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VIRGINIA GAS AND OIL CONSERVATION BOARD

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HEARING OF FEBRUARY 19, 1993

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9:00 A. M.

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IN THE CONFERENCE ROOM

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4-H CENTER

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ABINGDON, VIRGINIA

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February 16, 1993

This matter came on to be heard on this the 16th day of February, 1993 before the Virginia Gas and Oil Board in the Conference Center 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. WAMPLER: Good morning. My name is Benny Wampler. I'm Deputy Director for the Virginia Department of Mines, Minerals and Energy. I'll just ask our Board members today to introduce themselves starting with Kevin.
(MEMBERS INTRODUCED.)

ITEM I

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MR. CHAIRMAN: The first five items that we have were continued from January meeting. The first item on the agenda is docket number VGOB-92/12/15-0297. We'd ask all parties that wish to address the Board concerning this matter to come forward at this time.

MR. McQUIRE: Grant McQuire, attorney for Ashland Exploration, and Don Cunningham, a representative of Ashland Exploration.

MR. SWARTZ: Mark Swartz, Howard Salisbury, and Marty Wirth representing Georgia Pacific and Buchanan Production Company.

MR. CHAIRMAN: Grant, you may continue.

MR. McQUIRE: Board members, we are before you today to apply for a location exception. Ashland is proposing to drill three wells, those wells you can see on Exhibit C to the application. One of the wells is too close according to statewide spacing to an existing A-1 well and I will have Mr. Cunningham explain to you why Ashland was not able to move that well any further. I would like to swear Mr. Cunningham.

COURT REPORTER: (Swears witness.)

1 DON CUNNINGHAM

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

4
5 DIRECT EXAMINATION

6
7 BY MR. McQUIRE:

8 Q. State your name for the record.

9 A. Don Kenneth Cunningham.

10 Q. Who are you employed by?

11 A. Ashland Exploration.

12 Q. What is your job at Ashland Exploration?

13 A. I work in the civil engineering group and my job is to
14 over see the permitting of gas wells in West Virginia,
15 Kentucky and Virginia.

16 Q. What is your professional background?

17 A. I have a Bachelor's of Science from West Virginia State
18 College in architectural engineering. I'm a professional
19 land surveyor in the State of West Virginia.

20 Q. Who have you worked for prior to Ashland?

21 A. Mountaineer Gas. I was in business for myself for three
22 years and I worked twelve years for Wilkenson Surveying
23 & Engineering.

24 Q. And what were you doing on those jobs? What were your
25 job responsibilities?

1 A. At Wilkenson it was to over see the surveying and civil
2 engineering operations. At Mountaineer Gas I was
3 superintendent of civil engineering and I've already
4 stated Ashland.

5 Q. Are you familiar with the land surrounding and underlying
6 the proposed unit?

7 A. Yes, I am.

8 Q. Did you cause a notice and a copy of this application to
9 be sent to the parties required under the Virginia Gas
10 and Oil Act?

11 A. Yes.

12 Q. Did you receive green cards back representing the receipt
13 of that notice?

14 A. Yes.

15 MR. McQUIRE: I'd like to tender the green cards to the Board
16 right now.

17 Q. (Mr. McQuire continues.) Were efforts made to determine
18 the addresses of the interested parties?

19 A. Yes, they were.

20 Q. Are those addresses correct to the best of your know-
21 ledge?

22 A. Yes.

23 Q. Ashland has a lease in the area depicted on Exhibit B, is
24 that correct, to the application?

25 A. Yes, they do.

1 Q. And the proposed well A-3 is less than the minimum
2 distance from an existing well GPA-1, is that correct?

3 A. That's correct.

4 Q. Explain to the Board, if you would please, what efforts
5 you made to move it to the required distance and why you
6 were not able to.

7 A. GPA-3 is on an existing strip bench and where geology
8 had picked it whenever we went out and then we did the
9 surveying we found out that we were too close to GPA-1.
10 So we moved north up the strip bench and I had the
11 calculator with me, so I kept calculating how far I'd
12 have to move and seeing how far I could get away. We
13 got to a point where we moved it about 300 feet and then
14 I got as far as I could get -- as the strip bench kept
15 going I started getting closer because the contour of the
16 land put me closer to the A-1. So I moved it out as far
17 as what I could get it.

18 Q. The existing well A-1 lies 2,611.63 feet from the
19 proposed well A-3, is that right?

20 A. That's correct.

21 Q. And we're here asking for an exception location because
22 we are not 2,640 feet from that well, is that right?

23 A. Right.

24 Q. No field rules exist for this area to your knowledge, is
25 that right?

1 A. That's correct.

2 Q. And do you believe the proposed well is necessary to
3 efficiently drain the source of supply of the reservoir
4 underlying the unit?

5 A. Yes.

6 MR. SWARTZ: I'm going to object to that as without basis.
7 The man hasn't testified he's qualified to do anything
8 other than survey.

9 MR. CHAIRMAN: I agree. That object is sustained.

10 Q. (Mr. McQuire continues.) Let me go back and ask you -- I
11 ran through your qualifications. Tell the Board again
12 at your duties are at Ashland Exploration.

13 A. My duties are to over see permitting of the gas wells and
14 to get Ashland's Exploration's required distance between
15 wells properly -- what we feel properly drain our gas
16 field and to inner-relate with the land department about
17 titles. I'm basically in charge of over seeing that all
18 the work is done and received in order for us to be able
19 to actually drill the wells.

20 MR. McQUIRE: I'd like to offer Mr. Cunningham as an expert
21 in the area of not only land and title work and surveying
22 work, but also drainage and production work.

23 MR. CHAIRMAN: Any objection?

24 MR. SWARTZ: I haven't heard anything about his qualifications
25 with regard to drainage. I mean, I don't know if he

1 relies on what other people tell him or if he makes these
2 decisions as to drainage. I think that would be pertin-
3 ent.

4 Q. (Mr. McQuire continues.) Let me ask you, in the course
5 of your duties how do you become familiar with drainage
6 of an area?

7 A. Working with the reservoir engineering about -- each well
8 is taken on a case by case basis in which we calculate
9 how much reservoir we believe that we have so that we can
10 get the right amount of spacing on each well so that
11 we're not draining the same gas with two wells and where
12 we could actually do it with one. And basically then I
13 work with the geology department in determining where
14 they think the best opportunity to take out the most gas
15 is. Then I go out to the field to review it and see that
16 I can get the location at that closest spot.

17 Q. How long have you been doing this for Ashland Explora-
18 tion?

19 A. For two years.

20 MR. MCQUIRE: I'd still like to offer my person as an expert
21 in drainage. He has testified that part of his duties at
22 Ashland Exploration is to ascertain drainage.

23 MR. CHAIRMAN: The people that you mentioned, the reservoir
24 engineers, do they work under your supervision and
25 control?

1 THE WITNESS: No, they don't work under my supervision. We
2 work as kind of a team operation. We have a reservoir
3 engineering department. We have a production department.
4 We have a geology department. I'm with civil engineering
5 which under the same manager as the reservoir department.

6 MR. CHAIRMAN: Any objection?

7 MR. SWARTZ: Well, I've still got the same problem but I guess
8 we've got the testimony. I mean, he doesn't do this.

9 MR. EVANS: I still don't see where there's -- Mr. McQuire, I
10 think that your witness is qualified in the area of land,
11 but by his own admission they have reservoir engineers
12 that do the drainage.

13 MR. MCQUIRE: Well, I would offer that this person as part of
14 his job works with the reservoir engineers, is respons-
15 ible for the permitting and has emanate knowledge of
16 drainage of locations.

17 MR. MASON: In making the determination of the drainage do you
18 make those judgments or do you rely on someone else?

19 THE WITNESS: I do not make the judgement. That's up to the
20 reservoir engineering department. I work with them in
21 determining that judgement and then I have to clear -- I
22 go to the field and find the location and I get back
23 with them and then we run a study and then I get with the
24 geology department and we do the same thing. And then
25 that's how we come up with where we're going to drill.

1 MR. McQUIRE: Let me make this easier. Let me just withdraw
2 that question and then I won't need to talk to him about
3 drainage if that's the Board's pleasure.

4 MR. CHAIRMAN: Okay. Go ahead.

5

6

CROSS-EXAMINATION

7

8 BY MR. SWARTZ:

9 Q. Is there a unit around GPA-1 that's shown on Exhibit C to
10 your application?

11 A. A unit?

12 Q. Right.

13 A. No, there isn't.

14 Q. Is it a statewide unit?

15 MR. McQUIRE: Are we into cross-examination?

16 MR. CHAIRMAN: Were you finished?

17 MR. McQUIRE: I am finished. I just wanted to ask that.

18 MR. SWARTZ: Well, I'm not trying to help you do direct. I
19 thought you were done. This is cross as far as I am
20 concerned.

21 MR. McQUIRE: Okay. I am finished.

22 MR. CHAIRMAN: Continue. I thought you were and I had given
23 him the go ahead.

24 Q. (Mr. Swartz continues.) So you see what I'm talking
25 about, in the middle of Exhibit C which is attached to

1 your location exception application there is a GPA-1
2 well?

3 A. Right.

4 Q. And my question is is there a unit around that well and
5 if so, what is it's shape or size?

6 A. Yeah. There is no unit. It was the first well drilled.
7 I don't remember how old the well is, but it was the
8 first well drilled within it. It met spacing require-
9 ments.

10 Q. Do you know if it's a 500 foot statewide unit or what it
11 is?

12 A. As far as I know there is no unit. It was drilled before
13 any unit was needed.

14 Q. There's also a GPA-2. Do you see that?

15 A. GPA-2 was one that we proposed and we had conflicts with
16 the coal company so we did not apply for that location.

17 Q. What is the model that your -- you said that your
18 reservoir engineers communicated to you certain basic
19 requirements in terms of drainage?

20 A. Right. Uh-huh.

21 Q. What were they telling you they were looking at as a
22 drainage area, do you remember?

23 A. Basically the wells that they had spaced were -- they
24 were less than the state requirement. I think they were
25 somewhere -- about 2,200/2,300 feet was the spacing that

1 they had. After I looked on the ground that's whenever I
2 moved the GPA-3 trying to get away enough in order for it
3 to be acceptable for the permit.

4 Q. So your reservoir engineers were telling you that if you
5 could locate the wells 2,200 to 2,300 foot apart that
6 would be an appropriate spacing?

7 A. That that would be acceptable to them as far as drainage.

8 Q. And I take it that the reservoir engineers' goal would be
9 to space the wells in such a way as to drain all of the
10 gas out of the relevant formation?

11 A. Probably.

12 Q. So essentially what you're telling us is that the
13 reservoir engineers advice to you was to space these
14 units closer and make them smaller than what would be
15 required by statewide spacing?

16 A. The spacing that they gave me was a minimum spacing.
17 That is close as they wanted the wells together. The
18 terrain itself, they were looking at that. Because of
19 the terrain they didn't want it any closer. So I could
20 have gone more -- farther than what they had given me.
21 What they gave me is a minimum and then I go out and look
22 at the terrain and see where I can actually get the well
23 location and then I come back to them.

24 Q. Was the purpose of the minimum as you understood it to
25 communicate to you that if we located wells 2,200 to

1 2,300 feet apart we would then successfully drain all of
2 the gas out of the formation?

3 A. Possibly.

4 Q. And if we are not locating them 2,200 to 2,300 feet apart
5 but are putting them 2,600, 2,700, 2,800 feet apart it is
6 less likely that all the gas would be removed, is that
7 the other end of the spectrum?

8 A. No, not really. They give me a minimum that they want
9 these things closer to in order that we're not drilling
10 two wells when one well would do the job. So the 2,200
11 was a minimum spacing. But in some cases and just since
12 we have developed this area it's 3,000 feet apart. They
13 were just getting what they felt was the minimum that
14 they wanted me in that area.

15 Q. Well, was it your understanding that the reservoir
16 engineers opinion was that if the wells were closer than
17 2,200 to 2,300 feet there would be economic waste in the
18 sense that you were drilling too many wells? That their
19 drainage patterns would overlap?

20 A. Yes. That's a possibility.

21 Q. So if you're 2,200 to 2,300 feet apart their view was
22 that there is not economic waste, you're drilling the
23 right number of wells to drain the formation?

24 A. Correct.

25 Q. Would you agree that as you move these wells further than

1 2,200 to 2,300 feet apart and you get up around 2,600/-
2 2,700 feet that the optimum drainage to remove all of the
3 gas is less likely?

4 A. We don't know. That's the whole reason of drilling -- we
5 permit three wells. We drill one. In this case we've
6 drilled A-4 and A-5. And we wait on production data and
7 we see what kind of production it is and then we'll go in
8 and drill the A-3. We may find out that the spacing that
9 they gave me was correct. We may find out that we need
10 more spacing. But the terrain on the A-3 is going to try
11 to stop us from moving out any further anyway. The well
12 won't be economically feasible for the cause of location
13 to go any farther.

14 Q. Was your reservoir engineering department telling you in
15 essence that they felt that 100 units were appropriate
16 from an economic standpoint -- roughly 100 acre units?

17 A. Well, for the first two. Until you get in there and
18 drill an area you're not sure. But that was their
19 speculation.

20 Q. And these units are actually what, 126/130 acres?

21 A. Yeah. 126 acres.

22 Q. Is there any reason that you can offer to me as to why
23 these three units could not be developed or spaced on a
24 grid system? Just to give you an example --

25 MR. MCGLOTHLIN: Excuse me. Mr. Chairman, before Mr. Swartz

1 continues with this line of questioning I have one of Mr.
2 McQuire. We continued these because of a possibility of
3 notification.

4 MR. McQUIRE: We did and I should have said that earlier on.

5 We determined that there is a unit -- a voluntary unit
6 that does overlap the A-3 and the A-5 and that we did not
7 need to bring any more parties before us. They were
8 already parties to this. Columbia Natural Resources
9 showed us after we had made the filing -- two months
10 after we had made the filing -- a voluntary unit agree-
11 ment and I wanted to address the Board about that in our
12 force pooling because frankly we have circular units for
13 A-3 and A-5. We have a voluntary unit that encroaches
14 into the side of A-3 and A-5. We believe that it's
15 unfair to pay -- it's essentially SNR twice and we would
16 ask the Board to carve that out if the Board so desires.
17 If the Board does not then we will accept circular units.
18 But that's the problem that came up. And you asked me to
19 determine whether we would need to notify more parties.
20 We do not. And I think it had to do with the expert
21 testimony offered by Georgia Pacific, as to whether or
22 not it would stand for these proceedings. And I believe
23 you thought that if we needed more parties in here that
24 we would reserve the right to have more expert testimony.
25 We do not have anymore parties here, but we do have this

1 encroaching unit, for lack of a better word, that came to
2 our attention that I would like to bring up in the next
3 two hearings on the force pooling.

4 MR. SWARTZ: Well, it would seem to me if we have a unit that
5 encroaches on A-3 which is the unit we're currently
6 talking about for which they're seeking a location
7 exception that this would be the relevant time to address
8 how this proposed location exception impacts on a pre-
9 existing unit which it apparently overlaps. I think now
10 is when we ought to address that and I would like to see
11 a map. Do you have a map?

12 MR. McQUIRE: I have a map.

13 MR. MCGLOTHLIN: Thank you, Mr. Chairman. Before Mr. Swartz
14 brought in some evidence that was from the last hearing I
15 wanted that cleared up. Thank you.

16 MR. CHAIRMAN: Any other questions?

17 MR. McQUIRE: Let me offer this map into evidence. I will be
18 talking about it in the next two force pooling applica-
19 tions. (Pause.) This unit, just to enlighten you, is a
20 voluntary unit that came to our attention right before
21 last month's hearing. And we discovered that there was
22 an agreement in 1977 between Mountain Mission School,
23 Buchanan Realty and Columbia Gas Transmission which later
24 assigned its interest to CNR creating a voluntary unit.
25 And because of that problem we asked this Board to

1 continue to see if we needed to bring in additional
2 parties. We determined because Mountain Mission and
3 Buchanan Realty and CNR were already parties that we did
4 not and we notified Mountain Mission and Buchanan Realty
5 and CNR of our discovery of the unit and that we may need
6 to ask the Board to carve that portion of the circle out
7 because there was an existing voluntary unit. We've had
8 no response from them and they are not here today.

9 MR. KELLY: Mr. McQuire, do you know where the well is, the
10 CNR well that this unit involves?

11 MR. McQUIRE: Let me introduce another map and I will say,
12 this was attached to the voluntary unit agreement. The
13 problem with the voluntary unit agreement is that it did
14 not have a meets and bounds description and we haven't
15 been able to plot with, I guess, terrible accuracy the
16 voluntary unit because it lacks a meets and bounds
17 description. We do know that it exists because we have
18 gotten a copy of the voluntary unit agreement.

19 Q. (Mr. Swartz continues.) What formation is this producing
20 out of, Mr. Cunningham? Do you know? Is it also the
21 Devonian?

22 A. I'm not sure. I never saw the feature report. I don't
23 know exactly how deep they went on it.

24 MR. MCGLOTHLIN: Mr. McQuire, when was this well drilled?

25 MR. McQUIRE: I don't have any information on that. You're

1 talking about the one on the voluntary unit?

2 MR. MCGLOTHLIN: Yes, sir.

3 MR. McQUIRE: I don't have any information on that and we have
4 requested information and I just haven't been able to get
5 it from CNR.

6 THE WITNESS: I'm thinking it's somewhere around 1979. I
7 think I think I remember seeing something.

8 MR. McQUIRE: I will say that we have had permit hearings on
9 all three of these wells. CNR was a party to the permit
10 hearing and never at any time during December when we had
11 the permit hearings did they inform us of this voluntary
12 unit. We found out about it right before the January
13 hearings and it came as a surprise to Ashland. I also
14 ascertain through my conversations with the gas and oil
15 agency here that the Board has come down different ways
16 on this matter in the past, that it has carved out
17 encroaching unit, and it has overlapped units and I
18 frankly don't know what the Board's pleasure is. It's
19 Ashland's feeling that it would be unfair to pay CNR
20 twice by having them in both units, but if this Board
21 feels that overlapping units are more proper then that's
22 up to the Board. As I said, this is a voluntary unit
23 that has not come before the Board. It didn't to my
24 knowledge have any reason to come before the Board
25 because it was voluntary.

1 MR. EVANS: This particular well?
2 MR. McQUIRE: Yes.
3 MR. EVANS: A conventional well to what formation?
4 MR. McQUIRE: Conventional and we are not sure what formation.
5 THE WITNESS: Supposedly it was from what we I understand to
6 be a Devonian well, but I never saw a completion report
7 or anything on it. So I'm not sure.
8 MR. EVANS: And the A-3 well is going to be the same?
9 THE WITNESS: It's going to be a Devonian well.
10 MR. KELLY: No Burea in this area? I believe you said from
11 the last hearing there's no Burea here.
12 MR. McQUIRE: No, I did not say that.
13 MR. KELLY: Do you recall?
14 MR. McQUIRE: Don, do you know?
15 THE WITNESS: When we drilled A-5 I know we hit something
16 other than Devonian. I think it was Burea but I'm not
17 sure. It showed up on the logs.
18 MR. KELLY: It just appears that Columbia has taken parts of a
19 couple of tracts here and mined them -- just used the
20 lease boundaries to form the unit.
21 THE WITNESS: That's correct.
22 MR. KELLY: And they're paying royalty to that entire area
23 from that well.
24 THE WITNESS: Right.
25 MR. KELLY: It also appears, although you can't confirm it

1 from this information, that the CNR well is beyond the
2 minimum spacing from your proposed well. But again, you
3 can't really confirm that from this.

4 MR. McQUIRE: It appears that way to me as well. And we've
5 had no objection from CNR or Buchanan Realty or Mountain
6 Mission as to spacing. We've frankly have trouble
7 communicating. It's not because they're not friendly.
8 It's just having trouble getting information.

9 MR. KELLY: Maybe I'm missing something here, but it appears
10 to me that there would be no real need to carve out this
11 piece of that unit. You'll be paying additional royalt-
12 ies to Buchanan Realty. But this voluntary unit is
13 certainly big enough to support more than the well is
14 built on. So I'm not sure that I would have a problem
15 with including that portion in your circle.

16 MR. CHAIRMAN: The problem I have is that you don't have the
17 exact information before us.

18 MR. KELLY: I agree with that.

19 MR. CHAIRMAN: I think burden is on the applicant to identify
20 the existing wells -- permitted wells in the area and to
21 testify as to drainage in order for the Board to consider
22 any exceptions. So far I haven't heard any of that.

23 MR. McQUIRE: And I'm afraid I can't offer you more today than
24 what I've offered you.

25 MR. CHAIRMAN: Anything else?

1 MR. EVANS: In looking at where the A-3 well is supposedly
2 going to be located, you stated that you couldn't go
3 around the strip bench any further because you would be
4 coming back to the A-1 well?

5 THE WITNESS: Right.

6 MR. EVANS: Could you not go down the hill closer to Knox
7 Creek? What are the topographic constraints that we're
8 talking about here? I see contour lines that are going
9 to be fairly close together.

10 THE WITNESS: Those are 200 foot contour lines.

11 MR. EVANS: That's what I said, they're going to be fairly
12 close together. I understand. But I still don't see why
13 that well has to be located there. Why not move it down
14 across from Bee Branch?

15 THE WITNESS: Well, actually we have another location, the
16 GPA-2, and Ray Fork Coal Company has --

17 MR. McQUIRE: Exhibit C to the application.

18 THE WITNESS: Ray Fork Coal Company has a dike that they
19 didn't want us to cross right now. So we were hoping to
20 leave that location in order to get another location in
21 there and that's why we --

22 MR. EVANS: Wait a minute. You lost me there. You were
23 hoping to leave which location, the A-2 location?

24 THE WITNESS: Yeah, the A-2 location. The only possibility
25 that we may have, it's pretty steep from the bench to the

1 creek and actually the bench that it's on is really the
2 only access into the property. And, of course, you know
3 it was made by strip mining. So as far as the terrain
4 and everything to make it economically feasible for us
5 that was the area in which we proposed the location.

6 MR. EVANS: From what I have in front of me I take it if you
7 had a topo with all the contour lines on it that would be
8 extremely beneficial as far as substantiating what
9 you're telling me.

10 THE WITNESS: Well, the strip bench that goes out through
11 there, it narrows quite a bit in there because of the
12 terrain getting steeper as you're going to the north --
13 kind of towards the northeast. And because of the way
14 the terrain gets I guess that's why they only went up
15 there so far for the coal. But as far as location wise
16 and what it would cost to construct the location that's
17 where it is. Actually these things were moved around in
18 order to provide for the cost of the locations as well as
19 everything else.

20 MR. KELLY: So it's not possible to move this A-3 30 more feet
21 to the north, sort of parallel to this 1,400 foot
22 contour?

23 THE WITNESS: We would have to go on top of the strip bench
24 and that's pretty steep.

25 MR. KELLY: Where it is right here you can't move it this way

1 30 more feet?

2 THE WITNESS: Move it towards the hollow?

3 MR. KELLY: Parallel that contour line? The contour line is

4 just above the location?

5 THE WITNESS: Right. It drops off the bench. If I'd go 30

6 feet -- the bench is approximately 35 feet wide and

7 we've --

8 MR. KELLY: Your bench doesn't parallel the contour lines?

9 THE WITNESS: Pardon?

10 MR. MASON: Your bench doesn't parallel the contour line?

11 THE WITNESS: Yes, it does. It kind of parallels the contour

12 line.

13 MR. KELLY: What I'm asking is why can't you parallel this

14 contour line right here in this direction 30 more feet

15 this way? The bench doesn't go there?

16 THE WITNESS: Well, that's the area where I was telling you

17 where it narrowed down and it drops off.

18 MR. KELLY: So it is there but it narrows?

19 THE WITNESS: Yes. That's why we took the survey crew back

20 out there. We tried to get this distance. And I took

21 Brad Simons out there with me and showed him the loca-

22 tion.

23 MR. MCGLOTHLIN: What's the height of the high wall?

24 THE WITNESS: It kind of varies. I'd say -- it's been so long

25 since I've been out there now. I'm not sure. I'd hate

1 to even tell you. I've been on so many locations since
2 this one.

3 MR. KELLY: You're saying with the existing width of the high
4 wall you could put the location here -- or of the bench,
5 you could put the location here without having to
6 excavate more high wall or create more bench?

7 THE WITNESS: Right. Uh-huh. See, the location that they
8 built is 60 feet wide. So we're going to be cutting back
9 into that as much as we can anyway in order to get the
10 width of the location.

11 MR. KELLY: You make it clear that this bench ends right --

12 THE WITNESS: Now, it doesn't end. It just narrows quite a
13 bit as it goes on out. This is an old, old strip bench
14 and pretty rough terrain. It doesn't look to me like it
15 was - it looks to me like it was naturally reclaimed.
16 Just whatever seeds came up that's what came up and
17 that's the way that is through there. What we did was we
18 traversed from the point that I had, 300 feet back -- we
19 traversed around through there and took the calculator
20 and kept calculating where we were in relation. We
21 looked over the hill to see if we could put it over the
22 hill in order to keep from coming to an exception
23 hearing.

24 MR. EVANS: Did you walk the rest of that bench on out?

25 THE WITNESS: We walked on up another 200 feet but it just got

1 so narrow and rough through there that --

2 MR. EVANS: What's the scale on this map?

3 THE WITNESS: 1,000.

4 MR. EVANS: So you walked up another 200 feet?

5 THE WITNESS: Right.

6 MR. EVANS: It appears to me that if you would have walked

7 another 600 or 700 feet that the contour lines from this,

8 it appears that there's a point that that bench -- do you

9 see what I'm talking about?

10 THE WITNESS: Uh-huh.

11 MR. EVANS: Did you go out there and look?

12 THE WITNESS: It got so rough where we were with the rock that

13 came off the hill and everything that the field who gives

14 me the estimates on locations felt that it would be too

15 expensive to build a location on out.

16 MR. EVANS: I assume you came up this little branch here.

17 Where is the access road on this?

18 THE WITNESS: It comes up from -- you come up Deadening Branch

19 and past the GPA-5 and that strip goes all the way out to

20 the GPA-3. That's how they hauled coal out.

21 MR. EVANS: I guess what I'm asking is there a backside entry

22 to that?

23 THE WITNESS: The U.S.G.S. map shows the strip ending. I

24 didn't walk it all the way there to the end because it

25 did go up quite a bit.

1 MR. EVANS: Well, that's what I was getting at. This topo
2 really doesn't show me what it is and my question was --
3 it looks like there's a wide spot out there.

4 THE WITNESS: Uh-huh. It's just getting out to that wide
5 spot. And I don't know, there may be a wide spot out
6 there but that's another 600 or 700 feet away from the
7 other locations. But that may not pose a problem to the
8 A-2 because I think there is quite a bit of distance
9 there. We just felt that the way that the bench turned
10 and the location started coming back -- of course, like
11 you're saying, we could go around probably -- maybe --
12 and get up through there, but the cost that it would take
13 for us to get the additional length in there was more
14 than asking the 30 feet for the exception.

