted at
4 Exhibit A of the application?

5 A. Yes, they are.

6 MR. COUNTS: Also note here, Mr. Chairman, that we have
7 previously provided the Board again with copies of our
8 return receipts -- not the Board, but the Department for
9 the benefit of the Board.

10 Q. (Mr. Counts continues.) Mr. Baker, does Equitable own
11 drilling rights in the units involved herein?

12 A. Yes.

13 Q. And does the proposed unit depicted at Exhibit A include
14 all acreage within 1,320 feet of the proposed well V-
15 2266?

16 A. Yes, it does.

17 Q. Would you indicate for the Board the interest of Equit-
18 able in this unit, sir?

19 A. Approximately 97.5 percent.

20 Q. Are you familiar with the ownership drilling rights of
21 parties other than Equitable Gas underlying this unit?

22 A. Yes.

23 Q. Would you indicate what that interest is?

24 A. Virginia Gas has approximately 1 percent under lease,
25 unleased interest being approximately 1.5 percent.

1 Q. And with respect to Virginia Gas' interest have they
2 indicated that they wish to contribute their acreage
3 towards this unit?

4 A. Yes, they have.

5 Q. And which interest do they have leased under this unit?

6 A. They have leased from the Milinda C. Wallen, et al, and
7 W. C. Colley and his wife.

8 MR. COUNTS: I'd like to file a copy of this consent to
9 pooling, Mr. Chairman, with the Board.

10 Q. (Mr. Counts continues.) So to reiterate effectively, Mr.
11 Baker, Equitable right now was 97.5 percent of this unit
12 under lease, is that correct?

13 A. Yes. Including the interest of Virginia Gas it would be
14 98.5.

15 Q. Thank you very much, sir. Are all the unleased respond-
16 ents set out in Exhibit B?

17 A. Yes.

18 Q. Prior to the application were efforts made to contact
19 each of the respondents in an attempt to work out an
20 agreement regarding the development of the units involved
21 herein?

22 A. Yes, they were.

23 Q. Subsequent to the filing of the application have you
24 continued to attempt to reach an agreement with respond-
25 ents listed at Exhibit B?

1 A. Yes.

2 Q. As a result of these efforts do you wish to dismiss any
3 of these respondents?

4 A. Yes, I do.

5 Q. Would you indicate for the Board those respondents you
6 wish to dismiss?

7 MR. COUNTS: I've got copies here.

8 MR. CHAIRMAN: Mr. Counts, I will remind you that ten
9 copies --

10 MR. COUNTS: Yes, sir, Mr. Chairman. I was trying to save you
11 space in the file.

12 A. (The witness continues.) On Page 3 of the revised
13 Exhibit B, being part of tract 2, middle ways in the page
14 is Bonnie Ward to be dismissed. Page 4, being a part of
15 tract 2, Ruth Flemming and also William G. Jackson to be
16 dismissed.

17 Q. And these parties that have been dismissed, are those
18 shown as leased parties now in your revised Exhibit B?

19 A. Yes, they are.

20 Q. Mr. Baker, in attempting to contact all these parties
21 were the primary sources used including deed records,
22 probate records, accessors records, and treasurers
23 records?

24 A. Yes.

25 Q. And in your professional opinion was due diligence

- 1 exercised to locate each of the respondents named herein?
- 2 A. Yes.
- 3 Q. Are the addressees set out in Exhibit B to the applica-
4 tion the last known addresses for the respondents?
- 5 A. Yes.
- 6 Q. And with the exception of those parties which you just
7 now dismissed from this proceeding are you requesting
8 this Board force pool all other interest listed at
9 revised Exhibit B?
- 10 A. Yes, I am.
- 11 Q. Is Equitable seek to force pool the drilling rights of
12 each individual respondent if living and if deceased the
13 unknown successor or successors to any deceased individ-
14 ual respondent?
- 15 A. Yes.
- 16 Q. Is Equitable seeking to force pool the drilling rights of
17 any person designated as a trustee if acting in the
18 capacity of trustee and if not acting in such capacity
19 the rights of the succeeded trustee?
- 20 A. Yes.
- 21 Q. Are you familiar with the fair market value of drilling
22 rights in this unit and the surrounding area?
- 23 A. Yes, I am.
- 24 Q. Would you advise the Board as to what those are?
- 25 A. \$5 per net mineral acre, three year term with a one-

1 eighth royalty.

2 Q. And did you gain your familiarity by acquiring oil and
3 gas leases in the area?

4 A. Yes.

5 Q. In your opinion do the terms you've testified to repre-
6 sent the reasonable fair market value and a fair and
7 reasonable compensation to be paid for drilling rights
8 within this unit?

9 A. Yes.

10 Q. Based on your prior testimony with respect to fair market
11 value do you recommend that the respondents listed at
12 Exhibit B and not dismissed at this hearing be allowed
13 options with respect to their ownership interest within
14 the unit?

15 A. Yes.

16 Q. Would you recommend that they be allowed the following
17 options including participation, a cash bonus of \$5 per
18 net mineral acre, plus a one-eighth royalty or to
19 participate as a carried interest owner, share in the
20 operations under the following conditions; Such carried
21 operator be entitled to a share of the production from
22 the tracts pooled accruing his interest exclusive of any
23 royalty or any over riding royalty reserved in any lease
24 assignments thereof or agreements relating thereto of
25 such those tracts but only after the proceeds allocable

1 to his share equal A; 300 percent of the share of such
2 cost allocable to the interest of the carried operator of
3 a leased tract or proportion thereof or B; 200 percent of
4 the share of such cost allocable to the interest of the
5 carried operator of an unleased tract or proportion
6 thereof?

7 A. Yes.

8 Q. Do you recommend that the order provide the elections of
9 the respondent be in writing and sent to the applicant at
10 the address stated in the application?

11 A. Yes.

12 Q. And should this be the address for all communications
13 with the applicant concerning the forced pooling order?

14 A. Yes, it should.

15 Q. Do you recommend that the order provide that if no
16 election is properly made by respondent then such
17 respondent shall be deemed to have elected to cash
18 royalty option in lieu of participation?

19 A. Yes.

20 Q. And do you recommend that each respondent have 45 days
21 from which time to make an election from the date of the
22 final order?

23 A. Yes, I do.

24 Q. If the respondent elects to participate how much time
25 from the date of the order should respondent have to pay

1 applicant for respondent's share of well cost?

2 A. 45 days.

3 (AFTER A BRIEF DISCUSSION OFF THE RECORD, THE HEARING
4 CONTINUED AS FOLLOWS:

5 Q. (Mr. Counts continues.) If the respondent elects to
6 participate, in other words, they've got 45 days to make
7 the election and then they elect to participate how much
8 time from the date of the order should the respondent
9 have to pay applicant for respondent's proportioned share
10 of the well cost?

11 A. 30 days.

12 Q. Does the applicant expect the party electing to partici-
13 pate to pay in advance that party's share of completed
14 well cost?

15 A. Yes.

16 Q. How much time from the date of the order should the
17 applicant have to pay or tender any cash bonus becoming
18 due under the forced pooling order?

19 A. 30 days.

20 Q. Do you recommend that the forced pooling order provide
21 that if the respondent elects to participate but fails to
22 pay respondent's proportioned share of well cost satis-
23 factory to applicant for the payment of well cost then
24 respondent's election to participate should be treated as
25 having been withdrawn and void and such respondent should

1 be treated as if no initial election had been filed under
2 the forced pooling order?

3 A. Yes.

4 Q. Do you recommend the forced pooling order provide that
5 where a respondent elects to participate but defaults in
6 regard to the payment of well cost any cash sum becoming
7 payable to such respondent be paid within 30 days after
8 the last date on which such respondent could have paid or
9 made satisfactory arrangements for the payment of well
10 cost?

11 A. Yes.

12 Q. Do you recommend that the forced pooling order provide
13 that if a respondent refused to accept the cash bonus or
14 the cash bonus cannot be paid to a party for any reason
15 or if there is a title defect in the respondent's
16 interest that the operator create an escrow account for
17 the respondent's benefit until the money can be paid to
18 the party or until the title defect is cured to the
19 operator's satisfaction?

20 A. Yes.

21 Q. And who do you recommend that the Board name as operator
22 under this unit?

23 A. Equitable Resources Exploration.

24 MR. COUNTS: Mr. Chairman, that's all the questions I have of
25 Mr. Baker.

1 MR. CHAIRMAN: Mr. Colley, do you have any questions of Mr.
2 Baker?

3 W.C. COLLEY: Yes, as to the pooling of the gas or rights, we
4 have a map and according to -- I received from Equitable
5 Resources and is incorrect. I'd like to discuss that.

6 KEN COLLEY: This concerns the T. K. Colley portion of the
7 land.

8 MR. CHAIRMAN: Go ahead and ask your question of Mr. Baker.

9 W.C. COLLEY: Well, I have a question -- I have a map here
10 that consistent with the pooling of the gas. And
11 according to my map -- engineering map and this one
12 provided by Equitable Resources doesn't match, doesn't
13 correspond. I have a deed and I can explain to you on
14 the map if you'd like to discuss that or -- we are in
15 discrepancy in our engineering work here.

16 MR. COUNTS: Mr. Chairman, I would simply state that we have
17 previously met with Mr. Colley. We do have a plat here
18 which has be certified to by Mr. Glenn Phillips as a
19 licensed land surveyor. Also I have a plat which I'll be
20 happy to show the Board with regard to an adjacent well
21 drilled by Virginia Gas Company, EH-24, in which Mr. W.C.
22 Colley and his heirs do an ownership interest in and it
23 effectively indicates the same monuments and boundaries
24 with respect to that. Of course, an objection has been
25 filed on behalf of Mr. Colley and I would submit to the

1 Board that the presumption is in favor of the applica-
2 tion. The burden is upon Mr. Colley to indicate that
3 this is incorrect. In addition, I would submit to the
4 Board that this is a private contractual matter not
5 really within the jurisdiction of the Board and that
6 Equitable is fully comfortable to the effect that our
7 plat is correct based upon Mr. Phillip's work and
8 secondly that our ownership as we've indicated on this
9 plat is correct based upon the title work that Equitable
10 Resources has had done.

11 KEN COLLEY: May the Board also note that as far as the land
12 ownerships of T.K. Colley heirs is concerned Mr. Phil-
13 lip's plotting of that area is incorrect because there is
14 a -- besides 1.5 percent interest of what they have
15 marked on our map from the percent that we would receive
16 from the well there is also a majority of land adjacent
17 to that that is marked on the map as T.K. Colley heirs
18 which is actually our surface area and not T.K. Colley,
19 in fact. And that would increase the percentage of our
20 land area from 1.5 percent to that additional amount.

21 W.C. COLLEY: What I have is also certified. Mr. Kendrick at
22 Kendrick Engineering -- I also had Joe Barger from Wise.
23 I have his map plot. I don't have it with me, but this
24 is from Kendrick Engineering and I have my deed here
25 which states this point.

1 MR. COUNTS: Mr. McGlothlin, I would be more than happy to
2 look at whatever maps these gentlemen have to submit.
3 But I think this would be -- in the event that we can't
4 come to an agreement this is appropriate for a motion for
5 boundary dispute resolution under the Circuit Court as
6 opposed to before the Gas and Oil Board.

7 KEN COLLEY: That would be fine. Just for the Board's
8 recognition of what we're discussing here, the way that
9 the plot recognizes it this is the area that we are
10 supposedly to have 1.5 percent interest in. This is the
11 area belonging to the T.K. Colley heirs. And in cor-
12 respondence to that area -- this area in here with the
13 line being here from here from a beach and I believe to
14 the barn, covers this area from here, would be adjacent
15 from here to here. If I might show you, this would be
16 more fully a demonstration of where -- the areas cor-
17 respond here and also here. And this area right here is
18 our land surface.

19 MR. CHAIRMAN: Mr. Colley, do you agree or disagree with the
20 amount of acreage that has been stated?

21 W.C. COLLEY: I disagree. That's my objection to it.

22 MR. MASON: It seems to me that what we've got here -- I mean,
23 obviously we can't resolve -- this Board -- any disputed
24 boundary. What we can do, though, is obviously there is
25 a conflicting claim with regard to this area in dispute

1 which we can recognize. Can you or will you have your
2 petition reflect the area in question as a conflicting
3 claim?

4 KEN COLLEY: What do you mean referring to the petition?

5 MR. MASON: I'm talking about this petition. Basically what
6 I'm saying is that there's a conflicting claim to whether
7 or not this portion of this area belongs to you or
8 someone else. We have within our jurisdiction the
9 ability to recognize that as a conflicting and if their
10 petition recognizes such there's an escrow that's created
11 for that until such time as a resolution is made of the
12 ownership. We don't do that. All I'm saying is that
13 from our standpoint we need to just recognize that there
14 is a conflicting claim as the areas in question.

15 KEN COLLEY: The major conflict that we have with Equitable
16 Resources is that they're trying to force a right-of-way
17 over our property from that well to the main line.

18 MR. COUNTS: Mr. Mason, this application, of course, being
19 brought under 361.21 as opposed to with regard to
20 conflicting claims. And we do have a title opinion on
21 this one rendered by McKennus and Scott that we'd be
22 happy to provide to the Board. And that title opinion
23 does reflect that the T.K. Colley heirs whom are listed
24 in Exhibit B of our application are the rightful owners
25 underlying this tract. As a result we're very comfort-

1 able with that. We feel like that's correct. And if Mr.
2 W.C. Colley, etcetera, feel that this is inappropriate
3 then they're more than willing to contest that. If we
4 feel like a valid claim has been submitted
5 -- if there's any question at that point we would
6 consider escrowing those funds.

7 MR. MASON: I stand corrected on that. It's conventional
8 wells as opposed to coalbed wells conflicting claim.

9 KEN COLLEY: The major conflict that we have in the situation
10 is, like I mentioned earlier, with Equitable Resources
11 intent to only cover a small portion of 1.5 percent and
12 then use that 1.5 percent to force a right-of-way over
13 our property basically on the road which is very virtual-
14 ly, if not adjacent to our living residence. We own a
15 considerable amount of land in that area. We're con-
16 siderable property owners there and they want to take
17 that 1.5 percent and force a right-of-way over our road
18 without any compensation.

19 MR. COUNTS: With respect to that issue, Mr. Chairman, he's
20 correct that only a very small portion of the tract is
21 actually -- of his acreage is actually contained within
22 the tract. However, as indicated in previously testimony
23 the Colley heirs have previously leased their interest to
24 Virginia Gas Company. And also estate where you have
25 life estate also remain-- the lease is granted by all

1 those parties and ratified by the remaining parties and
2 effectively the leases all contain a pooling provision
3 which is at Paragraph 13 which I will introduce to the
4 Board, a copy of a certified lease and ratification. So
5 there is a pooling clause in Paragraph 13 of the lease
6 and in addition the lease provides for the utilization of
7 such surface tracts with all necessary rights-of-way over
8 said premises for the aforesaid. And that's in the
9 granting clause. It is well known and it is without
10 question the fact that if a unit is leased -- even if a
11 unit is unleased and is forced pooled within a unit by a
12 Board order that the operator of such unit is entitled to
13 -- it's implied in the event of an unleased unit and
14 expressed easements such as exist in this oil and gas
15 lease and the ratification. I would like to provide a
16 certified copy of this lease to the Board.

17 KEN COLLEY: But may the Board also note any leasing agreement
18 made by T.K. Colley heirs does not reflect the leasing
19 agreements on our own surface areas involved because
20 those lease agreements from T.K. Colley heirs does not
21 include our land surface area.

22 MR. CHAIRMAN: Mr. Counts, just to clarify the exhibit, what
23 number are you wishing to mark this?

24 MR. COUNTS: We need to mark that one as Exhibit C.

25 MR. CHAIRMAN: This is an oil and gas lease?

1 MR. COUNTS: That's correct. And Exhibit D would be the
2 ratification to the oil and gas lease.
3 MR. CHAIRMAN: Okay. From W.C. Colley and Ruby Colley, his
4 wife to Virginia Gas.
5 MR. COUNTS: That's correct.
6 MR. FULMER: That's Exhibit 2. Exhibit 1 was the letter from
7 EREX.
8 KEN COLLEY: Members of the Board, there was an earlier
9 question stated to one of the gentlemen. As far as one
10 of the witnesses replied that Virginia Gas has leased or
11 has agreed to give Equitable Resources a certain percent-
12 age of the area that they own in their leasing agreement,
13 to my contention or to my know Virginia Gas has not held
14 any contention to allow Equitable Resources any access.
15 They have decided that if Equitable Resources wants to
16 use their pipeline to ship their gas they're more than
17 willing to do that. As far as percentage wise or any
18 interest in the area involved I don't think Virginia Gas
19 has given them any authorization to use that. I mean, I
20 might be mistaken on that.
21 MR. COUNTS: We have before the Board the consent to pool from
22 Virginia Gas Company.
23 MR. FULMER: That's Exhibit 1.
24 MS. RIGGS: Do you have a title opinion?
25 MR. COUNTS: Yes, ma'am, we do. Would you like to have

1 presented to the Board? We'll provide that. Mark this
2 as Exhibit 3.

3 MR. CHAIRMAN: Mr. Colley, the Board is aware now on record
4 that there is a conflict in the acreage and we'll -- we
5 don't have the authority to hear --

6 KEN COLLEY: I realize that. We just wanted to bring it to
7 your attention, sir.

8 MR. CHAIRMAN: We'll say that you are on record with the Board
9 to that objection.

10 W.C. COLLEY: I do have a sheet here received by me yesterday,
11 the objections to that right-of-way. I have a copy of
12 that. Did you receive it? Did the Board receive a copy?

13 MR. FULMER: Yes. That was submitted with the package.

14 MR. COUNTS: Again, Mr. Chairman, with respect to all those
15 objections raised and the objection filed with the Board
16 we would submit that those are a private contractual
17 matter and therefore, the appropriate forum would be the
18 Circuit Court for those.

19 KEN COLLEY: For one thing, if the Board will allow, as far as
20 this hearing today is concerned my father and I both did
21 receive notification as to the hearing taking place.
22 There are two other parties involved, my sister who also
23 owns a substantial part in it and also Nancy Owens who
24 owns a substantial part in it. And they were not
25 notified by certified mail or in any manner that this

1 hearing was taking place today.

2 MR. COUNTS: I believe the exhibit will reflect that those

3 parties were all notified. I think what the gentleman's

4 making reference to is the objection was filed with

5 regard to a permit application. And on the permit

6 application the life tenant was only notified and

7 obviously that hearing will be set, assuming it will be

8 set in front of the oil and gas inspector based upon the

9 permit application itself. We received an objection to

10 permit in addition to an objection to pooling. And that

11 is the only one where improper notification took place.

12 Notification with regard to Mr. Colley and all the

13 remaining was submitted to DMME and we would submit that

14 those notifications were properly made to all parties.

15 MR. CHAIRMAN: Mr. Colley, who's the owner of record?

16 W.C. COLLEY: I am.

17 MR. CHAIRMAN: Were you notified, Mr. Colley?

18 W.C. COLLEY: Yes. I received notification, me and my wife.

19 KEN COLLEY: As far as it stands, the land is in both myself

20 and my sister's names. My father and my mother have a

21 lifetime interest in the property, but the land is in my

22 self and my sister's names.

23 MR. COUNTS: Mr. Chairman, I'd like to again request the names

24 of the individuals that were not notified.

25 W.C. COLLEY: Nancy Owens and Milinda Wallen.

1 MR. COUNTS: Those parties were notified by return receipt
2 requested, P308914699, accepted by Nancy Owens on
3 11/3/92. Milinda Wallen was notified by P308914632 and
4 accepted on 10/27/92. Those have been provided with the
5 Department.

6 W.C. COLLEY: The decision on this, this was prepared by my
7 son-in-law Buddy Wallen and an attorney in Clintwood.
8 His wife is my daughter Milinda Colley Wallen. He said
9 there was nothing like that sent -- there could be. It
10 could have been an oversight. But my statement was in
11 regard to his objections here to this right-of-way.

12 MR. MASON: Do you have a copy of those cards?

13 MR. COUNTS: Mr. Chairman, I did not keep copies. Like I
14 said, they were submitted to the DMME along with a letter
15 to Ms. Davis. I can show you that, if you would like,
16 sir.

17 MR. FULMER: We received them on October 19th. They're at the
18 office. I can verify it for the Board.

19 MR. MASON: Okay. That's fine.

20 MR. FULMER: They were submitted on November 9th with respect
21 to this application.

22 MR. MASON: Thank you.

23 KEN COLLEY: I stand corrected.

24 MR. CHAIRMAN: Any other questions of Mr. Baker?

25 W.C. COLLEY: I'd like to submit these if -- Mr. Counts I

1 don't think he'd probably have a copy of this. I think
2 the Board has a copy, but I don't believe he received
3 copy yet. It was mailed on the 16th.

4 MR. COUNTS: I did receive a copy of this yesterday and my
5 understand is that this is an objection you have filed to
6 the application for permit on 2266.

7 W.C. COLLEY: Yes. That's correct.

8 MR. COUNTS: Have all the parties, the life tenants, etcetera,
9 have all the interested parties been notified now? Are
10 they aware of that objection and the application?

11 KEN COLLEY: All parties in our family have been.

12 W.C. COLLEY: My attorney is assisting me in that. My son-in-
13 law Buddy Wallen.

14 MR. COUNTS: But all parties are now aware, correct?

15 W.C. COLLEY: As far as I know. I mean, he's handling it for
16 me.

17 MR. MASON: Is this an objection to the pooling or is this an
18 objection to the permit?

19 W.C. COLLEY: An objection to the right-of-way.

20 MR. FULMER: The objection you have before you is an objection
21 to the pooling.

22 MR. MASON: But somebody just said there was also --

23 MR. FULMER: There is another out there but it has nothing to
24 do with this.

25 MR. MASON: Okay.

1 MR. FULMER: Which when the hearing is scheduled these people
2 will be notified of the date of the hearing. But there
3 is an objection that has been filed against the permit to
4 V-2266.

5 MR. MASON: I see.

6 MR. FULMER: Mr. Chairman, for some information in regards to
7 some of the statements made this morning, what Mr. Counts
8 has submitted in Exhibit 2 is an agreement between
9 Milinda Wallen, Buddy Wallen, and the other one is an
10 agreement W.C Colley and Ruby Colley, not the T.K. Colley
11 heirs.

12 KEN COLLEY: To clarify subject matters to the Board, we
13 really have no contention against the pooling of the gas,
14 just as long as Equitable Resources deems it in our
15 interest to see that our interest and our surface rights
16 are protected. But the pooling matter is not a great
17 concern. We have no objection to the pooling as long as
18 they see fit to work with us on interests that cor-
19 responds to our own needs.

20 MR. CHAIRMAN: That's handled outside of this forum.

21 MR. MASON: Well, some of those matters would be germane to
22 the permit application, would they not?

23 MR. MASON: It's simply a more proper forum for discussion of
24 some of these matters.

25 MR. FULMER: Yeah.

1 MR. CHAIRMAN: Continue, Mr. Counts.

2 (Witness stands aside.)

3 MR. COUNTS: I'd like to call my next witness, Mr. Bob Dahlin.

4
5 ROBERT A. DAHLIN, II

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

8
9 DIRECT EXAMINATION

10
11 BY MR. COUNTS:

12 Q. Mr. Dahlin, are you familiar with the proposed explora-
13 tion and development of the unit involved herein and
14 Equitable's proposed plan of development?

15 A. Yes, sir, I am.

16 Q. What is the total depth of the proposed initial well
17 under the applicant's plan of development?

18 A. Total depth at this location would be 4,710 feet.

19 Q. And will this be sufficient to penetrate and test all the
20 common source of supply in this area?

21 A. Yes, sir.

22 Q. What are the estimated reserves of this unit?

23 A. At this location our drilling unit has anticipated 400
24 million cubic foot of gas assigned to it.

25 Q. And are familiar with the well costs for the proposed

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

2 A. Yes, sir.

3 Q. Has an AFE been prepared, reviewed and revised within the

4 last 45 days and submitted to the Board?

5 A. It has.

6 Q. Was an AFE prepared by an engineer knowledgeable in

7 preparation of AFEs and knowledgeable in regard to well

8 costs in the area?

9 A. Yes, sir.

10 Q. Does this AFE represent a reasonable estimate of the

11 reasonable well costs for the proposed initial unit well

12 under applicant's plan of development?

13 A. Yes, it does.

14 Q. Would you indicate for the Board the dry-hole and

15 completed well cost for this well?

16 A. Dry-hole cost would be \$126,780 with a completed AFE cost

17 of \$239,060.

18 Q. And in your professional opinion will the granting of

19 this application be in the best interest of conservation,

20 prevention of waste, and protection of correlative

21 rights.

22 A. Yes, sir.

23 MR. COUNTS: Mr. Chairman, I have no further questions. We

24 would request that the forced pooling application for

25 well 2266 as submitted be approved by the Board.

1 MR. CHAIRMAN: Any questions of Mr. Dahlin?

2 KEN COLLEY: No. But I would ask also that the Board take
3 into consideration the fore mentioned aspects of what
4 we're taking into consideration and take that into an
5 aspect of your decision that you are about to render.

6 MR. COUNTS: Mr. Chairman, as a result that those things are
7 not within the purview or the jurisdiction of the Board
8 at this point in time I would request that no mention be
9 taken.

10 KEN COLLEY: Until such time as these matters can be remedied
11 and then the consideration of this forced pooling can be
12 re-evaluated at a later date.

13 MR. COUNTS: Mr. Chairman, the W.C. Colley heirs, etcetera,
14 will have an opportunity to bring their case before the
15 appropriate forum. As they indicated, they have no
16 problems with the pooling. This is a pooling application
17 as to the relief requested. We would simply request that
18 the application as submitted be approved.

19 MR. CHAIRMAN: I have to agree with Mr. Counts. The purpose
20 of this application is for a pooling order and we can't
21 allow the evidence that you suggested be part of our
22 decision on this application. Any other questions?

23 (Witness stands aside.)

24 MR. KELLY: I move that the application be approved.

25 MR. EVANS: Second.

1 MR. CHAIRMAN: We have a motion and a second to approve the
2 application. -- Excuse me. Any discussion of the
3 application?
4 MR. MASON: Well, I wanted to ask a question. Excuse me. I
5 want to ask this question to Madam Attorney General, if
6 you will. Looking at D, Mr. McGlothlin and I were
7 briefly looking at this and it's designating the appli-
8 cant as the operator providing that the operator shall
9 have the right to drill, develop, produce, market and
10 sell oil and gas produced. Granting the right to market
11 and sell, do we have the power to do that?
12 MS. RIGGS: I think the statute reads, "The right to drill and
13 operate." Drill and operate the well under the forced
14 pooling.
15 MR. MASON: Then I believe the question would be as to whether
16 or not embodied in the right to operate is the right to
17 do all these things, is that correct?
18 MS. RIGGS: It would be under 45.1 361-21.C.3 "Designate the
19 gas and oil owner who is authorized to drill and operate
20 the well." I do not believe there is a definition in the
21 statute of the word operate. Let me check that. I think
22 the way our orders read is drill and operate when we do
23 the designation.
24 MR. MASON: In other words, rather than specifying the powers
25 of the operator we would just appoint the operator and

1 then it would be up to whatever the proper interpretation
2 that included their powers and not enumerated on our
3 behalf for any specific ruling as to what those powers
4 include.

5 MR. COUNTS: I think that the Board's got continuing jurisdic-
6 tion to -- for instance, adjudicate cost by well operat-
7 ors.

8 MR. MASON: Correct.

9 MR. COUNTS: And I think as long as the operator is not
10 unreasonably exercising it's rights then I think that
11 it's consistent with a general mandate by the Board that
12 they may operate. But I think that the Board would have
13 jurisdiction if it was an unreasonable exercise of those
14 rights.

15 MR. MASON: Well, I think it would be more appropriate to have
16 this read designate the applicant EREX as operator to
17 drill and operate the drilling unit and just leave it at
18 that without any enumeration of what those powers
19 include.

20 MR. COUNTS: I think that's correct. I would totally agree
21 that it should a generic mandate as opposed to try to
22 specify because then you're going to have parties coming
23 back to the Board --

24 MR. MASON: Would we (Inaudible.) with an amendment to that
25 effect?

1 MR. COUNTS: Yes, sir, you will.

2 MR. FULMER: I'll point out as just a matter of clarity,
3 though, if you took that one step further as being the
4 operator and designated gas and oil operator, those two
5 definitions --

6 MR. MASON: Well, I understand that. I think it's a lot
7 broader than that.

8 MS. RIGGS: So we will use the standard language of the forced
9 pooling orders.

10 MR. MASON: Right.

11 MR. CHAIRMAN: Any further discussion?

12 KEN COLLEY: As far as --

13 MR. CHAIRMAN: I'm sorry. We have a motion before us right
14 now, Mr. Colley.

15 (AFTER A BRIEF DISCUSSION OFF THE RECORD, THE HEARING
16 CONTINUED AS FOLLOWS:)

17 MR. CHAIRMAN: Mr. Colley, if it pertains to the motion, Mr.
18 Colley, I can recognize you. I'm sorry. Go ahead.

19 KEN COLLEY: I have two other objections that I was going to
20 bring in front of the Board to continue with respect of
21 notification that you all have already received. But
22 just to bring it to your full attention if you want to
23 listen to the remaining two objections I'll be happy to
24 state them.

25 MR. EVANS: Do they pertain to the pooling order?

1 KEN COLLEY: Well, as far as it stands we do -- as Mr. Counts
2 mentioned earlier, as far as it stands we have no
3 objection to the pooling itself.

4 MR. EVANS: Bring them when they're due.

5 KEN COLLEY: And when will that be held?

6 MR. EVANS: It depends on what they're submit to. If it's for
7 the permit application or whatever else, bring them in
8 the proper forum at the proper time. If they have to do
9 with the pooling, that's what this particular hearing is
10 about. That's the only thing we can address now, what's
11 before us.

12 KEN COLLEY: Okay.

13 MR. CHAIRMAN: We've got a motion and a second. All in favor
14 say yes. (ALL AFFIRM.) All opposed? (NONE.) So
15 carried.

16 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)
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1 ITEM V

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3 MR. CHAIRMAN: The next item on the docket is VGOB-92/11/17-
4 0288, well V-2431. All interested parties come forward,
5 please.

6 MR. COUNTS: Mr. Chairman, I'd like to call my first witness,
7 Mr. Baker. I'll remind Mr. Baker that he's previously
8 been sworn with respect to all matters before the Board
9 today.

10

11 DENNIS BAKER

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

14

15 DIRECT EXAMINATION

16

17 BY MR. COUNTS:

18 Q. Mr. Baker, are you familiar with Equitable's application
19 for the establishment of a drilling and pooling order
20 under well 2431 and is Equitable seeking to force pool
21 the drilling rights underlying this spacing unit as
22 depicted at Exhibit A of the application?

23 A. Yes, we are.

24 Q. Does Equitable own drilling rights involved in the units
25 herein?

1 A. Yes, we do.

2 Q. And does the proposed unit depicted at Exhibit A include
3 all acreage within 1,320 feet of the proposed well 2431?

4 A. Yes, it does.

5 Q. Would you indicate for the Board the interest of Equit-
6 able in this unit?

7 A. Approximately 99.5 percent.

8 MR. COUNTS: So to reiterate, Mr. Chairman, Equitable has
9 under in the lease in the unit or has 99.5 percent of
10 this unit leased.

11 Q. (Mr. Counts continues.) Mr. Baker, are you familiar
12 with the ownership of the drilling rights of parties
13 other than Equitable underlying this unit?

14 A. Yes, I am.

15 Q. And what's the unleased segment of those interests?

16 A. Unleased represents .5 percent.

17 Q. And are all the unleased respondents set out at Exhibit
18 B?

19 A. Yes, they are.

20 Q. Prior to filing the application for forced pooling were
21 efforts made to contact each of the respondents in an
22 attempt to work out an agreement regarding the develop-
23 ment in the units involved?

24 A. Yes, they were.

25 Q. And subsequent to the filing of the application have you

1 continued to attempt to reach an agreement with the
2 respondents listed at Exhibit B?

3 A. Yes, we have.

4 Q. And as a result of these efforts do you wish to dismiss
5 any of these respondents?

6 A. Yes. We have a revised Exhibit B.

7 Q. Would you indicate for the Board those parties that
8 you're dismissing?

9 A. On Page 2 of the revised Exhibit B, last shown individual
10 on tract 2, Lillian Joan Smith and husband Donnie Joe
11 Jones. That's the only one that we wish to dismiss.

12 Q. And the figures you've previously testified to from the
13 standpoint of .5 percent of the parties being unleased is
14 reflected on this revised Exhibit B, is that correct?

15 A. That is correct.

16 Q. Were any efforts made to determine if the individual
17 respondents were living or deceased or their whereabouts
18 and if deceased were efforts made to determine the names
19 and addresses of the whereabouts of the successors to any
20 deceased individual respondent?

21 A. Yes.

22 Q. And in terms of making these efforts were the primary
23 sources used including -- did they include deed records,
24 probate records, accessors records and treasurers
25 records?

1 A. Yes, they did.

2 Q. In your professional opinion was due diligence exercised
3 to locate each of the respondents named herein?

4 A. Yes, they were.

5 Q. And are the addresses set out in Exhibit B to the
6 application the last known addresses for the respondents?

7 A. Yes.

8 Q. And with the exception of those parties which you've
9 dismissed from this proceeding are you requesting that
10 the Board force pool all other interests listed at
11 revised Exhibit B?

12 A. Yes.

13 Q. Does Equitable seek to force pool the drilling rights of
14 each individual respondent if living and if deceased the
15 unknown successor or successors to any deceased indivi-
16 dual respondent?

17 A. Yes, we are.

18 Q. Is Equitable seeking to force pool the drilling rights of
19 any person designated as a trustee if acting in the
20 capacity of trustee and not acting in such capacity is
21 Equitable seeking to force pool the drilling rights of
22 the successor of such trustee?

23 A. Yes, we are.

24 Q. Are you familiar with the fair market value of the
25 drilling rights in the units in the surrounding area?

- 1 A. Yes.
- 2 Q. Would you advise the Board as to what those terms are?
- 3 A. A \$5 bonus per net mineral acre, five year term, one-
- 4 eighth royalty.
- 5 Q. And did you gain your familiarity by acquiring oil and
- 6 gas leases in the area?
- 7 A. Yes, I did.
- 8 Q. In your opinion do the terms you've testified represent
- 9 the fair market value of the fair and reasonable compensa-
- 10 tion to be paid for drilling rights within this unit?
- 11 A. Yes.
- 12 Q. Based on that do you recommend that the respondents
- 13 listed at Exhibit B and not dismissed at this hearing be
- 14 allowed the following options with respect to their
- 15 ownership interest within the unit; Number one is
- 16 participation. Number two would be the elect to the cash
- 17 bonus of \$5 per net mineral acre and a one-eighth of
- 18 eight-eighths royalty. Number three elect to be a
- 19 carried operator under the Virginia Oil and Gas Act?
- 20 A. Yes.
- 21 Q. Do you recommend that the order provide that the election
- 22 of the respondents be in writing and sent to applicant at
- 23 the address stated in the application?
- 24 A. Yes.
- 25 Q. And should this address be the address for all communica-

1
2 ROBERT A. DAHLIN, II
3 a witness who, after having been previously sworn, was
4 examined and testified as follows:
5

6 DIRECT EXAMINATION
7

8 BY MR. COUNTS:

9 Q. Mr. Dahlin, do your responsibilities include the lands
10 involved herein the surrounding area and are you familiar
11 with Equitable's proposed plan of development?

12 A. Yes, I am.

13 Q. Would you indicate for the Board the total depth of the
14 proposed initial well under Equitable's plan of develop-
15 ment?

16 A. 5,400 feet.

17 Q. And will this be sufficient to penetrate and test the
18 common source of supply in this general area?

19 A. Yes, sir.

20 Q. What are the estimated reserves of this unit, sir?

21 A. We've assigned 600 million cubic feet to this drilling
22 unit.

23 Q. And are you familiar with the well cost for the proposed
24 initial unit well under applicant's plan of development?

25 A. Yes, sir.

1 Q. Has an AFE been prepared or reviewed and revised within
2 the last 45 days and submitted to the Board?
3 A. Yes, sir.
4 Q. Was an AFE prepared by an engineer knowledgeable in the
5 preparation of AFEs and knowledgeable in regard to well
6 costs for this area?
7 A. It was.
8 Q. Does the AFE represent a reasonable estimate of the
9 reasonable well costs for the proposed initial unit well
10 under applicant's plan of development?
11 A. Yes, sir.
12 Q. And would you indicate for the Board the anticipated dry-
13 hole and completed well cost?
14 A. The anticipated dry-hole cost would be \$166,250.
15 Completed well cost would be \$323,350.
16 Q. In your professional opinion, Mr. Dahlin, will granting
17 of the application be in the best interest of conserva-
18 tion, prevention of waste, and protection of correlative
19 rights?
20 A. Yes, sir.
21 MR. COUNTS: Mr. Chairman, I have no further questions and no
22 further witnesses to present before the Board in this
23 matter.
24 MR. CHAIRMAN: Any questions, members of the Board?
25 (Witness stands aside.)

1 MR. CHAIRMAN: Gentlemen, what's your pleasure?
2 MR. KELLY: I move that the application be approved.
3 MR. EVANS: Second.
4 MR. CHAIRMAN: We have a motion and a second. Any further
5 discussion?
6 MR. HARRIS: I do have one question. Again, we have on the
7 notice of hearing the listing about drilling, operating
8 and selling and we did make some decision on that in the
9 previous application. Do we need to address that on this
10 one? The other question I had is that's in the notice of
11 hearing. Is that a problem, that it's in the notice?
12 MR. COUNTS: I don't think it's a problem. But the extent we
13 certainly want to be consistent and we'll modify that in
14 the future as well to be consistent with the order of the
15 Board.
16 MR. HARRIS: But the notice doesn't effect the order?
17 MR. CHAIRMAN: No. Any further discussion? All in favor
18 signify by saying yes. (ALL AFFIRM.) Opposed? (NONE.)
19 So carried.
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3 ITEM VI

4 MR. CHAIRMAN: The next item on the agenda is VGOB-92/11/17-
5 0289, well V-2328. All interested parties please come
6 forward. Mr. Counts.