15 MR. EVANS: That was just a --

16 THE WITNESS: Right. I understand. I'm open to any ideas.

17 MR. EVANS: Never having been to the site I can't offer one.

18 MR. MASON: If you move this unit to the north, based on the
19 shape of this Mountain Mission School's portions would it
20 not actually increase the percentage of unleased acreage
21 in the unit if you did that?

22 THE WITNESS: Yeah. If you move it to the north, what he was
23 talking, along that bench then it would probably -- I'm
24 not sure. It's so close.

25 MR. WIRTH: Yes, it would.

1 MR. MCGLOTHLIN: The physical location again, you say the
2 bench narrows as it comes to the point. It seems to me
3 that the excavation of that point would not be that
4 difficult unless -- can you tell me why that seems to be
5 more difficult?

6 THE WITNESS: Well, like I said, it was an old bench before
7 reclamation and it's not a flat bench as you go on out.
8 It's just where spills and everything have just been
9 there. It just adds up as you build a location and
10 you're going on out through there. I'm not saying that's
11 not possible. I'm saying that the field people who gave
12 me the cost of the location felt that economically that
13 they couldn't build it.

14 MR. MCGLOTHLIN: What is the cost of this location?

15 THE WITNESS: Uh --

16 MR. EVANS: Mr. McGlothlin, if I might add, what is the
17 differential cost for going 30 more feet? Do you have
18 that?

19 THE WITNESS: I'm not sure because they gave me -- they want a
20 60 by 120 foot location. And because the thing narrows
21 like that we have to cut more back into the hill which
22 was going to add quite a few more days involved. I think
23 the well was figured on a \$4,000 location cost as far as
24 economics and everything.

25 MR. EVANS: Well, that still doesn't answer my question.

1 THE WITNESS: I'd have to get somebody from the field. I just
2 can't answer your question because I don't know what --

3 MR. MCGLOTHLIN: I feel that Ashland is not presenting enough
4 evidence to hear this case. We don't know where the
5 strip bench ends. We don't know what the cost of it is
6 or what the difference is. We don't know exactly where
7 the access road is going to go.

8 THE WITNESS: The access road to the location?

9 MR. MCGLOTHLIN: Yes, sir.

10 THE WITNESS: Yeah. The access road will be along the bench.

11 MR. MCGLOTHLIN: It's not on any of the exhibits.

12 THE WITNESS: It's on the permit application.

13 MR. MCGLOTHLIN: And you're unsure of the well -- the previous
14 well from CNR. You don't know the exact location of it.
15 I think we need some more information before we can
16 decide on this well -- A-3.

17 MR. CHAIRMAN: Is that a motion?

18 MR. MCGLOTHLIN: Yes, sir. I make that a motion.

19 MR. CHAIRMAN: Are you making a motion to deny the
20 application?

21 MR. MCGLOTHLIN: Yes, sir, until more evidence is presented
22 to give the Board a better understanding of this well.

23 MR. McQUIRE: I wonder if we might be permitted to present
24 that evidence that you requested at next month's hearing?

25 MR. MCGLOTHLIN: Well, you've continued this once.

1 MR. McQUIRE: We have and that was because of this new
2 information that came up.

3 MR. MASON: I don't think it's a problem to continue it. The
4 goal of the Board is to solicit additional information.
5 I don't see there's any purpose served by denying it. If
6 that's what we want we ought to afford them an opportuni-
7 ty to do it in the most expeditious fashion possible. I
8 think that it might be helpful to be pretty specific
9 about some of the things that we would like to know as
10 Mr. McGlothlin has listed. I think Mr. Evans indicated
11 -- one of his questions seemed to be directed toward is
12 there access to this location perhaps from the north? Is
13 that correct?

14 MR. EVANS: Yeah.

15 MR. MASON: I think additional information about the well in
16 this voluntary pooling tract, where it is, what forma-
17 tions it produces from. Things like that would be
18 helpful to us in determining the impact of all this. And
19 some information that Mr. McGlothlin discussed relative
20 to a more further evaluation of why this particular
21 location is necessary as opposed to moving the location
22 to the north in terms of -- the factors involved in
23 making that decision. I mean, you indicate generally
24 that it would be more costly, but we don't have any real
25 factual data to support that. I feel like what you're

1 asking us to do is that we don't have sufficient factual
2 data to make an informed decision.

3 MR. CHAIRMAN: Of course, we also have as part of the Georgia
4 Pacific objection requesting the Board to defer action on
5 this application and then direct Ashland to petition the
6 Board to establish field rules for the development of the
7 Devonian Shell pool or provisional rules for that.

8 MR. McQUIRE: May I respond to that?

9 MR. CHAIRMAN: Yes, sir.

10 MR. McQUIRE: Ashland would be opposed to spending the time
11 and money involved in getting field rules. If it's the
12 Board's pleasure -- I'm not aware of the Board ever
13 directing any party. Maybe I've missed something. I've
14 seen the Board on it's own motion look into field rules.
15 I have seen interested parties -- I believe that's the
16 way the statute reads. Interested parties who want field
17 rules because it would affect them. I've seen them come
18 forward and ask and have field rules established. But I
19 don't know of any situation where a party has been
20 directed against his wishes to submit field rules.

21 MR. CHAIRMAN: The reason I brought it up is because I just
22 suspect that based upon the objection that we're going to
23 hear that same objection regardless of what you bring
24 back next time.

25 MR. SWARTZ: The problem I have and I am not at all sympathet-

1 ic to the assertion that they don't want to spend the
2 time and money to develop provisional field rules or
3 field rules for this area. We can see on the maps that
4 we have that there are five wells under consideration and
5 there's this one in this unit which we don't have a very
6 clear understanding of. I mean, there must be enough
7 information out there for them to commit to spend over a
8 million dollars drilling wells -- to spend that kind of
9 money. And provisional field rules on some kind of a
10 grid system -- for example, the grids that we offered
11 last time when we were here when Grant needed a continu-
12 ance but I had a witness here, those grids fit over
13 these wells and they wouldn't need a location exception.
14 They could drill this well where it is. I think that the
15 Board needs to seriously consider either on it's own
16 motion or directing Ashland to come back with a provis-
17 ional field rules proposal. I think that when you're
18 talking about correlative rights and you can see in the
19 one well that we're talking about, the A-3, if you move
20 that thing north or east what you do with the voluntary
21 unit, if you carve it out or carve it in -- I mean, some
22 of the maps they've given you today show that Georgia
23 Pacific's interest changes by ten percent plus or minus
24 in the unit depending on how you deal with that volunt-
25 ary unit. These are correlative rights issues, drainage

1 issues, economic waste issues. There are obviously
2 enough wells proposed just by Ashland in this area to --
3 it would seem to me to be prudent for the Board to
4 suggest very strongly to them, if you don't want to set
5 on your own motion, that when they come back they ought
6 to have some kind of provisional proposal that at least
7 takes into account the wells that are immediately in this
8 area. I mean, there may be other wells we haven't heard
9 about yet that are near by in other units. And I think
10 that the Pilgrim's Knob thing is an example of where the
11 Board essentially told the parties, as I recall what
12 happened there, you come to us, people who are developing
13 this area, we're setting it on our own motion but you all
14 come to us and make some proposals that will apply in a
15 uniform basis. So if they're going to come back I think
16 in fairness to them, because you're going to hear this
17 from me again, if this is of interest to the Board to
18 look into a global solution as compared to a piece meal
19 solution. I think that this would be an appropriate time
20 to address that and let them know what your pleasure is
21 in that regard.

22 MR. MASON: If it would be appropriate I would like to ask
23 Ashland a couple of questions that's sort of directed to
24 that, if I may.

25 MR. CHAIRMAN: Sure.

1 MR. MASON: How much acreage do you all have in this area
2 under lease?

3 THE WITNESS: All that I'm working on is just 269 acres.
4 That's all that I know that we have.

5 MR. MASON: You're talking about three wells on here. What's
6 the scope of your drilling, just these three wells in
7 this area?

8 THE WITNESS: That's correct.

9 MR. MASON: You don't have any plans in this immediate area
10 for any other wells?

11 THE WITNESS: No.

12 MR. EVANS: I thought you said A-2?

13 THE WITNESS: Well, I don't know how many years down the road
14 that is.

15 MR. MASON: Is that on the same lease?

16 THE WITNESS: Yes. And that's all depending on how well A-4
17 and A-5 goes.

18 MR. MASON: Do you know whether any other parties have leases
19 in this area that there are any active programs on?

20 THE WITNESS: No. I know OXY has some acreage close by, but I
21 don't know of them permitting anything.

22 MR. MASON: Mr. Fulmer, do you know of any other activity in
23 this area?

24 MR. FULMER: Well, in this immediate area we've had an
25 independent out of Kentucky drill a couple of wells on

1 Elijah -- I can't think of the last name -- the Elijah
2 Bledso property, I think.

3 MR. MASON: Say within a tract of 1,120 acres in the area is
4 there much?

5 MR. FULMER: That particular tract that this person drilled on
6 I think was somewhere around 600 acres plus or minus.
7 This particular area is not heavily drilled. It's right
8 in between some Columbia acreage to the north and
9 Columbia acreage to the south.

10 MR. MASON: Thank you.

11 MR. CHAIRMAN: Well, I certainly think and I alluded to it in
12 earlier questioning -- or a statement about what not was
13 before us. I think that the applicant bears the burden
14 to show the Board the field in which it's making decis-
15 ions, particularly with something like spacing exceptions
16 that you would need to go that radius at a minimum -- the
17 minimum statewide spacing beyond the well that you're
18 trying to get an exception to to see what else is out
19 there. I think it's impossible for us to make any kind
20 of decision without having that kind of information. And
21 I think knowing the objection that you're facing it's
22 prudent to try to get together and come to some term as
23 to what may resolve the issues that you have before the
24 Board. To the extent we go beyond that we're willing, I
25 think, as a Board probably just to deal with whatever

1 comes before us as it comes up next time. Okay. I had a
2 motion and then we had further discussion --

3 MR. McQUIRE: Was the motion to continue it over and allow us
4 to present evidence?

5 MR. CHAIRMAN: We still really haven't firmly stated the
6 motion.

7 MR. MASON: I think it was a motion and lack of a second.

8 MR. CHAIRMAN: I think the chair was putting some words maybe
9 in the person making the motions mouth that they didn't
10 intend. So we'll just dispense of that and the chair is
11 open for any motion.

12 MR. McGLOTHLIN: I move that we dismiss this application as
13 filed.

14 MR. CHAIRMAN: We have a motion to dismiss the application.
15 (Pause.) The motion dies for lack of a second. Another
16 motion?

17 MR. EVANS: Mr. Chairman, I'd like to make a motion that we
18 allow Ashland Exploration to provide sufficient informa-
19 tion to allow us to make a decision in this. I'd just as
20 soon continue it until the next docket.

21 MR. CHAIRMAN: A motion to continue.

22 MR. McGLOTHLIN: Second.

23 MR. CHAIRMAN: A motion to continue and a second. Further
24 discussion?

25 MR. KELLY: Would you want to be more specific as Mr. Mason

1 said earlier as far as the title of information we would
2 like to see or at least give them some guidelines as far
3 as what we need to make a decision?

4 MR. McQUIRE: I believe I have a list and I believe I can
5 satisfy you -- I feel confident I can. I've been taking
6 notes of your wishes.

7 MR. CHAIRMAN: Is that satisfactory? Okay. Further
8 discussion? If not, all in favor signify by saying yes.
9 (ALL AFFIRM.) Opposed say no. (NONE.) It's unanimous.
10 It's continued to next hearing.

ITEMS II, III, IV

1
2
3 MR. CHAIRMAN: The next three agenda items the Board heard
4 testimony from Buchanan Production Company in support of
5 their request to have field rules established in the area
6 proposed by Ashland for drilling and operation of
7 following units. The second item on today's agenda is
8 VGOB-92/12/15-0298. We would ask the parties that wish
9 to address the Board to come forward at this time.

10 MR. McQUIRE: Ashland Exploration. Grant McQuire as counsel
11 and Don K. Cunningham as representative.

12 MR. SWARTZ: Mark Swartz and Howard Salisbury on behalf of
13 Georgia Pacific, Buchanan Production, and OXY, USA.
14 Marty Wirth is here on behalf of Buchanan Production and
15 OXY, USA.

16 MR. CHAIRMAN: Mr. McQuire, you may continue.

17 MR. McQUIRE: Board members, let me paraphrase what I'm going
18 to say by the information that came up in our last hearing
19 on a well location exception. It came to Ashland's
20 attention a few days prior to the hearing in January that
21 there was a voluntary unit that encroached into the ones
22 that we proposed. I guess another way of looking at is
23 our units encroached into their units. But they do
24 appear to overlap. You've heard testimony this morning
25 that we don't have as much information as we would like

1 to have about the voluntary unit and it's not been
2 through lack of effort. We found out about this volunt-
3 ary unit months after we had applied for our well permit
4 and had received no objection from the parties in the
5 voluntary unit or any indication that one existed. And
6 we found out about it through CNR prior to the last
7 hearing. As we have stated in the last hearing, it would
8 be Ashland's suggestion that we carve out the encroaching
9 unit, but if it's the Board's pleasure that they overlap
10 then Ashland is willing to let them overlap. Because of
11 lack of a description of the property in the voluntary
12 unit it's difficult for us to plot it and we do not have
13 the well located on the map that we have given you
14 because we've been unable to determine exactly where it
15 is. Knowing that, I would like to move forward with the
16 application. I don't know what the Board's pleasure will
17 be with regard to A-3 and A-5, whether the Board is
18 willing to carve out, whether the Board is willing to
19 overlap, or whether the Board wants Ashland Exploration
20 to come back with the type of information that it
21 requested of Ashland in the last hearing.

22 MR. SWARTZ: Do you mind if I -- I'm not going to argue. I'm
23 just going to point something out. If you overlap or
24 don't overlap -- if you look at Exhibit B to the applica-
25 tion, the pooling application for GPA-3 and then you look

1 at this map that you gave you last time Georgia Pacific's
2 interest in A-3 goes up by ten percent if you don't
3 overlap and that's a significant change. In A-5 it goes
4 up roughly ten percent. I think that these kinds of
5 changes demonstrate the appropriateness of a grid system.
6 I mean, you just overlay it. It falls where it falls.
7 100 percent of the acreage is covered. There's no
8 islands. There's no gaps. I think Grant is suggesting
9 to you you can do whatever you want and he's right, but I
10 think that you can that there are significant fluctua-
11 tions in royalty interests and/or working interests
12 obviously since the working interest appears to be all
13 theirs since they have it all leased. But there are
14 significant royalty impacts when you start moving this
15 stuff around and carving it in and out.

16 MR. McQUIRE: I am prepared to proceed with A-3 and putting
17 the information in. Would the Board prefer to stop me
18 for any reason based upon what you've heard today?

19 MR. CHAIRMAN: Well, if we're not going to be able to go into
20 the same -- it's similar type questions. I would think
21 that it would be prudent for us to consider continuing
22 these till next hearing and let you come in because
23 they're all intertwined.

24 MR. McQUIRE: It is true with A-3 and A-5 that there is a
25 relationship because we don't have the information that

1 we would like to have with regard to that voluntary
2 unit.

3 MR. SWARTZ: Well, the other problem you're going to have, is
4 this your only witness?

5 MR. McQUIRE: That's the only witness I have today.

6 MR. SWARTZ: You're going to have all kinds of problems with
7 A-4 too because we're going to be talking about drainage,
8 economics. You can do whatever you like. I just want to
9 warn you that you're going to hear the same thing from me
10 again.

11 MR. McQUIRE: It would seem to me based upon what I know the
12 Board is wanting from me in our last hearing that we
13 should continue these three, too.

14 MR. CHAIRMAN: I think that that's prudent because we're going
15 to save everyone time and there's no point in --

16 MR. SWARTZ: Could Mr. Wirth say something?

17 MR. WIRTH: What the Board -- they keep dancing around the
18 issues. We create island acreage with circles. Well,
19 remember the Pilgrim's Knob and circle/square theory.
20 You're cutting out their own lessors. Nobody can drill a
21 well in these things. You have wasted economic physical
22 correlative rights which you have the power -- I can give
23 them more information on this unit. They've excluded all
24 of my acreage in the CNR unit but they're just going to
25 my acreage (Inaudible.) So you just take those deeds and

1 that would give you a description of the unit. This is
2 what correlative rights is. They've excluded everybody
3 that has a lease different than theirs. And as Mark
4 pointed out, you start moving circles around in the
5 Appalachia area where it's not just perfectly square or
6 rectangle townships and range you start getting --
7 private individuals start getting left out and he has no
8 way to develop his acreage. So this is the main consid-
9 eration really I think the Board strongly needs to take
10 under advisement.

11 MR. CHAIRMAN: Any further discussion?

12 MR. MCGLOTHLIN: I make a motion that we continue the items in
13 question. I would also like to bring to Mr. McQuire's
14 attention that I notice in your AFEs on these that -- I'm
15 going to have some questions on those. If you don't have
16 somebody who can answer them you might want to have them
17 here next time.

18 MR. CHAIRMAN: We have a motion to continue VGOB-92/12/15-
19 0298, 0299 and 0300.

20 MR. EVANS: Second.

21 MR. CHAIRMAN: Any further discussion? All in favor signify
22 by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
23 They are continued. Let's take a ten minute break.

24 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)
25

1 ITEM V

2
3 MR. CHAIRMAN: The next item on the agenda is Item V and this
4 is docket number VGOB-92/12/-15-0314. Virginia Gas
5 Company has petitioned the Board for establishing a
6 conventional gas pool unit designated as EH-144. We
7 would ask the parties that wish to address the Board to
8 come forward at this time.

9 MR. MULLINS: If it pleases the Board, my name is Tom Mullins
10 and I represent Virginia Gas Company. Also appearing on
11 behalf of Virginia Gas Company is Mr. David Street and we
12 have Mr. James Rasnake as a witness. I have a revised
13 exhibit for the Board that I'll hand out at this time.
14 At the last set of hearings I think the Board asked that
15 the cost of participation be included in a breakdown. So
16 we have done that in this. I'd like to call Mr. James
17 Rasnake as a witness, please.

18 COURT REPORTER: (Swears witness.)
19

20 JAMES RASNAKE

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

DIRECT EXAMINATION

3 BY MR. MULLINS:

4 Q. Sir, if you would please state your name?

5 A. James Rasnake.

6 Q. And what do you do for a living?

7 A. I'm land manager for Virginia Gas Company.

8 Q. Your duties as land manager, what does that entail? What
9 do you do?

10 A. I'm charged with lease acquisition, lease management,
11 well locations, right-of-way acquisition, supervision of
12 surveying crews and title examination.

13 Q. Have you testified before this Board on prior occasions
14 as an expert witness?

15 A. Yes, I have.

16 Q. Has your testimony been accepted by the Board as an
17 expert witness?

18 A. Yes, it has.

19 MR. MULLINS: At this time, Mr. Chairman, I'd like to ask that
20 he be recognized as an expert witness for the pending
21 application.

22 MR. CHAIRMAN: Any objections? You may continue.

23 Q. (Mr. Mullins continues.) Sir, if I could, I'd like to
24 direct your attention to unit EH-114. Are you familiar
25 with the application filed by Virginia Gas concerning

1 this unit?

2 A. Yes, I am.

3 Q. Are you seeking to force pool the interests in unit EH-
4 114 identified by the plat filed as part of the applica-
5 tion?

6 A. Yes.

7 Q. Has notice been sent to the interested parties by
8 certified mail, return receipt requested?

9 A. Yes, it has.

10 Q. And have copies of the certified mail cards been filed
11 with the Board?

12 A. Yes.

13 Q. What is the size of this unit?

14 A. It's a circular unit comprising 125.66 acres.

15 Q. How much of the unit is leased and how much is outstand-
16 ing?

17 A. Leased to Virginia Gas Company is 31.44 percent and
18 unleased is 68.55 percent.

19 Q. What are Virginia Gas Company's interests?

20 A. We have under lease the James Belcher heirs.

21 Q. Is there any person identified on your amended Exhibit C
22 that you want to dismiss as having been leased since
23 filing your application?

24 A. No.

25 Q. Who owns the drilling rights of this particular unit?

1 A. Virginia Gas Company.

2 Q. Is this a conventional gas well?

3 A. Yes, it is.

4 Q. What formation are you asking the Board to force pool
5 today?

6 A. We're asking the Board to force pool the Burea formation,
7 the Weir, Max and Big Lime, Devonian Shell and Raven
8 Cliff.

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

10 A. 4,600 feet.

11 Q. Have you attempted to contact each party concerning an
12 agreement prior to filing the application?

13 A. Yes, we have.

14 Q. What were the results of your efforts and what did you
15 do?

16 A. Our efforts to lease these parties, all parties were
17 contacts, leases were offered with a royalty rate of
18 one-eighth per acre, \$5 per acre and a five year term.

19 Q. And as an exhibit to the application there's a list
20 naming the parties not leased, is that correct?

21 A. Yes, it is.

22 Q. And we've handed out to the Board today a revised Exhibit
23 C. Is that the --

24 A. Those are the parties that have been leased.

25 Q. And as far as the original Exhibit C, you're withdrawing

1 that at this time?

2 A. Yes, sir.

3 Q. And the Board will recall the reason for this. I think
4 the Board asked us to provide per person breakdown for
5 the parties being forced pooled. So that's what we've
6 done. Was due diligence used to locate each of the
7 parties?

8 A. Yes, it was.

9 Q. Whose interest and drilling rights are you asking the
10 Board to force pool today?

11 A. Those parties listed on Exhibit C.

12 Q. That's the revised Exhibit C?

13 A. Revised Exhibit C.

14 Q. Are you asking that Virginia Gas Company be named as the
15 drilling operator in unit EH-114?

16 A. Yes, we are.

17 Q. Has an AFE been prepared?

18 A. Yes, it has.

19 Q. Was it prepared by someone who is knowledgeable in the
20 costs and operations of wells of this type?

21 A. Yes, it was.

22 Q. Are you familiar with the AFE?

23 A. Yes, I am.

24 Q. Was it filed as part of the application?

25 A. Yes. It's filed as Exhibit F to the application.

1 Q. Based upon your experience in the gas industry is this a
2 reasonable AFE for the proposed type of well being
3 drilled?

4 A. Yes, it is.

5 Q. Does any amount need to be escrowed by the Board?

6 A. Yes. That percentage is 1.15 percent. It represents the
7 Lewis Elswick heirs.

8 Q. And that's identified on the plat, the Lewis Elswick
9 heirs interest?

10 A. Right.

11 Q. What's the estimated production over the life of the
12 well?

13 A. .5 BCF.

14 Q. And does Virginia Gas have a blanket bond to cover the
15 plugging and reclamation costs?

16 A. Yes, it does.

17 Q. Is there anything else that you would like to offer to
18 the Board that you feel like the Board needs to be aware
19 of concerning this well?

20 A. No, not that I'm aware of.

21 MR. EVANS: One little question. How much do you have under
22 lease?

23 THE WITNESS: 31.44 percent.

24 MR. EVANS: I'm reading from the force pool on the applica-
25 tion. Applicant currently has under lease 34.58 percent?

1 THE WITNESS: At the time of our application we were working
2 with Columbia Natural Resources on three -- I think it
3 was -- I'll get the numbers correct here in a second.

4 MR. MULLINS: 3.14 percent, the Stewart Elswick property
5 listed on the plat. It was expected in the regular
6 course we thought we were going to get a farm out from
7 Columbia, but what happened is Columbia for whatever
8 reason decided not to farm-out this particular portion.
9 They've not objected to it. They just decided not to
10 farm it out and that changed the percentages that we
11 ended up with.

12 MR. EVANS: No problem.

13 MR. CHAIRMAN: Other questions?

14 MR. MCGLOTHLIN: Mr. Rasnake, that 3.1 percent on Exhibit B,
15 Columbia Natural Resources, do you still have them under
16 lease?

17 THE WITNESS: No, they're not leased. Columbia has a lease on
18 the Stewart Elswick property.

19 MR. MULLINS: And we were expecting a farm-out from Columbia
20 and they decided for whatever reason not to farm it out.
21 They're listed on the revised Exhibit C where the Stewart
22 Elswick interest is being unleased.

23 MR. MCGLOTHLIN: So you could dismiss Columbia Natural
24 Resources from Exhibit B?

25 MR. MULLINS: No. Since they've decided not to farm it out

1 we'll have to include those.

2 MR. MCGLOTHLIN: I thought Exhibit B was the ones that you had
3 leased?

4 THE WITNESS: No. Exhibit B is the owners and the lessee.
5 Columbia would be a lessee of Stewart Elswick.

6 MR. MCGLOTHLIN: Okay. I'm sorry.

7 MR. CHAIRMAN: Other questions?

8 MR. EVANS: I move we approve the force pooling application.

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

10 MR. MASON: Second.

11 MR. CHAIRMAN: Motion and a second. Further discussion? All
12 in favor signify by saying yes. (ALL AFFIRM.) Opposed
13 say no. (NONE.) It's a unanimous approval. Thank you.

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ITEM VI

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3 MR. CHAIRMAN: The next item on the agenda is an appeal by
4 Jacqueline Sykes on the Inspector's decision dated
5 December 29th, 1992 in the matter of Jacqueline Sykes
6 versus OXY, USA, Incorporated over well CBM S-15B,
7 permit number 2212. This is docket number VGOB-93/02/16-
8 0324. We would ask all parties that wish to address the
9 Board in this matter to come forward, please.

10 MR. SYKES: I'm Jack Sykes. I'm here on behalf of Jacqueline.

11 MR. CHAIRMAN: Just have a seat right in here near the
12 microphone, please.

13 MR. SCOTT: Mr. Chairman, Tim Scott appearing on behalf of
14 OXY, USA and Buchanan Production and Marty Wirth also
15 appearing on behalf of OXY, USA and Buchanan Production.

16 MR. CHAIRMAN: Now, we also had a motion to intervene from
17 Pauline Childress. Is she here today?

18 MR. FULMER: Mr. Chairman, I have a document and they have
19 withdrawn their motion to intervene.

20 MR. CHAIRMAN: Would you give Mr. Sykes and Mr. Scott a copy
21 of this, please. (Pause.) Okay.

22 MR. SCOTT: Mr. Chairman, before we get started I'd like to
23 note an objection to the propriety of this hearing. At
24 the Informal Fact Finding Hearing evidence was taken as
25 to whether notice was properly effected by OXY, USA and

1 Buchanan Production. At that time -- or after that
2 hearing Mr. Fulmer entered an order in favor of the
3 objecting party and gave the objecting party the required
4 notice to object under the statute under 361.35. The
5 time expired for that time to file an objection without
6 an objection being filed by the objecting party and under
7 45.1-361.23 if the order is not stayed by the Inspector
8 for a good cause shown then the time elapses and there's
9 really -- there's no remedy for Ms. Sykes or Ms. Mullins
10 except to object under the statute. And that time period
11 has run at this point.

12 MR. SYKES: This decision was appealed to this Board on time
13 from the Board in Abingdon.

14 MR. CHAIRMAN: That's what we're checking right now. Is that
15 what you're saying, that this is not a timely filed
16 objection?

17 MR. SYKES: If he gave me the right information on the time it
18 was suppose to be appealed.

19 MR. SCOTT: The appeal was timely filed but the time to object
20 expired and that was the remedy that Ms. Mullins had
21 under the statute. There's no time to object at this
22 point because the order of the Inspector was not stayed
23 as to when Ms. Mullins could object under 361.35. So
24 even if the Board were to reverse, the time limit has run
25 to file an objection as a surface owner.

1 MR. CHAIRMAN: The original objection?

2 MR. SCOTT: Yes, sir.

3 MR. CHAIRMAN: You're challenging before the Board whether or
4 not Mr. Fulmer had a right to hear the objection to begin
5 with?

6 MR. SCOTT: We argue that due diligence was exercised by OXY
7 and Buchanan Production. What I'm arguing -- maybe I'm
8 not making myself clear. Once the appeal was filed based
9 on the decision regarding notice Mr. Fulmer gave Ms.
10 Mullins fifteen days to objection as is required by the
11 statute once he determined she was entitled to notice.

12 MR. CHAIRMAN: Let me stop you. We're talking about Ms. Sykes
13 here now. Okay? Ms. Mullins --

14 MR. SCOTT: Ms. Mullins, yeah. It's Mr. Sykes' daughter. I'm
15 sorry. I call her Ms. Sykes and Ms. Mullins. In any
16 event the fifteen day period ran without filing an
17 objection which was the remedy that Ms. Mullins was
18 afforded under the statute. So even if the Board were to
19 reverse, the time limit has run for filing an objection.
20 There was no stay of that order permitting Ms. Mullins to
21 file an objection. And that would be under 45.1-361.24.-
22 D.

23 MR. SYKES: The way I understood it the objection would be
24 appealing to this Board here.

25 MR. SCOTT: The decision was entered in his favor -- in Ms.

1 Mullins' favor, that she did have standing to receive
2 notice.

3 MR. CHAIRMAN: Yes. The Inspector's decision was in Jac-
4 queline Sykes' favor. That she did, in fact, have
5 standing.

6 MR. SCOTT: That's correct.

7 MR. SYKES: We asked for the permit to be revoked and it
8 wasn't revoked. I don't see how it could have been in
9 her favor.

10 MR. CHAIRMAN: Well, it was in her favor that she should have
11 had notice. So the portion that you're appealing to the
12 Board is for revocation of the permit which is the part
13 that you asked for and didn't receive from the Inspector,
14 is that correct? I'm just trying to sort through this
15 and I'm not going away from what you're asking.

16 MR. SCOTT: Oh, that's fine. I understand that.

17 MR. SYKES: I'm saying that I followed all the procedures that
18 this guy sitting here told me to follow.

19 MR. CHAIRMAN: I understand. And he's challenging whether or
20 not all the time periods have elapsed after what OXY
21 alleges was due diligence of notice. Is that correct?

22 MR. SCOTT: Right. That's correct.

23 MR. CHAIRMAN: So we're backing up right now the challenge
24 before the Board. He's backing up before the Informal
25 Fact Hearing was held?

1 MR. SCOTT: We have not filed an appeal to the decision. What
2 we are arguing is that the issue is moot because the time
3 limit for filing the objection is over.

4 MR. MASON: Mr. Chairman, if I may, as I understand it
5 basically what you're saying is that there were two
6 things going on. One was the objection that was filed on
7 the basis that you didn't receive notice. Had you
8 received notice or when you were told that you had to
9 receive notice then there was a period of time in which
10 you were to file an objection to the permit itself.

11 MR. SCOTT: That's correct.

12 MR. MASON: You're saying the informal decision said yes, you
13 should have had notice but as a part of that decision it
14 didn't state the time within which to file the objection
15 to the permit --

16 MR. SCOTT: Fifteen days.

17 MR. MASON: And that time has expired. So once the notice was
18 given there would be nothing you could do about it.

19 MR. SCOTT: Exactly.

20 MR. MASON: But I think the issue here is Mr. Sykes believes
21 that at the hearing with Mr. Fulmer he raised two issues,
22 the notice itself and the objection to the permit. And
23 what you're saying is there was no objection to the
24 permit actually made, only with respect to the objection
25 over whether notice was given. Is that the controversy?

1 MR. SYKES: Right. I think so. That's correct.

2 MR. SYKES: That was the first objection to the permit because
3 they hadn't give notice.

4 MR. MASON: I understand that. Has there been any objection
5 to the permit filed?

6 MR. CHAIRMAN: Yes. There is an objection. It was filed.

7 MR. SCOTT: I didn't receive anything like that.

8 MS. RIGGS: The December 11th letter, the original objections
9 by counsel.

10 MR. SCOTT: As to notice.

11 MR. SYKES: This guy here now, he did tell me I had another
12 fifteen days on another well at that time that they
13 drilled on this same property. I had fifteen days after
14 they gave me notice on it to file it.

15 MR. MASON: Well, it just seems to me that one of the issues
16 is was there an actual objection to the permit filed in a
17 timely fashion. It seems to me that would be one of the
18 key issues here.

19 MR. CHAIRMAN: That's the objection --

20 MR. SYKES: It was according to the time that he told me that
21 I had to file it. Fifteen days.

22 MR. CHAIRMAN: I understand. We're going to get to it here.
23 We all have to get on the same wavelength. Ms. Sykes's
24 attorney filed on her behalf December 11th, 1992 and in
25 there asked to show cause why this permit should not be

1 revoked. So before the Board the question initially is
2 then is does that constitute notice on the part of the
3 objecting party that they requested the permit be
4 revoked.

5 MR. SYKES: There has been another permit given on this same
6 property.

7 MR. CHAIRMAN: We can't really get into another one here today
8 as far as any appeal goes. You can exercise those. All
9 we can discuss today is this one. Okay?

10 MR. MASON: It seems to me, Mr. Chairman, the issue would be
11 the last part of that large paragraph next to the last
12 where it says, "whether that constitutes an objection to
13 the permit."

14 MR. CHAIRMAN: That's right. The challenge before us is do we
15 read this -- and I'll read the statement into the record.
16 This is a letter from Copeland, Molinary, Beiger &
17 Leonard, P.C. signed by Robert Copeland, a copy to Mark
18 Swartz. It was dated December 11th, 1992 written to Tom
19 Fulmer. It was received in the Gas and Oil Office on
20 December 14th, 1992. And the last paragraph says,
21 "Because of the fact environmental harm will be done to
22 the surface of the property and because of the fact it
23 appears that OXY, USA, Incorporated either deliberately
24 and/or grossly failed to comply with Virginia law it is
25 requested that a notice of violation be immediately

1 issued to them as allowed by Section 1.17 of Article 3 of
2 the Gas and Oil Regulations and that pursuant to Article
3 3, Section 120 that a show cause be issued to OXY, USA
4 requiring them to show cause why their permit application
5 should not be revoked as a result of their false state-
6 ments." As to whether or not that constitutes proper
7 notice the objecting party requested that the permit be
8 revoked. What's your pleasure?

9 MR. MASON: I would be interested in hearing what our Attorney
10 General person would have to say as to whether that would
11 satisfy the law as to an objection. Do you have any
12 feelings about that?

13 MS. RIGGS: Well, I don't think the law specifies what the
14 basis of the objections necessarily would be and these
15 are somewhat vague. I think it certainly gives notice if
16 they have objections and this was filed prior to the
17 Informal Hearing. I don't know whether the show cause
18 actually -- the only thing the Informal Hearing addressed
19 was the notice issue, is that correct?

20 MR. FULMER: That's correct.

21 MS. RIGGS: And it did not go to the issue of revocation of
22 the permit.

23 MR. SCOTT: Nor to any surface owner objections that could be
24 raised.

25 MS. RIGGS: From what I'm understanding what we have before us

1 today is an appeal from the informal decision that
2 addressed the notice issue and that the Inspector's
3 decision did not address those issues that go to the
4 environmental harm and basis for revocation of the
5 permit.

6 MR. MASON: So, in fact, as to those issues would it not be
7 correct or seem to be correct that that process is not
8 yet matured for a hearing by this Board but rather --
9 what would be the appropriate remedy, would it not be an
10 additional informal hearing as to whether or not that
11 permit should be revoked?

12 MR. CHAIRMAN: Mr. Sykes, you know, I don't know if he wants
13 to offer anything on this or not. If you back up prior
14 to the Informal Hearing, what caused the Informal Hearing
15 to be held was what I was reading from. And a part of
16 that was requesting that -- if you basically restate it,
17 if you find that I wasn't properly notice revoke the
18 permit. And what I heard him say as soon as we opened
19 the floor was -- when we were saying that the finding was
20 in favor of Ms. Sykes was yes, but you didn't revoke the
21 permit.

22 MR. MASON: It seems to me that the issue, though, that it
23 was tried or adjudicated in the Informal Hearing related
24 only as to the propriety of notice. As to the actual
25 objection to the permit itself was not reached in that

1 hearing.

2 MS. RIGGS: I think that Ms. Sykes was given an opportunity --
3 fifteen days to further state her objections for the
4 show cause and that is what did not occur. So all she
5 has as an objection was the initial letter. In other
6 words, the Inspector gave her fifteen days to file
7 further objections and instead of filing the further
8 objections the party appealed to this Board on an issue
9 where they were the prevailing party.

10 MR. MASON: I understand that but --

11 MS. RIGGS: That's how it got here in a convoluted way.

12 MR. MASON: But there has not been --

13 MR. SYKES: Could I tell you just the way it was?

14 MR. CHAIRMAN: Sure.

15 MR. SYKES: I did talk to him on that issue and he said there
16 wasn't enough proof there that day. But I told him of
17 some more proof that he would revoke the permit if I'd
18 bring the proof in that I had.

19 MR. CHAIRMAN: Here today?

20 MR. SYKES: Huh?

21 MR. CHAIRMAN: That you bring it here today?

22 MR. SYKES: No. He told me down there. They would have
23 another hearing and go back through his office. He was
24 wanting to go back through his office. He wasn't wanting
25 me to appeal it.

1 MR. MASON: But as I understand it there's not been a denial
2 of the objection to the permit. That's never been
3 determined by the Oil and Gas Inspector which would be a
4 procedural matter necessary in order for that to be
5 appealed to this Board.

6 MR. SYKES: I would think when he stated in his letter that
7 she was a surface owner that's enough to revoke the
8 permit on there. That she wasn't given proper notice.
9 And he did state that she was a property owner -- surface
10 owner.

11 MR. MASON: If I may, subject to further interpretation from
12 our legal advisor, it seems to me there are two separate
13 issues. One related to whether you were given notice or
14 not and the second one is the determination of whether or
15 not the permit is properly revokable. And the evidence
16 to support that decision is different from the evidence
17 as to whether or not the notice -- the fact that they
18 didn't give you notice -- the law supports that that's
19 the ground for revoking the permit and then they have to
20 go through that procedure and you have an opportunity to
21 be heard on the revocation issue which as I understand it
22 has not yet been done.

23 MR. SYKES: That's what we were asking for, the permit to be
24 revoked at the first hearing.

25 MS. RIGGS: Well, I think what he's saying is that in order

1 for you to have standing to appear and put on that
2 evidence it first has to be determined that you're a
3 proper party for the proceedings. And the subject of
4 that hearing that you had was to determine whether or not
5 you had some record, evidence of ownership that would
6 have entitled you to receive notice. Now, the Board
7 doesn't make title determinations but I guess it's a due
8 diligence search kind of thing, should you have received
9 notice. He rules that you should have received notice
10 and gave fifteen days as if you had received it in the
11 first instance to file any further objections or basis
12 for revocation of the permit. That's the response that
13 they're saying you did not file. Instead you appealed to
14 this Board. What he had intended to do, as I understand
15 it, is you would file your objections and then you would
16 have another hearing on the grounds for revocation of the
17 permit, the second portion of your December 11th request.
18 And what Mr. Mason is saying is that you never went back
19 for that second hearing to put on that evidence.

20 MR. SCOTT: And we maintain that that's been waived because it
21 was not filed within the fifteen day period provided by
22 the statute.

23 MS. RIGGS: Well, to the extent that he wishes to expand on
24 the grounds that he already had in the December letter
25 -- he's bound to his December objections.

1 MR. SYKES: Well, wait a minute. You're saying I should go
2 back and do the same thing that I done to start with
3 then.

4 MS. RIGGS: On a different issue. The first hearing was on
5 whether or not you were a party entitled to receive
6 notice. In order to appear to put on evidence you first
7 had to be a party entitled to receive notice. He ruled
8 that you were and gave you an opportunity then to come
9 back and put on your evidence.

10 MR. SYKES: But we objected and asked for the permit to be
11 revoked to start with.

12 MS. RIGGS: Correct. But in order to have standing under the
13 law to do that it first has to be determined that you
14 were a proper party. And that was what the first hearing
15 dealt with as I understand it, whether you were a person
16 entitled to notice and therefore a party who had standing
17 to object to the permit.

18 MR. SYKES: You're saying that objection don't cover that part
19 that we made?

20 MS. RIGGS: Well, we're not saying that it doesn't cover it.
21 I think what I heard was that that hearing has never
22 occurred. The second stage of the hearing has never
23 occurred before the Inspector. You haven't yet put on
24 your evidence as to why the permit should be revoked.
25 The only thing heard was whether or not you were a

1 surface owner and therefore entitled to notice.

2 MR. SYKES: Oh, yeah. We put on evidence that the permit
3 should be revoked. We put on the evidence that day why
4 the permit should be revoked.

5 MR. SCOTT: We have maintained that they were given the
6 opportunity to object with Mr. Fulmer's decision.
7 Fifteen days had lapsed. No objection was filed based on
8 their standing under the statute. So they've waived any
9 objection to the permit. There was no stay of the order.
10 It's clearly provided in the statute that there isn't
11 unless there's good cause shown by the objecting party.

12 MR. CHAIRMAN: To further clarify the record, in the Inspect-
13 or's decision of December 29th, 1992 -- and what they're
14 talking about here, Mr. Sykes -- he says, "Therefore, it
15 is the decision of the Inspector that Jacqueline Sykes
16 has provided a right of standing for purposes of 45.1-
17 361.35." And if the Board will look in that section that
18 is the objections to permits. The hearing that is
19 reported there. "And shall be afforded the same rights
20 as set out in 45.1-361-35 for a period of fifteen days
21 from the date of receipt of this decision." Now, that's
22 where they're referring back to and saying the Inspector
23 afforded the opportunity for a second hearing.

24 MR. SYKES: Why is your man sitting there tell me that I could
25 go ahead and appeal it or go ahead and have the hearing

1 in front of him again for then -- that guy sitting there?
2 He made it appear to me that day that he was for OXY. He
3 was drinking out of an OXY cup. He made it appear to me
4 that he was for them.

5 MR. CHAIRMAN: Well, personally I think you can bring this
6 objection before the Board, but I'm one person, because I
7 think consistently throughout the application for hearing
8 you have asked for the permit to be revoked. And I think
9 you've further stated in the appeal to the Board here
10 today that you would like this permit -- I'm looking at
11 your notice of appeal. "Wherefore Jacqueline Sykes
12 requests that the Board find that she is owner of an
13 undivided interest in the surface property in question."
14 That was found by the Inspector. "That OXY failed to
15 provide notice as required." "That was found by the
16 Inspector and that the permit of OXY, USA therefore
17 revoked." Now, this goes back to Tim's original ques-
18 tion. You're saying --

19 MR. SCOTT: It was in his favor. The ruling was in his favor.
20 Gave them standing to object and they did not object. So
21 as far as notice is concerned there's no right to
22 revocation because they were given notice and the
23 opportunity to object. No objection was ever filed.

24 MR. CHAIRMAN: In the Inspector's Decision?

25 MR. SCOTT: That's absolutely correct. So I don't know where

1 we are here.

2 MR. CHAIRMAN: Well, where I'm saying we are -- and I'm
3 talking as one Board member. Where I think we are is we
4 have a person who has stated that he feels the Inspector
5 is prejudice. And if we're saying as a Board that we
6 can't hear an objection of a citizen who feels the
7 Inspector is prejudice we better carefully think that one
8 and talk that one out. I think he has maintained an
9 appeal to the Board.

10 MR. SYKES: I think we can clear up the part of the objection.
11 This is the new permit that they filed for. It was in
12 his office. It's got Jacqueline Sykes --

13 MR. SCOTT: Objection. That was withdrawn.

14 MR. SYKES: -- named as a surface owner before this hearing
15 took place.

16 MR. CHAIRMAN: Is this this case?

17 MR. SYKES: That's this case with her name on it.

18 MR. SCOTT: That permit is not on file with the Inspector's
19 office. It was withdrawn.

20 MR. CHAIRMAN: Okay. That would be irrelevant to what we're
21 trying to decide here.

22 MR. SYKES: I'm saying this guy already knew she was a surface
23 owner.

24 MR. CHAIRMAN: I understand. I think I clearly stated for the
25 Board what --

1 MR. SYKES: I'm saying that he already knew that OXY gave her
2 notice. It's in black and white right here. He didn't
3 need to go through that no more at this hearing.

4 MR. CHAIRMAN: I understand. That's why I said I think the
5 Board needs to carefully decide that when a citizen comes
6 before the Inspector and feels that the Inspector is
7 prejudice whether or not the Board can properly dismiss
8 that appeal on to the Board and can the Board hear the
9 objections under 361.35.

10 MR. MASON: Mr. Sykes, at the time that you appeared before
11 this gentleman were you given an opportunity to be heard
12 on whether or not the permit should have been revoked?

13 MR. SYKES: I called this gentleman before the permit was
14 issued and told him that we were surface owners.

15 MR. MASON: I understand that. But the question is -- we all
16 believe that you are entitled to notice. I think he
17 found that. We accept that. That's not an issue. The
18 question is do you have sufficient facts to establish
19 that this permit should be revoked and have you had an
20 opportunity to present those facts. I mean, that's what
21 we want to find -- at least that's what I want to find
22 out.

23 MR. SYKES: Yes, I do. Yeah.

24 MR. MASON: Were you given an opportunity when you appeared
25 before this gentleman to present your facts on why the

1 permit should be revoked?

2 MR. SYKES: Well, he didn't give me too much opportunity. He
3 didn't want me to talk too much. In fact, he got a bit
4 hateful with me at both hearings.

5 MR. MASON: Obviously those involve personality or person
6 issues. I'm concerned about the facts of whether you
7 were given an opportunity to present your evidence on
8 why this permit should be revoked.

9 MR. SYKES: A certain amount of it, yes, it was.

10 MR. MASON: So you did permit that. You presented that at
11 this hearing. Did you understand that this hearing,
12 though, only made the determination as to whether or not
13 you were entitled to notice?

14 MR. SYKES: I understood from him that he would revoke the
15 permit that day if I proved that they did not give proper
16 notice.

17 MR. SCOTT: Mr. Sykes and Ms. Mullins were represented by
18 counsel at the Informal Fact Finding Hearing and Mr.
19 Sykes presented evidence through counsel that the permit
20 should be revoked based on the fact that they were not
21 given proper notice. That was the issue that was raised,
22 the failure to give proper notice. Mr. Fulmer then
23 decided that OXY and Buchanan Production should have
24 given them notice. It was so ordered and then gave them
25 the opportunity to object. So that was the limitation.

1 They objected and wanted the permit revoked because
2 notice was not given and that's what Mr. Fulmer decided.
3 MR. SYKES: Well, let me say -- add on to that. What I showed
4 you right here had already give her notice. What was we
5 going down there for to start with? He knew that. He
6 already had this in his office.

7 MR. MASON: I understand that. But it seems to me that your
8 letter that Mr. Wampler read into the record raised
9 issues other than notice as the basis for the invalidity
10 of the permit (Inaudible.) specifically environmental
11 matters. And what I'm trying to determine is whether or
12 not those issues were adjudicated in this Informal
13 Hearing or whether the hearing was restricted just to the
14 question of notice. Because certainly the letter that
15 was filed raised that issue. I mean, that's all I'm
16 trying to determine.

17 MR. SYKES: Well, that's what I'm saying. He made it appear
18 to me if I'd come back before him he would revoke the
19 permit or either I could appeal it onto this Board here.

20 MR. MASON: But those are your rights. You could have done
21 those things and I understand that. Let me ask you this.
22 If he informed you that you had the right to come back
23 before him and present additional evidence as to why this
24 permit should be revoked why did you not do that?

25 MR. SYKES: Because the way he acted the day of the hearing.

1 MR. MASON: So you felt like you could not get a fair hearing?

2 MR. SYKES: Right. I didn't feel there was a chance with
3 anything I would have had.

4 MR. CHAIRMAN: That's what I was saying. So he was intention-
5 ally coming before this Board with his argument --

6 MR. MASON: It took me longer to get around that, but that's
7 what I was --

8 MR. SYKES: Because I didn't feel I had a chance down there.

9 MR. CHAIRMAN: Right.

10 MR. SCOTT: That issue was never raised. This is the first
11 I've heard of this, that he felt that he was prejudiced
12 before the Inspector. This is news to me and to my
13 client. That's not in the petition for appeal, that he
14 was prejudiced by the decision that was made by the
15 Inspector. As I said, I've not heard this before.

16 MR. MASON: Well, I think the issue is not whether he was
17 prejudiced by the decision but whether the decision was
18 reached in a prejudicial manner.

19 MR. SCOTT: Well, that's exactly -- that's what I'm saying if
20 I didn't say that correctly.

21 MR. MASON: That's a tough one.

22 MR. SYKES: I'm saying beyond a reasonable doubt we deserve
23 this hearing here today.

24 MR. SCOTT: The decision was entered in their favor. I don't
25 know how he could be prejudice.

1 MR. SYKES: I'd like to know how it would have been entered in
2 our favor and then over there working every day on our
3 property and drilling more wells besides that one. I
4 don't know how it could be in our favor.

5 MR. SCOTT: I object. It's limited to what's on appeal and
6 it's one well.

7 MR. CHAIRMAN: Sustained.

8 MR. MASON: I think that we should confer with our legal
9 advisor as to exactly how we should deal with this issue.

10 MR. SYKES: I would ask that it be heard because it's clear
11 that they're on the property without giving proper
12 notice. I think the record -- even their records make
13 that part clear.

14 MR. MCGLOTHLIN: I'm concerned in the letter dated December
15 11th from Mr. Copeland -- signed by Mr. Copeland. I read
16 that as a two part motion to intercede on this objection,
17 that if the oil and gas Inspector finds that proper
18 notice was not given then he should revoke the permit.
19 In reading through the transcript I don't see where -- I
20 might have missed it -- that anything was brought forward
21 on revoking the permit but yet that's the basis of the
22 objection. I'm inclined to agree with Mr. Sykes that he
23 has standing to -- he won part of his objection -- the
24 first part but not the second part. I think his appeal
25 is to this Board, not to go back to Mr. Fulmer.

1 MR. SYKES: That's what I'm trying to explain, that he told me
2 I could appeal to this Board here. And then he told me
3 that he would like for me to come back there. I told him
4 about some additional information and I just told him
5 what I thought. I believe in saying what you think. But
6 he made it appear there that day that he was for OXY,
7 that he wasn't going to do nothing for me. If he comes
8 in here drinking out of an OXY cup and saying some things
9 to make it appear that he was for OXY what's chance have
10 we got in the court -- if you want to call it a court.

11 MR. SCOTT: The decision was in their favor. The decision
12 that they had the right to object was in their favor,
13 that they were not given notice properly and they should
14 be given the time to object under the statute. And
15 that's what occurred. The Informal Fact Finding Hearing
16 -- the evidence that was put on by Mr. Sykes through his
17 attorney was was that notice was not properly given and
18 they requested that the permit be revoked, as I remember.
19 However, they were given the opportunity to object
20 through the decision.

21 MS. RIGGS: It seems to me that there's two prongs to this
22 thing, one of which has moved through the Inspector up
23 to this Board and I would agree that an appeal from the
24 Inspector's decision doesn't lie in that we don't have
25 an agreed party here on the issue heard before the Board

1 and that's notice. They got what they asked for.
2 However, the second prong of that is their objections to
3 the permit itself and the issue there is whether or not
4 that has -- they had fifteen days to state any additional
5 grounds they may have had and they didn't do that.
6 Therefore, the environmental harm argument or whatever --
7 their December 11th letter I think however did state
8 objections and they haven't had the opportunity yet to
9 put on the evidence as to that issue. And the question
10 is whether or not it goes back to the Inspector for that
11 hearing or because of the prejudice that this party feels
12 that the Board ought to hear that issue here. Recuse the
13 Inspector and have the hearing held at this level. That
14 appears to be the issue to me.

15 MR. MASON: I agree with that 100 percent.

16 MR. CHAIRMAN: I think that's exactly what he's requesting.

17 MR. MASON: If I may, Mr. Chairman, I would suggest that if
18 you wish to proceed that you could find that inherent in
19 the Inspector's decision not to adjudicate that issue was
20 a decision which was appealable to this Board and
21 therefore, jurisdiction would allow to hear it.

22 MR. CHAIRMAN: Right.

23 MR. MASON: If the Board so chose.

24 MR. CHAIRMAN: Do we have a motion to hear it?

25 MR. MASON: Yes, sir.

1 MR. CHAIRMAN: We have a motion to hear this case.

2 MR. MCGLOTHLIN: Second.

3 MR. CHAIRMAN: A motion and a second. Any further

4 discussion? All in favor signify by saying yes. (ALL

5 AFFIRM.) Opposed say no. (NONE.) We're overruling your

6 motion, Mr. Scott, and are going ahead and continuing the

7 hearing today.

8 MR. SCOTT: Based on whether notice -- I mean, I don't know

9 what we're hearing.

10 MR. CHAIRMAN: We're hearing the fact that he's requested that

11 the permit be revoked based on environmental harm as is

12 stated in the December 11th letter from the attorney

13 which is carried forward to the appeal to this Board.

14 Mr. Sykes, it's clear that the Inspector has ruled in

15 your favor on notice. You understand that?

16 MR. SYKES: That I should have had proper notice?

17 MR. CHAIRMAN: Yes, you should have had proper notice. Now

18 you have to go to Section 361.35 for the hearing here

19 today and present to the Board the objections that are

20 for new or modification of permits under that Section

21 361.35. Do you have a copy of that available to you?

22 MR. SYKES: I don't have a copy of that.

23 MR. CHAIRMAN: Those are the restrictions that the Board or

24 the Inspector either one can hear objections to permits.

25 That has to go to the environmental harm side of that

1 that you raised in the December 11th hearing.

2 MR. SYKES: Uh-huh.

3 MR. CHAIRMAN: Are you ready to proceed or do you need a few
4 minutes to get ready?

5 MR. SYKES: Yeah, wait just a minute.

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

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

8 MR. CHAIRMAN: Mr. Sykes, I've referred you to 45.1-361.35.

9 We acknowledge that -- folks, we need to come to order --
10 to the objections to permit that was referred to by the
11 Inspector, 361.35. The Board has agreed to hear why you
12 believe the permit should be revoked. You may proceed.

13 MR. SYKES: I have several documents I'd like to introduce
14 into evidence, the deed, the tax tickets.

15 MR. CHAIRMAN: There's no question on the Board's part and the
16 Board is not even having to hear the question of whether
17 or not you had the right to be noticed. Okay? So we
18 don't need any testimony on the notice issue.