7 MR. COUNTS: Mr. Chairman, again I'm Richard Counts appear on
8 behalf of Equitable Resources. I'd like to call my first
9 witness Mr. Dennis Baker. I'll remind Mr. Baker that
10 he's previously been sworn with respect to all matters
11 coming before the Board on this date.

12 DENNIS BAKER

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

15
16 DIRECT EXAMINATION

17
18 BY MR. COUNTS:

19 Q. Mr. Baker, do your responsibilities include the lands
20 involved herein the surrounding area and are you familiar
21 with Equitable's application for the establishment of a
22 drilling unit and pooling order for well V-2328?

23 A. Yes, I am.

24 Q. Is Equitable seeking to force pool the drilling rights
25 underlying the drilling and spacing unit as depicted at

1 Exhibit A of the application?

2 A. Yes.

3 Q. Does Equitable own drilling rights involved in the units

4 herein?

5 A. Yes.

6 Q. Does the proposed unit depicted at Exhibit A include all

7 acreage within 1,320 feet of the proposed well 2328?

8 A. Yes, it does.

9 Q. Would you indicate for the Board Equitable's interest in

10 this unit?

11 A. 99.47 percent leased, .54 percent being unleased.

12 Q. And would you indicate the ownership of the unleased

13 interest?

14 A. .53 percent.

15 Q. And is that private owners?

16 A. That's third party, private owners.

17 Q. And are all the unleased respondents set out at Exhibit

18 B?

19 A. Yes, they are.

20 Q. Did you attempt prior to filing the application to

21 contact each respondent in an attempt to work out an

22 agreement regarding the development of the units involv-

23 ed?

24 A. Yes.

25 Q. Subsequent to filing the application have you continued

1 to attempt to reach an agreement with the respondents
2 listed at Exhibit B?

3 A. Yes, we have.

4 Q. Are you able to dismiss any of the respondents at Exhibit
5 B at this time?

6 A. No, we are not.

7 Q. In other words, there will be no changes to the Exhibit B
8 as previously submitted with the application?

9 A. Correct.

10 Q. Were any efforts made to determine if the individual
11 respondents were living or deceased or their whereabouts
12 and if deceased were efforts made to determine the names
13 and addressed and whereabouts of the successor to any
14 deceased individual respondents?

15 A. That is correct.

16 Q. In your professional opinion was due diligence exercised
17 to locate of the respondents named herein?

18 A. Yes.

19 Q. Are the addressed set out in Exhibit B to the application
20 the last known addresses for the respondents to the best
21 of your knowledge?

22 A. Yes.

23 Q. With the exception of those parties withdrawn does
24 Equitable seek to force pool the drilling rights of each
25 individual respondent if living and if deceased the

1 unknown successor or successors to any deceased indivi-
2 dual respondent?

3 A. Yes.

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

9 A. That is correct.

10 Q. Are you familiar with the fair market value of leasing in
11 this area?

12 A. Yes, I am.

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

14 A. \$5 per net mineral acre, five year term, one-eighth
15 royalty.

16 Q. In your opinion do the terms you've testified to repre-
17 sent the fair market value of and the fair and reasonable
18 compensation to be paid for the drilling rights within
19 this unit?

20 A. Yes. That is correct.

21 Q. Based on these recommendations do you suggest that the
22 respondents listed at Exhibit B be allowed the following
23 options with respect to their ownership interest within
24 the unit; Number one, they be allowed to participate.
25 Number two, they be allowed to elect a cash bonus of \$5

1 per net mineral acre plus a one-eighth of eight-eighths
2 royalty. Number three, they be allowed to elect to
3 participate as a carried operator consistent with 361.21,
4 Subsection C, Subsection 7?

5 A. Yes.

6 Q. Do you recommend that the order provide that elections by
7 respondent be in writing and sent to the application at
8 the address stated in the application?

9 A. Yes. That is correct.

10 Q. Should this be the address for all communications with
11 the applicant concerning the forced pooling order?

12 A. Yes.

13 MR. COUNTS: Again, Mr. Chairman, I'd like to request that the
14 previous request made with regard to the elections under
15 the order be incorporated into testimony with regard to
16 this particular hearing noting again, of course, to the
17 extent that any conflict with the order promulgated by
18 the Board recently, that those would take precedence.

19 MR. CHAIRMAN: That's fine.

20 Q. (Mr. Counts continues.) Mr. Baker, who would you
21 request that the Board name as operator under the forced
22 pooling order?

23 A. Equitable Resources Exploration.

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

1 MR. CHAIRMAN: Any questions from the Board?

2 (Witness stands aside.)

3 MR. CHAIRMAN: You may continue, Mr. Counts.

4 MR. COUNTS: I'd now like to call Mr. Bob Dahlin. I'll remind
5 Mr. Dahlin that he's previously been sworn with regard to
6 all matters appearing before the Board on this date.
7

8 ROBERT A. DAHLIN, II

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

12 DIRECT EXAMINATION
13

14 BY MR. COUNTS:

15 Q. Mr. Dahlin, do your responsibilities include the lands
16 involved herein the surrounding area and are you familiar
17 with Equitable's application for forced pooling on this
18 unit?

19 A. Yes, sir.

20 Q. Would you indicate for the Board the total depth of the
21 proposed initial well under Equitable's plan of develop-
22 ment?

23 A. Total depth will be approximately 6,000 feet.

24 Q. And will this be sufficient to penetrate and test the
25 common sources of supply in this area?

- 1 A. Yes, sir.
- 2 Q. Can you indicate for the Board the projected estimated
3 reserves of the unit?
- 4 A. We have assigned 350 million cubic feet of gas to this
5 drilling unit.
- 6 Q. And are you familiar with the well cost for the proposed
7 initial unit well under Equitable's plan of development?
- 8 A. Yes, sir.
- 9 Q. In this regard can you advise the Board whether an AFE
10 has been prepared or reviewed and revised within the last
11 45 days and submitted to the Board?
- 12 A. Yes, sir, it has.
- 13 Q. Was this AFE prepared by an engineer knowledgeable in the
14 preparation of AFEs and knowledgeable in regard to well
15 costs in this area?
- 16 A. Yes.
- 17 Q. And does this AFE represent a reasonable estimate of the
18 reasonable well cost for proposed initial unit well under
19 applicant's plan of development?
- 20 A. It does.
- 21 Q. Would you indicate for the Board the anticipated dry-hole
22 and completed well cost of this well?
- 23 A. The anticipated dry-hole cost would be \$154,600.
24 Completed well cost \$254,000.
- 25 Q. In your professional opinion will the granting of the

1 application for forced pooling be in the best interest of
2 conservation, prevention of waste, and protection of
3 correlative rights?

4 A. Yes, sir.

5 MR. COUNTS: Mr. Chairman, I have no further questions of this
6 witness and I do not have any other testimony to present
7 in this matter.

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

10 (Witness stands aside.)

11 MR. CHAIRMAN: What's your pleasure?

12 MR. MASON: I move the approval of the application.

13 MR. EVANS: Second.

14 MR. CHAIRMAN: We have a motion and a second. Mr. Counts,
15 will you be willing to amending in your application D,
16 the notice to correspondence the previous language?

17 MR. COUNTS: Yes, sir. I certainly would.

18 MR. CHAIRMAN: All in favor of the motion please signify by
19 saying yes. (ALL AFFIRM.) Opposed? (NONE.) So
20 carried.

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3 ITEM VII

4 MR. CHAIRMAN: The next item on the docket is VGOB-92/11/17-
5 0293, well V-2363. Anyone wishing to address the Board
6 please come forward. (Pause.) Mr. Counts.

7 MR. COUNTS: Mr. Chairman, I'll call my first witness, Mr.
8 Dennis Baker. I'll remind him again he's previously been
9 sworn with respect to all matters appearing before the
10 Board on this date.

11 DENNIS BAKER

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

14
15 DIRECT EXAMINATION

16
17 BY MR. COUNTS:

18 Q. Mr. Baker, do your responsibilities include the lands
19 involved herein the surrounding area and are you familiar
20 with Equitable's application for drilling unit and
21 pooling order for well 2362?

22 A. Yes.

23 Q. Does Equitable seek to force pool the drilling rights
24 underlying the drilling and spacing unit as depicted at
25 Exhibit A of the application?

- 1 A. Yes.
- 2 Q. Does Equitable own drilling rights involved in the units
3 herein?
- 4 A. Yes, we do.
- 5 Q. Does the proposed unit depicted at Exhibit A include all
6 acreage within 1,320 feet of proposed well 2363?
- 7 A. Yes, it does.
- 8 Q. Would you indicate for the Board the interest of Equit-
9 able underlying this unit?
- 10 A. Approximately 90 percent.
- 11 Q. Are you familiar with the ownership of drilling rights of
12 parties other than Equitable underlying this unit?
- 13 A. Yes.
- 14 Q. And would you indicate those interest and whether they
15 are unleased or whether they are owned by other parties?
- 16 A. They're unleased interest, approximately 10 percent by
17 individuals.
- 18 Q. And are all these unleased respondents set out in Exhibit
19 B?
- 20 A. Yes, they are.
- 21 Q. Prior to filing the application were efforts made to
22 contact each respondent in an attempt to work out an
23 agreement regarding the development of the units involv-
24 ed?
- 25 A. Yes, there was.

- 1 Q. Subsequent to filing the application have you continued
2 to attempt to reach an agreement with the respondents
3 listed at Exhibit B?
- 4 A. Yes.
- 5 Q. And as a result of these efforts do you wish to dismiss
6 any of these respondents?
- 7 A. Yes, I do.
- 8 Q. Would you indicate for the Board those parties and the
9 tracts underlying which you anticipate dismissing those
10 parties?
- 11 A. Revised Exhibit B, Page 1, tract 3, The Leda H. Lay
12 estate, care of Donald Lee Lay now leased to EREX. Glenn
13 L. Wynne estate, care of Juanita J. Wynne now leased to
14 EREX. William F. Wynne leased to EREX. Those are the
15 only corrections at this time.
- 16 Q. Were any efforts made to determine if the individual
17 respondents were living or deceased or their whereabouts
18 and if deceased were efforts made to determine the names
19 and addresses of the successors to any deceased individ-
20 ual respondent?
- 21 A. Yes.
- 22 Q. In your professional opinion was due diligence exercised
23 to locate each of the respondents named herein?
- 24 A. Yes, it was.
- 25 Q. Are the addresses set out in Exhibit B to the application

- 1 -- revised Exhibit B -- the last known addresses for the
2 respondents?
- 3 A. Yes. That is correct.
- 4 Q. And with the exception of those parties which you are
5 hereby dismissing from this proceeding are you requesting
6 that the Board force pool all other interests listed at
7 Exhibit B?
- 8 A. Yes.
- 9 Q. Does Equitable seek to force pool the drilling rights of
10 each individual respondent if living and if deceased the
11 unknown successor or successors to any individual
12 respondent?
- 13 A. Yes, we are.
- 14 Q. And is Equitable seeking to force pool the drilling
15 rights of any person designated as trustee or acting in
16 the capacity of trustee and if not acting in such
17 capacity is Equitable seeking to force pool the drilling
18 rights of the successor of such trustee?
- 19 A. Yes.
- 20 Q. Mr. Baker, are you familiar with the fair market value of
21 drilling rights in this unit and surrounding area?
- 22 A. Yes, I am.
- 23 Q. Would you advise the Board as to what that fair market
24 value is?
- 25 A. \$5 per net mineral acre, five year term, one-eighth

- 1 royalty.
- 2 Q. Did you gain your familiarity by acquiring oil and gas
3 leases in this area?
- 4 A. Yes.
- 5 Q. In your opinion do the terms you've testified to repres-
6 ent the fair market value of and the fair and reasonable
7 compensation to be paid for drilling rights within this
8 unit?
- 9 A. Yes.
- 10 Q. Considering these fair market value issues do you
11 recommend that the respondents listed at Exhibit B and
12 not dismissed at this hearing be allowed the following
13 elections with respect to their ownership interests
14 within the unit, A; That they be allowed to participate
15 in the drilling of the well. B; That they be allowed the
16 opportunity to elect a cash bonus of \$5 per net mineral
17 acre plus a one-eighth of eight-eighths royalty. C; They
18 be allowed to participated as a carried interest owner
19 under 361.21, Paragraph C, Subparagraph 7?
- 20 A. Yes. That is correct.
- 21 Q. Do you recommend that the order provide the elections by
22 the respondent be in writing and sent to applicant at the
23 address stated in the application?
- 24 A. Yes.
- 25 Q. And should this be the address for all communications

1 with the applicant concerning the forced pooling order?
2 A. Yes.
3 MR. COUNTS: Again, Mr. Chairman, I'd like to request that the
4 previous recommendations we've made with respect to
5 provisions of the order be incorporated into this hearing
6 as well.
7 MR. CHAIRMAN: That will be fine.
8 Q. (Mr. Counts continues.) Mr. Baker, would you indicate
9 for the Board whom should be named operator under the
10 forced pooling order?
11 A. Equitable Resources Exploration.
12 MR. COUNTS: Mr. Chairman, I have no further questions of Mr.
13 Baker.
14 MR. CHAIRMAN: Any questions of Mr. Baker, members of the
15 Board?
16 MR. FULMER: As point of clarity in regards to the unit map
17 and so forth, it lists Lilly Lay estate. Is that in the
18 W.W. Lay heirs?
19 THE WITNESS: Each of the individuals shown have a one-half
20 interest in the oil and gas.
21 MR. CHAIRMAN: So Leda Lay would have one-half interest of
22 that --
23 THE WITNESS: The Lilly J. Lay estate, yes, sir.
24 MR. CHAIRMAN: -- of the 110.2 acres and the W.W. estate would
25 have the other half of that?

1 THE WITNESS: Uh-huh.

2 MR. FULMER: That's fine. They've got W.W. Lay heirs listed.
3 They don't have Lilly J. Lay estate listed. I'm just
4 adding a point of clarity does this capture both estates?

5 THE WITNESS: Yes, it does. It represents the full interest
6 of both estates.

7 MR. CHAIRMAN: Mr. Fulmer, would it be advantageous for EREX
8 to submit a revised revised Exhibit B showing the
9 distinction between the two heirs?

10 MR. FULMER: That's fine. This is going to be record and if
11 someone comes in and asks a question I just want to make
12 sure it links up.

13 MR. HARRIS: What you're saying is that the Lilly J. Lay
14 estate that's shown on the map is not listed in anywhere
15 in Exhibit B.

16 MR. FULMER: Specifically it's not. I understand they're
17 saying it's interpreted in there, but it's not specific-
18 ally listed.

19 MR. COUNTS: Mr. Chairman, if it would be acceptable to the
20 Board Equitable will be more than happy to submit a
21 revised revised Exhibit B which would indicate the
22 differentiation between the two different estates and
23 those heirs. I think that definitely each heir is set
24 out and their interest is specifically enumerated. So
25 all those interests would be covered and the notice would

1 be effect as to all those parties. But for purposes of
2 the supplemental order, etcetera, escrow proceedings -- I
3 think it would help for clarification purposes -- we'll
4 be more than happy to submit a revised Exhibit B.

5 MR. CHAIRMAN: Would that suit you, Mr. Fulmer?

6 MR. FULMER: That's fine. I'm just trying to keep the Board
7 record straight.

8 MR. CHAIRMAN: Thank you.

9 (Witness stands aside.)

10 MR. CHAIRMAN: You may continue, Mr. Counts.

11 MR. COUNTS: My next witness would be Mr. Bob Dahlin.

12
13 ROBERT A. DAHLIN, II

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

16
17 DIRECT EXAMINATION

18
19 BY MR. COUNTS:

20 Q. Mr. Dahlin, I'll remind you again that you've previously
21 been sworn with respect to all matters coming before the
22 Board on this date. Are you familiar with Equitable's
23 proposed plan of development and the application for
24 forced pooling underlying this unit?

25 A. I am.

1 Q. Would you indicate the total depth of the proposed
2 initial well under Equitable's plan of development?
3 A. Total depth will be approximately 3,900 feet.
4 Q. And will this depth be sufficient to penetrate and test
5 the common source of supply underlying this unit?
6 A. Yes, sir.
7 Q. What are the estimated reserves which Equitable has
8 assigned to this unit?
9 A. 350 million cubic foot of gas.
10 Q. Are you also familiar with the well cost for the proposed
11 initial unit well under Equitable's plan of development?
12 A. Yes, sir.
13 Q. And has an AFE been prepared or reviewed and revised
14 within the last 45 days and submitted to the Board?
15 A. It has.
16 Q. Was an AFE prepared by an engineer knowledgeable in the
17 preparation of AFEs and knowledgeable with regard to well
18 costs in this area?
19 A. Yes, sir.
20 Q. And does this AFE represent a reasonable estimate of the
21 reasonable well costs for the proposed initial unit well
22 under Equitable's plan of development?
23 A. Yes, sir, it does.
24 Q. Would you indicate for the Board the anticipated dry-hole
25 and completed well cost of this well?

1 A. Estimated dry-hole cost would be \$107,400 with the
2 completed AFE of \$201,800.

3 Q. Mr. Dahlin, in your professional opinion will the
4 granting of this application be in the best interest for
5 conservation, prevention of waste, and protection of
6 correlative rights?

7 A. Yes, sir, it would.

8 MR. COUNTS: Mr. Chairman, I have no further questions.

9 MR. EVANS: Mr. Chairman, I have one. Are you going to frack
10 this well?

11 THE WITNESS: Pardon me?

12 MR. EVANS: Are you going to acidize the well?

13 THE WITNESS: We anticipate a single stage completion --
14 nitrogen frack.

15 MR. EVANS: In looking at the last three or four AFEs on the
16 docket today I notice that some -- your higher producing
17 wells appear to be acidized.

18 THE WITNESS: Based on what we've found statistically in the
19 fields we have different completions that we apply to
20 different zones.

21 MR. EVANS: Sure. And that's why I was asking. Is that the
22 difference between why you expect one well to produce 600
23 million versus 350 -- and also the reservoir character-
24 istics. I realize --

25 THE WITNESS: The reservoir characteristics primarily. We

1 have found that certain stimulations are more appropriate
2 in certain zones and we've tailored them to accommodate
3 those results -- anticipated results. Basically an in-
4 place characteristic of the reservoir.

5 MR. EVANS: That's fine. I just noticed there was a fairly
6 good sized difference in completion cost versus depth.

7 THE WITNESS: The completion cost differences are mostly
8 whether it's a single stage completion anticipated or a
9 multiple stage completion. You'll see a range of
10 approximately \$20,000 to \$25,000 per stage increase.

11 MR. EVANS: Thank you, sir. That's all I have.

12 MR. CHAIRMAN: Any other questions?

13 (Witness stands aside.)

14 MR. COUNTS: I request that the Board approve the application
15 for 2363 as submitted.

16 MR. EVANS: I make a motion that we approve the application
17 with -- Mr. Counts, will your clients stipulate to the
18 changes that have been discussed previously?