19 MR. SYKES: Well, these documents will prove that they knew
20 who owned the land that I didn't have there at that time.
21 That's what we're ask them for the grounds for the permit
22 to be revoked on because they knew who owned the proper-
23 ty. But still they went in on the property without
24 notice and drilled a well on the surface.

25 MR. SCOTT: Mr. Wampler, we have decided this issue on whether

1 or not they were entitled to notice. The Board has
2 agreed. He should be limited to the objections under
3 361.35.

4 MR. CHAIRMAN: I sustain it. You are limited to those
5 objections to the permit under 361.35.

6 MR. SYKES: Well, I would say that this documents weren't
7 presented at the other hearing and I'd like to present
8 them today for the record.

9 MR. CHAIRMAN: Let me see what you want to present.

10 MR. SYKES: This has the right-of-way signature on it,
11 11/3/92.

12 MR. CHAIRMAN: Is this a copy that you're offering?

13 MR. SYKES: It's the original, yeah.

14 MR. CHAIRMAN: What else?

15 MR. SYKES: Tax tickets plus the deed.

16 MR. CHAIRMAN: Here again your point is that this information
17 was available to the applicant when they were applying
18 for the permit, is that the point you're making?

19 MR. SYKES: Yes, sir.

20 MR. CHAIRMAN: And therefore you think that you should have
21 had -- that Jacqueline Sykes should have had notice?

22 MR. SYKES: Yes, sir.

23 MR. CHAIRMAN: I believe the record will show that the
24 Inspector concurred with that and said that you should
25 have had notice. So there's no dispute on whether or not

1 you should have had notice. Now we're going to why do
2 you believe the permit should be revoked.

3 MR. SYKES: Why we're asking for the permit to be revoked,
4 they filed to amend the permit and then after there
5 wasn't no settlement made they went in on the property
6 anyway, disturbed the property, even places in it 80
7 foot wide which the permit even calls for 40 foot.

8 MR. SCOTT: Mr. Wampler --

9 MR. SYKES: And that's been brought to the attention of
10 reclamation. It was suppose to have been a report on
11 it.

12 MR. SCOTT: Are we now beyond the title issues?

13 MR. CHAIRMAN: I think we have to be beyond the title issue.
14 There's no argument before the Board on the title issue
15 as far as I'm aware.

16 MR. SYKES: I would like to present this abstract of Mr.
17 Scott's here on the title if you need anymore title on
18 who owns the land.

19 MR. SCOTT: I objection. It's not my abstract and we've
20 already decided that issue.

21 MR. CHAIRMAN: I don't think the Board wants to even get into
22 anything on title. We're not going to decide any issues
23 of title as far as the Board goes. There's no authority
24 in law for us to do that.

25 MR. MASON: Mr. Sykes, let me ask a question. In your letter

1 to that initiated this you state that because of the fact
2 that environmental harm would be done to this surface
3 that the permit -- show cause why the permit. What we
4 would like to hear from you is what environmental harm do
5 you believe justifies the revocation of the permit.
6 That's really all we're entitled to hear.

7 MR. SYKES: Okay.

8 MR. MASON: At least from what I think. I mean, I can't speak
9 for everybody, but I would like for you to tell me what
10 it is from an environmental standpoint do you believe
11 justifies having this permit revoked.

12 MR. SYKES: Well, they took my timber. They pushed it over
13 the hill, destroyed it. I even told Mr. Boucher that I
14 was fixing to build on this property, even if we dealt
15 with it I wanted to know exactly where the road went
16 even if we gave them the right to go on the property. Do
17 you understand what I mean?

18 MR. MASON: Uh-huh.

19 MR. SYKES: Yet they go ahead and tell us that they're going
20 to go around the property, not get on this property. We
21 find out from the Gas and Oil Board that they had to stay
22 right on this road that they've got projected on this
23 permit. So they have knocked us out of doing any
24 building and any way on the property by doing what
25 they've done until we can get this matter settled.

1 MR. SCOTT: Those are not objections under the statute. It's
2 not an objection under the statute. Water well control,
3 sediment control and whether or not there's a hazard to
4 the safety of any person. Whether or not there's a
5 dispute between my client and Mr. Sykes as to what I'm
6 hearing him say is damages, that's not before this Board.

7 MR. SYKES: Well, I'm saying they went in on the property
8 illegally destroying the surface.

9 MR. SCOTT: I object. We have a permit.

10 MR. CHAIRMAN: We're going to listen to what he has to say.

11 MR. SYKES: I'd like to say -- if he says he has a permit I'd
12 like to say what the gentleman told me over here. He
13 told me they had no right in any way on that permit to
14 go on the surface of that property. That's what he told
15 me. That permit only gave them the right that they had
16 to do the work by that permit. This permit that he said
17 he issued them gave them no right to go on the surface of
18 that property. That's from the Gas and Oil Board.
19 That's his statement to me.

20 MR. SCOTT: We have leases to permit us to be on the property
21 and that's also not an issue before the Board.

22 MR. SYKES: Since Mr. Scott has brought up the issue of --
23 opened a can of worms you might say to the issue that he
24 had a right to be on the property, he did file a suit in
25 Buchanan Court and --

1 MR. SCOTT: It's irrelevant.

2 MR. SYKES: -- he didn't give notice of the suit to Jacqueline
3 Sykes. You brought it up.

4 MR. SCOTT: I object.

5 MR. CHAIRMAN: I sustain the objection.

6 MR. SYKES: I'd ask that it be overruled because he brought
7 the issue up himself to start with. I think I ought to
8 have the right to defend my end of it.

9 MR. CHAIRMAN: Mr. Sykes, it's not something the Board can
10 consider. That's just something that's irrelevant to
11 what we're considering here today. What we're --

12 MR. SYKES: I object to him having any right to be on the
13 property and if I can't cross-examine that part of it.

14 MR. CHAIRMAN: We understand that. I think what we've heard
15 you say is because you weren't given notice you think the
16 permit should be revoked. I think the Board clearly
17 understands that. What the Board has to hear, though, is
18 that that's not one of the areas that's listed in law
19 that the Board can consider as an objection to the
20 permit. No matter how that may sound to you we have to
21 go by what's in the law.

22 MR. SYKES: Well, continuing then with the work that was done,
23 the well was sunk on the property.

24 MR. SCOTT: May I interject something? Does Mr. Sykes need to
25 be sworn or not?

1 MR. SYKES: I'll be glad to. I confirm I'll tell the truth.

2 I don't understand. I ain't got to make an opening
3 statement here today. If you notice their right-of-way
4 agent I told -- Boucher is not here today. He's never
5 appeared even at the Abingdon hearing. He's never
6 appeared if that tells you anything.

7 MR. CHAIRMAN: You have a duly recorded deed -- or Jacqueline
8 Sykes does in Buchanan County and that's what you've
9 presented to the Board, right?

10 MR. SYKES: Yeah. I introduced it as evidence.

11 MR. CHAIRMAN: As a surface owner of the area?

12 MR. SYKES: Yes, sir. I'm sorry I can't get all of this, but
13 I'd like to introduce this map of the property by their
14 own engineer. It was certified by their own engineer.

15 MR. SCOTT: As evidence of what? If it's a title issue we've
16 decided that again, that she's entitled to notice. The
17 Board's already decided that as did Mr. Fulmer.

18 MR. SYKES: This is to prove where they are at now on the
19 surface. We're talking about the surface now, aren't we?
20 This is the proof by their own map that this map matches
21 their map.

22 MS. RIGGS: Under the definitions contained within the statute
23 a surface owner is a owner of record and you submitted a
24 deed claiming record title. Therefore, the Inspector
25 has found that you should have received notice. Beyond

1 that this Board is not in power to rule on title issues.
2 That is a matter to be resolved in Circuit Court when
3 there are title disputes as to what rights that deed
4 might give you or may not give you. What we're bound to
5 is this statute that we handed you, that once you qualify
6 as a surface owner the statute spells out certain grounds
7 under which you can object to the permit. They're right
8 there in that sheet of paper laying on top.

9 MR. SYKES: Okay. There's no doubt here today that the issue
10 has already been decided, that where this well is at we
11 are surface owners.

12 MS. RIGGS: Well, we have not decided issues of title. You
13 have made a claim as a surface owner by virtue of a deed
14 of record. And under the statute once you come forward
15 and say that you have a record title -- we're not saying
16 that's good title or not, but that you claim record
17 title. The Inspector ruled that that should have
18 entitled you to notice because that record of deed would
19 have given them notice that you have a claim and there-
20 fore you are entitled to receive notice. This Board is
21 not empowered under the law to make determinations of
22 ownership. That is a matter for Circuit Court and title
23 disputes. We're saying regardless of whether you're
24 ultimately determined to have good title or not is not an
25 issue before this Board. Merely that you claim record

1 title and that you should have gotten notice. Do you
2 understand?

3 MR. SYKES: Well, I move right now for the permit to be
4 revoked because --

5 MS. RIGGS: As a surface owner you have before you right there
6 the statute that says what the grounds of that objection
7 have to be.

8 MR. MASON: Mr. Sykes, let me ask you this. Do you have any
9 evidence to show that the soil erosion and sediment
10 control for their operations on this well are not
11 adequate?

12 MR. SYKES: Well, what I'm saying -- I don't know whether you
13 understand it or not. What I'm saying is the same as
14 filing the house right down here across the road on the
15 half acre of land. They come to me and say, "Sign this."
16 I don't sign it and they move a dozer in and start
17 grading my yard up and set a well machine there and drill
18 the well. That's what I'm saying.

19 MR. MASON: You have to understand, sir, that we're empowered
20 by the State, that we have certain things that we have
21 the legal authority to do. And the law that you've been
22 given a copy of sets out very specifically and as the
23 Attorney General has explained what we can act on. And
24 the areas are set out in the law. And one of those is
25 that -- and I asked you. I understand that you object to

1 where the road is and related to how that's affected your
2 property. My questions relate specifically to the
3 evidence that you have to give us in order for us to
4 overturn or revoke a permit. Can you give us any
5 evidence today of any soil erosion or sediment control
6 that's not adequate to your knowledge on this location?

7 MR. SYKES: Yes.

8 MR. MASON: What is that?

9 MR. SYKES: Well, like I said on the road, the permit being 40
10 foot. In places it's 100 foot. In one place it's 100
11 foot wide.

12 MR. MASON: But how does that constitute the fact that they
13 don't have --

14 MR. SYKES: Well, they damaged property. Water running -- the
15 water running off the road into a spring on the property.
16 The well was sunk.

17 MR. MASON: Have they put up soil control barriers along this
18 road?

19 MR. SYKES: No. They don't even have a fence around the well
20 or don't have a cap on the well. It's a foot above the
21 ground just blowing up. And a coon hunter could get
22 around it and it could blow up. I guess, if that gas
23 would blow up.

24 MR. SCOTT: That's pure speculation. I object.

25 MR. MASON: Mr. Scott, is there a soil and erosion and

1 sediment control plan in effect on file?

2 MR. SCOTT: It's on file. Yes, sir.

3 MR. MASON: Has that been complied with?

4 MR. SCOTT: Yes, sir, it has. There are no houses near the
5 property --

6 MR. SYKES: Well, I'm still objecting to the permit. It makes
7 no difference if they done everything by this permit they
8 got. They're on this property illegally.

9 MR. MASON: I'm telling you that we don't have the power to do
10 anything about that. The law is very specific as to what
11 we can act on. I understand that you are grieved by
12 that. You're unhappy about it. You feel like it's
13 illegal. But the law does not give us the authority to
14 do anything about that. We can only act upon the basis
15 of very closely identified evidence. Unless you present
16 us with that evidence we can't help you.

17 MR. SYKES: You're saying that them not giving notice to the
18 surface owner that the permit can't be revoked? Do I
19 understand that?

20 MR. MASON: On that basis alone, no, sir.

21 MR. CHAIRMAN: Not by this Board.

22 MR. MASON: Not by us. It's just that the law gives us very
23 limited authority to act in this area. And we would want
24 to give you every opportunity in the world to give us the
25 evidence that would support that if it exists.

1 MR. SYKES: Well, it's suppose to be in the records. Reclama-
2 tion was over there and agreed further that they were in
3 violation of their own permit where it was 100 foot wide.

4 MR. SCOTT: Where is this?

5 MR. MASON: But that's not one of the things that the law says
6 you -- there are other procedures for dealing with that
7 that are unrelated to revocation of a permit as I
8 understand it. This appeal process right now. What we
9 have to do is --

10 MR. SYKES: Let me understand this then.

11 MR. MASON: I'm trying to explain the way I feel.

12 MR. SYKES: Let me understand this. These people, if they can
13 go down here and get this guy to issue them a permit,
14 just give any kind of a false name and they go through
15 your property and just grade it from one end to the other
16 you're just done for after he once gives them that permit
17 then, if I understand this right.

18 MR. MASON: No, sir. You have all kinds of remedies at law to
19 deal with that. They just don't lie before this Board.

20 MR. SYKES: Well, that's what I'm saying. When I called this
21 guy down here and told them that they never gave proper
22 notice, the permit never should have been issued to start
23 with. We wouldn't have been here. Even before he issued
24 the permit. I mean, the way I understand it is the Gas
25 and Oil Board is for the surface owner, not for OXY, the

1 way it's been turning out.

2 MR. MASON: Well, we're not here for anybody. We're here to
3 take this law and do what we -- make decisions based on
4 the authority granted to us based on the evidence
5 presented to us within what this law says we can do. I
6 understand that you feel that what they've done is wrong
7 and harmful to you. All I'm saying to you is based on
8 what you've told us we don't have the authority to do
9 anything about it. But there are other legal remedies
10 available to you.

11 MR. SYKES: Well, let me bring this up. Why did this guy here
12 tell me that he would revoke their permit if I would
13 prove that they didn't give proper notice?

14 MR. MASON: Well, I don't know --

15 MR. SYKES: I mean, is he different that the Board of Appeals?

16 MR. MASON: That is not an issue that we can deal with. If
17 you have a complaint about this gentleman's activities --
18 I'm not that familiar with it, but I assume there's some
19 procedure for you dealing with that. But we can't revoke
20 their permit because of something you perceive as his
21 conduct.

22 MR. SYKES: Well, again, I think the permit ought to be
23 revoked because the law requires them to give proper
24 notice to the surface owner. That is the law, that they
25 give proper notice. They didn't give proper notice to

1 the surface owners. Therefore, we're asking for the
2 permit to be revoked.

3 MR. MASON: But the law doesn't give us the authority to
4 revoke their permit on that basis.

5 MR. SYKES: It gives you the right to give them the permit,
6 though, without notifying the surface owners. That's
7 what you're telling me?

8 MR. MASON: Sir --

9 MR. SYKES: Are you telling me that it gives them the right to
10 give them the permit without notifying the surface owner
11 but then you ain't got no right to revoke it?

12 MS. RIGGS: Upon the required proof spelled out in the
13 statute. The purpose of giving notice is so that you can
14 object under this statute to the issuance of the permit.

15 MR. SYKES: Well, what I'm here for today is this right here.

16 MS. RIGGS: Well, now you have notice and you've got the
17 opportunity to object and that's what we --

18 MR. SYKES: Let me explain myself. What I am here for, the
19 Gas and Oil Board -- this guy sitting right here was told
20 this permit shouldn't be issued to start with, but he
21 went ahead and issued it. Then you're sitting here and
22 telling me that you can't revoke this permit that he
23 issued them. Now, there's something wrong.

24 MR. MASON: Why do you think it shouldn't have been issued?

25 MAN IN AUDIENCE: That's right.

1 MR. MASON: You're not of order, please. If you want to
2 testify you can come up here and testify. If not, we
3 will have order. I'm sorry, Mr. Chairman.
4 MR. CHAIRMAN: Go ahead.
5 MR. SYKES: I've proved the reason why the permit should be
6 revoked. It's already been proved. You all agreed to
7 that.
8 MR. MASON: No, sir. You haven't proved that at all. You've
9 proved that you didn't get notice and Mr. --
10 MR. SYKES: The law requires to give notice.
11 MR. MASON: No. The law requires to make due diligence to
12 determine the surface owners and to give them notice. He
13 determined that you should have gotten notice and you've
14 gotten it. Then the next stop is once you have that
15 notice you appear and show why the permit should not be
16 issued. You're saying that the fact that you're --
17 MR. SYKES: Well, let me make this statement for the record.
18 I don't think we need this guy over here in Abingdon. If
19 that be the case, if I give him a call and say, "Hey,
20 these people are on my property grading and I've never
21 been noticed in any way." And a week later he issues them
22 a permit and they're coming in here saying that that
23 permit gives them the right to be on the surface -- that
24 don't have a thing to do with it.
25 MR. SCOTT: I object. This has been decided.

1 MR. CHAIRMAN: Sustained.

2 MR. MASON: But you've had your notice.

3 MR. SYKES: They've had theirs and I'm asking the Board to
4 revoke this permit because the Board should know beyond a
5 reasonable doubt what's in the record --

6 MR. SCOTT: I object.

7 MR. SYKES: That they went on the property illegally.

8 MR. McGLOTHLIN: Mr. Sykes, it's explained to you what this
9 Board can do and what we can't do. And what we can do is
10 what's spelled out in the Code of Virginia. If you feel
11 that you've been injusticed by OXY, by Mr. Fulmer or by
12 this Board when we get through today you certainly have a
13 right of an appeal. It sounds to me that you need to be
14 in Circuit Court, not before this Board.

15 MR. SYKES: I wouldn't have had to of been in Circuit Court if
16 he had done his job -- if he had been protecting the
17 surface owners rights.

18 MR. SCOTT: I object. He's given them notice.

19 MR. SYKES: By him giving the permit illegal, this makes it
20 cost us money to go to Circuit Court where it ought never
21 to have been to start with.

22 MR. CHAIRMAN: Do you have anything to add, Mr. Sykes, because
23 we're getting ready to decide on this issue. Is there
24 anything else you would like to add regarding this
25 section of law where the Board has the authority?

1 MR. MCGLOTHLIN: I might ask one question. Mr. Sykes, when
2 was your water well -- when did that cease to produce
3 water?

4 MR. SYKES: The same week that they were drilling the well.
5 It was about four days after they started drilling the
6 well.

7 MR. MCGLOTHLIN: Do you have any --

8 MR. SYKES: I'd like to add too that there's a guy that lives
9 on this property that never was notified that they were
10 doing any work there -- on the same property.

11 MR. SCOTT: We've not been provided with any evidence that a
12 water well is not working any longer or that the water
13 supply on this property has been affected in one way or
14 the other. Is there something in the record?

15 MR. MCGLOTHLIN: That was the objection Mr. Sykes raised, that
16 his water supply had been interrupted and I just wanted
17 to find out when and --

18 MR. SYKES: I'd like to say there was a guy inspected the well
19 and he told me he would turn it in to this gentleman
20 sitting right here.

21 MR. MCGLOTHLIN: Do you have a record of that?

22 MR. SYKES: They ain't sent me nothing.

23 MR. SCOTT: Is there a notice of violation? We've not
24 received it.

25 MR. MCGLOTHLIN: Did you have the well tested at your expense?

1 MR. SYKES: Had it tested?

2 MR. MCGLOTHLIN: Yes, sir.

3 MR. SYKES: It burnt the pump up. There's no water in it.

4 When the water went out the (Inaudible.) pump keeps on
5 and it will just keep running till the pressure builds up
6 to kick it off. So there's no water there. They sunk
7 the water.

8 MR. MCGLOTHLIN: Do you have any proof that Buchanan Produc-
9 tion and OXY, USA damaged your well?

10 MR. SYKES: Well, I think that's good enough with them in 600
11 feet of my well -- drilling a well and it goes dry at the
12 same time. I think that's pretty good evidence. It had
13 been working good before.

14 MR. SCOTT: Has there been a test conducted? I mean, I'm not
15 aware of this if there has been or that any damage has
16 been done to a water well -- a water supply on this
17 property or that it's within 600 feet of the well site
18 location or notice that a violation has been filed.

19 MR. SYKES: Mr. Scott, I told you about it at the last hearing
20 down there.

21 MR. SCOTT: No, you have not, Mr. Sykes.

22 MR. SYKES: Well, you wouldn't talk to me. You was in too
23 big a hurry to get out of there.

24 MR. MCGLOTHLIN: Did you report this to anybody, Mr. Sykes?

25 MR. SYKES: Right there he sits. Ask him and see if I did.

1 MR. MCGLOTHLIN: Did an inspector come to the site and check
2 the well?

3 MR. SYKES: Yes, he did.

4 MR. MCGLOTHLIN: What was the inspector's name?

5 MR. SYKES: Jay was his first name. He also inspected the
6 surface. I rode on top of the hill with him. That's
7 another reason why the permit should be revoked. This
8 road going out to this well which is permitted on 40 foot
9 is about 100 foot wide there in one spot.

10 MR. SCOTT: Objection.

11 MR. SYKES: He agreed to me that that was a definite violation
12 of the permit to start with and that he would go right
13 back and report this. So you all should have the files
14 on that. I mean, you should ask this fellow right here
15 has he got it. That's where it was suppose to have went
16 back to. I didn't know that I was --

17 MR. MCGLOTHLIN: Mr. Fulmer, have you receive anything at the
18 office regarding a disruption in the well service?

19 MR. FULMER: Yes, we have.

20 MR. MCGLOTHLIN: Could you explain to the Board if it was
21 determined that it was Buchanan Production and OXY's
22 fault or --

23 MR. FULMER: There's two investigations going one in regards
24 to our office and the Division of Mining Reclamation.
25 Island Creek Coal Company VP-5 I believe is encroaching

1 upon this property as far as mining. So there may be a
2 subsidence issue here. The other thing, we did measure
3 the depth of the well. It was only 40 foot deep. Below
4 that it had already collapsed. We have no evidence of
5 water being in the well at the time. The depth of the
6 well and the water was inspected -- the certification was
7 set 1,100 feet in this particular well. As far as the
8 CBM S15B, the ground protection and water protection
9 stream was set at 1,100 feet which approximately means
10 that a well to be effected the water well would have had
11 to of been 1,000 feet. We could only get down to 40 feet
12 to measure the line.

13 MR. SYKES: Let me add to that, if I may. Two more people
14 standing right there with me -- he was picking up rocks,
15 throwing them in the well, said, "It sounds like it's
16 hitting dry surface." He said, "There ain't no water in
17 this well." He kept picking up rocks and throwing them
18 in there. So if the well ain't but 40 foot the man that
19 inspected it stopped it up because the well was 200 feet
20 --

21 MR. SCOTT: There is no evidence that this operation affected
22 this well one way or the other.

23 MR. SYKES: I've got two men that were there -- I was there
24 when he was throwing them in myself. I mean, I reckon
25 I'm allowed to testify that I seen him throw them in the

1 well if that be the case.

2 MR. SCOTT: Is it one of the inspectors that caused the
3 problem now or is it the operator?

4 MR. SYKES: If it's not but 40 feet deep he definitely caused
5 a problem. Maybe for you all. I don't know.

6 MR. CHAIRMAN: Anything further, members of the Board?

7 MR. SYKES: All I know is -- I mean, you've got to use common
8 sense a little bit. If me and you have got two houses
9 adjoining each other and you're pumping water out of your
10 well and I go over here and drill me a well and your well
11 does dry, that's pretty good evidence that you sunk my
12 well. I think that's as good as you need.

13 MR. SCOTT: I object. Mr. Fulmer already said that this water
14 casing stream was 1,100 feet, that the well was 40 feet
15 deep. There's no evidence presented by Mr. Sykes or
16 anywhere that shows that these operations conducted
17 caused any decrease in water supply to this property.
18 There's just no evidence to that effect.

19 MR. SYKES: Well, ask him if --

20 MR. SCOTT: And it is his burden.

21 MR. SYKES: Ask him if there wasn't mud running in the spring
22 within 100 foot below the well site. What was the report
23 on that?

24 MR. FULMER: The only thing I can say right now as far as this
25 evidence, it's never been brought before me. So I can't

1 really allude on the evidence here. I don't have the
2 inspector who inspected this to give his -- well, I can
3 give you an inspection report, but as far as verbiage and
4 what was told and whatever I can't testify on that. I do
5 know that we conducted an investigation to the water well
6 complaint. We've looked at that. We also know that
7 there is an encroachment upon the mine. So there's not a
8 final determination right now. We know at what depth
9 that the ground water protection stream was set on the
10 S15B well. We know that that well is not in production.
11 It's drilled and it's cased as far as that well goes. So
12 there's no movement of water in or out at that depth.
13 We're still open ended on the investigation of the water
14 well because of this encroachment on the mining in there.
15 We don't know exactly if there is a connection between
16 the drilling of the S15B or is it mining -- subsidence
17 from mining.

18 MR. EVANS: Has there been a notice of violation issued for
19 violation of the soil erosion control plan?

20 MR. FULMER: Not to my knowledge.

21 MR. SYKES: Can I ask him a question?

22 MR. CHAIRMAN: You can ask the Board.

23 MR. SYKES: Can I ask him a question on this --

24 MR. CHAIRMAN: Go ahead and ask your question.

25 MR. SYKES: Did your inspector turn a violation into you on

1 the road?

2 MR. FULMER: Do you want me to answer?

3 MR. CHAIRMAN: Yes.

4 MR. FULMER: Not to my knowledge.

5 MR. SKYES: Did he turn in a violation that there was mud
6 running in the spring?

7 MR. FULMER: Not to my knowledge. He would have wrote the
8 violation -- he would have wrote them. I don't write the
9 violations. He writes the violation.

10 MR. SYKES: To your knowledge --

11 MR. FULMER: To my immediate knowledge right now I do not
12 know.

13 MR. SYKES: Is there anything in the file?

14 MR. SYKES: Would it have been turned in to you or someone
15 else?

16 MR. FULMER: No. The violation goes directly into the data
17 system. I have nothing to do with it. If there's a
18 question of a violation --

19 MR. SYKES: Why would he tell me that he would take it back
20 and turn it in to you if he wasn't suppose to?

21 MR. FULMER: Sir, I can't tell you on that. I have no idea.
22 But the violation he issues -- if there is a conflict of
23 the violation filed by somebody, whether a citizen or
24 whether an operator, then I would hear that violation --
25 the appeal of that violation, whoever is appealing. But

1 personally I do not issue violations. He's empowered to
2 issue violations.

3 MR. SYKES: I'd like to ask the Board would there be any way
4 of knowing here today if they had filed this violation
5 --

6 MR. SCOTT: May I ask Mr. Wirth under oath if they've received
7 a notice of violation?

8 MR. CHAIRMAN: Yes.

9 COURT REPORTER: (Swears witness.)

10

11

MARTIN E. WIRTH

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

14

15

DIRECT EXAMINATION

16

17 BY MR. SCOTT:

18 Q. Your name, please?

19 A. Martin E. Wirth.

20 Q. By whom are you employed?

21 A. OXY, USA.

22 Q. Are you familiar with the well which is controversy here
23 today?

24 A. Yes, I am.

25 Q. To get to the issue that was raised a couple of minutes

1 ago, have you received a notice of violation for this
2 well regarding any violation of soil or erosion and
3 sediment control?

4 A. Not as to the soil and erosion. I will say on the access
5 road coming off -- not on Mr. Sykes' property -- we were
6 suppose to have a couvert in. The inspector asked us to
7 get the couvert. It wasn't put in until the next day.
8 Therefore, he issued a violation but abandoned the
9 violation because we did get it put in within twenty-four
10 hours. But we did get it in that day.

11 MR. CHAIRMAN: Anything further?

12 MR. SYKES: I'd like to cross-examine him.

13 MR. SCOTT: Limited to the notice of violation.

14 MR. CHAIRMAN: Right.

15 MR. SCOTT: Only notice of violation.

16 MR. SYKES: My cross-examination would be on the water and mud
17 running off the road that's permitted. If I would be
18 permitted to ask him that question.

19 MR. SCOTT: He's already testified he's not received a notice
20 of violation. He can ask him have you gotten you and you
21 can say no. We haven't received one.

22 MR. MASON: What would you like to know about that? Ask me
23 and I'll ask him.

24 MR. SYKES: The fact that they've not only run over my
25 property but the fact that there's three inches of mud

1 running out on the state highway property.

2 MR. MASON: All right. Mr. Wirth.

3 MR. WIRTH: I have no knowledge --

4 MR. SYKES: And I'll eat it all if it's not there.

5 MR. MASON: Do you have any knowledge of this?

6 MR. WIRTH: No, I do not.

7 MR. SYKES: And then I'd still like to add in why this permit
8 should be revoked. They have mined -- was permitted by
9 me introduced into evidence there --

10 MR. SCOTT: Objection. If it relates to the notice we've
11 already decided that issue.

12 MR. SYKES: It don't relate to the notice.

13 MR. CHAIRMAN: I'm going to let him go ahead and see what he's
14 going to say. Overruled. Go ahead.

15 MR. SYKES: I contacted OXY and told them that the guy lived
16 there and went in the mine to get house coal out of the
17 mine. He said, "We didn't know nothing about one being
18 there and don't care nothing about one being there.
19 We're going ahead and drill." I said, "Well, you could
20 maybe kill somebody or blow them up with that gas them
21 being in the mine getting house coal out of it." And the
22 guy living there was never notified that they were going
23 to drill there.

24 MR. SCOTT: Mr. Wampler, there has not been any evidence shown
25 that there are any dwelling houses near this well

1 location or that anybody's personal safety has been --
2 MR. SYKES: If he'll bring out his permit I'll show you the
3 house on it -- the man that he introduced into evidence.
4 I'll show you the house on it.
5 MR. MASON: The person that was mining this house coal, is he
6 an owner of property?
7 MR. SYKES: He lives on the property and he has permission
8 from us to --
9 MR. MASON: But he's a tenant. He's not an owner.
10 MR. SYKES: No, he's not an owner. No.
11 MR. CHAIRMAN: Further questions?
12 MR. SYKES: But I'm saying square to the Board here that these
13 people from all your documents here have moved in here on
14 this property, you might say done just what they want to
15 do. Without giving proper notice which comes back to --
16 when they get that chance to do that it costs the
17 property owner anywhere from maybe \$5,000 to \$40,000 to
18 battle this out with them.
19 MR. SCOTT: Objection. We're talking about notice again.
20 You've gotten notice.
21 MR. SYKES: I'm asking for the permit to be revoked on that
22 account that they can't do nobody else that way.
23 MR. SCOTT: Based on notice.
24 MR. CHAIRMAN: We understand that. Any further questions,
25 members of the Board?

1 MR. WIRTH: May I have one say? Some of the offices of the
2 state have been un due wrathed just because there was an
3 OXY cup. That was my cup in the middle of the table.
4 We've done due diligence. We did as a record. I'm not
5 going to rehash why their name wasn't on record. It's
6 all in the transcript, everything was decided, and it's
7 all hashed out. We've tried to work with the gentleman.
8 We cannot.

9 MR. SYKES: Well, I'll cross-examine you in a minute then.

10 MR. CHAIRMAN: No. I think we've -- unless the Board has any
11 further questions --

12 MR. SYKES: Well, I think I ought to have the right to follow-
13 up on his statement. He said he made every effort to
14 settle with us.

15 MR. CHAIRMAN: You can make a concluding remark to us. That
16 was just a statement.

17 MR. SYKES: I can't cross-examine him on his statement he just
18 made?

19 MR. CHAIRMAN: You can make any statement you want to the
20 Board.

21 MR. SYKES: Okay. He said he made every effort. I'll tell
22 you how they made an effort. Mr. Otto Boucher that's not
23 here today --

24 MR. SCOTT: Objection. Hearsay.

25 MR. CHAIRMAN: Overruled. Go ahead.

1 MR. SYKES: He comes and says, "I'm going to drill a well up
2 here to let some gas off where Island Creek is mining.
3 Sign this here." No, we ain't going to sign it until we
4 find out what's wrong. Then he comes back a few days
5 later and he threatens you. That's the way they operate.
6 He threatens you. "I'll take you over here to court.
7 I'll file an injunction against you."

8 MR. SCOTT: Objection.

9 MR. SYKES: He did state that --

10 MR. CHAIRMAN: I'm going to go ahead and let him say whatever
11 he's going to say.

12 MR. SYKES: He stated that in the court of Buchanan County.
13 See, these people have -- even an attorney here has gone
14 into Buchanan court without giving any notice to Jac-
15 queline K. Sykes and gets permission to go on the land.

16 MR. SCOTT: Objection.

17 MR. CHAIRMAN: Sustained.

18 MR. SYKES: But what I'm adding up to here on the way they
19 operate, I was doing my best to deal with them. Doing my
20 best to try to deal with them. They had already been on
21 the land. I told Mr. -- he told me, "Now, there's a guy
22 that's already been on your land cutting timber. Now, it
23 ain't been us. It ain't been us." So I walked up there
24 and it was them doing the grading -- already starting on
25 my land doing the grading then. So what I'm saying is

1 that's the reason you don't see Otto here today.

2 MR. SCOTT: Objection.

3 MR. SYKES: He don't want to face me here today. It's kind of
4 funny that they --

5 MR. SCOTT: Objection.

6 MR. CHAIRMAN: It's noted for the record.

7 MR. SYKES: It's kind of funny that they wouldn't have the of-
8 way agent here today.

9 MR. CHAIRMAN: Anything further, members of the Board?

10 MR. MASON: Mr. Chairman, I would just like to say as I tried
11 to state earlier that -- I mean, I understand that Mr.
12 Sykes is unhappy about the way a lot of these things have
13 occurred and I understand that there's a lot of conflict
14 between surface owners and mineral owners that we have no
15 authority to do anything about. And I certainly under-
16 stand that the burdens of pursuing those in court and
17 other ways are often expensive and that the burden is on
18 the surface owner. But there's just very little that we
19 can do about that. We just don't have the authority to
20 do it.

21 MR. SYKES: Could I make a statement to follow-up on that for
22 the record?

23 MR. MASON: I think we've dealt with these pretty thoroughly
24 and maybe -- to my mind you just haven't given us
25 anything that we can legally act on.

1 MR. SYKES: But I'm still -- my thoughts that I have might
2 help someone in the future. If you recommend this fellow
3 here to do his job, not issue these permits, you might
4 not cause these surface owners all these problems. These
5 here permit that's illegal to start with and him knowing
6 it.

7 MR. MASON: Your point's well made. Thank you. Mr. Chairman?

8 MR. CHAIRMAN: Mr. Mason.

9 MR. MASON: I think it's appropriate that we move forward.

10 MR. SYKES: I still want to move that the permit be revoked.

11 I think there's grounds to revoke their permit.

12 MR. CHAIRMAN: Do I have a motion from any member of the
13 Board?

14 MR. EVANS: I move that the request to revoke the permit be
15 denied based on lack of evidence as contained in Section
16 45.1-361.35.

17 MR. CHAIRMAN: We have a motion.

18 MR. KELLY: Second.

19 MR. CHAIRMAN: A motion and a second. Any further
20 discussion? All in favor signify by saying yes. (ALL
21 AFFIRM.) Opposed say no. (NONE.) It's a unanimous
22 decision. Thank you, Mr. Sykes. We'll adjourn for
23 lunch now and be back at 1:25.

24 (AFTER A LUNCHEON RECESS, THE HEARING CONTINUED AS
25 FOLLOWS:)

ITEM VII

MR. CHAIRMAN: The next item on the agenda is Pocahontas Gas Partnership has by petition requested the Board to extend and establish drilling units for coalbed methane extraction by amending prior field rules of Oakwood Coalbed Gas Field which was created in March of 1990 and the Oakwood Coalbed Gas Field II. This has been published as docket number VGOB-93/02/16-0325 and we would ask any parties wishing to address the Board to come forward at this time.

MS. McCLANNAHAN: Mr. Chairman, I'm Elizabeth McClannahan and I represent Pocahontas Gas Partnership in its applications for the Hurricane Branch Extension to the Oakwood Coalbed Gas Field and the Oakwood Coalbed Methane Gas Field II to establish units for the exploration, development and production of coalbed methane gas, coalbed methane gas located in the active gob area, unsealed gob gas, short hole gas, and gas from any additional well. This application is a proposed extension of the Oakwood Fields. It contains a combined acreage of 4,320 acres. The proposed units consist of 80 acres and continue the unit designation numbering system of the Oakwood Fields. We're requesting that the Board extend the Oakwood Field Rules with regard to additional wells in compliance with

1 Virginia Code annotated Section 45.1-361.20.C and we will
2 demonstrate through the testimony of our expert witnesses
3 that the proposed Hurricane Branch Extension is essent-
4 ially the same pool exhibiting the same characteristics
5 as that of the previously established Oakwood Fields.

6 The first witness I would like to call is Les Arrington.

7 COURT REPORTER: (Swears witness.)

8
9 LESLIE ARRINGTON

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

12
13 DIRECT EXAMINATION

14
15 BY MS. McCLANNAHAN:

16 Q. Mr. Arrington, would you please state your full name for
17 the record?

18 A. Leslie K. Arrington.

19 Q. Would you please identify Exhibit 1?

20 A. That's my resume and work history.

21 Q. Mr. Arrington, have you been qualified as an expert
22 witness prior to this before the Gas and Oil Board?

23 A. Yes, I have.

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

1 MR. CHAIRMAN: Okay, without objection.

2 Q. (Ms. McClannahan continues.) Has there been a continuous
3 property acquisition program in connection with the
4 development plan of the mine area underlying the Hurri-
5 cane Branch Extension?

6 A. Yes, there has.

7 Q. How were the names of the potential owners of the coalbed
8 methane gas identified?

9 A. From field work, title opinions and mapping.

10 Q. Could you please identify the exhibits that are marked
11 for identification as Exhibits 2, 3, 4 and 5?

12 A. Exhibit 2 is the coal control map. Exhibit 3 is the coal
13 seams below the Tiller -- coal below the Tiller seam.
14 Exhibit 4 is the oil and gas control and Exhibit 5 is the
15 coalbed methane control map.

16 Q. Did you prepare this maps?

17 A. Yes, I did.

18 MS. McCLANNAHAN: Mr. Chairman, I move the introduction of
19 Exhibits 2 through 5.

20 MR. CHAIRMAN: Any objection? Okay.

21 Q. (Ms. McClannahan continues.) Looking at Exhibits 2 and
22 3, Mr. Arrington, since the development planning for the
23 mine began how much of the coal estate has PGP obtained
24 control of within the area of the Hurricane Branch
25 Extension?

1 A. The P-3 control we control 81.08 percent. Of the coal
2 below the Tiller seam we control 69.872 percent.
3 Q. Is this acreage leased?
4 A. Yes.
5 Q. Is it colored in yellow on both maps -- both exhibits?
6 A. Yes.
7 Q. Along with the coal what percentage of the oil and gas is
8 controlled by PGP?
9 A. 63.365 percent of the oil and gas.
10 Q. Is this acreage also leased?
11 A. Yes.
12 Q. Along with the coal and oil and gas what percentage of
13 coalbed methane gas is controlled by PGP in this area?
14 A. 81.018.
15 Q. And is that shown on Exhibit 5?
16 A. Yes.
17 Q. Since the filing of the Hurricane Branch Extension field
18 rules application the ownership acreages and percentage
19 that you've just testified to and which are shown on this
20 maps have been revised, is that correct?
21 A. Yes, they have.
22 Q. Have you submitted revised applications and exhibits for
23 those?
24 A. Yes, I have. That's Exhibit 6.
25 Q. And that would include Exhibits B and C to the applica-

1 tion, is that correct?

2 A. Yes.

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

5 MR. CHAIRMAN: Okay.

6 Q. (Ms. McClannahan continues.) Will each of the mineral
7 tracts in Hurricane Branch Extension participate in the
8 unit production on a surface acreage basis within each 80
9 acre unit?

10 A. Yes, they will.

11 Q. That's total mineral acres as reflected on the surface,
12 is that correct?

13 A. Yes.

14 Q. Do the plat and acreage totals on the revised exhibits
15 that you've submitted as Exhibit 6 reflect the relative
16 contribution that each tract is expected to make to the
17 total Hurricane Branch Extension project?

18 A. Yes.

19 Q. Who are the owners of the coal below the Tiller seam?

20 A. The coal owners are listed on Exhibit C, pages 1 through
21 12.

22 Q. And that is Exhibit C of Exhibit 6 as you've submitted
23 it?

24 A. Yes.

25 Q. Are these also your coal lessors?

1 A. Yes.

2 Q. Would you please identify Exhibit 7?

3 A. Exhibit 7 is the hearing notice that was mailed to each
4 potential owner.

5 Q. Did you conduct that mailing?

6 A. Yes, I did. It was accomplished by certified mail,
7 return receipt.

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

10 MR. CHAIRMAN: It's admitted.

11 Q. (Ms. McClannahan continues.) Are copies of the return
12 receipts shown at Exhibit 8?

13 A. Yes, they are. However, I do have a waiver of notice
14 from the Hirt McQuire heirs.

15 Q. And the Hirt McQuire heirs signed a waiver of notice
16 because the United States Postal Service did not deliver
17 that package, is that correct?

18 A. Correct.

19 MS. McCLANNAHAN: Mr. Chairman, I would move the introduction
20 of Exhibit 8.

21 MR. CHAIRMAN: With no objection it's admitted.

22 Q. (Ms. McClannahan continues.) How were the persons whose
23 names and/or addresses are listed as unknown notified?

24 A. By the publication in the Virginia Mountaineer and
25 Bluefield Daily Telegraph on January 28th and January

1 27th respectively.

2 Q. Have proofs of publication for the above referenced
3 notice been previously submitted to the Gas and Oil
4 Board?

5 A. Yes, they have.

6 MS. McCLANNAHAN: Thank you, Mr. Arrington. I don't have any
7 further questions of this witness.

8 MR. CHAIRMAN: Any questions, members of the Board, for Mr.
9 Arrington? You may call your next witness.

10 (Witness stands aside.)

11 MS. McCLANNAHAN: I'd like to call Ken Cormandy.

12 COURT REPORTER: (Swears witness.)

13

14 KENNETH CORMANDY

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

17

18 DIRECT EXAMINATION

19

20 BY MS. McCLANNAHAN:

21 Q. Mr. Cormandy, would you please state your full name and
22 address for the record?

23 A. Kenneth J. Cormandy, 529 Quail Valley, Princeton, West
24 Virginia.

25 Q. And could you please identify Exhibit 9 as it's been

1 submitted to the Board?

2 A. Exhibit 0 is a copy of my resume detailing my educational
3 background and my work experience.

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

6 A. Yes, I have.

7 MS. McCLANNAHAN: Mr. Chairman, I submit Mr. Cormandy as an
8 expert witness.

9 MR. CHAIRMAN: Without objection.

10 Q. (Ms. McClannahan continues.) Mr. Cormandy, would you
11 please identify the exhibit that's marked for identifica-
12 tion as Exhibit 10?

13 A. Exhibit 10 is a cross section generated through the
14 Hurricane Branch Extension area.

15 Q. Did you prepare this particular exhibit?

16 A. Yes, I did.

17 MS. McCLANNAHAN: Mr. Chairman, I would move the introduction
18 of Exhibit 10.

19 MR. CHAIRMAN: Any questions?

20 MR. EVANS: I've got one question. That's a cross section
21 east west or north south?

22 THE WITNESS: That's east west.

23 MR. EVANS: Okay.

24 Q. (Ms. McClannahan continues.) Mr. Cormandy, could you
25 please identify the characteristics of the coal seams

1 lying below the Tiller seam that are listed on the
2 Hurricane Branch Extension application?

3 A. I generated this cross section from the drill hole data
4 based on electric logs, geologic logs, using the P-3 seam
5 or Pocahontas 3 seam as the datum point and created the
6 cross section and the surface profile. The Board will
7 notice that the seams penetrated are familiar because
8 we've testified in previous hearings on the Oakwood area.
9 The seams are the same encountered in this area because
10 it lies adjacent to the existing Oakwood Field.

11 Q. Would you please identify Exhibit 11?

12 A. Exhibit 11 is another cross section that we previously
13 have used in our Oakwood testimony. We brought this in
14 to make a comparison of the two areas to show the
15 similarities between the Hurricane Branch Extension and
16 the existing Oakwood Field. The seams encountered are
17 all the same. Again, you have some slight variation in
18 seam thickness. Some unnamed coal seams that have --
19 that's just listed as unnamed, but basically the rock
20 types that you encounter, the coal seams that you
21 encounter are the same that exist in the Oakwood area.
22 The Hurricane Branch Extension lies adjacent to the
23 existing Oakwood Rules.

24 Q. Are there any geologic barriers between these two
25 particular areas?

1 A. No, geologic anomalies or structural anomalies exist
2 between these two areas. They are right next to each
3 other. They're continuous and basically the same.

4 Q. Is the acreage that's covered by the Hurricane Branch
5 Extension underlame by at least one coalbed capable of
6 producing coalbed methane gas?

7 A. Yes, it is.

8 MS. McCLANNAHAN: I would submit Exhibit 11 to the Board.

9 Q. (Ms. McClannahan continues.) Could you please identify
10 the two exhibits that are listed as Exhibit 12?

11 A. Exhibit 12, the first one is a location of -- you see the
12 existing Oakwood Field and then in yellow the Hurricane
13 Branch Extension. What we have there are two wells that
14 were drilled, one in the Oakwood area, 118-C, and then
15 another well that's drilled in the Hurricane Branch
16 Extension area. And another method to show that we're
17 talking about the same geologic setting, we've made a
18 cross section just comparing these two particular wells.
19 And that's the --

20 Q. Excuse me. Mr. Cormandy, the well that's in the Hurri-
21 cane Branch Extension area is well number 407, is that
22 correct?

23 A. That's correct.

24 Q. Okay. Go ahead.

25 A. What I did was just compare the two logs of these wells.

1 The second part of your Exhibit 12 shows how these
2 compare. And you can see the distance between them is
3 quite extensive, but when you correlate these logs
4 together -- match up the coal seams -- they match very
5 well. For geologists this is a nice thing to see across
6 your property. But it's another method of showing that
7 the two areas are basically the same geologically, the
8 same setting, the same structure and contain the same
9 coal seams that we have testified before you.

10 Q. Mr. Cormandy, did you also prepare these two exhibits
11 that are identified as Exhibit 12?

12 A. I prepared the cross section and Mr. Arrington prepared
13 the location map.

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

15 Q. (Ms. McClannahan continues.) Mr. Cormandy, are the
16 characteristics of the specific coal seams that lie below
17 the Tiller seam, the coal thicknesses of these seams, the
18 strata within these coal seams, the coal formations and
19 their structures essentially the same as the formations
20 underlying the established Oakwood Field?

21 A. Yes, they are.

22 Q. Based on this information do you believe that the
23 formations in the Hurricane Branch Extension should be
24 treated as a part of the Oakwood Fields pool because of
25 their common deposition and because there are in communi-

1 cation with the Oakwood Fields pool?

2 A. Yes, I do.

3 Q. Are there any significant variances in the depths and
4 thicknesses between the previously established Oakwood
5 Fields coal seams and the Hurricane Branch Extension coal
6 seams?

7 A. The stratigraphy of the coal seams is basically the same,
8 but again the Hurricane Branch Extension is on the
9 northern flank of the Dry Fork anticline. It does rise
10 from west to east. So you will structurally be just a
11 little bit higher, but basically the intervals between
12 the seams and the coal seams themselves are the same.

13 Q. And does this pool as it is defined in Hurricane Branch
14 Extension application underlay all of the acreage that's
15 listed in the application as PGP has filed it?

16 A. Yes, it does.

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

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

20 MR. EVANS: Is there any indication that the stratigraphy
21 extends beyond -- how much beyond the proposal that
22 you've come in with today? Do you have any information
23 outside of the units your proposing yet?

24 THE WITNESS: Yes, Mr. Evans. I've looked at quite a bit of
25 acreage there for Consolidation Coal Company, particular-

1 ly for the 3 seam, and it does extend beyond.

2 MR. EVANS: Is it your opinion that other acreage adjacent to
3 what you're proposing today would be suitable for
4 including that in an application like this?

5 THE WITNESS: Looking at the stratigraphy and geology the
6 similarities do extend beyond there. Yes, it does.

7 MR. EVANS: Is there any reason why you cut it off where you
8 did?

9 MS. McCLANNAHAN: Well, first I'd like to answer the first
10 reason for that question is a legal one. We have to give
11 notice to all the owners in the particular area that's
12 the subject of the application and the economics of
13 doing title work and due diligence on any other acreage
14 are actually prohibited, number one, at this particular
15 time. Number two, I think probably Randy Albert can
16 explain to you the technical and engineering reasons why.
17 He's our next witness if that's okay.

18 MR. CHAIRMAN: Any other questions for Mr. Cormandy? Call
19 your next witness.

20 (Witness stands aside.)

21 MS. McCLANNAHAN: Randy Albert.

22 COURT REPORTER: (Swears witness.)

23

24 RANDALL ALBERT

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

1 testified as follows:

2

3

DIRECT EXAMINATION

4

5 BY MS. McCLANNAHAN:

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

7 A. Randall M. Albert.

8 Q. And would you please identify Exhibit 13?

9 A. Exhibit 13 is my resume, work history.

10 Q. Have you been qualified as an expert witness prior to
11 this time before the Gas and Oil Board?

12 A. Yes.

13 MS. McCLANNAHAN: I would submit Mr. Albert as an expert
14 witness.

15 Q. (Ms. McClannahan continues.) Mr. Albert, would you
16 please address Mr. Evans' question?

17 A. Sure. As Elizabeth has stated, the legal reasons for not
18 including any further acreage technically speaking this
19 is the area that we have proven will our drilling program
20 to date and basically those two reasons -- it's the area
21 proven by our exploration drilling program. And we've
22 feasibly in the time frame and time constraints we had to
23 get this going couldn't see doing title on that entire
24 area at this point in time.

25 MR. EVANS: But there's no reason to believe that that should

1 not be extended?

2 THE WITNESS: That's correct. In fact, if the Board upon it's
3 own motion wants to extend that boundary we certainly
4 would not find no fault with that.

5 MR. EVANS: I guess I have one other question as far as how
6 big a pool we're talking about. Are we -- how far does
7 a coal seam or coal seams capable of producing coalbed
8 methane extend in the north, south and east directions?
9 Based on Virginia geological survey maps of coal seams do
10 they -- I know that at some point in time some of the
11 seams do pinch and don't return because of the deposi-
12 tion. And I guess what I'm asking is do you have any
13 information as to how far, if the Board on its own
14 motion decides to extend this field, we could extend it.

15 THE WITNESS: I think that would have to be a question Mr.
16 Cormandy would have to answer.

17 MR. CORMANDY: It would extend north. I don't have a map, but
18 there is a fault -- the Bishop Bradshaw fault that would
19 limit the northern -- extend to the 3 seam to the south.
20 You have the thrush faults that would be the southern
21 (Inaudible.) of it. It extends quite far. The Hurri-
22 cane Branch Extension just borders on the Jewel Ridge
23 quadrangle and it would cover basically the Jewel Ridge
24 quadrangle. Some of the southern ends might cut off
25 because the 3 seam starts to thin to the south and to

1 the north. The bulk of the thicker 3 seam is --

2 MR. EVANS: A load that comes out that direction?

3 MR. CORMANDY: Basically yes. And the other seams again are
4 there, something thin and discontinuous. The most
5 persistent, as we've testified before, is the 3 seam and
6 the War Creek or #11 seam. The remaining seams are
7 present but sometimes very thin and discontinuous. You
8 just have to look at how far you want to go with the data
9 that we have.

10 MR. ALBERT: Mr. Evans, I would remind you that the area we
11 have before you today is the only area that we have
12 drilled -- that we have a proven reserve in.

13 MR. EVANS: Right. I'm just asking if you have any informa-
14 tion that could help the Board. You made reference to
15 the fact that we could on our own motion extend this
16 beyond this. I want to know if you could help us out in
17 saying why we should or shouldn't.

18 MR. ALBERT: Well, I think Mr. Cormandy has defined the area
19 of the probable gas reserve, coal reserve, as you may
20 have it.

21 MR. EVANS: Okay. I'm not trying to argue with you or
22 anything else. I'm trying to ask a question but -- okay.

23 Q. (Ms. McClannahan continues.) Mr. Albert, what kind of
24 production is contemplated in the Hurricane Branch
25 Extension area?

1 A. It would be the same type of productions covered by the
2 existing Oakwood Fields and Oakwood orders. It would be
3 all the coalbed methane gas, all the coalbed methane gas
4 from active gob areas, unsealed gob areas, horizontal gas
5 or short hole gas as referred to in the Oakwood orders
6 and gas from any additional wells. Collectively all
7 coalbed methane gas.

8 Q. Could you identify Exhibit 14 that's been submitted to
9 the Board?

10 A. Exhibit 14 is the Hurricane Branch mine plan with the
11 well locations that are drilled to date located on it.
12 Superimposed on top of the mine plan are the 80 acres as
13 we're asking them to be extended.

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

16 MR. CHAIRMAN: Any objections? Okay. It's admitted.

17 Q. (Ms. McClannahan continues.) What kind of units are
18 being proposed by the Hurricane Branch Extension applica-
19 tion as shown on Exhibit 14?

20 A. The application extends the Oakwood Field and utilizes
21 the same 80 acre unit numbering designations as in the
22 previously established Oakwood Fields. In addition the
23 relief requested is the same as the Oakwood Coalbed
24 Methane Gas Field II or the Oakwood II order. Including
25 in that we are asking that any operator may apply to the

1 Inspector for drilling of additional wells. We feel this
2 to be an important part of our application because it
3 will allow the operators flexibility permitting all
4 additional wells as coalbed methane rather than VVH under
5 the Division of Mines regulations which will benefit both
6 the operator and Commonwealth by preventing physical
7 waste of coalbed methane because the well simply is
8 permitted as a oil and gas well.

9 MR. CHAIRMAN: Was that provision in the Oakwood II order?

10 MS. McCLANNAHAN: Yes, it is.

11 Q. (Ms. McClannahan continues.) That would be that the
12 Inspector be granted the authority to approve additional
13 wells under 361.20.C, is that correct?