19 MR. COUNTS: Yes, sir.

20 MR. KELLY: Second.

21 MR. CHAIRMAN: We have a motion and a second. Any discussion?
22 Mr. Evans, may I ask you to amend you motion that the
23 order would take place at such time that we have a
24 revised Exhibit B?

25 MR. EVANS: Yes.

1 MR. KELLY: Second.

2 MR. CHAIRMAN: All in favor signify by saying yes. (ALL
3 AFFIRM.) All opposed? (NONE.) So carried.

4 MR. COUNTS: Mr. Chairman, I want to thank the Board for it's
5 patience today.

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

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ITEM VIII

MR. CHAIRMAN: The next item on the agenda is VGOB-92/11/17-0283. All parties wishing to address the Board in this matter please come forward. It's well T-16.

MR. SWARTZ: Mark A. Swartz and Howard Salisbury appearing on behalf of OXY, USA.

MR. BAKER: Carles Baker.

MS. ROSE: Leonie Rose. I'm Walter Reeves daughter.

MR. CHAIRMAN: Mr. Swartz, you may continue.

MR. SWARTZ: My first witness would be Sam Gordon.

COURT REPORTER: (Swears witness.)

SAMUEL EDWARD GORDON

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

DIRECT EXAMINATION

BY MR. SWARTZ:

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

A. Samuel Edward Gordon.

Q. And by whom are you employed?

A. OXY, USA, Inc.

Q. And what is your capacity or title with OXY?

1 A. I'm regulatory affairs coordinator for OXY.
2 Q. Do you also have a position with Buchanan Production
3 Company, the applicant?
4 A. Yes, I do. I'm regulatory manager for Buchanan Produc-
5 tion.
6 Q. Did you prepare the notice of hearing and the application
7 with regard to unit T-16?
8 A. Yes, I did.
9 Q. And, in fact, you signed both of them?
10 A. Yes, I did.
11 Q. Buchanan Production Company, is that a Virginia general
12 partnership?
13 A. Yes, it is.
14 Q. And are the partners in Buchanan Production Company two
15 corporations by the name of Appalachian Operators, Inc.
16 and Appalachian Methane, Inc.?
17 A. Yes, it is.
18 Q. And are those two corporations wholly owned subsidiaries
19 of Oxidental Oil and Gas Corporation?
20 A. They are, yes.
21 Q. Is Buchanan Production Company authorized to do business
22 in the Commonwealth of Virginia?
23 A. Yes, it is.
24 Q. Has Buchanan Production Company in it's application
25 requested that the Board appoint someone other than

1 Buchanan Production Company as the designated operator of
2 this unit in the event this pooling application is
3 approved?
4 A. Yes, they have. They've requested that OXY, USA, Inc. be
5 designated as unit operator.
6 Q. And OXY, USA, Inc. is a Delaware corporation, correct?
7 A. That is correct.
8 Q. Is OXY, USA, Inc. authorized to do business in the
9 Commonwealth of Virginia, is it registered with the
10 DMME, and does it have a blanket bond on file, all as
11 required by law?
12 A. Yes, it does.
13 Q. With regard to Buchanan Production Company in the
14 relationship with OXY, USA are there exhibits on file --
15 particularly what I'm have reference to is Exhibit J,
16 Page 1?
17 A. Yes.
18 Q. And what is Exhibit J, Page 1 do?
19 A. Exhibit J, Page 1, is the resolution of the management
20 committee of Buchanan Production Company.
21 Q. And it grants certain authority to OXY, USA, Inc., does
22 it not?
23 A. Yes, it does.
24 Q. And that is the authority to explore, develop and
25 maintain the properties of Buchanan Production Company as

1 it's professional manager, correct?

2 A. That is correct.

3 Q. Has OXY, USA delegated this authority that it has from
4 Buchanan Production to certain individuals within OXY,
5 USA to manage the affairs of Buchanan Production Company?

6 A. Yes, it has.

7 Q. Who are they and what are their titles?

8 A. Glen VanGolen general manager, Martin E. Wirth land
9 manager, and myself as regulatory manager.

10 Q. Is there also on file as part of the application package
11 a consent signed by OXY, USA to serve as unit operator if
12 appointed?

13 A. Yes, it is. And it's Exhibit J, Page 2.

14 Q. The notice of hearing at the first page lists the parties
15 who were made respondents when this pooling application
16 was filed, correct?

17 A. That is correct.

18 Q. And the names and addresses of the folks who are listed
19 on Page 1 of the notice of hearing also appear in Exhibit
20 B to the application, correct?

21 A. That is correct.

22 Q. With regard to the list of respondents do we want today
23 to dismiss any respondents?

24 A. Yes, we do.

25 Q. For purposes of clarity in the record let's turn to

1 Exhibit B and refer to that as we go through the people
2 that you would ask that the Board dismiss today.

3 A. Okay.

4 Q. Are the first folks listed under tracts 5 and 6?

5 A. Yes, they are.

6 Q. And which persons listed under tracts 5 and 6 is OXY and
7 Buchanan Production requesting be dismissed as respond-
8 ents?

9 A. We would direct the Board's attention to owner number
10 three under tracts 5 and 6 Elmer Reedy, also to owner
11 number four Dorothy R. and Bruce Saldosky, owner number
12 eight Ovella Griggs. Continuing then on Page 2 of
13 Exhibit B owner number nine Viola and Richard Holman.
14 Owner ten is Nona B. and James Shuler. Owner eleven is
15 Orvil and Erma Reedy. Owner twelve Eugene and Bertha
16 Reedy. Owner thirteen is Ida B. Barrett. And owner
17 fourteen Francis V. Beckham.

18 Q. And why is it that you're requesting that these persons
19 whom you've just identified be dismissed as respondents?

20 A. We have secured leased from these individuals.

21 Q. And the dismissal of these folks would require some
22 changes in other exhibits, correct?

23 A. Yes, it would. It would require changed in Exhibit G,
24 Page 4.

25 Q. And that would simply be to remove their names and the

1 numbers associated with their names?

2 A. That's correct.

3 Q. And it would also require a change on Exhibit A, Page 2,
4 would it not?

5 A. It would. Those numbers would change to -- in our oil
6 and gas ownership under section one the net percentage
7 would become 39.8494 percent. Under section two of
8 Exhibit A, Page 2, the oil and gas owners under both the
9 gross and the net percentages would change to 60.15056
10 percent. And then item B under section four would be
11 60.15056 percent.

12 Q. As long as we're on Exhibit A, Page 2, this exhibit shows
13 the interest that has been acquired by Buchanan Produc-
14 tion and the interest that needs to be force pooled.
15 Would it be fair to say that there is no requirement of
16 the forced pooling of any coal claimants here and you are
17 simply seeking to force pool roughly 60 percent of the
18 oil and gas claimants?

19 A. That is correct.

20 Q. Now, in addition to the question of dismissing any
21 respondents there were two people to whom mailings were
22 sent who were not listed as respondents. It was Ada
23 Reedy and Sadie E. Cox and they also be listed on Exhibit
24 B. So that there is no confusion is it true that
25 Buchanan Production has also obtained leased from Ada

1 Reedy and Sadie Cox and that's why they were not listed
2 as respondents?

3 A. That is correct and we in error left them on our mailing
4 list.

5 Q. With regard to amendment to add any folks, after this
6 notice of application and application was filed did
7 anyone contact OXY, USA as designated operator for
8 Buchanan Production and indicate that they were claimants
9 or they felt they were claimants?

10 A. Yes, they did. Again on Exhibit B I direct the Board's
11 attention to tract 1. We have listed here as an oil and
12 gas claimant Jerry and Phyllis Raines and we had Therman
13 W. Owens and Elma G. Owens come forward -- or one of
14 their heirs -- let me correct that. One of the heirs
15 came forward representing that estate saying that they
16 still claim the oil and gas estate there. So we'll be
17 prepared to amend our petition of respondents to include
18 these parties.

19 Q. The person who contacted you on behalf of Therman W.
20 Owens and Elma G. Owens heir, successors and so forth,
21 was that Lut Owens?

22 A. That was Lut Owens, yes, sir.

23 Q. And did he call your office on November 5th?

24 A. That is correct. He talked with -- I believe Mr. Wirth
25 talked to him.

1 Q. Have you prepared and filed a pooling application for the
2 December docket with regard to Mr. Lut Owens and that
3 estate and this claim?

4 A. Yes, we have prepared it and it was filed last Friday.

5 Q. And it has been mailed to Mr. Lut Owens?

6 A. Yes, it has.

7 Q. And Mr. Owens is aware of the hearing today as well?

8 A. Yes, sir.

9 Q. From his conversations with your office?

10 A. That's correct. And I believe that we have had one of
11 our field people go out and contact him personally.

12 Q. And, in fact, he was given the paper work this past
13 weekend with regard to this hearing in person?

14 A. Right.

15 MR. COUNTS: The Board really has a choice here. We have
16 filed an application to pool these folk for the December
17 docket that's already been filed, served and published or
18 you can join them today at your pleasure. We really
19 wanted you to know that it was coming, that we had been
20 contacted, and that we have filed an application,
21 published and mailed it and that would only concern Lut
22 Owens on behalf of Therman W. Owens and Elma G. Owens.
23 So it's really your call. We're prepared to proceed with
24 this application. We've got another one on file to deal
25 with that issue. It does not change any of the percent-

1 ages. They're simply conflicting claimants on tract 1
2 conflicting with the interest of Jerry and Phyllis
3 Raines. So that's an issue that you can basically tell
4 us how you want to handle it.

5 Q. (Mr. Counts continues.) With regard to notice and
6 publication, Sam, did OXY on behalf of Buchanan Produc-
7 tion mail via certified mail copies of the notice of
8 hearing and the application to all people for whom you
9 had addresses?

10 A. That's correct. Yes, we did.

11 Q. And were there some people for whom addresses were simply
12 not available? Unlocatable people?

13 A. Yes. That's right.

14 Q. And the list of the unlocatable people would be whom?

15 A. We did not have addresses for W.H. Reedy heirs, Earnest
16 Herford, Earl Herford, Frazier Plaster, Clarence Elkins,
17 Oscar and Nancy Vance, Charlie Whited Persins.

18 Q. And then were there some people for whom you had address-
19 es but the mail came back returned by the post office as
20 undeliverable?

21 A. Yes. We had our package returned to us that were
22 addressed to Sylvia and Richard Perkins, Wanda and George
23 Cochran, Jr. and Carl and Claudia Childress.

24 Q. So in effect although you thought you had addresses for
25 those three couples it has turned out that those address-

1 es were not accurate and the mail could not be delivered?

2 A. That is correct.

3 Q. So at this point for purposes of whether they're locat-

4 able or unlocatable it would be your position that you

5 are unable to locate them?

6 A. That is correct.

7 Q. Did you send certified mail to anyone where you got

8 nothing at all back, either a card or the returned mail,

9 on this unit?

10 A. No.

11 Q. Everything's accounted for?

12 A. Everything's accounted for.

13 Q. Was a proof of mailing filed as Exhibit F with Mr.

14 Fulmer's office?

15 A. Yes, it was.

16 Q. And it was filed on what date?

17 A. November 9th.

18 Q. Was a notice of the application with regard to this

19 pooling hearing published in the newspaper and if so on

20 what date?

21 A. Yes. We published this notice in the Virginia Mountain-

22 eer on October 29th, 1992 edition.

23 Q. And did you file an Exhibit E with Mr. Fulmer's office

24 which is a certificate of publication from a newspaper

25 and if so when was it filed?

1 A. Yes. We filed that the same time we did the notices --
2 or mailing on November 9th.

3 Q. Obviously a fair number of the potential claimants here
4 have been leased, correct?

5 A. That is correct.

6 Q. In leasing the folks in this unit from whom you've been
7 able to obtain leases and in offering leases to other
8 folks on other units has OXY and Buchanan Production --
9 do they have a general proposal or lease proposal that
10 they make to persons from whom they're trying to lease
11 coalbed methane gas?

12 A. Yes, we do.

13 Q. And what would the royalty provision be that is uniformly
14 offered by OXY?

15 A. The royalty provision is one-eighth royalty.

16 Q. And is there a bonus payment involved typically?

17 A. Yes, it is and it's a one time payment of \$1 per acre as
18 bonus.

19 Q. And if the lease is a voluntary agreement would that be
20 paid on delivery of the lease?

21 A. Yes.

22 Q. Or on execution?

23 A. Upon execution of the lease, yes, sir.

24 Q. And it is a bonus as opposed to a delay rental?

25 A. That's correct.

1 Q. Although term is probably not relevant to the proceedings
2 if there's a forced pooling order entered here, what is
3 the typical term that you're talking about when you're
4 trying to lease coalbed methane interests?

5 A. We generally acquire a five year term lease.

6 Q. With regard to any order that might be entered by this
7 Board concerning election rights would you recommend to
8 the Board that the election rights, if there is a
9 provision having been deemed to have been leased, that
10 that provision incorporate a one-eighth royalty?

11 A. Yes.

12 Q. And would you further recommend to the Board that there
13 be consideration given to a \$1 one time per acre bonus?

14 A. Yes, we would.

15 Q. Now, this unit T-16 which is shown in relationship to an
16 Island Creek mine on Exhibit G is going to start out as a
17 short hole gob gas unit, correct?

18 A. It will be short hole production, yes.

19 Q. And on Exhibit G, Page 1, you have shown four longwall
20 panels on that map?

21 A. Yes, I have.

22 Q. And the unit that we're talking about here, T-16, is sort
23 of in the center right-hand side of the page outlined a
24 little darker than the other Oakwood units?

25 A. That's correct.

1 Q. And it intersects one longwall panel which is labeled
2 1-Development, correct?
3 A. That's correct.
4 Q. And what Island Creek mine is this in?
5 A. This is the VP-8 mine development.
6 Q. At the upper right-hand corner of Exhibit G, Page 1, is
7 that a drawing of entries and development work?
8 A. Yes, it is.
9 Q. And can I assume that as the entry that runs along the
10 boundary line of -- well, if we assume the top of the
11 page is north, there is an entry which runs north and
12 south. Do you see that?
13 A. Yes.
14 Q. Is that anticipated to continue to the south along
15 1-Development?
16 A. Yes. If you'll notice, we've got dashed in lines there
17 and that's basically where the entries are projected to
18 go.
19 Q. And the lines which start at a point on the right-hand
20 side of 1-Development and then sort of diverge as they go
21 to the left-hand side, are those depictions of short
22 holes?
23 A. Yes, they are.
24 Q. And ultimately when the mining proceeds is it anticipated
25 that this panel will be longwalled?

1 A. Yes, it will.

2 Q. And then active gob would be produced?

3 A. Right.

4 Q. And this application is intended to cover the short hole
5 degasification efforts in advance of longwall mining and
6 then the active gob after longwall is mined through?

7 A. That is correct. Yes, sir.

8 Q. And this is an 80 acre unit?

9 A. Yes, it is.

10 Q. Under Oakwood Field Rules II?

11 A. Right.

12 Q. And we're talking about all coal seams below the Tiller
13 basically to the Pokie 3?

14 A. Correct.

15 Q. Now, there is an Exhibit C which is an estimate of
16 allowable costs?

17 A. That's correct.

18 Q. Did you prepare that and if so when?

19 A. I prepare this on October 15th.

20 Q. Have we previously filed with the Board a copy of an
21 agreement reached by Island Creek Coal and Buchanan
22 Production Company and OXY, USA with regard to the use of
23 methane production holes?

24 A. We have given testimony and filed the abstract and the
25 agreement, yes.

1 Q. We've actually filed the agreement?
2 A. Yes. I believe it's on record.
3 Q. And have we marked as Exhibit K a copy of the agreement
4 dated October 7th, 1992 between Island Creek, Buchanan
5 Production and OXY, USA with regard to the use of methane
6 production holes?
7 A. Yes.
8 Q. The estimate of costs that you have filed with the
9 application here, Sam, includes a bore hole fee of
10 \$142,500, correct?
11 A. Yes, it does.
12 Q. Is that what's provided for in Exhibit K?
13 A. Yes, it is.
14 Q. With regard to this development which is depicted on
15 Exhibit G, Page 1, is it, in fact, VP-8 or is it some
16 other mine?
17 A. It is VP-5.
18 Q. So you'd like to correct this?
19 A. I'd like to correct that to VP-5, yes, sir.
20 Q. Turning back, though, to Exhibit C, your estimate of
21 allowable costs, is Exhibit C your estimate as to the
22 reasonable cost associated with developing this unit, T-
23 16, to produce short hole gas and subsequently produce
24 from the active gob?
25 A. Yes, it is.

1 Q. And the total amount is what amount?

2 A. \$184,000.

3 Q. And this includes only one methane production hole

4 located within T-16?

5 A. That is correct.

6 Q. With regard to the balance of Exhibit G, if you would

7 turn to Exhibit G, Page 2, for me.

8 A. Okay.

9 Q. Is the number which is shown with reference to unit T-16,

10 the one that we're currently discussing, it says percent

11 of panel under unit and it shows 11.405, correct?

12 A. That is correct.

13 Q. Was that number calculated by taking the acreage within

14 unit T-16 which is also within the panel 1-Development?

15 A. Yes.

16 Q. And calculating the acreage within the unit that is also

17 within the panel over the total acreage in the panel to

18 get that percentage?

19 A. That is correct.

20 Q. And this percentage, 11.405 percent, would be a percent-

21 age that would be relevant to allocation of cost or

22 participation or for carried interest and would also be

23 relevant to allocation of revenue and income to the

24 various royalty interest owners?

25 A. That's correct. Yes.

1 Q. And if you turn to Exhibit G, Page 3, the first column at
2 the top of the page which is entitled 1-Development East,
3 is that a recap of the anticipated costs within the
4 various units affected by panel 1-Development?

5 A. Yes, it is.

6 Q. And it shows the total of those estimated costs as
7 \$846,975, correct?

8 A. That's correct.

9 Q. And since this unit is only in 1-Development East 2-
10 Development East is not relevant to this particular unit?

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

12 Q. And then at the next set of columns have you undertaken
13 to allocate using the percentage from Exhibit G, Page 2,
14 which is 11.405 percent pertaining to T-16, using that
15 percentage and the total cost have you attempted to
16 allocate the costs to unit T-16 for purposed of carried
17 interest or participation?

18 A. Yes, we have.

19 Q. And what is that allocable cost with regard to unit T-16?

20 A. That cost would be approximately \$96,598.

21 Q. Turning to Exhibit G, Page 4, and bearing in mind that we
22 have dismissed or have asked that certain people be
23 dismissed because leases have been obtained from those
24 folks, what is the importance of Page 4 of Exhibit G to
25 royalty interest, allocation of income, calculation of

1 your participation share or your carried interest?

2 A. The importance of Exhibit G, Page 4, it will help the
3 individual respondents see that we have accounted for a
4 percentage of their acreage position in the unit and then
5 put that in direct relation to the percentage of the
6 panel underlying their unit which is 11.405 percent. And
7 we calculate their acreage position in the 80 acre block
8 times their percentage of the panel and we come up with a
9 division of interest which would be applied to the total
10 cost for allocation of costs or they could even apply
11 that to their royalty of one-eighth and come up with
12 their royalty decimal.