14 A. That's correct.

15 MR. CHAIRMAN: Nothing any different?

16 MS. McCLANNAHAN: That's correct.

17 MR. CHAIRMAN: That's what I wanted to make sure of.

18 MS. McCLANNAHAN: If you'll remember, the designation was made
19 as to a 20A well. Increased density you would have to
20 come before the Board. A 20 C well the Inspector could
21 grant that.

22 Q. (Ms. McClannahan continues.) Are you requesting that the
23 Board adopt the previously established Oakwood Field
24 Rules for the proposed Hurricane Branch Extension?

25 A. Yes, we are.

1 Q. Are you requesting that the Board require that all the
2 provisions of the Oakwood orders be applicable to the
3 proposed Hurricane Branch Extension including the
4 formulas for allocating production?

5 A. Yes, we are.

6 Q. Do the units as proposed by the Hurricane Branch Extension applications conform with reserve coal properties
7 planned Hurricane Branch mine boundary for the area
8 underlying the Hurricane Branch Extension?
9

10 A. Yes, they do.

11 Q. What is the proposed mine operation and drilling plan for
12 this Hurricane Branch Extension as it's shown on Exhibit
13 14?

14 A. The Hurricane Branch Extension as proposed overlays RCP's
15 planned Hurricane Branch Mine. The Hurricane Branch
16 Extension as shown on Exhibit B-1 of this application
17 contains 4,320 acres.

18 Q. What considerations have determined the characteristics
19 of this drilling operations plan?

20 A. First of all, it was determined by the mine plan or the
21 proposed mine plan. Further like with any drilling plan
22 it was influenced by topography, surface constraints, and
23 upper seam mine operations.

24 Q. What do you believe are the primary reasons that the
25 Oakwood order and the December 17, 1991 order should be

1 extended to include the Hurricane Branch Extension area
2 as you've requested?

3 A. Well, I think the things we have to talk about are it's
4 the same coal, the same conditions and same geology as
5 referred to by Mr. Cormandy. The units and the payment
6 plans have been previously approved by this Board.
7 Because of that it would lead to some administrative
8 efficiencies within the division and within the operat-
9 or's companies itself. Basically those are the reasons
10 as we've set forth through testimony today that we feel
11 should be extended based on the previously approved
12 orders.

13 MS. MCCLANNAHAN: Those are all the questions I have for Mr.
14 Albert.

15 MR. CHAIRMAN: Any questions, members of the Board? On your
16 Exhibit 14 you've identified wells that in a couple of
17 cases at least -- I see several cases where you're
18 showing more than one well in a particular unit. Are you
19 asking the Board to -- do you have prior approval of
20 those or are you trying to get approval from this Board
21 on --

22 THE WITNESS: Those wells are permitted and gridded.

23 MR. CHAIRMAN: And specifically permitted by the Board for
24 additional wells?

25 THE WITNESS: No, sir. Those are coalbed methane wells

1 approve by the Inspector.

2 MR. FULMER: They're outside the field under statewide
3 spacing.

4 THE WITNESS: Under statewide spacing.

5 MS. McCLANNAHAN: These are all drilled on statewide spacing.
6 There weren't variances required for any of them.

7 MR. MASON: Maybe I'm being naive here, but what effect would
8 adopting these rules have on the allocation and payment
9 of revenues from the wells? Would you be switching from
10 the statewide spacing to the units in terms of how the
11 income is allocated?

12 THE WITNESS: The wells aren't in production yet, Mr. Mason.

13 MR. MASON: I see.

14 THE WITNESS: We're hoping to have approval of this extension
15 prior to any of the wells going into production. So
16 there would be no need to switch from one method of
17 payment to the other.

18 MR. MASON: But it would alter the allocation of the income
19 from these wells based on these units as opposed to what
20 it would have been if you had used the statewide spacing,
21 is that correct?

22 THE WITNESS: That's correct.

23 MR. MASON: There's no payments been made at this point?

24 THE WITNESS: That's right. I didn't mean to interrupt,
25 Benny.

1 MR. CHAIRMAN: That's a good follow through. That's the same
2 wavelength I'm on here. What about the notification
3 issue or anything like that? Have all the parties to the
4 wells that are identified on here been notified?

5 THE WITNESS: Yes, sir.

6 MR. CHAIRMAN: Okay.

7 MR. MASON: The next thing is -- you know, these wells were
8 permitted and when you did the units the permitting
9 notice was based on the statewide spacing. When you
10 shift over to these units will there be any people who
11 would be within those units that weren't notified as a
12 part of the original process? Because basically you're
13 going to shift that permit from a statewide spacing unit
14 to a field unit, is that correct?

15 THE WITNESS: That's correct.

16 MR. MASON: I don't know what ramifications that has. That's
17 just what I --

18 MR. CHAIRMAN: That's what I'm questioning, too.

19 MS. MCCLANNAHAN: Legally I think under --

20 THE WITNESS: Notice was given under statewide spacing.

21 You're point is well taken. I'm not sure I can answer
22 that question.

23 MR. MASON: I'm just questioning what effect does it have when
24 you make notice based on one -- basically one boundary
25 and then you adopt the field rules and you have a

1 different boundary and you're going to produce under the
2 second boundary and allocate income and, in effect, shift
3 the -- these people, if there were involuntary pooling
4 applications based on statewide spacing -- did that
5 occur?

6 THE WITNESS: No, sir.

7 MS. McCLANNAHAN: No. None of these have been pooled nor have
8 any of them been paid production. I have looked at the
9 law and the regs on this and I think once the -- certain-
10 ly when the permit has been -- at the time that the
11 permit is issued then you have to give notice in conform-
12 ance with the circle under the statewide spacing rules.
13 Once the well has been drilled then the only time at
14 which it matters again is at the time that you produce
15 it and you have to pay royalty owners. And we're in the
16 middle of that process at this point. So no one would be
17 effected adversely.

18 MR. CHAIRMAN: But again, have all these parties that are in
19 here been noticed that you're proposing to change to the
20 80 acre spacing?

21 MS. McCLANNAHAN: Oh, yes. Everybody in the 4,320 acre
22 Hurricane Branch area who has an interest under the
23 statute has been notified.

24 MR. MASON: And that would include everybody that was noticed
25 under the original permit applications?

1 MS. McCLANNAHAN: Right. Yes, it would.

2 MR. CHAIRMAN: Are there any other parties here today that
3 want to address the Board in any of these matters? You
4 haven't finished your testimony yet.

5 MR. SWARTZ: I'm here on behalf of OXY, USA and Buchanan
6 Production Company. We have no objection at all to
7 extending the field. I think it makes sense. What I've
8 heard from these gentlemen today is consistent with what
9 we understand. I would like to encourage the Board, sort
10 of following up on some comments Mr. Evans made, to
11 seriously consider setting on your own motion for the
12 March docket the question of whether or not it would be
13 appropriate to not just stick a piece on the east side of
14 the Oakwood Field -- to extend the Oakwood Field some
15 uniform distance with all of the units being extended to
16 the east and I think also to look into extending it
17 perhaps to the north. There are some folks here --
18 Steve Breeding is here from Island Creek and he may
19 want to speak and he may not have to. But I know that
20 Island Creek has some acres to the east that they are
21 interested in pursuing an extension of the field rules.
22 Some people were here from Pittston this morning and
23 they've left, but they discussed the matter of extending
24 the Oakwood rules, both sets, to the north. With Marty
25 Wirth they're willing to work on a cooperative basis to

1 do that. I think that there is a reason for the Board to
2 seriously consider doing this on their own motion and I
3 think Elizabeth and Randy and Les have highlighted for
4 you. In order for a party to come before the Board and
5 ask you to extend these field rules that party essential-
6 ly has to -- within the statute probably has to be
7 titled. And it is really not feasible for companies to
8 do title on huge areas and acreage which they have no
9 development plan. The Board's own motion process, in
10 other words, if you think it would be appropriate to
11 consider this and let the companies come forward with
12 variance proposals or plans and testimony to support it.
13 We think it makes sense. There is an economic reason for
14 you to do to for a company that has the resources to
15 come forward and do this or put it in the budget. And by
16 giving notice in the newspaper, setting it on your own
17 motion you've satisfied those requirements of the statute
18 and those requirements for you all are different than
19 they are for the oil and gas company. I think you would
20 be refined if you said this in 30 days -- I'm not
21 suggesting you withhold approval of the PGP application
22 before you. I don't want to delay their efforts. But
23 what I'm suggesting is that if you set this 30 or 60 days
24 ahead on your own motion you will have people coming
25 forward with testimony to give you a basis to make a

1 reasonable decision on whether or not this field should
2 be extended to the east on a uniform basis and whether or
3 not it can be appropriately extended to the north. The
4 last thing I would suggest to you, there has been
5 recently an Informal Fact Finding Hearing in front of the
6 ever popular Mr. Fulmer. It involved a coalbed methane
7 gas well that Ashland Exploration was attempting to
8 permit on Pittston Coal, I think, and it's about 3,000
9 feet to the northeast corner of the Oakwood Field. Mr.
10 Fulmer's decision I got this morning and essentially he
11 is referring the question of provisional rules or the
12 implementation of field rules in that area to the Board
13 under the Code. When somebody appears in front of the
14 oil and gas Inspector and has a royalty interest -- and
15 the VP was a part of that Informal Fact Finding Hearing
16 -- and asked the Inspector to consider implementing
17 provisional rules or field rules it is then his obliga-
18 tion to pass that along to you. He's going to be
19 setting it on the a March docket. At least that's the
20 decision I got this morning. So you're going to be
21 addressing it as to the northeast anyway and I would
22 really encourage you to do this. I think that in our
23 development efforts you're starting them to the east and
24 it's an opportunity to look into this and I think there
25 are a lot of companies, both oil and gas operators and

1 coal companies who would like to see this happen. It
2 seems to be something that's worked fairly well in the
3 Oakwood Field and I think you should give people an
4 opportunity to do.

5 MR. CHAIRMAN: Thank you, Mr. Swartz. Anyone else?

6 MR. BREEDING: Steve Breeding with Island Creek Coal Company.
7 We have no objection whatsoever to the extension of the
8 field. We do concur with Mark's recommendation that the
9 field be uniformly extended. And I really can't add
10 anything to what he said, but he has stated our position
11 also. Thank you.

12 MR. CHAIRMAN: Anyone else? You can continue with your --

13 MR. MCGLOTHLIN: Excuse me. Mr. Albert, I'll ask the question
14 and you yield it to the proper respondent. On the
15 Oakwood Coalbed Methane Field Rules there are certain --
16 some of the tracts -- the 80 acre tracts -- on the plat
17 some of them were more than 80 acre tracts. Does this
18 effect the edge tract for more than 80 acre tracts? Does
19 this affect those?

20 THE WITNESS: No, sir, not this particular ones. Again, out
21 on the -- I would imagine again that the boundaries --
22 where the final boundaries of this thing end up you could
23 end up with some odd acreage tracts. But what we have
24 proposed here today are all 80 acres.

25 MR. MCGLOTHLIN: My concern is do you know if the adjacent

1 are here that -- so that the Board can have them clearly
2 understand what's going on here, can you just recap the
3 basis for the extension of the field, not the technical
4 justification but what you're doing at this hearing, your
5 relief sought in this application?

6 MR. ALBERT: Yes, sir.

7 MR. CHAIRMAN: I'm looking for something like why -- that
8 you're setting a field for future activity.

9 MR. ALBERT: Our development has carried forward now into an
10 area -- or in 1992 carried forward into an area that
11 there were no field rules established for. We drilled
12 the wells under statewide spacing. However, because of
13 our previous 4As before this Board and the wish to create
14 administrative efficiency, both on your side of it and
15 our side of it, we are attempting to extend a system of
16 80 acre units known as the Oakwood II Field Rules that
17 have been shown and approved by this Board and shown to
18 work in practice so that we can have some assemblance of
19 uniformity over the entire field. Basically we're
20 asking that you extend that boundaries of Oakwood Field
21 to include our proposed extension, establish the drilling
22 units and the well locations for the proposed extension
23 in accordance with the Oakwood orders as follows. We
24 want the subject formations to be all coal seams below
25 the Tiller down to the Pocahontas 2 seam, the unit sizes

1 to be approximately 80 acre squares, the permitted well
2 location to be any point within the drilling unit. We
3 want the well and field classification -- the field
4 classification to be known as the Oakwood Coalbed Gas
5 Field and Oakwood Coalbed Methane Gas Field II, for
6 coalbed methane gas located in active gob areas, unsealed
7 gob gas, short hole gas, and gas from any additional or
8 increased density well.

9 MR. McGLOTHLIN: Mr. Albert, is there any particular reason
10 you excluded the 300 foot window from your drilling unit?

11 MS. McCLANNAHAN: We're not excluding that. We're asking that
12 all the field rules apply.

13 MR. McGLOTHLIN: I misunderstood him. He said that they could
14 drill anywhere in the unit.

15 MS. McCLANNAHAN: That's in accordance with the Oakwood II.
16 That's the Oakwood II rule.

17 MR. McGLOTHLIN: Under the same provision but you have to come
18 before the Board and ask for the exception or get a --

19 MS. McCLANNAHAN: No, not under the Oakwood II.

20 MR. MASON: It's anywhere within the windows.

21 MR. SWARTZ: Only on one.

22 MS. McCLANNAHAN: Right. Only on one is there a window.

23 MR. CHAIRMAN: Now, let me ask you before the Board takes any
24 action. Are you asking for any change in any of the
25 language that's in Oakwood I and II orders?

1 MS. McCLANNAHAN: The only --

2 MR. CHAIRMAN: Because you do have some things that are stated
3 a little differently is the reason I'm asking if the
4 Board were to act on this. I'll give you an example.
5 You stat in the application, "To grant the Inspector the
6 authority to approve additional or increased density" --

7 MS. McCLANNAHAN: Right. I can address that. There are two
8 things actually. One is under the Oakwood I order the
9 way the order actually reads is that -- I believe it
10 says the Inspector can grant OXY variances for location
11 exceptions. So we would want that to say any operator
12 could request a location exception. The other thing is
13 that in the application we did have additional wells and
14 increased density wells stated as an and/or. But we
15 would amend the application to request that the addition-
16 al wells be granted by the Inspector under 361.20.C and
17 increased density wells could only be granted under 20.A
18 by the Board just as it's stated in the Oakwood II.

19 MR. CHAIRMAN: Okay. Anything further?

20 MS. McCLANNAHAN: We did have one other question about that
21 order which I guess we could get on the table and that is
22 on Page 6, paragraph 3, of that order it indicates that
23 surface -- I believe it should be mineral acres as
24 reflected on the surface. It's actually Page 6 of the
25 order, paragraph one, two and three. And I'm not sure

1 that that should say surface acreage in both of those
2 places.

3 MR. SWARTZ: You're right. That needs to be straightened out.

4 MS. McCLANNAHAN: Right. I think it needs to be mineral acres
5 as reflect on the surface. There's also a problem in
6 paragraph 3. It says for gas from any additional well
7 and then the second paragraph to that talks about
8 increased density wells. I think that particular
9 reference should actually be to addition well again.

10 MR. ROBINSON: May I address the Board, please? I object to
11 any extension of that coalbed there because of environ-
12 mental reasons.

13 MR. CHAIRMAN: I need you to come forward, please, and state
14 your name for the Board.

15 MR. ROBINSON: My name is Kyle Robinson. The reason I object
16 to this is they pollute our water, you cannot keep no
17 fish, you cannot have no ducks after they come in
18 drilling. The gas is coming up in the creek at the
19 present time, bubbling up out of the creek. I don't
20 think you should extend it any further.

21 MR. CHAIRMAN: Are you affected by this?

22 MR. ROBINSON: Yes. I live right at the mouth of Hurricane
23 Branch.

24 MS. McCLANNAHAN: Mr. Chairman, I would simply indicate that
25 these objections aren't appropriate for this particular

1 Board hearing and in addition Mr. Robinson has previously
2 made these objections in an informal hearing which the
3 oil and gas Inspector was presided at and rendered a
4 decision in.

5 MR. ROBINSON: That was a kangaroo hearing that we had. I've
6 already objected to you about that hearing.

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

8 MR. ROBINSON: We weren't given a proper hearing. I asked for
9 a hearing in September. Do you know when I got the
10 hearing? I got it in January after the wells were
11 already completed. They issued the right to drill a well
12 on my property.

13 MR. CHAIRMAN: Mr. Robinson, we can't really hear that here
14 today.

15 MR. ROBINSON: Well, I'm just telling you.

16 MR. CHAIRMAN: I understand, but we can't here that here
17 today. So we'll strike that. Anything else from anyone?
18 Anyone else wishing to address the Board? Any questions?
19 For clarification, we would not without due notice
20 contemplate making any changes or consider any changes to
21 the existing Oakwood I or II language. If you wish to
22 propose any -- the change in the mineral acreage for the
23 extension we could consider that, but we could not
24 consider going back and changing that other language
25 without due notice.

1 MS. McCLANNAHAN: Our proposal is that that language be
2 changed for purposes of this order extending the --

3 MR. CHAIRMAN: Any objections? Questions?

4 MR. EVANS: I'm still unclear as to what -- you want to amend
5 the language of I and II, correct?

6 MS. McCLANNAHAN: No.

7 MR. EVANS: You don't want this really included in Oakwood I
8 and II. You want this as a separate order?

9 MS. McCLANNAHAN: It necessarily will be a separate order. Am
10 I correct about that, Ms. Riggs? Because it will be an
11 order pursuant to these docket numbers.

12 MS. RIGGS: I think there will be two orders, one amending
13 Oakwood I and one amending Oakwood II.

14 MR. CHAIRMAN: Right, to extend the boundaries as proposed.

15 MS. RIGGS: To change the boundaries of each of those orders.

16 MR. EVANS: Will that order also read that the language for
17 this extension be changed from what is already in Oakwood
18 I and Oakwood II? That's where I'm unclear.

19 MS. RIGGS: What I hear her saying is they want a clarifica-
20 tion of the definition of an additional where it refers
21 to surface acreage, is that correct?

22 MS. McCLANNAHAN: That's correct.

23 MS. RIGGS: So they're asking for a clarification of the
24 definition of additional well contained in Oakwood II.
25 And on the issue of -- well, I guess it's for short hole,

1 unsealed and additional wells?

2 MR. CHAIRMAN: Yeah. All three.

3 MS. RIGGS: So it's a definitional change.

4 MS. McCLANNAHAN: The easier way to explain this is to say
5 that the order for the Hurricane Branch Extension area
6 would apply the exact same field rules as in the Oakwood
7 II with those changes.

8 MR. EVANS: Do those changes materially affect how Oakwood I
9 and Oakwood II apply? What benefit is derived from the
10 changes that you're proposing and what difference does it
11 make --

12 MS. McCLANNAHAN: Paragraphs one, two and three are actually
13 the allocation of production. So I think it makes a
14 difference for the Board and for all the royalty owners
15 and all the operators who are paying these royalties that
16 this be clear, that you're actually paying based on
17 mineral acreage as it's reflected on the surface because
18 you're not paying royalties to surface owners.

19 MR. EVANS: I understand that one.

20 MS. McCLANNAHAN: Okay. The second one is that this reference
21 to additional well versus increased density well, the
22 distinction between those two as was made in the Oakwood
23 II order and testimony and I will defer to Mr. Swartz if
24 I say this incorrectly. But as I understand it the
25 additional wells are to be granted by the Inspector under

1 the statute 361.20.C. The increased density wells are
2 wells which we have to come back to the Board for. There
3 is some inconsistency in this paragraph three because it
4 references additional wells and then I believe it's
5 referring back to an additional well that causes an
6 increased density well.

7 MR. EVANS: Clear as mud.

8 MS. McCLANNAHAN: And then with regard to the Oakwood I order
9 again it's just a semantics problem because the original
10 application was applied for by OXY and so the order
11 indicated that OXY could request a variance and we would
12 just request that it say any -- that it apply to any
13 operator for a variance.

14 MR. EVANS: In order for us to amend the language in an
15 order --

16 MS. McCLANNAHAN: I'm not requesting that you amend the
17 language in these orders. I'm just asking that the order
18 for the Hurricane Branch Extension area be exactly like
19 the Oakwood I and II --

20 MR. EVANS: With those changes.

21 MS. McCLANNAHAN: -- with those changes. Right. We're not
22 requesting an amendment in Oakwood I and II.

23 MR. EVANS: I guess in thinking about this since the language
24 is going to be different in this extension this extension
25 is not going to be part of Oakwood I and II. It's going

1 to have to be on its own. It can have the same language
2 which there are changes, but I don't see how we square a
3 --

4 MS. McCLANNAHAN: Well, I think these changes that are being
5 requested are actually not -- they don't go to the merits
6 of this being a part of the Oakwood Field or not.

7 MR. EVANS: I agree.

8 MS. McCLANNAHAN: Okay.

9 MR. EVANS: I agree with that full heatedly. I'm just --

10 MS. McCLANNAHAN: So I'm not suggesting that these changes be
11 made because that somehow -- I'm not trained to contra-
12 dict my expert witnesses who have said that it's the same
13 pool that's in the Oakwood Field. It necessarily will be
14 a separate order because it's a -- as Ms. Riggs has
15 pointed out it will be two new docket numbers. So I'm
16 just requesting that the field rules -- we should
17 probably think of it instead as a field order as field
18 rules, that the same field rules that are applicable to
19 the Oakwood I and the Oakwood II should also be applic-
20 able to the Hurricane Branch Extension area.

21 MR. EVANS: With your changes in the language.

22 MS. McCLANNAHAN: They're the same field rules. I mean, I
23 don't think this really changes the field rules.

24 LADY IN AUDIENCE: I have a question. How would this change
25 effect the land owner?

1 MR. CHAIRMAN: Would you state your name for the record,
2 please?

3 MS. ESTRIDGE: Melleg Estridge.

4 MR. CHAIRMAN: The question was how would this change --

5 MS. ESTRIDGE: How would this change effect the land owners?

6 MS. McCLANNAHAN: It's actually to the royalty owners benefit
7 to be paid based on the acreage that they own.

8 MS. ESTRIDGE: I'm sorry. I couldn't hear what you said.

9 MS. McCLANNAHAN: It's actually to the royalty owners benefit
10 -- I mean, I don't want to get put in a position here --
11 I mean, I assume that the royalty owners are being paid
12 under the Oakwood I and II based on mineral acres as
13 they're reflected on the surface even though those
14 technical words aren't here. So I don't think there's
15 any difference. I don't think there would be any effect
16 on the royalty owners or land owners.

17 MR. PRESLEY: What if the royalty owners don't want to lease?

18 MR. CHAIRMAN: Would you state your name for the record?

19 MR. PRESLEY: Charles Presley.

20 MS. McCLANNAHAN: You certainly have that option under
21 Virginia State Law not to lease your property. You're
22 not forced to lease your property. Although I'm not in a
23 position of rendering advise here today to anyone in the
24 audience.

25 MR. CHAIRMAN: Except for forced pooling, of course, and

1 that's in the Virginia Statute. That's what you got some
2 of the oohs and ahhs about. Any other questions?

3 MR. EVANS: I've got a question that's not -- it's been
4 brought up, but I guess can we clarify the language in
5 order at this time to make the changes and make it apply
6 throughout the Oakwood I and II fields as they stand now.

7 MR. CHAIRMAN: I don't think we can without notice.

8 MS. McCLANNAHAN: Right. I might help you out on that. We
9 actually notified everybody and all the operators in
10 Oakwood I and II, not just all the owners in the Hurri-
11 cane Branch Extension area.

12 MR. CHAIRMAN: Mr. Swartz.

13 MR. SWARTZ: To answer your question, I believe you can fairly
14 simply -- if you -- some of things Elizabeth is telling
15 you about are clarifications. I mean, people are
16 operating along the lines that she's describing to you,
17 but the language perhaps needs to be clarified, particu-
18 larly with the surface acre prorrations. If you want to
19 amend the Oakwood -- the existing Oakwood Field Rules you
20 can simply put it on the docket on your motion -- on
21 motion for next month to amend. Publish it in the
22 newspaper and then you would have a uniform set of
23 Oakwood I and Oakwood II that would apply to this
24 extension and it wouldn't be different in any regard
25 except obviously you've got to think of letting it apply

1 to any operator. So I think that kind of gets to where
2 you want to go if that's the mechanism you would want to
3 employ.

4 MR. EVANS: My question was how do you get there?

5 MR. SWARTZ: That's how you do it or any way --

6 MS. RIGGS: Or in addition -- I mean, you are somewhat
7 protected by the fact that we have given notice today --
8 for today's hearing also.

9 MR. CHAIRMAN: Any other questions, verifications? We have an
10 application before us as presented. We have a request to
11 consider holding a future hearing to determine what the
12 appropriate extended boundaries of the Oakwood I and II
13 should be and we have an objection to any extension based
14 on Mr. Robinson's request. What's your pleasure?

15 MR. EVANS: Mr. Chairman, I'd like to make a motion that this
16 -- that the Board consider on the next docket receiving
17 testimony as to the proper extension of the Oakwood
18 Coalbed Methane Field both north, south and east by
19 anyone who has information that will help us make that
20 determination as to whether it should be and what to
21 extent. In other words, the Board on its own motion will
22 consider areas outside the extension request and that are
23 outside the Oakwood Field to be included within that
24 Oakwood Field.

25 MS. McCLANNAHAN: Mr. Evans, are you making that motion in

1 lieu of?

2 MR. EVANS: No, not in lieu of.

3 MR. EVANS: I will also move that we accept this extension
4 request and grant this motion for the extension based on
5 the evidence presented.

6 MR. CHAIRMAN: We have a motion.

7 MR. KELLY: Second.

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

9 MR. MASON: Does Mr. Evans include in there the desire to go
10 forward with an amendment of the Oakwood I and II rules
11 to conform them to the proposed extension?

12 MR. EVANS: As far as the clarification of language?

13 MR. MASON: Yes.

14 MR. EVANS: Yes.

15 MR. MASON: Thank you.

16 MR. CHAIRMAN: Do you second that as clarified?

17 MR. KELLY: Second as clarified.

18 MR. CHAIRMAN: Any further discussion? All in favor signify
19 by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
20 It' an unanimous approval.

21 MR. FULMER: Mr. Chairman, as far as doing the work for the
22 next Board agenda, do you want that in two different
23 agenda items -- the classification?

24 MR. CHAIRMAN: Do you mean for Oakwood I and Oakwood II?

25 MR. FULMER: Yeah. There's two motions there I heard, one had

1 to do with clarification and the other one had to do with
2 receiving testimony for extension.

3 MR. EVANS: Actually there's three.

4 MR. CHAIRMAN: Three motions.

5 MR. FULMER: Well, I understand what the third one is. Do
6 you want that in two different agenda items or do you
7 want to address them in one as far as the notification
8 goes?

9 MR. MASON: Mr. Chairman, I think it would be appropriate to
10 make it two different things because one of them you're
11 going to be soliciting testimony and evidence from a
12 third party -- from parties about it and the other one
13 really just relates to the propriety of extending -- the
14 create a uniform order. I think they're two different --

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2 ITEM 8
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4 MR. CHAIRMAN: The next item on the agenda is a petition for
5 force pooling from Pocahontas Gas Partnership under 45.1-
6 361.1 for Oakwood Field Unit Q-42 on the Jewell Ridge
7 Quadrangle. This is Docket Number VGOB-93/02/16-0326.
8 I would ask the parties that wish to address the Board in
9 this matter to come forward at this time. The witnesses
10 have been previously sworn so we will just stipulate it
11 for the record.

12 MS. MCCLANAHAN: Just for purposes of explanation this is the
13 Q-42 unit as it has been previously -- now previously
14 designated in the Hurricane Branch Extension area. The
15 first witness that we would like to call is Les Arring-
16 ton, who has been previously sworn. And his resume is
17 Exhibit 1 and I would move the introduction of that based
18 on previous testimony.

19 MR. CHAIRMAN: It's admitted.
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22 LESLIE ARRINGTON

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

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BY MS. MCCLANAHAN:

Q. Mr. Arrington, have you given notice that is required by Virginia Code Annotated, Section 45.1-361.19 to each person or entity identified on Exhibit C of the force pooling application?

A. Yes, I have.

Q. And is that Hearing Notice at Exhibit 2?

A. Yes, it is.

MS. MCCLANAHAN: Mr. Chairman, I would move the introduction of Exhibit 2.

MR. CHAIRMAN: Any questions? (Pause.) Okay. It is admitted.

Q. (Ms. McClanahan continues.) Was the Notice of Hearing mailed by certified mail, return receipt requested to all the parties?

A. Yes, it was.

Q. And are copies of those return receipts at Exhibit 3?

A. Yes.

MS. MCCLANAHAN: Mr. Chairman, I would move the introduction of Exhibit 3.

MR. CHAIRMAN: They are admitted.

Q. (Ms. McClanahan continues.) Were there any persons whose names and/or addresses were unknown?

1 A. No. However, it was published in the Virginia Mountain-
2 eer and the Bluefield Daily Telegraph on January 27th and
3 28th.

4 Q. Do you have those proofs of publications?

5 A. Yes, they were previously submitted to the Inspector.

6 Q. What percentage of the coal rights in the tracts that
7 comprise the Q-42 unit does PGP control?

8 A. 100 percent of all coal below the Tiller seam.

9 Q. What percentage of the oil and gas rights in the tracts
10 that comprise the Q-42 unit does PGP control?

11 A. 94.95 percent.

12 Q. What percentage of the coalbed methane gas rights that
13 comprise the Q-42 unit does PGP control?

14 A. 100 percent.

15 Q. Is the unleased owner listed on Exhibit D of the Q-42
16 unit force pooling application?

17 A. Yes.

18 Q. Is the information of Exhibits C, D and E as they were
19 previously submitted still correct?

20 A. No.

21 Q. Has an amendment been made to those exhibits?

22 A. Yes, it has.

23 Q. And are those amendments shown at Exhibit C, D, and E
24 identified as Exhibit 4?

25 A. Yes, it is.

1 Q. What is that amendment?

2 A. It was to show the change from Consolidated Coal Company
3 to reflect Reserve Coal Properties.

4 Q. Is Reserve Coal Properties also a subsidiary of Consol?

5 A. Yes.

6 Q. On Exhibit 4, the revised Exhibit E, could you please
7 identify that exhibit. Is that the conflicting ownership
8 claim exhibit?

9 A. Yes.

10 Q. Are you requesting that the Board pool the interest of
11 the parties that are listed on revised Exhibit C of the
12 Q-42 force pooling application?

13 A. Yes, we are.

14 MS. MCCLANAHAN: Those are all the questions I have of Mr.
15 Arrington.

16 MR. CHAIRMAN: Question, members of the Board? Now, you are
17 requesting an additional well in Q-42, is that correct?
18 You already have one there? One that is shown? Or is
19 that the one that is shown on the map that you presented?

20 MS. MCCLANAHAN: That's the one that is shown on the map.

21 There are no additional wells in this particular unit.

22 MR. CHAIRMAN: All right. Thank you for that clarification.
23 You may proceed.

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WILLIAM GILLENWATER

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

DIRECT EXAMINATION

BY MS. MCCLANAHAN:

Q. Could you please identify the exhibit marked for identification as Exhibit 5?

A. That is my resume.

Q. And does that reflect your work history and qualifications?

A. Yes, it does.

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

A. Yes.

MS. MCCLANAHAN: Mr. Chairman, I submit Mr. Gillenwater as an expert witness.

MR. CHAIRMAN: Any objections? (Pause.) Proceed.

Q. (Ms. McClanahan continues.) Mr. Gillenwater, where has your experience in obtaining mineral leases been concentrated?

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

Q. In Southwest Virginia?

A. Yes.

1 Q. In your experience in obtaining lease in Southwest
2 Virginia are you familiar with the fair market value for
3 oil and gas leases and coalbed methane leases in the Q-42
4 unit area?
5 A. Yes, I am.
6 Q. And what are the fair market value terms for an oil, gas
7 and coalbed methane gas lease in this area?
8 A. \$5 per acre, per year.
9 Q. Is that a rental?
10 A. Yes.
11 Q. No bonus, is that correct?
12 A. No bonus, no, ma'am.
13 Q. Okay.
14 A. And a 1/8 production royalty.
15 Q. And for a coalbed methane lease?
16 A. \$1 per acre, per year.
17 Q. That's rental?
18 A. Yes, ma'am. And there, again, a 1/8 production royalty.
19 Q. And you pay no bonus?
20 A. No, ma'am.
21 Q. What would be the standard primary term for oil, gas and
22 coalbed methane leases?
23 A. 10 years.
24 Q. With regard to the unleased owner that is listed on Q-42
25 unit force pooling application have you contacted this

1 land owner or tried to contact them to obtain a lease?

2 A. Yes, we have.

3 Q. By what method did you contact them and offer the lease?

4 A. It was verbal.

5 Q. Did they refuse to sign the lease?

6 A. Yes, ma'am, they did.

7 MS. MCCLANAHAN: Those are all the questions I have of Mr.
8 Gillenwater.

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

10 MR. EVANS: Just as a point of clarification Q-42 is shown in
11 the application as same Q-42 that was just granted as
12 your extension?

13 MS. MCCLANAHAN: That's correct.

14 MR. CHAIRMAN: Other questions? (Pause.) Call your next
15 witness.

16 MS. MCCLANAHAN: Mr. Albert has been previously sworn and his
17 resume is at Exhibit 6. And pursuant to the Chairman's
18 request I would move the introduction of Exhibit 6.

19 MR. CHAIRMAN: Admitted.

20 MS. MCCLANAHAN: And I would submit Mr. Albert as an expert
21 witness.

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RANDALL ALBERT

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

3
4 DIRECT EXAMINATION

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6 BY MS. MCCLANAHAN:

7 Q. Has a drilling permit previously been refused to PGP on
8 any of the tracts that comprise the Q-42 unit?

9 A. No, it has not.

10 Q. And has a well work permit been issued for the Q-42 unit
11 well?

12 A. Yes. It was issued as Permit #2145.

13 Q. For what type of well was the permit issued?

14 A. Coalbed methane gas well.

15 Q. Have you received any written responses from the owners
16 of the tract within this unit to the force pooling
17 application?

18 A. No, we haven't.

19 Q. Does the plat attached to the force pooling application
20 filed by PGP indicate the acreage and shape of the
21 acreage to be embraced within the Q-42 unit as it was
22 previously approved by the Board today?

23 A. Yes.

24 Q. Would you please identify Exhibit 7?

25 A. Exhibit 7 is Exhibit B-1 from the Q-42 application.

1 MS. MCCLANAHAN: Mr. Chairman, I move the introduction of
2 Exhibit 7.

3 MR. CHAIRMAN: Any questions? Okay. It is admitted.

4 Q. (Ms. McClanahan continues.) Does the unit follow the
5 boundary lines of the Hurricane Branch Extension 80 acre
6 unit designated as Q-42 as shown on Exhibit B-1?

7 A. Yes, it does.

8 Q. Does the plat attached to the force pooling application
9 filed by PGP indicate the area within which the well will
10 be drilled on the Q-42 unit?

11 A. Yes, it does.

12 Q. Does this drilling unit embrace two or more separately
13 owned tracts?

14 A. Yes, it does.

15 Q. Are the costs and expenses for the well, number 404, set
16 forth on a detailed well estimate attached to the force
17 pooling application as Exhibit H?

18 A. Yes, it is.

19 Q. Does this exhibit reflect the cost of drilling the well
20 to total depth and completed for production costs?

21 A. Yes, it does.

22 Q. Could you please describe how you calculated the costs
23 that are listed in the DWE?

24 A. The costs are a mixture of actual costs -- as I previous-
25 ly testified the well is drilled, so the drilling costs

1 are actual. However, the well has not been completed so
2 essentially the completion costs are estimated.

3 Q. Are you requested that PGP be designated as the well
4 operator for this unit?

5 A. Yes, we are.

6 Q. And are you requesting the relief sought in Paragraph 4
7 of the application?

8 A. Yes.

9 MS. MCCLANAHAN: Those are all the questions I have for Mr.
10 Albert.

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

12 MS. MCCLANAHAN: We would request that the Board approve this
13 force pooling application.

14 MR. CHAIRMAN: Again, I would ask if there are any other
15 parties that wish to address the Board in this matter?
16 (Pause.)

17 MR. EVANS: I move that we grant the force pooling application
18 as submitted.

19 MR. CHAIRMAN: I have a motion to approve.

20 MR. MASON: Second.

21 MR. CHAIRMAN: I have a second. Any further discussion? With
22 no further discussion, all in favor signify by saying
23 yes.

24 BOARD: Yes.

25 MR. CHAIRMAN: Opposed say no. (None) Unanimous approval.

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2 ITEM 9
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4 MR. CHAIRMAN: The next item on the agenda is a petition for
5 force pooling from Pocahontas Gas Partnership under 45.1-
6 361.1 for Oakwood Field Unit Q-41 on the Jewell Ridge
7 Quadrangle. This is Docket Number VGOB-93/02/16-0327.
8 I would ask the parties that wish to address the Board in
9 this matter to come forward at this time. (Pause.) You
10 may proceed. There are no other parties wishing to
11 address the Board.

12 MS. MCCLANAHAN: My first witness is Les Arrington, who has
13 been previously sworn. And his resume is at Exhibit 1
14 and I would move the introduction of that resume as
15 Exhibit 1 and indicate that he has been previously
16 qualified as an expert witness before the Gas and Oil
17 Board, pursuant to the Chairman's request.

18 MR. CHAIRMAN: That's admitted.
19
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21 LESLIE ARRINGTON

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

BY MS. MCCLANAHAN:

Q. Mr. Arrington, have you given notice that is required by Virginia Code Annotated, Section 45.1-361.19 to each person or entity identified on Exhibit C of the force pooling application?

A. Yes, we have.

Q. And is the Hearing Notice that you sent to each of these parties shown and identified as Exhibit 2?

A. Yes, it is.

MS. MCCLANAHAN: Mr. Chairman, I would move the introduction of Exhibit 2.

MR. CHAIRMAN: Any questions? (Pause.) Okay. It is admitted.

Q. (Ms. McClanahan continues.) Was the Notice of Hearing mailed by certified mail, return receipt requested to all the parties?

A. Yes, it was.

Q. And are copies of those return receipts shown at Exhibit 3?

A. Yes.

MS. MCCLANAHAN: Mr. Chairman, I would move the introduction of Exhibit 3.

MR. MASON: Just totally -- just sort of a small point. But

1 on that list in the notice where it says after United
2 Coal Company N and S, there is no such entity. It's NS.

3 MS. MCCLANAHAN: Mr. Arrington has noted that.

4 Q. (Ms. McClanahan continues.) Mr. Arrington, we did
5 receive a copy of their return receipt, is that correct?

6 A. Yes. And it showed Norfolk Southern.

7 Q. So only your notice is wrong?

8 A. Yes.

9 Q. Were there any persons whose names and/or addresses were
10 unknown?

11 A. No. However, we published it in the Virginia Mountaineer
12 and the Bluefield Daily Telegraph on January 27th and
13 28th.

14 Q. Do were those proofs of publications previously submitted
15 to the Board?

16 A. Yes, they were.

17 Q. What percentage of the coal rights in the tracts that
18 comprise the Q-41 unit does PGP control?

19 A. 100 percent of all coal below the Tiller seam.

20 Q. What percentage of the oil and gas rights in the tracts
21 that comprise the Q-41 unit does PGP control?

22 A. 88.8 percent.

23 Q. What percentage of the coalbed methane gas rights that
24 comprise the Q-41 unit does PGP control?

25 A. 100 percent.

1 Q. Are the unleased owners, the leasehold owners and mineral
2 owners who have leased to other parties listed on Exhibit
3 D with their percentages of ownership in the respective
4 tract?

5 A. Yes, they are.

6 Q. Has the information that was submitted on Exhibits C, D
7 and E to the application been amended?

8 A. No. And the corrected pages are listed on Exhibit 4.

9 Q. Let's go back to that. Mr. Arrington, Exhibits C, D and
10 E as they were previously submitted to the Board have
11 been corrected?

12 A. Yes.

13 Q. And those amendments exhibit are at Exhibit 4, is that
14 correct?

15 A. Yes, they are.

16 Q. What is the amendment that has been made on those
17 exhibits?

18 A. It's to reflect the Consolidated Coal Company and Reserve
19 Coal Properties changes.

20 MS. MCCLANAHAN: I would submit Exhibit 4 to the Board.

21 MR. CHAIRMAN: Okay. It's admitted.

22 Q. (Ms. McClanahan continues.) Are the conflicting claim-
23 ants whose funds are to be escrowed listed on the
24 revised Exhibit E?

25 A. Yes.

1 Q. Are you requesting that the Board pool the interest of
2 the parties that are listed on revised Exhibit C?

3 A. Yes, we are.

4 MS. MCCLANAHAN: Those are all the questions I have of Mr.
5 Arrington.

6 MR. CHAIRMAN: Question, members of the Board? You may call
7 your next witness.

8 MS. MCCLANAHAN: Mr. Gillenwater is my next witness and he has
9 been previously sworn. His resume with qualifications is
10 at Exhibit 5. I would move the introduction of Exhibit 5
11 and also submit Mr. Gillenwater as an expert witness,
12 pursuant to the Chairman's request.

13 MR. CHAIRMAN: Okay. It's admitted.

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WILLIAM GILLENWATER

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

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DIRECT EXAMINATION

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22 BY MS. MCCLANAHAN:

23 Q. In your experience in obtaining lease in Southwest
24 Virginia what are the fair market value terms for oil and
25 gas leases and coalbed methane lease in this area?

1 A. \$5 per acre, per year rentals. And a 1/8 production
2 royalty.

3 Q. And for a coalbed methane lease?

4 A. \$1 per acre, per year rentals. And a 1/8 production
5 royalty.

6 Q. What is the standard primary term for both these leases?

7 A. 10 years.

8 Q. With regard to the unleased owners that are listed on the
9 Q-41 unit force pooling application have you contacted
10 those land owners or attempted to contact them to offer a
11 lease?

12 A. Yes, we have contacted them.

13 Q. By what method did you contact each of the land owners?

14 A. It was in person.

15 Q. Were they unwilling to execute a lease with your company?

16 A. Yes, they were unwilling.

17 MS. MCCLANAHAN: Those are all the questions I have of Mr.
18 Gillenwater.

19 MR. CHAIRMAN: Questions, members of the Board? Proceed.

20 MS. MCCLANAHAN: Randy Albert is our next witness. He also
21 has been previously sworn. His resume is at Exhibit 6.
22 I would move the introduction of Exhibit 6 and submit Mr.
23 Albert as an expert witness, pursuant to the Chairman's
24 request.

25 MR. CHAIRMAN: Admitted.

1 RANDALL ALBERT

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

5 DIRECT EXAMINATION
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7 BY MS. MCCLANAHAN:

8 Q. Has a drilling permit previously been refused to PGP on
9 any of the tracts that comprise the Q-41 unit?

10 A. No, it has not.

11 Q. And has a well work permit actually been issued for a
12 well contained within the boundaries of the Q-41 unit?

13 A. Yes, it has. It has been submitted and issued as Permit
14 #2161.

15 Q. For what type of well was the permit issued?

16 A. Coalbed methane gas well.

17 Q. Have you received any written responses from the owners
18 of the tracts within this unit?

19 A. No, we have not.

20 Q. Does the plat attached to the force pooling application
21 filed by PGP indicate the acreage and shape of the
22 acreage to be embraced within the Q-41 unit as it was
23 previously approved by the Board today?

24 A. Yes.

25 Q. Would you please identify the exhibit that is marked for

1 identification as Exhibit 7?

2 A. Exhibit 7 is Exhibit B-1 from the Q-41 application.

3 MS. MCCLANAHAN: Mr. Chairman, I move the introduction of
4 Exhibit 7.

5 MR. CHAIRMAN: Okay. It is admitted.

6 Q. (Ms. McClanahan continues.) Does this particular unit
7 follow the boundary lines of the Hurricane Branch
8 Extension 80 acre unit designated as Q-41 as shown on
9 Exhibit B-1 in the application?

10 A. Yes, it does.

11 Q. And does it indicate the area within which the well has
12 been drilled on the Q-41 unit?

13 A. Yes, it does.

14 Q. Does this drilling unit embrace two or more separately
15 owned tracts?

16 A. Yes, it does.

17 Q. The costs and expenses for the well that has been drilled
18 are set forth on a detailed well estimate as Exhibit H to
19 the force pooling application, is that correct?

20 A. That's correct.

21 Q. Does this exhibit reflect the cost of drilling the well
22 to total depth and completed for production costs?

23 A. Yes, it does.

24 Q. Could you please explain to the Board how those costs
25 were calculated?

1 A. Again, it is a mixture of actual costs and estimated
2 costs. Again, the well is drilled but is not yet com-
3 pleted.

4 Q. Are you requested that PGP be designated as the well
5 operator authorized to operate this unit?

6 A. Yes, I am.

7 Q. And the relief that is sought in Paragraph 4 of the
8 application?

9 A. Yes.

10 MS. MCCLANAHAN: Those are all the questions I have for Mr.
11 Albert.

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

13 MR. EVANS: This particular drill site that has already been
14 drilled is that within 300 feet of the boundary of the
15 unit?

16 MR. ALBERT: Mr. Evans, from this scale of map I can't be
17 sure. I don't think so.

18 MS. MCCLANAHAN: These wells were previously drilled on
19 statewide spacing rules.

20 MR. ALBERT: No, it's not.

21 MR. EVANS: It's not within 300 feet? It's more than 300 feet
22 from the boundary?

23 MR. ALBERT: Yes.

24 MR. CHAIRMAN: Any other questions?

25 MS. MCCLANAHAN: We would request that the Board approve this

1 force pooling application.

2 MR. MCGLOTHLIN: I move that we accept the application as
3 submitted.

4 MR. CHAIRMAN: I have a motion to approve.

5 MR. KELLY: Second.

6 MR. CHAIRMAN: I have a second. Any further discussion? With
7 no further discussion, all in favor signify by saying
8 yes.

9 BOARD: Yes.

10 MR. CHAIRMAN: Opposed say no. (None) Unanimously approved.

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2 ITEM 10
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4 MR. CHAIRMAN: The next item on the agenda is a petition for
5 force pooling from Pocahontas Gas Partnership under 45.1-
6 361.1 for Oakwood Field Unit Q-40 on the Jewell Ridge
7 Quadrangle. This is Docket Number VGOB-93/02/16-0328.
8 We would ask the parties that wish to address the Board
9 in this matter to come forward at this time. (Pause.)
10 You may proceed.

11 MS. MCCLANAHAN: Our first witness we would like to call is
12 Les Arrington. He has been previously sworn. His
13 resume is at Exhibit 1 and pursuant to the Chairman's
14 request I would move the introduction of that exhibit
15 and indicate that he has been previously qualified as an
16 expert witness before the Gas and Oil Board and would
17 submit Mr. Arrington as an expert witness.

18 MR. CHAIRMAN: Okay. You may proceed.
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21 LESLIE ARRINGTON

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

BY MS. MCCLANAHAN:

Q. Mr. Arrington, have you given notice as required by Section 45.1-361.19 to each person or entity identified on Exhibit C of the force pooling application?

A. Yes, I have.

Q. Is that Hearing Notice identified as Exhibit 2?

A. Yes, it is.

MS. MCCLANAHAN: Mr. Chairman, I would move the introduction of Exhibit 2.

MR. CHAIRMAN: Okay. It is admitted.

Q. (Ms. McClanahan continues.) How was this mailing listed to the parties on Exhibit B accomplished?

A. By certified mail, return receipt requested.

Q. And are copies of those return receipts identified as Exhibit 3?

A. Yes, they are.

MS. MCCLANAHAN: I would move the introduction of Exhibit 3.

MR. CHAIRMAN: Okay. It's admitted.

Q. (Ms. McClanahan continues.) Were there any persons whose names and/or addresses were unknown?

A. No. However, we published it in the Virginia Mountaineer and the Bluefield Daily Telegraph on January 27th and 28th.

1 Q. Were copies of those proofs of publications previously
2 submitted to the Board?

3 A. Yes.

4 Q. What percentage of the coal rights in the tracts that
5 comprise the Q-40 unit does PGP control?

6 A. 100 percent of the Pocahontas #3 seam and 63.4 percent of
7 all coal below the Tiller seam, less the P-3.

8 Q. What percentage of the oil and gas rights in the tracts
9 that comprise the Q-40 unit does PGP control?

10 A. 92.925 percent.

11 Q. What percentage of the coalbed methane gas rights that
12 comprise the Q-40 unit does PGP control?

13 A. 100 percent.

14 Q. Are the unleased owners, the leasehold owners and mineral
15 owners who have leased to other parties listed on Exhibit
16 D of the Q-40 force pooling application?

17 A. Yes.

18 Q. Have Exhibits C, D and E as previously submitted been
19 amended?

20 A. Yes, they have.

21 Q. What amendments have been made?

22 A. We have revised the ownership acreage and percentages.
23 In addition, we have made the changes from Consolidated
24 Coal Company to reflect Reserve Coal Properties.

25 Q. And are those exhibits and a revised Application Page 2

1 shown at Exhibit 4.

2 A. Yes, it is.

3 MS. MCCLANAHAN: I move the introduction of Exhibit 4.

4 MR. CHAIRMAN: All right. It's admitted.

5 Q. (Ms. McClanahan continues.) Are the conflicting claim-
6 ants whose funds are to be escrowed listed on the
7 revised Exhibit E?

8 A. Yes, they are.

9 Q. Are you requesting that the Board pool the interest of
10 the parties listed on revised Exhibit C?

11 A. Yes, we are.

12 MS. MCCLANAHAN: Those are all the questions I have of Mr.
13 Arrington.

14 MR. CHAIRMAN: Any question, members of the Board? Call your
15 next witness.

16 MS. MCCLANAHAN: My next witness is Mr. William Gillenwater and
17 he has been previously sworn. Pursuant to the Chairman's
18 request I would submit Exhibit 5 as his resume reflecting
19 work history and qualifications. And I would submit Mr.
20 Gillenwater as an expert witness before the Gas and Oil
21 Board.

22 MR. CHAIRMAN: Go ahead.
23
24
25

1 WILLIAM GILLENWATER

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

5 DIRECT EXAMINATION
6

7 BY MS. MCCLANAHAN:

8 Q. Mr. Gillenwater, in your experience in obtaining lease in
9 Southwest Virginia what are the fair market value terms
10 for an oil, gas and coalbed methane lease in this area?

11 A. \$5 per acre, per year rentals. And a 1/8 production
12 royalty.

13 Q. And for a coalbed methane lease?

14 A. \$1 per acre, per year rentals with a 1/8 production
15 royalty.

16 Q. What is the standard primary term for both these leases?

17 A. 10 years.

18 Q. With regard to the unleased owner that is listed on the
19 Q-40 unit force pooling application have you contacted
20 this land owner or attempted to contact him to obtain a
21 lease?

22 A. Yes, we did.

23 Q. By what method did you contact him?

24 A. It was in person.

25 Q. Was he unwilling to execute a lease with your company?

1 A. Yes, he was unwilling.

2 MS. MCCLANAHAN: Those are all the questions I have of Mr.
3 Gillenwater.

4 MR. CHAIRMAN: Questions, members of the Board? Call your
5 next witness.

6 MS. MCCLANAHAN: I would like to call Mr. Randy Albert, who
7 has also been previously sworn. His resume is marked for
8 identification as Exhibit 6. Pursuant to the Chairman's
9 request I move the introduction of Exhibit 6 and submit
10 Mr. Albert as an expert witness.

11 MR. CHAIRMAN: Go ahead.

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RANDALL ALBERT

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

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DIRECT EXAMINATION

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20 BY MS. MCCLANAHAN:

21 Q. Mr. Albert, has a drilling permit previously been refused
22 to PGP on any of the tracts that comprise this unit?

23 A. No, it has not.

24 Q. Has a well work permit been issued for a well contained
25 within the Q-40 unit?

1 A. Yes, it has. The permit was issued for Well #407. That
2 is Permit #2099.

3 Q. For what type of well was the permit issued?

4 A. Coalbed methane gas well.

5 Q. Have you received any written responses from the owners
6 of the tracts within this unit?

7 A. No.

8 Q. Does the plat attached to the force pooling application
9 filed by PGP indicate the acreage and shape of the
10 acreage to be embraced within the Q-40 unit as it was
11 approved by the Board at its hearing today?

12 A. Yes, it does.

13 Q. Would you please identify Exhibit 7?

14 A. Exhibit 7 is Exhibit B-1 from the Q-40 application.

15 MS. MCCLANAHAN: Mr. Chairman, I move the introduction of
16 Exhibit 7.

17 MR. CHAIRMAN: Okay. It is admitted.

18 Q. (Ms. McClanahan continues.) Does the unit follow the
19 boundary lines of the Hurricane Branch Extension 80 acre
20 unit designated as Q-40 and as shown on Exhibit B-1 in
21 the application?

22 A. Yes, it does.

23 Q. Does the plat attached to this force pooling application
24 filed by PGP indicate the area within which that well has
25 been drilled?

1 A. Yes, it does.

2 Q. Does this drilling unit embrace two or more separately
3 owned tracts?

4 A. Yes, it does.

5 Q. Are the costs and expenses for the well that has been
6 drilled set forth on a DWE that is attached to the force
7 pooling application as Exhibit H?

8 A. Yes, it is.

9 Q. Does this exhibit reflect the cost of drilling the well
10 to total depth and completed for production costs?

11 A. Yes, it does.

12 Q. Could you please explain to the Board how these costs
13 were calculated?

14 A. Again, the DWE reflects a mixture of actual costs and
15 estimated costs. Actual drilling costs and estimated
16 completion costs.

17 Q. Are you requested that PGP be designated as the well
18 operator authorized to operate the Q-40 unit?

19 A. Yes, I am.

20 Q. Are you requesting the relief sought in Paragraph 4 of
21 PGP's application in accordance with (inaudible) and
22 361.1?