13 Q. And is the same kind of calculation and is the same kind
14 of information also reflected on Page 5 of Exhibit G
15 with regard to the balance of the people in this unit?

16 A. That is correct. Yes, sir.

17 Q. Is it your opinion, Mr. Gordon, that the applicant's plan
18 of development is a reasonable plan to develop the
19 coalbed methane resource within and under unit T-16 for
20 the benefit of the owners of that resource? And specif-
21 ically what I'm talking about is the plan to capture
22 coalbed methane by short hole in advance of longwall
23 mining and then capture coalbed methane after longwall
24 mining through active gob production?

25 A. Yes, it is.

1 Q. Will the proposed development that we're talking about,
2 the methane production hole, the short holes, is that in
3 your opinion -- or will that your opinion contribute to
4 the production of the correlative rights of the owners of
5 the methane within this unit and lessen the likelihood of
6 both physical waste and economic waste?

7 A. Yes.

8 MR. COUNTS: That's all I have.

9 MR. CHAIRMAN: Any questions for Mr. Gordon?

10 MR. HARRIS: I have one question. The assumption here is that
11 you have uniform distribution of the gas under the
12 proposed panel. Is that usually the case? I mean, if
13 you start proportioning out you have a certain percent of
14 the panel and so your cost is a certain percent.

15 MR. SWARTZ: When the field rules were adopted -- because this
16 allocation formula is in the Oakwood Field Rules II
17 order. And the assumption -- I mean, I can't speak for
18 what you all had in mind, but our assumption certainly
19 was that that was a reasonable approach to take and it is
20 an assumption I think that underlies this that there is a
21 uniform distribution of the methane within the panel. I
22 think that assumption was made.

23 MR. HARRIS: I think I remember talking about that.

24 MR. EVANS: Is this particular unit subject to Oakwood I in
25 any way?

1 MR. SWARTZ: I don't think so.

2 THE WITNESS: I don't think so, no, only in the 80 acre
3 configuration.

4 MR. SWARTZ: If you mean do we have an Oakwood I well the
5 answer I believe is no.

6 THE WITNESS: No.

7 MR. EVANS: Is a VVH already in or are you going to put that
8 in?

9 THE WITNESS: That's to be applied for and drilled in the
10 future. To my knowledge we don't have anything going in
11 T-16.

12 MR. WIRTH: I don't think we have filed yet but we are getting
13 the plats together to file for a permit to drill as a --

14 MR. EVANS: That's fine. Existing is what I was --

15 MR. WIRTH: No existing.

16 MR. MASON: Sam, looking at this agreement among Island Creek
17 and Buchanan Production and OXY, Article 9 of that
18 agreement provides that the agreement may be terminated
19 by any party upon 45 days written notice. If for some
20 reason this agreement were terminated 50 days after it's
21 implementation what would happen to the fee that was
22 paid?

23 THE WITNESS: Mr. Mason, I don't know how to respond to that.
24 Maybe Mr. Wirth can help us.

25 MR. SWARTZ: Mr. Wirth and I negotiated this agreement. So

1 he's probably the appropriate person to put those -- do
2 you want to raise your hand, Marty?

3 COURT REPORTER: (Swears witness.)

4 MR. CHAIRMAN: Before we continue with Mr. Wirth, Mr. Mason,
5 would you mind letting the individuals here have a chance
6 to quarry Mr. Gordon?

7 MR. MASON: Sure.

8 MR. SWARTZ: Well, we'll bring him back.

9 MR. WIRTH: I'll just answer --

10 MR. SWARTZ: He's not going anywhere.

11 MR. WIRTH: Your question was if terminated and 50 days had
12 elapsed -- well, basically since we do not have a joint
13 operating agreement. But if someone should participate
14 is your concern. We don't have a joint operating
15 agreement, but it would have been addressed in the joint
16 operating agreement that they would recoup pro-rata what
17 that share was or we get the total thing if they did not
18 receive any income from it. But if that case would come
19 about and there is no JOA what we all assume would happen
20 -- well, if we did not come to a mutual agreement we
21 would come back before the Board and you would hear the
22 case on its facts and merits and make the adjudication
23 since there is no contract between the parties when they
24 be carried or participate.

25 MR. MASON: I'm just concerned that this clause does not have

1 any cause or any other basis for termination other than a
2 notice and that there's a payment of this amount and an
3 allocation of that cost and then an earlier termination
4 or for some reason the economic benefit afforded by that
5 payment would --

6 MR. WIRTH: Like I say, though, they would be entitled for
7 something but they're also be entitled to notice. As
8 soon as they would make their election to participate or
9 be carried they also would be -- notification of 45 days
10 would go to that participating party because they are a
11 partner to this agreement.

12 MR. SWARTZ: Both of you need to look at Paragraph 10, though.
13 I'm not sure what question Bill was asking. If a well
14 bore becomes subject to this agreement and money has
15 changed hands Paragraph 10 provides that in spite of the
16 termination of the agreement that well bore or methane
17 production hole remains subject to the terms of this
18 agreement until OXY or BPC says they're through produc-
19 ing.

20 MR. WIRTH: If production is occurring. I was assuming the
21 five days difference that you had if there was no
22 production coming out of there.

23 MR. MASON: That's correct. That's what I meant.

24 MR. SWARTZ: I think just to summarize to see if Marty agrees
25 with this, in the event that a methane production hole is

1 drilled and is producing in the unit it would remain
2 subject to this agreement until production could no
3 longer be made on an economic basis, is that correct?
4 MR. WIRTH: That is correct.
5 MR. SWARTZ: Now, if the hole is not drilled pursuant to the
6 terms of this agreement there would be no payment, is
7 that also correct?
8 MR. WIRTH: That is correct. Until we tender an invoice
9 usually in a normal situation they have a 30 or 60 day
10 time frame to tender their money to us. There wouldn't
11 be an exchange of the 90 some thousand dollars we're
12 talking about or the \$142,500 that's part of the agree-
13 ment.
14 MR. MASON: Okay.
15 MR. SWARTZ: I hope that covered both sides of your question,
16 Mr. Mason. If it didn't --
17 MR. WIRTH: I'll get back on my band wagon. That's why a JOA
18 is such an important part of this situation. In the
19 event people would enter into -- all these are outlined.
20 MR. MASON: Unfortunately we live in an imperfect forum.
21 MR. WIRTH: That's true. Any other questions?
22 MS. RIGGS: I would like to point out that I think there are
23 probably at least 20 to 30 forced pooling orders that
24 have a contingency in them that relate to this particular
25 exhibit and I think that provision only provided that OXY

1 come back and present the final contract terms to the
2 Board. Whether or not the Board needs to take action on
3 that it was silent as to what further action the Board
4 would take on this. But we made it subject to them
5 telling us what the final terms would be.

6 MR. SWARTZ: And the record should also reflect that OXY
7 tendered that document in advance of the deadline.

8 MS. RIGGS: That's correct.

9 MR. SWARTZ: As opposed to the last day, for example.

10 MR. CHAIRMAN: If you have any questions of Mr. Gordon now is
11 the time to ask them. State your name for the record
12 again, please.

13 MR. BAKER: On this 80 acre tract are they -- are there a
14 longwall on there now?

15 THE WITNESS: Is there a longwall under there now? I would
16 ask that we invite Mr. Breeding to testify to that. He's
17 a representative of Island Creek and he'd be better to
18 answer that.

19 MR. BAKER: Well, the owners of this land, do they own the
20 coal rights also?

21 THE WITNESS: We have set out in the petition those who have
22 coal and those who have oil and gas estates under here.
23 We have all of the coal leased right now and all we're
24 addressing the Board with is the remaining oil and gas
25 estates that we do not have leases on.

1 MR. BAKER: You don't know whether they're mining under that
2 or not then?

3 MR. SWARTZ: Well, we can answer your questions. Steve, you
4 want to come up here?

5 COURT REPORTER: (Swears witness.)

6 MR. MASON: Isn't also true when we're talking about coal here
7 we're talking below the Tiller, too, are we not?

8 MR. SWARTZ: This mine is in the Pokie 3.

9 MR. MASON: I know, but I'm just talking about in terms of --
10 when you start talking about the coal estate. As I
11 understand this petition it only related to coal below
12 the Tiller and that wouldn't be important in terms of who
13 owns what.

14 MR. BREEDING: No, there's no longwall mining in that area.

15 MR. BAKER: Any mining at all on that 80 acre tract?

16 MR. BREEDING: No. I meant 80 acre tract.

17 MR. SWARTZ: But to go back to what Mr. Mason said, coal tends
18 to be leased above drainage to certain people and below
19 them. And this is below drainage deep coal that Island
20 Creek has under lease. Now, there may be some mining
21 above the Tiller seam that we're unaware of. So you need
22 to understand that there could mining from the ground
23 level to maybe 1,000 feet that we're not involved in and
24 we don't --

25 MR. BREEDING: Right. You were concerned about the longwall

1 in the VP-3 seam -- the Pokie 3 seam?

2 MR. BAKER: Yeah. Well, just if they're mining any in that 80

3 acre tract.

4 MR. BREEDING: Well, all I can speak for is Island Creek and

5 Island Creek has the Tiller and below leased and they are

6 not mining that. And like Mark says, there may be some

7 other companies that might have the above drainage coal

8 leased.

9 MR. SWARTZ: I just don't know.

10 MR. BAKER: You're just asking for a permit now trying to get

11 all the owners together to see if it's all right or is

12 somebody done authorized to drill?

13 MR. SWARTZ: It doesn't sound like we've filed for a permit

14 yet.

15 MR. WIRTH: If we have filed one it would be in the applica-

16 tion.

17 MR. GORDON: I don't have any work permit applications in

18 here.

19 MR. FULMER: No.

20 MR. WIRTH: It's on the escrow right now and we'll be permitt-

21 ing the T rows in the very near future.

22 MR. SWARTZ: What happens -- the procedure here is there's two

23 steps. These people cannot give us a well permit to

24 drill a well. We have to go see that gentleman over

25 there who's the gas and oil inspector, Tom Fulmer. His

1 office is in Abingdon. As far as we can tell today we
2 have not filed for a well permit and we would need that
3 to drill. So if your question was are we all set to go
4 and drill a well, no, I don't even think we've filed a
5 permit application and we would go to Mr. Fulmer to get
6 it. All that these people can do today is enter an order
7 saying that if a well is drilled and gas comes out of
8 that and is sold that these are the people who have
9 claims to it. So what they basically do is provide how
10 the money is handled. And if people disagree as to
11 whose entitled to it it gets escrowed with the Bank of
12 Tazewell. If there is no dispute it gets paid out. But
13 they're basically dealing with who has claims and how do
14 we protect them. Mr. Fulmer deals with whether or not
15 you can drill the well.

16 MR. BAKER: I seen that percentage on there and I don't --
17 I've not been to a Board meeting of this type. Could you
18 break that down into dollars and know more about it? I
19 mean, there's so many ifs there. If you get --

20 MR. SWARTZ: Which number are you on the list here? I had
21 trouble catching your name.

22 (AFTER A BRIEF DISCUSSION OFF THE RECORD, THE HEARING
23 CONTINUED AS FOLLOWS:)

24 MR. SWARTZ: Is it number seven there, Leona and David?

25 MS. ROSE: He is my son.

1 MR. SWARTZ: Okay. If you go toward the back -- let me show
2 you -- this page which is Exhibit G, Page 4, you'll see
3 the names here again. Do you see that?

4 MS. ROSE: Uh-huh.

5 MR. SWARTZ: And then if you go all the way over to the right
6 there's a .0744 percent. If you take all the people who
7 are in this 80 acres who have not leased -- if you put
8 them all into the pot this would be your share of the
9 royalty. So if \$1,000 of royalty was paid out this would
10 be your share. \$7.44 out of \$1,000. If you wanted to --
11 now, 100 percent of that royalty being paid to people
12 like you all, but it's just that your interest is that
13 amount compared to the other people who own royalty. The
14 other reason that this number is important is, and it's
15 the same number, if you wanted to be partner in this unit
16 or well that would be the number you would multiply times
17 the development cost in terms of what it would cost to
18 become a partner or to be carried. So that number is for
19 both -- we're never going to tell anybody that a well is
20 going to pay X because we don't know. But in terms of
21 how much your interest is that's the number you would
22 use in terms of what your share of any money is paid by
23 that royalty.

24 MR. BAKER: The cost of drilling the well and everything, does
25 it come out of the people's --

1 MR. SWARTZ: No. This .0744 percent, that's royalty and no
2 costs come off of royalty. I mean -- well, I misstated
3 that. The Board orders allow -- I can't remember if it's
4 computed at the well head or how it works. But the Board
5 orders allow certain costs for transportation. In other
6 words, the gas has to get from the well into a pipeline
7 in West Virginia. It has to be compressed. And there
8 are certain -- I can't remember if the order is calculat-
9 ed at the well head or whatever. But to the extent it
10 costs money to get the gas to West Virginia to sell it
11 into the Columbia pipeline, those costs can be deducted
12 before your calculated royalty. But in terms of drilling
13 the well, building the roads, doing the title, those
14 costs are not deducted from royalty owners.

15 MR. BAKER: But the all these will get just the royalties off
16 of it?

17 MR. SWARTZ: Take a look at -- this is a better way to list it
18 than to have me just tell you. Take a look at the
19 application towards the front here, down at the bottom of
20 Page 3. Do you see where it says C there?

21 MR. BAKER: Uh-huh.

22 MR. SWARTZ: You'll see the sentence that starts at the bottom
23 of the page. It says, "Applicant requests that the Board
24 establish a procedure whereby each person named herein
25 shall have the right to;" And if you turn to the next

1 page these are the options -- the choices that you have
2 as to what you might want to do. Number one says to
3 assign or lease your interest to the designated operator.
4 That's a fancy way of saying enter into a lease with OXY
5 or Buchanan Production. Number two is to enter into a
6 voluntary agreement to share in the operation. And
7 basically what that says is you can become a partner in
8 this well. If you want to pay .0744 percent of the
9 roughly \$96,000 in costs you can become a partner in this
10 unit and share both obviously in the revenue interest to
11 the extent you have it coming and the working interest.
12 And then the third choice is to not come up with any
13 money but say I want to be a partner after you have
14 recovered either 300 or 200 percent of your cost. So
15 when that is recouped and paid out then you back in as a
16 partner without having paid anything. And then you've
17 got to look at D also because you really wind up with
18 sort of four choices. If you don't decide to lease, if
19 you don't decide to become a partner, if you don't decide
20 to be carried until those costs are recouped what's going
21 to happen is you're going to be assumed by the Board to
22 have entered into a lease which will provide that you get
23 \$1 bonus an acre -- a one time payment up front of \$1 an
24 acre to the extent that you're in the unit if it doesn't
25 have to be escrowed and whatever your share of the

1 royalty is on a one-eighth basis. Those are the four
2 things -- actually three of them are choices and the
3 fourth thing sort of happens if you don't do anything.
4 Is that clear as mud or -- does it help?

5 MR. BAKER: Yeah. Some of the others as I read it on there,
6 they said it was all right to go ahead and drill? They
7 gave you leases on it, in other words? Is that what you
8 said?

9 MR. SWARTZ: We would be more than happy to talk to you about
10 a lease.

11 MR. BAKER: How did they get one? Do you write them or do
12 they call you or what?

13 MR. SWARTZ: You mean the other people?

14 MR. BAKER: Yeah.

15 MR. SWARTZ: Generally we have gone out and found them and
16 tried to lease from them.

17 MR. BAKER: They live in Maryland, the ones I'm talking about.
18 Some of the names you called --

19 MS. ROSE: My sisters.

20 MR. BAKER: How did they obtain these?

21 MR. WIRTH: Ida Barrett has helped us find a lot of addresses
22 and she executed a lease and has been spreading the word
23 really and they contacted our office.

24 MR. BAKER: Well, I guess we could sign a lease if that's --

25 MR. WIRTH: We'll definitely make the same lease terms, but

1 I'd rather if it's all possible -- are you near by?
2 Where do you live?
3 MR. BAKER: Right out of Tazewell.
4 MR. WIRTH: That's fine. I would like to have a person come
5 by. The lease form again is another legal contract and I
6 would like it to be explained so you have time to look it
7 over because you're dealing with real estate.
8 MR. SWARTZ: Or have your lawyer look at it.
9 MR. BAKER: Okay. I showed this to three lawyers and they
10 didn't have time.
11 MR. WIRTH: I will be more than happy to stop by or have a
12 gentleman stop by and explain the situation to you.
13 MR. SWARTZ: Before you leave make sure you get a card from
14 Marty, but he'll call you. If you'll leave your phone
15 number he'll track you and get somebody out there.
16 MR. CHAIRMAN: Does that answer your questions?
17 MR. BAKER: Yeah.
18 MS. ROSE: Uh-huh.
19 MR. CHAIRMAN: Would you like to continue, Mr. Swartz?
20 MR. SWARTZ: I'm finished.
21 MR. CHAIRMAN: Any more questions, members of the Board?
22 (Witness stands aside.)
23 MR. CHAIRMAN: What's your pleasure, gentlemen?
24 MR. EVANS: I move that we approve the petition.
25 MR. KELLY: Second.

1 MR. CHAIRMAN: We have a motion and a second. Any further
2 discussion? While I'm thinking, Mr. Swartz, Warren Kitts
3 and Jacqueline Kitts, would you like to amend your
4 application to the name correction?
5 MR. SWARTZ: Oh, yeah. Just a second. Let me find that.
6 MR. CHAIRMAN: Would you like to withdraw your motion until
7 they straighten it out?
8 MR. EVANS: Depending on the answer I'll amend my motion when
9 they come up with an answer.
10 MR. SWARTZ: No. We had an address we wanted to correct, too.
11 MR. WIRTH: Mr. McGlothlin, you are right, we had on number 15
12 under the fifth tract three and we were placed on notice
13 that it's Warren and Jacqueline Kitts. And their address
14 is 5320 Twilight Road, Northwest, Roanoke. So we did
15 want to get that corrected.
16 MR. MASON: Mr. Swartz, has some response been made to these
17 questions?
18 MR. SWARTZ: Yes. They were fully responded. Tom, don't you
19 have a copy of that letter?
20 MR. FULMER: I've got a copy of the letter that she sent you
21 all.
22 MR. MASON: That's okay. I mean, you all have responded.
23 MR. SWARTZ: We responded.
24 MR. GORDON: We did respond and I'll be happy to send it. We
25 show a carbon copy going to Virginia Gas and Oil Board

1 and then later Mr. Wirth followed up with that and I --
2 did your copy come through?

3 MR. FULMER: Yes.

4 MR. MASON: I think as long as there was a response made
5 that's satisfactory to me.

6 MR. CHAIRMAN: Mr. Swartz, you're going to come before the
7 Board next month on the Owens?

8 MR. SWARTZ: Yeah. I would rather do that way frankly. I
9 mean, we've got it on the docket. We've published -- the
10 percentages won't change, but just so there's no notice
11 issue I would rather leave that on the docket and request
12 that you approve this as submitted.

13 MR. CHAIRMAN: You're going to escrow this for now?

14 MR. WIRTH: The situation that we're talking about is a school
15 teacher from Grundy Junior High School sold this tract of
16 land to Jerry and Phyllis Raines. He assumed that his
17 father retained the mineral rights and the word hereto-
18 fore got him into a little problem that the coal was
19 severed in the 1800s, the oil and gas stayed with the
20 surfaces that went down. Instead of reserving and
21 accepting his father did not. He went ahead and just
22 reserved heretofore any and all minerals. Therefore, the
23 oil and gas did pass to Jerry and Phyllis Raines. He was
24 not aware it. Like we said, we have explained and gave
25 him the deeds and he has taken it to an attorney. He's

1 advised us he'll probably dismiss any claims that he had
2 but he wants to be advised by counsel before he does.
3 So, yes, we may be back protecting his claim but we may
4 come back and say we're just going to dismiss this
5 motion.

6 MR. SWARTZ: But that application's already been filed. I
7 mean, it's set for December.

8 MR. WIRTH: Yes, for December.

9 MR. SWARTZ: So the question is whether or not we feel
10 comfortable dismissing it.

11 MR. CHAIRMAN: We have a motion and a second.

12 MR. HARRIS: I have one other comment and again, this is the
13 language and this is what we stated in the EREX peti-
14 tions. Paragraph E of relief sought under number four
15 does list again the right to drill, develop, produce,
16 market and sell. Do you want to make something on that
17 relative to that?

18 MS. RIGGS: Mark, I think the orders that have been used for
19 Buchanan Production in the past appoint the operator for
20 purposes of drilling and operating the unit which tracks
21 the statutory language and I think that is the language
22 that's currently being used in the form of the order.

23 MR. SWARTZ: The problem is, Mr. Harris, we continue to have
24 negotiated positions with the Department and the Board
25 that we don't necessarily agree with that we all live

1 with. And we often persistently ask for things that we
2 don't get because we want them. And I guess what I'm
3 saying is that we have a good working relationship and
4 counsel for the Board simply will not, for various
5 reasons, go along with some of these things. But we will
6 -- I don't want to mislead you. We will continue to ask
7 for this kind of relief probably for a long time but we
8 understand that we don't get it. Things may change.
9 We're optimistic, I guess, is the response to that. But,
10 no, we've talked about this a number of times and you're
11 right, I mean we ask for that and we don't get it and I
12 understand that.

13 MR. KITTS: I'd like to make a comment. You mentioned -- that
14 was my brother, Warren Kitts. I'm Wendle Kitts. And I
15 don't know if you can correct this. I don't know if it
16 would have to be submitted in writing, but there are a
17 couple of errors here. Louise and Lester Agee, that's
18 my sister. And her last name is A-G-E-E.

19 MR. GORDON: Okay. Is that owner thirteen under tract 3?

20 MR. KITTS: Yes, sir.

21 MR. GORDON: It's Louise and Lester Agee?

22 MR. KITTS: Right.

23 MR. GORDON: And that's A-G-E-E?

24 MR. KITTS: Yes, sir.

25 MR. KITTS: And for the record, number fourteen, Straley D.

1 and Betty Kitts, Betty his wife is deceased.

2 MR. GORDON: Okay. Betty's deceased. And what is his name?

3 MR. KITTS: Straley D.

4 MR. GORDON: Okay.

5 MR. KITTS: That's all I have.

6 MR. GORDON: Thank you very much.

7 MR. CHAIRMAN: Mr. Swartz, will you submit an amendment to

8 that?

9 MR. SWARTZ: Well, I can amend the spelling of Agree to Agee,

10 but record title is record title. I really don't -- I

11 don't want to mess with number fourteen at this point.

12 You know, until a will or something appears of title of

13 record at Buchanan County I feel like we've got to keep

14 it the way -- I understand and we'll check into that.

15 MR. MASON: Well, you can straighten it out on your revision

16 order.

17 MR. SWARTZ: Ultimately we'll straighten it out, but I don't

18 feel comfortable at this point --

19 MR. WIRTH: It's a conflicting interest right now. Until we

20 figure out who owns it it won't be resolved.

21 MR. SWARTZ: Right. But a spelling error we can fix and we'll

22 do that. I didn't tell you all this but we're going to

23 file an Exhibit A, Page 2, amended and an Exhibit B

24 amended because we need to dismiss these parties and a G

25 amended so that Sandy has something in writing to deal

1 with when she's trying to draft these orders.

2 MR. CHAIRMAN: We have a motion and a second before us.

3 All in favor say yes. (ALL AFFIRM.) All opposed?

4 (NONE.) So carried.

5 MR. MASON: Mr. Chairman, as a procedural matter since we have

6 this contract in front of us related to Island Creek and

7 Buchanan Production, don't you think it would be appropri-

8 ate with the comment solicited from the Assistant

9 Attorney General that we as a Board recognize that we

10 received this in accordance with our earlier request and

11 that that condition of those orders have been satisfied?

12 I think that would be appropriate and I make a motion to

13 that effect.

14 MR. EVANS: Second.

15 MR. CHAIRMAN: Any discussion? All in favor say yes? (ALL

16 AFFIRM.) All opposed? (NONE.) So carried.

17 (AFTER A LUNCHEON RECESS, THE HEARING CONTINUED AS

18 FOLLOWS:)

19

20

21

22

23

24

25

1 ITEM IX

2
3 MR. CHAIRMAN: The next item on the docket is VGOB-92/11/17-
4 0284.

5 MR. SWARTZ: Mark A. Swartz and Howard Salisbury appearing for
6 OXY, USA and Buchanan Production Company. This is
7 another forced pooling application for what will start of
8 as a short hole unit and ultimately become an active gob
9 unit. The pooling application is filed under the Oakwood
10 Field Rules II. My first witness would be Sam Gordon.
11

12 SAMUEL EDWARD GORDON

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

16 DIRECT EXAMINATION

17
18 BY MR. SWARTZ:

19 Q. Sam, do you want to identify yourself?

20 A. Samuel E. Gordon.

21 Q. And you're still under oath. Do you understand that?

22 A. Yes, I do.

23 Q. Did you prepare the notice of hearing and the application
24 with regard to unit T-17?

25 A. Yes, I did.

1 Q. And they're both signed by you?
2 A. Yes.
3 Q. The applicant is Buchanan Production Company?
4 A. That is correct.
5 Q. And that company is a Virginia general partnership?
6 A. Yes, it is.
7 Q. And the two partners in Buchanan Production Company are
8 Appalachian Operators, Inc. and Appalachian Methane,
9 Inc., both of whom are corporations incorporated in the
10 State of Delaware, correct?
11 A. Yes. That's correct.
12 Q. And are those two corporations wholly owned subsidiaries
13 of Oxidental Oil and Gas Corporation?
14 A. That's correct.
15 Q. Is Buchanan Production Company authorized to do business
16 in the Commonwealth of Virginia?
17 A. Yes, it is.
18 Q. And by this application is Buchanan Production Company
19 requesting than someone other than itself, namely OXY,
20 USA be designated operator of this unit?
21 A. That is correct.
22 Q. And OXY, USA, Inc. is a Delaware corporation, correct?
23 A. That is correct.
24 Q. And is OXY authorized to do business in the Commonwealth
25 of Virginia, is it registered with the DMME, and does it

1 have a blanket bond on file as required by law?

2 A. That is correct.

3 Q. Now, there is a management committee of Buchanan Produc-
4 tion Company, is that correct?

5 A. Yes.

6 Q. And has that committee granted or delegated to OXY, USA,
7 Inc. "the authority to explore, develop and maintain the
8 properties of Buchanan Production Company as it's
9 professional manager?

10 A. That's correct. That's Exhibit J, Page 1.

11 Q. And has OXY, USA in terms of fulfilling the authority
12 that it has been delegated to it by Buchanan Production
13 appointed certain people to have responsibilities with
14 regard to discharging those duties?

15 A. That's correct.

16 Q. Who are they and what are their titles?

17 A. Glen VanGolen general manager, Martin E. Wirth land
18 manager, and myself as regulatory manager.

19 Q. Has OXY, USA consented to serve as unit operator if
20 appointed and has OXY, in fact, filed a signed consent to
21 do so?

22 A. Yes, we have.

23 Q. And what exhibit would that be?

24 A. It's Exhibit J, Page 2.

25 Q. In the notice of hearing have you listed the names of all

1 people who were to be joined as respondents to this
2 pooling application?

3 A. Yes, we have.

4 Q. Are some of the same people involved in this unit that
5 were involved in T-16 that need to be dismissed because
6 leases have been obtained?

7 A. Yes. I would direct the Board's attention to Exhibit B.
8 Under tract 1 owner number three Elmer Reedy, owner
9 number four Dorothy R. and Bruce Saldosky, owner number
10 eight Ovella Griggs, number nine is Viola and Richard
11 Holman, number ten Nona B. and James Shuler, number
12 eleven Orvil and Erma Reedy. The next page, number
13 twelve Eugene and Bertha Reedy, number thirteen Ida B.
14 Barrett, and fourteen Francis V. Beckham.

15 Q. HAS Buchanan Production obtained CBM leased from those
16 folks?

17 A. Yes, they have.

18 Q. And are you requesting that they be dismissed as respond-
19 ents from this application?

20 A. Yes, we are.

21 Q. Now, with regard to other changes that need to be made on
22 Exhibit B, if you go to Item 41 does the address of Mary
23 Ellen and Jack Jacobson need to be corrected?

24 A. yes, it does. I was contacted by Mr. Jacobson and he
25 gave me the address of 937 Plantation Road, Kelargo,

1 Florida, 33037.

2 Q. And then the gentleman who was here on T-16 gave us a
3 name correction. It's Item 16 on the last page. It says
4 Wendle and Angie Kitts and it should be Wendle and
5 Jacqueline, I believe.

6 A. No, that's fifteen.

7 Q. I got that wrong. That's Warren.

8 A. Also on fifteen it should be Warren and Jacqueline Kitts
9 and the address is 5320 Twilight Road and we've got an M
10 after there that needs to be stricken.

11 Q. And Item thirteen on the previous page, Page 4, the same
12 gentleman who was here on T-16 told us that it should be
13 Agee as opposed to Agree?

14 A. Right.

15 Q. Mr. Gordon, because of the leases that are obtained that
16 resulted in the dismissals we've just discussed does
17 there need to be an amendment of Exhibit A, Page 2, with
18 regard to the interest that's subject to pooling under
19 this application?

20 A. Yes, it does. Again I'd direct the Board's attention to
21 Exhibit A, Page 2, under Item 1 under the oil and gas
22 section the net percentage should now read 92.1676
23 percent. Under Item 2 again under the oil and gas
24 section the gross and net percentage should be 7.8324
25 percent and again that number should appear in Item 4.B

1 as 7.8324 percent.

2 Q. As long as we're on this item, Exhibit A, Page 2, is the
3 only interest that is subject to forced pooling which you
4 have not acquired by lease or otherwise on this applica-
5 tion 7.8324 percent of the outstanding oil and gas
6 interest?

7 A. That is correct.

8 Q. That's what we're talking about pooling?

9 A. That is correct.

10 Q. And in addition as a result of these dismissals -- or the
11 request to dismiss these folks would Exhibit G, Pages 4
12 and -- well, actually all the changes are on Page 4.
13 Would Exhibit G, Page 4, have to be revised simply to
14 strike the names of the folks that you have asked to be
15 dismissed?

16 A. That is correct.

17 Q. Now, did you mail notices containing both the notice of
18 hearing and the application to all persons listed in
19 Exhibit B for whom you had addresses?

20 A. Yes, we did.

21 Q. Were there some people that you did not have addresses
22 for and if so who were they?

23 A. There were several parties we did not have addresses for.
24 Those parties being W.H. Reedy heirs, Earnest Herford,
25 Earl Herford, Frazier Plaster, Clarence Elkins, Oscar and

1 Nancy Vance heirs, Harley Whited, Eleanor and Robert
2 Hawkins, Edith Prestnol, Ira G. Ratcliff and Billy
3 Ratcliff.

4 Q. With regard to mailing did you mail to anyone where the
5 mail came back -- to an address that you thought was a
6 good address where the mail came back undeliverable?

7 A. Yes. We had Wanda and George Cockran, Jr.

8 Q. So for purposes of this hearing and the Board's records
9 Wanda and George Cockran, Jr. should be shown at least at
10 this point as unlocatable because you do not have an
11 address for them?

12 A. That is correct.

13 Q. Is this a situation also where notices were sent in error
14 to Ada Reedy and Sadie E. Cox, people who you had leased
15 from but had not deleted from Exhibit B?

16 A. That is correct. They are not on Exhibit G but they were
17 on our mailing list.

18 Q. Right. Were there people to whom you sent mail but you
19 haven't gotten anything back at all yet, either the
20 mailing that you sent or the return cards, and if so who
21 are they?

22 A. We have Sylvia and Richard Perkins and we need to change
23 that because we did just get Sylvia and Richard's back in
24 the mail. I mean, this is since we prepared this. And
25 Carl and Claudia Childress also came back in the mail

1 with unknown not deliverable on it. So allow me to amend
2 the first part of our testimony there.

3 Q. So two additional people who are unlocatable at this
4 point would be Sylvia and Richard Perkins and Carl and
5 Claudia Childress?

6 A. Right. And then the other parties under the testimony
7 now is Warren and Angie Kitts, Beatrice and Clarence
8 Riley, Phyllis Everett.

9 Q. And those three people you mailed to but you don't have
10 anything back, either the mailing or the card back at
11 this point?

12 A. That is correct.

13 MR. EVANS: Is that Warren and Jacqueline?

14 THE WITNESS: Yeah.

15 Q. (Mr. Swartz continues.) Now, did you file a proof of
16 mailing with Mr. Fulmer's office as Exhibit F?

17 A. Yes, we did.

18 Q. And when was that sent to him?

19 A. That was sent on November 9th.

20 Q. Did you publish a copy of the notice that's compiled in
21 this matter in the newspaper and if so what newspaper and
22 when was the publication?

23 A. The publication was in the Virginia Mountaineer on
24 October 29th, 1992 and again, we sent certifications of
25 this publication to Mr. Fulmer's office on November 9th?

1 Q. And that would have been filed as Exhibit E?
2 A. That's correct.
3 Q. Obviously most of this unit has been leased by you all?
4 A. That is correct.
5 Q. In leasing the CBM interest that you've acquired in this
6 unit do you have standard terms that you generally offer?
7 A. That is correct.
8 Q. And what is the standard royalty that you would offer?
9 A. The standard royalty provision is one-eighth royalty.
10 Q. And in terms of the payment of a bonus what is the bonus
11 arrangement if you were able to enter into a voluntary
12 lease that you generally would be offering?
13 A. We would offer \$1 per acre bonus which is a one time
14 payment when the lease is tendered to us -- executed.
15 Q. And although term may not be relevant to the Board
16 proceedings, what is the term generally that you're
17 talking about in these CBM leases that you're negotiat-
18 ing?
19 A. The term are generally for five years.
20 Q. Would you recommend that in the event to the Board that
21 the Board should pool this unit that it include as terms
22 for people who are deemed to have leased a one-eighth
23 royalty and a one time payment of \$1 bonus per acre?
24 A. Yes, I would.
25 Q. Now, T-17 is in the Oakwood Gas Field II, correct?

1 A. That is correct.

2 Q. And if you turn to Exhibit G --

3 MR. COUNTS: No, just hang on a second. One other amendment
4 to Exhibit B. Marty Wirth, could you identify yourself?

5 MR. WIRTH: Martin E. Wirth. I'll remind you you're still
6 under oath.

7 MR. COUNTS: With regard to Harley Whited have you learned
8 since filing the application that he is deceased?

9 MR. WIRTH: Yes, we have.

10 MR. COUNTS: And should Exhibit B show Harley Whited heirs?

11 MR. WIRTH: That's correct.

12 Q. (Mr. Counts continues.) Sam, if you would turn to Page 1
13 of Exhibit G. Again, we're talking about unit T-17 and
14 there is only one longwall panel shown within that unit,
15 correct?

16 A. Correct.

17 Q. And that's 1-Development?

18 A. Right.

19 Q. Is what's depicted on Exhibit G, Page 1, short hole
20 development?

21 A. Yes, it is.

22 Q. And ultimately is anticipated that this panel which is
23 shown on Exhibit G, Page 1, will be longwalled?

24 A. Yes.

25 Q. And subsequently this unit will produce -- there will be

1 production of active gob gas that will be produced from
2 this unit or allocated to this unit?
3 A. That's correct.
4 Q. With regard to the prior page in the package there's an
5 Exhibit C?
6 A. Correct.
7 Q. Did you prepare that yourself?
8 A. Yes, I did on October 15th.
9 Q. And is Exhibit C your estimate as to the reasonable
10 probable cost to develop this unit?
11 A. \$180,000.
12 Q. And is that your estimate of a reasonable cost to
13 undertake the work shown on this estimate?
14 A. Yes, it is.
15 Q. There is one bore hole anticipated?
16 A. That is correct.
17 Q. And the \$142,500 comes from the agreement which we've
18 previously offered marked as Exhibit K?
19 A. Correct.
20 Q. If you turn to Exhibit G, Page 2, again just directing
21 your attention to T-17, what is the percentage that's
22 reported there?
23 A. 11.405 percent.
24 Q. And at the top of that column it says what that percent-
25 age represents and what is that?

1 A. It's the percent of the panel under the unit.

2 Q. And to calculate this percentage would it be fair to say

3 that what you did is you took the acres in this unit that

4 are also within the panel, put over the total acres of

5 the panel and the result is this percentage?

6 A. That is correct.

7 Q. If you turn to the next page, Exhibit G, Page 3, the

8 upper left-hand portion of the exhibit shows the total

9 cost to be incurred in all units relevant to panel 1-

10 Development East, correct?

11 A. That's correct.

12 Q. And that amount is \$846,975?

13 A. Correct.

14 Q. And then the next column with regard to panel 1-Develop-

15 ment East or the next section calculates the portion of

16 the total panel cost allocable to unit T-17, does it not?

17 A. Yes, it does.

18 Q. And what is that amount?

19 A. \$96,598.

20 Q. And that would be a number that would be relevant to

21 people who elected to participate in terms of calculating

22 their share or people who elected to be carried in terms

23 of calculating the recoupment of cost before they were

24 back in as a participant, correct?

25 A. That is correct.

1 Q. And then the last two pages of Exhibit G, Pages 4 and 5,
2 do those state the division of interest for each respondent
3 in the unit?

4 A. Yes, it does.

5 Q. And that would be relevant to calculating both their
6 royalty interest and/or their participation or carried
7 interest?

8 A. Yes, it does.

9 Q. Acreage in this unit is 80 acres?

10 A. That is correct.

11 Q. And the coalbed methane that you seek to force pool by
12 this application will be in all coal seams and associated
13 structure below the Tiller seam of coal?

14 A. That is correct.

15 Q. Is it your opinion that the plan to short hole development
16 followed by active gob development is a reasonable
17 method or plan to develop the coalbed methane within this
18 unit?

19 A. Yes, it is.

20 Q. And is it your view that this plan will contribute to the
21 protection of correlative rights with the people who have
22 interests in the coalbed methane within this unit and
23 would tend to lessen the likelihood of both physical and
24 economic waste?

25 A. Yes, it is.

1 MR. COUNTS: That's all I have.

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

3 MR. HARRIS: Exhibit G, the mine map there has numbers 12/92
4 1/93. Are these dates? This is just for information.

5 THE WITNESS: They are dates. They are timing dates for
6 mine.

7 MR. HARRIS: When they expect to reach that point or some-
8 thing?

9 THE WITNESS: They were projected mining dates, yes.

10 MR. HARRIS: Thank you. I was just curious.

11 MR. CHAIRMAN: Any other questions?

12 (Witness stands aside.)

13 MR. CHAIRMAN: What's your pleasure?

14 MR. EVANS: I move to grant the petition.

15 MR. HARRIS: Second.

16 MR. CHAIRMAN: We have a motion and a second. Any further
17 discussion? All in favor signify by saying yes. (ALL
18 AFFIRM.) All opposed? (NONE.) So carried.

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ITEM X

MR. CHAIRMAN: The next item on the agenda is VGOB-92/11/17-0285, U-13. I'd this time I'd like to step aside and ask Mr. Mason to chair this hearing. I feel I need to step aside for personal reasons. I feel have a potential conflict of interest with this.

MR. MASON: There does seem to be a number of McGlothlins.
(THEREUPON, MR. MASON RESIDES AS CHAIRMAN.)

MR. SWARTZ: Appearing, Mr. Chairman, for Buchanan Production Company and OXY, USA I'm Mark A. Swartz and Howard Salisbury.

MR. CHAIRMAN: Is there anyone else present that would like to speak on this matter? Let the record reflect there are none.

MR. SWARTZ: This is another pooling application under Field Rules II. It is for a unit that will begin as a short hole unit in the longwall panel, the same panel that we have been looking at today. I believe -- no, it's a different panel. It's on the other side, but it is very similar to what we've been looking at today and it will ultimately wind up being an active gob unit. The first witness I'd like to call is Sam Gordon.

SAMUEL EDWARD GORDON

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

DIRECT EXAMINATION

BY MR. SWARTZ:

Q. Sam, do you want to state your name for us?

A. Samuel E. Gordon.

Q. And I will remind you you're still under oath. Do you understand that?

A. Yes.

Q. Did you prepare the notice of hearing and the application with regard to unit U-13?

A. Yes, I did.

Q. And you have signed both of them?

A. Yes, I did.

Q. The applicant here is Buchanan Production Company, correct?

A. That is correct.

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

A. Yes, it is.

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

1 Inc., is that correct?

2 A. That is correct.

3 Q. And those companies are both wholly owned subsidiaries
4 of Oxidental Oil and Gas Corporation?

5 A. That is correct.

6 Q. Is Buchanan Production Company authorized to do business
7 in the Commonwealth?

8 A. Yes, it is.

9 Q. Is Buchanan Production Company requesting than the Board
10 appoint someone -- or designate someone other than
11 Buchanan Production Company, namely OXY, USA, as design-
12 ated operator in the event this application is approved?

13 A. That is correct.

14 Q. And is OXY, USA, Inc. is a Delaware corporation?

15 A. Yes, it is.

16 Q. And is OXY authorized to do business in the Commonwealth
17 of Virginia?

18 A. Yes, it is.

19 Q. Is it registered with the DMME and does it have a
20 blanket bond on file as required by law?

21 A. Yes, it does.

22 Q. Buchanan Production Company has a management committee?

23 A. Yes.

24 Q. And has that management committee delegated to OXY, USA,
25 Inc. "the authority to explore, develop and maintain the

1 properties of Buchanan Production Company" as it's
2 professional manager?

3 A. Yes, it has. And that is reflected in Exhibit J, Page 1.

4 Q. And has OXY, USA delegated it's authority to act as
5 professional manager for Buchanan Production to any
6 specific individuals and if so who would they be?

7 A. Yes, it has. Glen VanGolen general manager, Martin E.
8 Wirth land manager, and myself as regulatory manager.

9 Q. Has OXY, USA filed a written consent to serve as unit
10 operator if appointed with this application?

11 A. Yes, it has and that is Exhibit J, Page 2.

12 Q. Did you or other agents of OXY, USA and Buchanan Produc-
13 tion Company cause copies of the notice of hearing and
14 the application filed with regard to unit U-13 to be
15 sent to everybody listed on Exhibit B for whom you had
16 addresses?

17 A. Yes.

18 Q. Do you desire to add any respondents today?

19 A. No, we do not.

20 Q. Do you wish to dismiss any?

21 A. No, we do not.

22 Q. With regard to the mailing, was the mailing accomplished
23 by certified mail, return receipt requested?

24 A. Yes, it was.

25 Q. Were there any people for whom you did not have addresses

1 and therefore, could not even attempt a mailing?

2 A. Yes.

3 Q. And who were they?

4 A. Cecil and Joyce McGlothlin and B.F. McGlothlin.

5 Q. Were there any persons for whom you had addresses but

6 mail which had been addressed to them came back un-

7 claimed?

8 A. Yes. We had Gladys and Paul Jessie.

9 Q. So that came back unclaimed?

10 A. Yes.

11 Q. So at this point as far as the applicant can tell they

12 are unlocatable?

13 A. That's correct.

14 Q. And should be treated as people for whom you do not have

15 addresses?

16 A. Right.

17 Q. Were there other people to whom you mailed that you have

18 -- were there any people that you mailed to but nothing

19 at all has come back, either the mailing or the card?

20 A. Yes. Bonnie McGlothlin.

21 Q. You do not have a return from her?

22 A. No.

23 Q. Did you file proof of mailing with Mr. Fulmer's office as

24 Exhibit F?

25 A. Yes, we did. That was filed with Mr. Fulmer's office on

1 November 9th.

2 Q. Did you publish a copy of the notice and if so where and
3 when?

4 A. It was published in the Virginia Mountaineer on October
5 29th, 1992 and again, as Exhibit E certification of
6 publication was filed with Fulmer's office on November
7 9th.

8 Q. Turn to Exhibit A, Page 2. If you would tell the Board
9 what interest, if any, is sought to be force pooled by
10 this application?

11 A. Exhibit A, Page 2, reflects that we have 100 percent of
12 the coal under lease as well as 100 percent of the oil
13 and gas ownership under lease. We have had these
14 respondents come forward and assert a claim from their
15 surface interest only and that surface interest amounts
16 to 15.66 percent of the 80 acre unit.

17 Q. And the reason that they're being joined here even
18 though their record title is to surface is because they
19 have affirmatively made a claim?

20 A. That is correct.

21 Q. Going to Exhibit C, Sam. Exhibit C is an estimate of
22 allowable costs, right?

23 A. That is correct.

24 Q. And who prepared it?

25 A. I did.

1 Q. When?
2 A. October 15th.
3 Q. Of this year?
4 A. Of this year, yes.
5 Q. And does this represent your estimate of the reasonable
6 cost to be expended to develop this unit, U-13, initially
7 as a short hole unit and then subsequently as an active
8 gob unit?
9 A. Yes, it is.
10 Q. And what is that amount?
11 A. \$172,000.
12 Q. Now, the first page of Exhibit G shows a portion of a
13 mine map, correct?
14 A. That is correct.
15 Q. On which you have overlaid the Oakwood grid or at least
16 part of the Oakwood grid and it does show unit U-13?
17 A. Yes, it does.
18 Q. And within unit U-13 there are portions of two longwall
19 panels, correct?
20 A. That is correct.
21 Q. One of them is marked -- the one on the left --
22 2-Development. Can I assume the one which is unmarked is
23 1-Development?
24 A. That is correct. As you can see on Exhibit G, Page 2, it
25 is 1-Development West and 2-Development West.

- 1 Q. And Page 2 of Exhibit G sets forth the percentage of the
2 unit in the panel under consideration and there are two
3 panels having been calculated by putting the acres in the
4 unit that are also in the panel over the total acreage in
5 the panel in making the division that results in the
6 percentage, correct?
- 7 A. That is correct.
- 8 Q. And what is the percentage of the panel 1-Development
9 West that is within unit U-13?
- 10 A. That portion of the panel underlying U-13 is 22.451
11 percent. And also the second development panel amounts
12 to 2.687 percent.
- 13 Q. And then on the next page of Exhibit G there are develop-
14 ment costs at the top for both of the panels, correct?
- 15 A. That is correct.
- 16 Q. And what is your projected cost to develop 1-Development
17 West?
- 18 A. 1-Development West for U-13 is \$172,000.
- 19 Q. What's the total for the whole panel, Sam?
- 20 A. For the whole panel it's \$713,250.
- 21 Q. And with regard to 2-Development West what is the
22 projected cost for that panel -- the entire cost?
- 23 A. \$680,000.
- 24 Q. And then the following calculations are to attribute a
25 portion of the panel costs to unit U-13, correct?

1 A. That is correct.

2 Q. And with regard to panel 1-Development West what are the
3 costs attributable or allocable to unit U-13?

4 A. In 1-Development West it would be \$160,132.

5 Q. And in panel 2-Development West what would it be for that
6 panel as allocated to U-13?

7 A. \$18,272.

8 Q. And those two numbers would be relevant to participation
9 interest or to carried interest in terms of calculating
10 either the participation cost or the carried multiple?

11 A. That is correct.

12 Q. Then with regard to the final pages of Exhibit G, Pages 4
13 and 5, do we again have the division of interest assigned
14 to each respondent for purposed of royalty and for
15 purposes of participation calculation or carried calcula-
16 tions?

17 A. That is correct. Yes.

18 Q. Is it your opinion that the plan of development which
19 you've discussed today which is at least in part shown on
20 Exhibit G, Page 1, is a reasonable plan to develop the
21 coalbed methane under and within unit U-13 to whit short
22 development followed by active gob development?

23 A. Yes, it is.

24 Q. And is it your opinion that the proposed development plan
25 and the proposed methane production hole will, in fact,

1 protect the correlative rights of the owners of the
2 methane within and under this unit and will lessen the
3 likelihood of both physical waste and economic waste?
4 A. Yes, it is.
5 Q. And Exhibit K that I had previously submitted is also
6 tabbed to this unit and should be -- the bore hole fee
7 that you used on Exhibit C also will reflect the amount
8 shown on Exhibit K, Sam?
9 A. Yes, it does.
10 MR. COUNTS: That's all I have. Thank you.
11 (Witness stands aside.)
12 MR. CHAIRMAN: Anybody else? Again, the record will reflect
13 none. Gentlemen?
14 MR. EVANS: Mr. Chairman, I move that we grant the petition.
15 MR. CHAIRMAN: Is there a second?
16 MR. HARRIS: I'll second.
17 MR. CHAIRMAN: Any further discussion?
18 MR. HARRIS: Can we take any action with three people?
19 MR. CHAIRMAN: Can we not? Well, what we've got is we've got
20 four people (Inaudible.) extension.
21 MS. RIGGS: Right. We have a quorum present.
22 MR. HARRIS: Do we have to record that there's one extension?
23 MR. CHAIRMAN: Probably, yeah.
24 MS. RIGGS: I think once you've got your quorum then it's a
25 majority of those present voting.

1 MR. CHAIRMAN: Good question. Anything else?

2 MS. RIGGS: I just had a general question as to all of these.
3 I think it was asked in the first one but it hasn't been
4 asked since. Are there any Oakwood I orders outstanding
5 on any of the units you seek to pool under Oakwood II
6 today?

7 MR. WIRTH: Yes. The next items, XII and XIII, will fall
8 under Oakwood I. They will not fall under Oakwood II.

9 MR. SWARTZ: Prior today no.

10 MR. CHAIRMAN: Are there any of them at all today, though,
11 that would fall under both? Isn't that what you're --

12 MS. RIGGS: Where there might be outstanding an Oakwood I
13 order and you're now seeking an Oakwood II where there
14 would be two orders in effect at one time?

15 MR. WIRTH: No.

16 MS. RIGGS: Okay.

17 MR. CHAIRMAN: All those in favor of Mr. Evans' motion signify
18 by saying yes. (ALL AFFIRM.) Opposed? (NONE.) The
19 motion carries. Let me indicate for the record that Mr.
20 McGlothlin abstained from such vote.

21 (THEREUPON, MR. MCGLOTHLIN RESUMES AS CHAIRMAN.)
22
23
24
25

ITEM XI

MR. CHAIRMAN: The next item on the agenda is VGOB-92/11/17-0290, unit W-19.

MR. SWARTZ: Mark A. Swartz and Howard Salisbury for Buchanan Production Company and OXY, USA. As you may or may not recall since I assume these all blend together in your minds, we were here last month from the number on this unit. This notice has been directed to Pauline Ratcliff Brown who at that time you were told had actually signed a lease in the presence of an OXY representative and we were hopeful that she would deliver the lease to us. But she wanted to have her lawyer look at it and her lawyer did look at that lease apparently. Anyway, she has told us that she is not going to deliver the lease. And when we learned that was the case we knew that since we didn't have a voluntary agreement with her we would have to pool her. So she is the only respondent. This unit was pooled by you all at the last hearing. At that point in time we had reason to believe she was going to lease. She has not. I would request that the testimony and exhibits -- since I do not believe she is here today that the testimony and exhibits from the last hearing with regard to W-19 which was held on -- actually which was held in September -- when was that, Sam?

1 MR. GORDON: September 15th.

2 MR. SWARTZ: September 15th be incorporated into the record
3 today. And the only testimony that I would offer would
4 be from Sam with regard to what I have just summarized
5 for you in terms of no lease being delivered, the fact
6 that we published and the fact that we noticed it.
7 That's an appropriate mechanism to deal with this as far
8 as you're concerned. I mean, in terms of saving some
9 time.

10 MR. CHAIRMAN: I have no objections. Any member of the Board
11 object?

12
13 SAMUEL EDWARD GORDON

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

16
17 DIRECT EXAMINATION

18
19 BY MR. SWARTZ:

20 Q. State your name for us.

21 A. Samuel E. Gordon.

22 Q. I would remind you that you're still under oath. Do you
23 understand that?

24 A. Yes, sir.

25 Q. Tell the Board why it is necessary for you to bring this

1 pooling application on this one, meaning W-19, for
2 hearing today?

3 A. The respondent listed today is Pauline Ratcliff Brown.
4 We thought at our pooling in September that we had this
5 party signed up on a lease which she did sign but she
6 failed to deliver that lease to us.

7 Q. Was she holding it when this case was heard by the Board
8 in September and was it your understanding that she was
9 going to review it before she would let go of it to you?

10 A. That's correct. Yes.

11 Q. Apparently is it your understanding she decided either on
12 her own or on advice of counsel not to deliver that lease
13 to you all?

14 A. Yes.

15 Q. Was she listed and was her interest accounted for in
16 September?

17 A. She was accounted for. We dropped her from our listing
18 of possible respondents.

19 Q. But her percentage was not assigned to anyone else?

20 A. No, it was not.

21 Q. Did you cause a notice of hearing to whit the one we're
22 looking at today and an application to be mailed certifi-
23 ed mail, return receipt requested, to Pauline Ratcliff
24 Brown?

25 A. Yes, I did.

1 Q. Did a card come back from her?
2 A. Yes, it did. She signed and received it on October 22nd.
3 Q. And did you file as Exhibit F with Mr. Fulmer's office
4 the certificate of mailing and that mailing information
5 with regard to Pauline Ratcliff Brown?
6 A. Yes, we did.
7 Q. And the filing occurred when?
8 A. November 9th.
9 Q. Did you also cause a copy of the notice of hearing to be
10 published in a newspaper?
11 A. Yes, we did.
12 Q. And what newspaper would that have been?
13 A. It was the Virginia Mountaineer on October 29th, 1992.
14 And we again filed Exhibit E certification of publication
15 with Mr. Fulmer's office on November 9th.
16 Q. And you have reflected her division of interest in the
17 two panels on Page 3 of Exhibit G, is that correct?
18 A. That is correct.
19 Q. And on Exhibit A, Page 2, all you have indicated is her
20 interest as being subject to pooling under this applica-
21 tion?
22 A. That is correct.
23 Q. Which is .29 percent?
24 A. Correct.
25 MR. SWARTZ: That's all I have.

1 MR. CHAIRMAN: Any questions?

2 MR. MASON: Exhibit C you've got your estimate of allowable
3 costs. On this one you have a bore hole fee of \$285,000?

4 THE WITNESS: That is correct.

5 MR. MASON: Did the prior application include a copy of your
6 contract with Island Creek with reference to this?

7 THE WITNESS: No, it did not. This has just been presented.

8 MR. WIRTH: It had the CAA -- become an abstract. It occurred
9 before we filed the final agreement.

10 MR. SWARTZ: We were using an abstract that showed the 142,500
11 and that would have been what we were using.

12 MR. MASON: So this, in fact, reflects two bore holes?

13 MR. SWARTZ: Well, that was true in September.

14 MR. GORDON: Correct.

15 MR. MASON: Okay. What I'm trying to say is that this is not
16 a different --

17 MR. GORDON: If you will look at Exhibit G, Page 1, the next
18 page, you'll note that we've got two panels underlying
19 this unit and that will serve as drilling --

20 MR. MASON: I might suggest in the future just for people who
21 are slow that you might indicate beside that there's more
22 than one.

23 MR. GORDON: Panel or well?

24 MR. MASON: No. More than one bore. You've got bore hole fee
25 285. Actually it's two fees. Thank you.

1 MR. CHAIRMAN: Any other questions? Do I hear a motion?

2 MR. MASON: I move the adoption of this petition.

3 MR. HARRIS: Second.

4 MR. CHAIRMAN: We have a motion and second. Any further
5 discussion? All in favor signify by saying yes. (ALL
6 AFFIRM.) All opposed? (NONE.) So carried.

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ITEM XII

MR. CHAIRMAN: The next item on the agenda is VGOB-92/11/17-0291, CBM Y-8.

MR. SWARTZ: Again, Mark A. Swartz and Howard Salisbury for Buchanan Production and OXY, USA. This application is regarding Y-8. Y-8 is a CBM frack well application which is filed under Oakwood I or the original Oakwood rules. This unit was -- originally there was a pooling hearing on April 30th, 1991. There was an order entered pooling this unit on May 31st, 1991. And for some inexplicable reason we did not name as respondents in the original application the Watkins heirs and this pooling application that you have before you today, Y-8, is an effort to clean up that problem. The Watkins heirs were shown actually on the map -- it's really amazing -- if you look at Exhibit A up toward the top. Exhibit A being the unit map. Up toward the top to the right-hand it says oil and gas owners James E. Watkins, et al. And they were shown on the plat map and everything else and they were not on our original Exhibit B. They were not picked up at the hearing and were not picked up in the order. The heirs were -- they were unknown and it was just essentially an estate at that point in time. We did not have an address for them. We now know who the heirs

1 are and we have named them in this pooling application,
2 but they're all unlocatable. I mean, we don't have
3 addresses for any of them. So there has been no mailing.
4 The exhibits that you are seeing attached to this
5 application are the same exhibits that were used -- or at
6 least the same numbers -- well, to some extent the same
7 exhibits that were used originally when this unit was
8 pooled. And what I would propose to do -- I need some
9 testimony from Mr. Gordon to tie up some of these loose
10 ends so that you're not just taking my word for it. But
11 what I would propose to do is incorporate by reference
12 the testimony that was offered at the hearing that was
13 held on April 30th, 1991 and incorporate by reference
14 since, in essence, we're seeking to amend a prior order
15 the order that was entered by the Board with regard to
16 unit Y-8 on May 31st, 1991 as recorded at Book 375, Page
17 456, in Buchanan County. And if it's acceptable to the
18 Board to incorporate the previous hearing testimony and
19 the previous exhibits in the order then proceed to offer
20 just some testimony from Mr. Gordon to tie up the loose
21 ends with regard to this estate that was lost in terms of
22 our original application.

23 MR. CHAIRMAN: Are there any objections from the Board?

24 MS. RIGGS: Would this action on this be done as a modifica-
25 tion to the original order under the old docket number?

1 MR. SWARTZ: It depends on what you can account for in your
2 computer. If you can track this as a modification of
3 that original order we prefer that it be done that way.
4 MR. FULMER: We can track it. What it will do is refer back
5 to the original docket number with the original order.
6 MR. SWARTZ: Yeah.
7 MS. RIGGS: For escrow purposes the VGOB number should be
8 consistent per unit for tracking purposes.
9 MR. SWARTZ: The VGOB number on this, if that's how you're
10 going to do it, which I think I would encourage you to do
11 it was VGOB-0430-111.
12 MR. FULMER: We can do that. We didn't have the capacity
13 until about a week ago to add a suffix.
14 MR. SWARTZ: This should just track the same docket number
15 because it's essentially a modification where we're
16 adding some additional people.
17 MR. MASON: Mr. Chairman, as a factual matter it's true that
18 when you pool the unit you pool everything in it. All
19 you're doing here is clarifying who some of the unknown
20 owners at that time are.
21 MR. SWARTZ: Well, yeah. Actually what we're clearing up is
22 we had a notice problem. I mean, you're right, we pooled
23 everybody but we did not notice by publication or mail to
24 these folks. They weren't named as respondents. The
25 unit was pooled, but we need to add these folks as

1 respondents and make them subject to that order.

2 MS. RIGGS: The 30 day election period will run from the date

3 of modification as to these new respondents.

4 MR. SWARTZ: Right.

5 MR. MASON: My point is, though, that the actual pooling of

6 the unit was done at that time and all you're doing is

7 modifying that order to add these additional parties and

8 affording them their rights to election, notice, etcet-

9 era. There's not an additional -- you can't re-pool the

10 same unit.

11 MR. SWARTZ: No, but we have to have a pooling hearing to make

12 those people subject to the --

13 MR. MASON: I understand that.

14 MR. SWARTZ: -- original pooling order which is why we --

15 you're right but there's no mechanism to do that without

16 having a pooling hearing.

17 MR. MASON: I think it's important -- what I made the point

18 for was for the virtue of the fact that the actual

19 pooling for purposes of the permitting and going forward

20 and all that actually occurred in April and all you're

21 doing here just amending that order.

22 MR. WIRTH: Basically what we have done we we've began to

23 prepare to make to sure that the supplemental orders will

24 go to the conflicting claims. I directed all my people

25 to go through everything and for some unknown reason the

1 person forgot to put them on the exhibit.

2 MS. RIGGS: Well, there could be situations when the supple-
3 mental order comes through where you have since located
4 people that were originally noticed and those issues get
5 clarified with updated addresses and so forth. But
6 because these people were not originally noticed and had
7 the election you've got to go back and modify the
8 original forced pooling to afford that and then supple-
9 ment for the escrow agent.

10 MR. MASON: That's right. I just was concerned about the
11 problem that was related if it was a re-pooling or
12 something -- because there are a lot of things that are
13 tied to that action. And, in fact, the unit itself is
14 pooled. It's just a question of affording these people
15 their rights as participants.

16 MR. SWARTZ: Right. The little bit of testimony that I would
17 need from Mr. Gordon will just take a minute.

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19
20 SAMUEL EDWARD GORDON

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

BY MR. SWARTZ:

Q. Sam, do you want to identify yourself again?

A. Samuel E. Gordon.

Q. And you understand you're still under oath?

A. Yes, sir.

Q. Did you prepare the notice of hearing and the application that we have before us today with regard to unit Y-8?

A. Yes, I did.

Q. Is this an application with regard to what could be described as a frack CBM well under the original Oakwood Field Rule?

A. Yes, it is.

Q. It does not involve gob production?

A. No, it does not.

Q. The respondents that are named here on the notice, the six folks, are they all heirs of a particular estate?

A. Yes, they are. They are all parties with the Thomas Watkins estate.

Q. And your title work has disclosed these to be the heirs?

A. Yes, it has.

Q. Have you been able to locate addresses for any of these six people?

A. No, we have not.

1 Q. So as far as OXY and Buchanan Production are concerned
2 they are unlocatable people as that term is used in the
3 statutes?
4 A. That is correct.
5 Q. So you were unable to mail to them?
6 A. That is correct.
7 Q. And notice was accomplished by publication?
8 A. That is correct.
9 Q. What paper did you publish in and when?
10 A. We published in the Virginia Mountaineer again on October
11 29th, 1992 and the certification of publication was filed
12 with Mr. Fulmer's office on November 9th, 1992.
13 Q. And the interest addressed -- looking at Exhibit A, Page
14 2, the only interest that's addressed here is the
15 percentage associated with this estate and these heirs
16 that have been named as respondents today?
17 A. That is correct and that deals with the oil and gas
18 estate only. And we show their interest to be 14.5125
19 percent.
20 Q. And, in essence, is what you're requesting that the Board
21 agree to modify to the pooling order that was originally
22 entered with regard to unit Y-8 under VGOB docket number
23 0430-111 to include the Watkins heirs as respondents and
24 to include the percentage that's allocated to them in
25 Exhibit B?

1 A. That is correct.

2 MR. COUNTS: That's all I have.

3 MR. CHAIRMAN: Any questions?

4 MR. MASON: Let me just sort of put this out for discussion.
5 I'd particularly be interested in Sandra and Tom's input.
6 At the top of this petition -- or this notice of hearing
7 where it says Division of Oil and Gas docket number and
8 then it lists it, wouldn't it be better where any of
9 these matters affect earlier ones to list that as
10 amending or affecting so you would know?

11 MS. RIGGS: I think what will happen from this point forward
12 not that we have the capacity to track it that way is it
13 will actually show up under the old docket number.

14 THE WITNESS: Yeah. The cover sheet that goes in with this is
15 checked amended.

16 MR. MASON: I understand. A lot of times in other court
17 proceedings where you have something like this and if you
18 have a number it will have modifying, amending, affecting
19 or something so that you know if you -- if this is
20 recorded. Actually I guess what I need to look at is the
21 application. And then the order itself will have some
22 designation like that?

23 MS. RIGGS: What's happened in the past in the body of the
24 order itself there is to a paragraph that refers back to
25 any prior orders and then it gets to be a tracking

1 problem.

2 MR. MASON: I understand. Okay. I was just thinking that it
3 might be helpful in terms of the actual headings --

4 MR. SWARTZ: Well, what's happened I believe and Sandy came
5 jump in and straighten me out, but we have been squabbl-
6 ing about this problem for a couple years because some of
7 us believe and I think in and out of the Department
8 believe that you should keep the same number forever.
9 The problem was that their computer software would not
10 allow us to do that in way that we could note that it was
11 amended.

12 MR. FULMER: Sequential.

13 MR. SWARTZ: They have had some programmers in and changed the
14 software. My understanding is that literally from like
15 last week or this week forward we can use the old
16 numbers. And everybody wants to do that. You've raised
17 a good point and I think you've got the capability to
18 handle it now and you will not see this anymore because
19 it's something we've been working toward -- all of us.

20 MR. MASON: But even if you use the old VGOB number there will
21 be some designation on subsequent orders to indicate that
22 that is a --

23 MR. SWARTZ: It will have a suffix like A, B, C, D or some-
24 thing like that so you'll know this is the -- if it's a D
25 it's the fourth amendment of the original --

1 MR. MASON: That's fine. I'm just trying to get some handle
2 on --

3 MR. SWARTZ: We've been struggling with that.

4 THE WITNESS: If it's the Board pleasure, we can simply add
5 amended and modified under that number.

6 MR. MASON: No. I just raised the issue simply because I
7 think it's confusing if you have multiple VGOB numbers
8 assigned to orders affecting the same pooled unit.

9 MR. FULMER: We had difficulty in the basic program as you
10 build it in. There's also an accounting problem because
11 each petition is allowed \$100 as assigned to it. So you
12 had that specific number for the accounting procedures.
13 So we had to go into the accounting receipt file and
14 change that to where we can go back up. Now, we did the
15 same in permitting, too. If you do a modification later
16 on it's got a suffix to it. So we're following that same
17 track and we'll be able to track from now on.

18 THE WITNESS: We will have several of this -- I don't know if
19 this is the appropriate time, but do have several of
20 these and will it help you and Sandy to maybe send you a
21 list of the one unit with the additional numbers that
22 have been assigned to it to track it and maybe add us a
23 suffix?

24 MR. FULMER: Any help that we can get. Once we get it in
25 there any help we can get to go back and track it. And

1 we can track back to the original number. It will
2 automatically pull it up. But the problem is now you've
3 got two numbers out there. Now, there's not going to be
4 two numbers. There's only going to be the one original
5 number plus a suffix.

6 THE WITNESS: We may be in a situation where we've got three
7 numbers on one unit.

8 MR. FULMER: That's a possibility, yes.

9 MS. RIGGS: That's why I keep asking you is there an Oakwood I
10 on this unit because our system won't allow us to match
11 that.

12 THE WITNESS: Right. And we'll do what we can to assist you
13 in any way.

14 MR. FULMER: Since we're frankly talking here I'd like to ask
15 one question here. I'm curious to know that on that
16 James Watkins tract who is Watkins and Harrison? Who did
17 they buy their property from?

18 THE WITNESS: They're the coal owner. They're with Big X --
19 trustee of the Big X Coal Corporation. They own the coal
20 and Watkins has the oil and gas tract on the same
21 acreage. And when we first forced pooled it we forgot to
22 add on there --

23 MR. FULMER: Is there any -- just one main mineral? I mean,
24 in your title work was there only one main mineral owner
25 before it's all severed out?

1 MR. SWARTZ: It's Howard Tiller probably.

2 THE WITNESS: Well, before that it was (Inaudible.). How far
3 back do you want me to go with the history?

4 MR. FULMER: It just kind of struck that the Watkins have one
5 estate, Watkins has another estate, and these's no
6 relatives on the Watkins side that you can find. That's
7 what blew my mind.

8 THE WITNESS: Well, we're coming a little closer. We've found
9 out that the original James Watkins is now deceased and
10 we did find in another county that -- like I asked the
11 gentleman here, the lady passed away. I can go to that
12 county and that should be where the will is. They don't
13 know they need to record it in the county of where the
14 real estate is. So as soon as I can get someone for this
15 estate we'll go up there and find out and maybe we can do
16 our Dick Tracy then.

17 MR. FULMER: I'm just wondering because there's no lease on
18 record. Nobody's leased that oil and gas. It's because
19 you can't find nobody, right?

20 MR. SWARTZ: Uh-huh.

21 MR. CHAIRMAN: Any further questions?

22 (Witness stands aside.)

23 MR. CHAIRMAN: Do I hear a motion?

24 MR. EVANS: Mr. Chairman, I move that we grant the petition.

25 MR. MASON: Second.

1 MR. CHAIRMAN: A motion and a second. Any further discussion?
2 All in favor signify by saying yes. (ALL AFFIRM.) All
3 opposed? (NONE.) It's so carried.
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ITEM XIII

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3 MR. CHAIRMAN: The next docket number is VGOB-92/11/17-0292.

4 MR. SWARTZ: Mark A. Swartz and Howard Salisbury appearing for
5 OXY, USA and Buchanan Production Company.

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

7 MR. SWARTZ: This is the same problem that we just saw except
8 this one I have someone to blame other than my client,
9 maybe. This is the same folks, the Watkins. This matter
10 was heard originally on November 21st, 1990 before this
11 Board. At that point it had VGOB number 1010-30. The
12 original pooling order was entered on January 11th, 1991.
13 The original pooling order, although it specified four
14 sets of folks -- actually I guess five who were forced
15 pooled by the terms in that order for some reason did not
16 include the Watkins. In this situation, however, the
17 pooling application -- I really don't know who dropped
18 the ball on this, but at least in this one the pooling
19 application -- the amended Exhibit B that was attached to
20 it included James E. Watkins or his heirs. It subse-
21 quently turned out that that wasn't really the name of
22 the person for the estate which we'll get to in a minute
23 with Mr. Gordon. But there was a reference and for some
24 reason or another there was no pooling of that interest
25 even though it was apparently disclosed by the records on

1 file at the time that matter was heard. So what I would
2 like to do here, if I might, is incorporate the testimony
3 and the exhibits from the original hearing, obviously the
4 order that was originally entered, and request that the
5 Board modify the original order to add the respondents
6 which have been named in the application which is set for
7 hearing today as people who are affected as respondents
8 if pooled by that order. And I would like to just call
9 Mr. Gordon and ask a few questions of him with regard to
10 the notice and so forth.

11
12 SAMUEL EDWARD GORDON

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

15
16 DIRECT EXAMINATION

17
18 BY MR. SWARTZ:

19 Q. Sam, would you state your name again?

20 A. Samuel E. Gordon.

21 Q. You recall that you're under oath and understand that?

22 A. Yes, I do.

23 Q. Who prepared the notice of hearing and the pooling
24 application with unit X-9 that's set for hearing today?

25 A. I did.

1 Q. The people who are listed as respondents, why is it
2 necessary to modify the order that was originally entered
3 in X-9?
4 A. They were identified as the James Watkins heirs and they
5 are the Thomas Watkins heirs.
6 Q. And, in fact, James Watkins is one of the heirs of
7 Thomas?
8 A. Is one of the heirs, yes.
9 Q. And do you know why -- even though the amended Exhibit B
10 which appears to have been under discussion at the
11 original hearing shows the Watkins even though it refers
12 to them improperly, why they weren't referred to in the
13 pooling order that was issued?
14 A. I have no idea why they were not picked up.
15 Q. But it is your view that they have an interest in this
16 unit and they should be addressed?
17 A. Yes.
18 Q. The six folks that you've identified as respondents, your
19 title work indicated to you that they are the heirs?
20 A. Yes, it does.
21 Q. Have you been able to locate them or locate addresses for
22 these people?
23 A. No, we have not.
24 Q. Can I assume then that you did not mail anything to them?
25 A. That is correct.

1 Q. Was the notice simply by publication?
2 A. That is correct.
3 Q. What paper did you publish in?
4 A. We published in the Virginia Mountaineer and it was on
5 October 29th, 1992. Certification of that publication
6 was filed with Mr. Fulmer's office on November 9th, 1992.
7 Q. And the interest that is addressed by this application at
8 this point is set forth in Exhibit A, Page 2, correct?
9 A. That is correct.
10 Q. And it's what?
11 A. We're showing that we have 28.825 percent under the oil
12 and gas estate credited to this estate.
13 Q. To the Watkins collectively?
14 A. Yes.
15 MR. COUNTS: That's all I have.
16
17 (Witness stands aside.)
18 MR. CHAIRMAN: Mr. Swartz, on Exhibit B, number one you have
19 James E. Watkins listed and then on the application you
20 have James B. Watkins.
21 MR. WIRTH: It should be James E. Watkins. If it shows a B
22 it's a typographical error.
23 MR. CHAIRMAN: Okay. Also I'll notice that same comment could
24 be made about W-8. There's a discrepancy there.
25 MR. SWARTZ: Yes.
MR. MASON: Which is correct, B or E?

1 MR. SWARTZ: E as in Edward, right?
2 MR. WIRTH: That's correct. It should be James E. Watkins.
3 MR. CHAIRMAN: How was your notice published in the paper?
4 MR. WIRTH: James B.
5 MR. EVANS: For both this and the previous? James B. on both?
6 MR. SWARTZ: James B. was how it was published.
7 MR. WIRTH: Yeah, James B. on both.
8 MR. CHAIRMAN: Any recommendations, Mr. Swartz? Has James E.
9 Watkins been noticed?
10 MR. SWARTZ: Maybe, maybe not. I don't know.
11 MS. RIGGS: Was it published as an heir of or was it just
12 published in his individual capacity?
13 MR. WIRTH: No. It was published just as the notice you see
14 in the application. All they do is duplicate it in the
15 newspaper.
16 MR. SWARTZ: You mean the notice of hearing is what gets
17 printed. So exactly what you have is what was printed.
18 Because the Board would feel more comfortable, what I
19 would suggest is that -- or what I would request is that
20 the order be modified with regard to everyone except
21 James, that we republish for next month, and in the event
22 that James turns up we can address any questions he might
23 have. In the event he doesn't we can then modify the
24 order -- I don't think we should be drafting a ton of
25 these order, but we could then modify the order further

1 to add him.

2 MR. CHAIRMAN: Would it also be amendable to do that on Y?

3 MR. SWARTZ: We'd do it on both of them.

4 MR. CHAIRMAN: Both of them. Okay.

5 MR. SWARTZ: That way we could take care of everyone except
6 James today and then we could publish again as to James
7 with a different middle initial.

8 MR. CHAIRMAN: Any objections from the Board? Any comment?

9 MR. EVANS: You may want to structure that such that if James
10 does not come forward that the simple letter --

11 MR. SWARTZ: Well, filing a proof of publication.

12 MR. EVANS: Right. That should suffice so they don't have to
13 come back here again.

14 MR. SWARTZ: And what I think we will do is combine the notice
15 so that it's on both units when we publish it so that we
16 don't have to take up half a page to accomplish that.

17 MR. EVANS: That's fine.

18 MR. CHAIRMAN: Do I hear a motion?

19 MR. EVANS: I move that we accept the petition with the
20 the modifications as to James E. Watkins.

21 MR. MASON: Second.

22 MR. CHAIRMAN: We have a motion and a second. Any further
23 discussion? All in favor signify by saying yes. (ALL
24 AFFIRM.) All opposed? (NONE.) So carried.

25 MR. SWARTZ: Thank you very much.

1 MR. CHAIRMAN: Gentlemen, thank you for your attendance today.
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4 (End of Proceedings for
5 November 17, 1992.)
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2 CERTIFICATE
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4 COMMONWEALTH OF VIRGINIA

5 COUNTY OF WASHINGTON
6

7 I, Deborah J. Bise, Notary Public in and for the Common-
8 wealth of Virginia, at Large, do hereby certify that the
9 foregoing proceedings of the Virginia Gas and Oil Board
10 meeting held on November 17, 1992 in the Conference Room at
11 the 4-H Center, Abingdon, Virginia, were taken by me and that
12 the foregoing is a true and correct transcript of the proceed-
13 ings had as aforesaid to the best of my ability.

14 I further certify that I am not a relative, counsel, or
15 attorney for either party, or otherwise interested in the
16 outcome of this action.
17

18 GIVEN under my hand this 1st day of December, 1992.
19

20
21 DEBORAH J. BISE
22 NOTARY PUBLIC
23

24 My commission expires September 30, 1996.
25