23 A. Yes.

24 MS. MCCLANAHAN: Those are all the questions I have.

25 MR. CHAIRMAN: What are those three little dots right by

1 Hurricane Branch?

2 MS. MCCLANAHAN: Dots by Hurricane Branch?

3 MR. CHAIRMAN: Right here. What do they indicate?

4 MR. ALBERT: That's a creek.

5 MS. MCCLANAHAN: An intermittent creek.

6 MR. CHAIRMAN: I didn't know if you had those identified as
7 something else or not.

8 MS. MCCLANAHAN: It's not three additional wells.

9 MR. CHAIRMAN: Just checking.

10 MS. MCCLANAHAN: Those are all the witnesses I have.

11 MR. CHAIRMAN: Is there anyone here who wishes to address the
12 Board in this regard? The record will show there are
13 none.

14 MS. MCCLANAHAN: We would request that the Board approve this
15 force pooling application.

16 MR. EVANS: I move that we grant the petition for forced
17 pooling as submitted.

18 MR. CHAIRMAN: I have a motion to approve.

19 MR. KELLY: Second.

20 MR. CHAIRMAN: I have a second. Any further discussion? With
21 no further discussion, all in favor signify by saying
22 yes.

23 BOARD: Yes.

24 MR. CHAIRMAN: Opposed say no. (None) Unanimous approval.
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2 ITEM 11
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4 MR. CHAIRMAN: The next item on the agenda is a petition for
5 force pooling from Pocahontas Gas Partnership under 45.1-
6 361.1 for Oakwood Field Unit P-41 on the Jewell Ridge
7 Quadrangle. This is Docket Number VGOB-93/02/16-0329.
8 We would ask the parties that wish to address the Board
9 in this matter to come forward at this time. (Pause.)
10 You may proceed.

11 MS. MCCLANAHAN: The first witness I would like to call is
12 Les Arrington. He has been previously sworn. His
13 resume is at Exhibit 1 and pursuant to the Chairman's
14 request I would move the introduction of Exhibit 1
15 reflecting Mr. Arrington's educational background, work
16 history and qualifications and submit him as an expert
17 witness.

18 MR. CHAIRMAN: It's admitted. You may proceed.
19
20

21 LESLIE ARRINGTON

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

DIRECT EXAMINATION

BY MS. MCCLANAHAN:

Q. Mr. Arrington, have you given notice as required by Virginia Code Annotated Section 45.1-361.19 to each person or entity identified on Exhibit C of the force pooling application?

A. Yes, I have.

Q. Is that Hearing Notice identified as Exhibit 2?

A. Yes, it is.

MS. MCCLANAHAN: Mr. Chairman, I would move the introduction of Exhibit 2.

MR. CHAIRMAN: Any questions? Okay. It is admitted.

Q. (Ms. McClanahan continues.) Is this the Notice of Hearing mailed to the parties listed on Exhibit C in the force pooling application?

A. Yes.

Q. Was it mailed by certified mail, return receipt requested?

A. Yes.

Q. Are copies of those return receipts shown at Exhibit 3?

A. Yes.

MS. MCCLANAHAN: Mr. Chairman, I move the introduction of Exhibit 3.

MR. CHAIRMAN: Admitted.

1 Q. (Ms. McClanahan continues.) Were there any persons
2 whose names and/or addresses were unknown?
3 A. No. However, we published it in the Virginia Mountaineer
4 and the Bluefield Daily Telegraph on January 27th and
5 28th.
6 Q. Have those proofs of publications been previously
7 submitted to the Board?
8 A. Yes, they have.
9 Q. What percentage of the coal rights in the tracts that
10 comprise the P-41 unit does PGP control?
11 A. 100 percent of all coal below the Tiller seam.
12 Q. What percentage of the oil and gas rights in the tracts
13 that comprise the P-41 unit does PGP control?
14 A. 59.541 percent.
15 Q. What percentage of the coalbed methane gas rights that
16 comprise the P-41 unit does PGP control?
17 A. 100 percent.
18 Q. Are the unleased owners, the leasehold owners and mineral
19 owners who have leased to other parties listed on Exhibit
20 D of the P-41 force pooling application with their
21 percentages of ownership in their perspective tracts?
22 A. Yes.
23 Q. Is the information that you submitted on Exhibits C, D
24 and E of the application still correct?
25 A. No.

1 Q. Have you amended it?

2 A. Yes, we have. We have amended it to reflect the owner-
3 ship by Consolidated Coal Company to reflect Reserve
4 Coal Properties.

5 Q. Are those changes reflected on the revised Exhibits C, D,
6 and E identified as Exhibit 4.

7 A. Yes, they are.

8 MS. MCCLANAHAN: Mr. Chairman, I move the introduction of
9 Exhibit 4.

10 MR. CHAIRMAN: Questions? All right. They are admitted.

11 Q. (Ms. McClanahan continues.) Are the conflicting claim-
12 ants whose funds are to be escrowed listed on the
13 revised Exhibit E submitted as Exhibit 4 of the P-41
14 force pooling application?

15 A. Yes.

16 Q. Are you requesting that the Board pool the interest of
17 the parties listed on revised Exhibit C?

18 A. Yes, we are.

19 MS. MCCLANAHAN: Those are all the questions I have of Mr.
20 Arrington.

21 MR. CHAIRMAN: Any question, members of the Board? Call your
22 next witness.

23 MS. MCCLANAHAN: My next witness is Mr. William Gillenwater and
24 he has been previously sworn. Pursuant to the Chairman's
25 request I would note that Mr. Gillenwater's resume is

1 marked for identification as Exhibit 5. And I would move
2 th introduction of that exhibit and submit Mr. Gillen-
3 water as an expert witness before the Gas and Oil Board.
4

5 MR. CHAIRMAN: Okay. You may proceed.
6

7 WILLIAM GILLENWATER

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

11 DIRECT EXAMINATION
12

13 BY MS. MCCLANAHAN:

14 Q. Mr. Gillenwater, where has your experience in obtaining
15 mineral leases been concentrated?

16 A. Oil and gas leasing, coalbed methane leasing and coal
17 leasing.

18 Q. In Southwest Virginia?

19 A. Yes, ma'am.

20 Q. In your experience obtaining leases in Southwest Virginia
21 what are the fair market value terms for an oil, gas and
22 coalbed methane lease in this area?

23 A. \$5 per acre, per year rentals. And a 1/8 production
24 royalty. And for a coalbed methane lease \$1 per acre,
25 per year rentals with a 1/8 production royalty.

1 Q. What is the standard primary term for both these leases?

2 A. 10 years.

3 Q. With regard to the unleased owners that are listed on the
4 P-41 unit force pooling application have you contacted
5 those land owner and offered them a lease?

6 A. Yes, we have.

7 Q. And were they unwilling to execute a lease with your
8 company?

9 A. Yes, they were unwilling.

10 Q. How did you contact these landowners?

11 A. Verbal.

12 Q. With regard to the leasehold owner, Cabot Oil and Gas
13 Corporation listed on the P-41 force pooling application,
14 did you make an offer regarding an assignment of their
15 leasehold interest?

16 A. Yes, I did.

17 Q. By what method did you contact them?

18 A. That's been by telephone. Verbal contact.

19 Q. And have you been able to come to an agreement as to the
20 proposed assignment?

21 A. Not at this time.

22 MS. MCCLANAHAN: Those are all the questions I have of Mr.
23 Gillenwater.

24 MR. CHAIRMAN: Questions, members of the Board? Call your
25 next witness.

1 MS. MCCLANAHAN: My next witness is Mr. Randy Albert. Randy
2 has also been previously sworn. His resume is marked for
3 identification as Exhibit 6. Pursuant to the Chairman's
4 request I would move the introduction of Exhibit 6 and
5 submit Mr. Albert as an expert witness.

6 MR. CHAIRMAN: Go ahead.

7
8
9 RANDALL ALBERT
10 a witness who, after having been previously sworn, was
11 examined and testified as follows:

12
13 DIRECT EXAMINATION
14

15 BY MS. MCCLANAHAN:

16 Q. Mr. Albert, has a drilling permit previously been refused
17 to PGP on any of the tracts that comprise this particular
18 unit?

19 A. No, it has not.

20 Q. Has a well work permit been issued for the well that is
21 located within the P-41 unit boundary?

22 A. Yes, it has. Well #401 was submitted and issued as
23 Permit #2049.

24 Q. For what type of well was the permit issued?

25 A. Coalbed methane gas well.

1 Q. Have you received any written responses from the owners
2 of the tracts within this unit?

3 A. No, we have not.

4 Q. Does the plat attached to the force pooling application
5 filed by PGP indicate the acreage and shape of the
6 acreage to be embraced within the P-41 unit as approved
7 by the Board today?

8 A. Yes, it does.

9 Q. Would you please identify Exhibit 7?

10 A. Exhibit 7 is Exhibit B-1 from the P-41 application.

11 MS. MCCLANAHAN: Mr. Chairman, I move the introduction of
12 Exhibit 7.

13 MR. CHAIRMAN: Okay. It is admitted.

14 Q. (Ms. McClanahan continues.) Does the unit follow the
15 boundary lines of the Hurricane Branch Extension 80 acre
16 unit designated as P-41 and as shown on Exhibit B-1 in
17 the application?

18 A. Yes, it does.

19 Q. Does the plat attached to this force pooling application
20 filed by PGP indicate the area within which the well will
21 be drilled on the P-41 unit?

22 A. Yes, it does.

23 Q. Does this drilling unit embrace two or more separately
24 owned tracts?

25 A. Yes, it does.

1 Q. Are the costs and expenses for the well that has been
2 drilled set forth on a DWE that is attached to the force
3 pooling application as Exhibit H?

4 A. Yes, it is.

5 Q. Does this exhibit reflect the cost of drilling the well
6 to total depth and completed for production costs?

7 A. Yes, it does.

8 Q. Could you please explain to the Board how these costs
9 were calculated?

10 A. A combination of actual costs and estimated costs.
11 Drilling costs are actual and completion costs are
12 estimates.

13 Q. Are you requested that PGP be designated as the well
14 operator authorized to operate the P-41 unit?

15 A. Yes, I am.

16 Q. Are you requesting the relief sought in Paragraph 4 of
17 PGP's application?

18 A. Yes, I am.

19 MS. MCCLANAHAN: Those are all the questions I have for Mr.
20 Albert.

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

22 MR. EVANS: I have got one. How close is your well to the
23 unit boundary.

24 MR. ALBERT: By my most recent calculation in preparation for
25 your question it appears to be about 341 feet from the

1 boundary.

2 MR. CHAIRMAN: Other questions?

3 MR. KELLY: I move that the petition be approved as submitted.

4 MR. CHAIRMAN: I have a motion to approve.

5 MR. MCGLOTHLIN: Second.

6 MR. CHAIRMAN: I have a second. Any further discussion? With
7 no further discussion, all in favor signify by saying
8 yes.

9 BOARD: Yes.

10 MR. CHAIRMAN: Opposed say no. (None) Unanimous approval.

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ITEM 12

MR. CHAIRMAN: The next item on the agenda is a petition for force pooling from Pocahontas Gas Partnership under 45.1-361.1 for Oakwood Field Unit P-40 on the Jewell Ridge Quadrangle of Buchanan County. This is Docket Number VGOB-93/02/16-0330. We would ask the parties that wish to address the Board in this matter to come forward at this time. (Pause.) Would the parties please identify themselves?

MS. MCCLANAHAN: Elizabeth McClanahan representing Pocahontas Gas Partnership, the applicant.

MR. PRESLEY: Charles Presley, land owner.

KYLE ROBINSON: Gas and oil.

MR. CHAIRMAN: Elizabeth, you may go ahead.

MS. MCCLANAHAN: The first witness I would like to call is Mr. Leslie K. Arrington. His resume is identified as Exhibit 1. I would move the admission of that exhibit pursuant to the Chairman's request. And I would submit him as an expert witness.

MR. CHAIRMAN: You may proceed.

1 LESLIE ARRINGTON

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

5 DIRECT EXAMINATION

6
7 BY MS. MCCLANAHAN:

8 Q. Mr. Arrington, have you given notice as required by
9 Section 45.1-361.19 to each person or entity identified
10 on Exhibit C of the force pooling application?

11 A. Yes, we have.

12 Q. Was that Hearing Notice that was mailed to each of the
13 parties Exhibit 2?

14 A. Yes, it is.

15 MS. MCCLANAHAN: Mr. Chairman, I would move the introduction
16 of Exhibit 2.

17 MR. CHAIRMAN: Any objection? Okay. It is admitted.

18 Q. (Ms. McClanahan continues.) Is notice was sent by
19 certified mail, return receipt requested, is that
20 correct?

21 A. Yes, it was.

22 Q. Are copies of those return receipts shown at Exhibit 3?

23 A. Yes, they are.

24 MS. MCCLANAHAN: Mr. Chairman, I move the introduction of
25 Exhibit 3.

1 MR. CHAIRMAN: Admitted.

2 Q. (Ms. McClanahan continues.) Were there any persons
3 whose names and/or addresses were unknown?

4 A. No. However, we still published it in the Virginia
5 Mountaineer and the Bluefield Daily Telegraph on January
6 27th and 28th.

7 Q. Were those proofs of publications previously submitted to
8 the Board?

9 A. Yes, they have.

10 Q. What percentage of the coal rights in the tracts that
11 comprise the P-40 unit does PGP control?

12 A. 96.237 percent of the Pocahontas #3 seam and 96.162 of
13 all coal below the Tiller seam less the Pocahontas #3.

14 Q. What percentage of the oil and gas rights in the tracts
15 that comprise the P-40 unit does PGP control?

16 A. 47.641 percent.

17 Q. What percentage of the coalbed methane gas rights that
18 comprise the P-40 unit does PGP control?

19 A. 96.237 percent.

20 Q. Are the unleased owners, the leasehold owners and mineral
21 owners who have leased to other parties listed on Exhibit
22 D of the P-40 force pooling application with their
23 percentages of ownership in their perspective tracts?

24 A. Yes, they are.

25 Q. Have revision been made to Exhibits C, D, and E as they

1 were previously filed?

2 A. Yes.

3 Q. What are those changes?

4 A. We have revised the ownership acreages and percentages
5 listed for Consolidated Coal Company to reflect Reserve
6 Coal Properties.

7 Q. Are those revised applications pages and revised exhibits
8 identified as Exhibit 4?

9 A. Yes, they are.

10 MS. MCCLANAHAN: Mr. Chairman, I move the introduction of
11 Exhibit 4.

12 MR. CHAIRMAN: Questions? All right. They are admitted.

13 Q. (Ms. McClanahan continues.) Are the conflicting claim-
14 ants whose funds are to be escrowed listed on the
15 revised Exhibit E?

16 A. Yes, it is.

17 Q. Are you requesting that the Board pool the interest of
18 the parties listed on revised Exhibit C?

19 A. Yes.

20 MS. MCCLANAHAN: Those are all the questions I have of Mr.
21 Arrington.

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

23 MR. EVANS: I have one question. On your Page 1 of 2,
24 Certification of Notice, on the received column what does
25 returned mean?

1 MR. ARRINGTON: No one bothered to pick it up. It was,
2 basically, returned because no one picked it up.

3 MS. MCCLANAHAN: It was returned by the Postal Service, is
4 that correct?

5 MR. ARRINGTON: Yes.

6 MR. EVANS: So it was unclaimed?

7 MR. ARRINGTON: Yes.

8 MR. ROBINSON: Could I ask a question, please?

9 MR. CHAIRMAN: Yes.

10 MR. ROBINSON: My papers say you own 40 percent.

11 MR. ARRINGTON: If you will look at Exhibit 4 we have revised
12 the percentages.

13 MR. ROBINSON: Well, I didn't get notice of that then.

14 MR. PRESLEY: They didn't give us no notice on that.

15 MR. ROBINSON: I don't think you have a right to pool that 40
16 percent.

17 MS. MCCLANAHAN: Mr. Arrington, these are revised exhibits --

18 MR. ROBINSON: This right here is what we have got. You can
19 see it.

20 MR. ARRINGTON: I mailed out a second set.

21 MS. MCCLANAHAN: The revised exhibits were also sent.

22 MR. ROBINSON: I ain't received them.

23 MR. ARRINGTON: I don't have those receipts with me. The
24 second set.

25 MR. CHAIRMAN: Well, you can amend as application at the

1 hearing so -- I mean, they can do that.

2 MR. ROBINSON: Why would they change it? Why would they issue
3 this at 40 percent and then go back and change it?

4 MR. CHAIRMAN: I will let them answer the question. But there
5 are other parties so the percentages changed.

6 MR. ROBINSON: Why did the percentages change from one week to
7 the next? That's what I can't understand.

8 MR. ARRINGTON: All right. We found a property line that we
9 had wrong and we corrected it. And that's the reason you
10 see changes there.

11 MS. MCCLANAHAN: I would like to call Mr. William Gillenwater
12 as my next witness. He has been previously sworn.
13 Pursuant to the Chairman's request I would note that Mr.
14 Gillenwater's resume is marked for identification as
15 Exhibit 5. And I would move the introduction of that
16 exhibit and submit Mr. Gillenwater as an expert witness.

17 MR. CHAIRMAN: You may proceed.

18

19

20 WILLIAM GILLENWATER

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

23

24

25

DIRECT EXAMINATION

BY MS. MCCLANAHAN:

Q. Mr. Gillenwater, in your experience in obtaining leases in Southwest Virginia what are the fair market value terms for an oil, gas and coalbed methane lease in this area?

A. \$5 per acre, per year rentals. And a 1/8 production royalty. And for a coalbed methane lease \$1 per acre, per year rentals with a 1/8 production royalty.

Q. What is the standard primary term for both these leases?

A. 10 years.

Q. With regard to the unleased owners that are listed on the P-40 unit force pooling application have you contacted those land owner or tried to contact them to obtain a lease?

A. Yes, I have.

Q. BY what method did you contact them?

A. Verbal.

Q. And were they willing to execute a lease with your company?

A. No, ma'am.

Q. With regard to the leasehold owner, Cabot Oil and Gas Corporation listed on the P-40 force pooling application, did you make an offer regarding an assignment of their

1 leasehold interest?

2 A. Yes, I did.

3 Q. By what method did you contact them?

4 A. Verbal contact.

5 Q. Were you able to come to an agreement as to the proposed
6 assignment?

7 A. Not at this time.

8 MS. MCCLANAHAN: Those are all the questions I have of Mr.
9 Gillenwater.

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

11 MR. ROBINSON: I want to know what options do we have?

12 MR. CHAIRMAN: I'm not sure I understand. What do you mean
13 what options do you have?

14 MR. ROBINSON: See, the only thing I was given was just a
15 contract. And nobody has tried to negotiate a contract.
16 A contract is an agreement between two people, isn't that
17 correct?

18 MR. CHAIRMAN: Yes, sir.

19 MR. ROBINSON: I was given a contract, but no negotiation was
20 done.

21 MR. CHAIRMAN: Well, following today's hearing if the Board
22 were to approve the force pooling application any parties
23 that have been pooled would have an option to lease, an
24 option to be carried, or an option to participate. And
25 all that would be spelled out in the Board's order. So

1 you would have those options. And it would also not
2 prohibit you in entering into any kind of agreement with
3 the applicant in the meantime.

4 MR. MASON: You said they contacted you and presented you with
5 a proposed lease?

6 MR. ROBINSON: Yes. A 24 page lease. There are some things
7 in there I --

8 MR. MASON: Did you get back in touch with them and ask them
9 about --

10 MR. ROBINSON: I told them I would negotiate a contract.

11 MR. MASON: I understand that, but did you make a counter
12 proposal to them?

13 MR. ROBINSON: Yes, I did.

14 MR. MASON: Have you heard from them in that regard?

15 MR. ROBINSON: No.

16 MR. MASON: So that is where it sort of stopped?

17 MR. ROBINSON: I guess.

18 MS. MCCLANAHAN: Mr. Gillenwater, would you please explain --

19 MR. GILLENWATER: My recollection of the negotiations was --
20 well, to start with the 24 page lease if we wanted to jam
21 the print together I think we can get it on two pages.
22 We do that for ease of reading.

23 MR. MASON: I understand that.

24 MR. GILLENWATER: We were at the advantage in this case of --
25 we had already drilled in the area and there was things

1 within the lease that we recognized may not be needed.
2 Certain rights in there that may not be needed. So I
3 welcomed Mr. Robinson to mark it up with anything that he
4 didn't like and I would be happy to take it back to our
5 management and see if we could go away with some of
6 those rights. And I believe we very well could have and
7 would.

8 MR. MASON: So his counter-proposal rests with you all?

9 MR. GILLENWATER: I have never seen a lease marked up of the
10 things that causes him problems.

11 MS. MCCLANAHAN: So in other words he did not present you with
12 a counter-proposal once you gave him the lease?

13 MR. GILLENWATER: No specifics of that caused problems other
14 than -- I think it would be fair to say he wasn't happy
15 with the money.

16 MS. MCCLANAHAN: I would just submit to the Board that the
17 statutory requirement is that we offer him a standard
18 lease.

19 MR. MASON: I understand that. I just want to find out what
20 the status of the fact that -- you were going to say
21 something, sir?

22 MR. ROBINSON: I was just given the lease and I contacted his
23 or -- I talked to Randy or whoever it was. I talked to
24 him and told him what I would do.

25 MR. PRESLEY: I have never saw a lease, They have made no

1 offer.

2 MR. ROBINSON: I thought there had to be -- my understanding
3 was they have to own over 50 percent before they can
4 force pool anyway.

5 MR. CHAIRMAN: There's no percentage on ownership on coalbed
6 methane.

7 MR. ROBINSON: Okay. If I wanted to drill the methane that own
8 you are telling me that I cannot do that?

9 MR. CHAIRMAN: No, I am not telling you that.

10 MR. MASON: You can file a petition and apply to be the
11 driller and operator of a unit based on the acreage that
12 you have.

13 MR. CHAIRMAN: You sure can.

14 MR. ROBINSON: Not if you force pool me I can't. There ain't
15 going to be anything there to drill.

16 MR. MASON: I understand. But you could have done so.

17 MR. ROBINSON: Well, maybe I want to do it next year or the
18 year after. If you force pool me I cannot do it.

19 MR. MASON: Okay. But you have a right at this hearing to put
20 on evidence of why these people should not be allowed to
21 force pool and be the operator of the acreage.

22 MR. ROBINSON: Well, I don't have any objections to that, but
23 I mean I should be able to negotiate a term. You can't
24 come out here and say this is 1/8. That's their offer.
25 That's just like buying a car. I can't go down there and

1 say, "I'll give you \$1,000 for a new Cadillac." I mean,
2 you have to negotiate some kind of an agreement. That's
3 my problem.

4 MR. MASON: I understand that. But this force pooling law
5 allows any claimant to force pool the acreage and to
6 petition the Board and be named as the operator. And
7 they have done that and you have the right to oppose
8 that.

9 MR. ROBINSON: Well, that is what I am doing.

10 MR. MASON: I understand.

11 MS. MCCLANAHAN: The next witness I would like to call is Mr.
12 Randy Albert. Mr. Albert has also been previously sworn.
13 His resume is marked for identification as Exhibit 6.
14 Pursuant to the Chairman's request I would move the
15 introduction of Exhibit 6 and submit Mr. Albert as an
16 expert witness.

17 MR. CHAIRMAN: Okay. Proceed.

18

19

20

RANDALL ALBERT

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

23

24

25

DIRECT EXAMINATION

BY MS. MCCLANAHAN:

Q. Mr. Albert, has a drilling permit previously been refused to PGP on any of the tracts that comprise this particular unit?

A. No, it has not.

Q. Has a well work permit been issued for wells within the P-40 unit?

A. Yes. Well #400 was submitted and was issued on 10/9/92 as Permit #2142. Permit for Well #602 was issued on 10/2/92 as Permit #2129.

Q. For what type of well were the permits issued?

A. Coalbed methane gas.

Q. Have you received any written responses from the owners of the tracts within this unit?

A. No, we have not.

Q. Does the plat attached to the force pooling application filed by PGP indicate the acreage and shape of the acreage to be embraced within the P-40 unit as approved by the Board today?

A. Yes, it does.

Q. Would you please identify Exhibit 7?

A. Exhibit 7 is Exhibit B-1 of the P-40 application.

MS. MCCLANAHAN: Mr. Chairman, I move the introduction of

1 Exhibit 7.

2 MR. CHAIRMAN: Okay. It is admitted.

3 Q. (Ms. McClanahan continues.) Does the unit follow the
4 boundary lines of the Hurricane Branch Extension 80 acre
5 unit designated as P-40 and as shown on Exhibit B-1 on
6 this application?

7 A. Yes, it does.

8 Q. Does the plat attached to this force pooling application
9 filed by PGP indicate the area within which the well will
10 be drilled on the P-40 unit?

11 A. Yes, it does.

12 Q. Does this drilling unit embrace two or more separately
13 owned tracts?

14 A. Yes, it does.

15 Q. Are the costs and expenses for the two well set forth on
16 a DWE's attached to the force pooling application as
17 Exhibit H and I?

18 A. Yes, they are.

19 Q. Does these exhibit reflect the cost of drilling the wells
20 to total depth and completed for production costs?

21 A. Yes, they do.

22 Q. Could you please explain to the Board how these costs
23 were calculated in the DWE?

24 A. The DWE's are again based on actual drilling costs and
25 estimated completion costs.

1 Q. Are you requested that PGP be designated as the well
2 operator authorized to operate the P-40 unit?

3 A. Yes, we are.

4 Q. Are you requesting the relief sought in Paragraph 4 of
5 PGP's application?

6 A. Yes, we are.

7 MS. MCCLANAHAN: Those are all the questions I have for Mr.
8 Albert. I do have one other witness in this particular
9 matter.

10 MR. ROBINSON: May I say something right now at this time?

11 MR. CHAIRMAN: Go ahead.

12 MR. ROBINSON: On September 10th I sent an objection to both
13 of these wells. We was not given a hearing until after
14 the wells were completed. And we were given a so called
15 hearing on January 14th.

16 MR. CHAIRMAN: Do you have a decision on that hearing? On the
17 January 14th hearing?

18 MR. ROBINSON: Yeah. It was a kangaroo hearing. But why
19 wasn't we given a hearing from September 10th until
20 January 14th is what I am trying to say? They drilled
21 the wells and wouldn't even give us a hearing.

22 MR. PRESLEY: That had a hearing for everybody else. I call
23 that discrimination myself.

24 MR. CHAIRMAN: Do we have that coming before the Board?

25 MR. FULMER: No.

1 MR. CHAIRMAN: Okay. Do you want to brief the Board, Mr.

2 Fulmer, and then I will let Mr. Robinson fill in on what
3 went on?

4 MR. FULMER: On the matter of Mr. Robinson's objection, he did
5 submit an objection, which says, "I object." The law
6 specifically requires him to submit written objections
7 according to the statute. We sent Mr. Robinson back a
8 letter and a copy of the section of the law in regards to
9 what he can object under. Apparently the Postal Service
10 did not deliver the letter within the specified days that
11 I had written in the letter in regards to submitting the
12 written objections. In other words the 15 days were
13 already up and I still didn't have written objections as
14 required under Section 35. No knowing -- or hadn't heard
15 back from him I assumed that he had gotten them and --
16 actually he did not get them because of a postal problem.
17 Subsequently, I gave him a hearing and scheduled it for
18 January 14th and heard his objections at that time.

19 MR. CHAIRMAN: Did you render a decision?

20 MR. FULMER: I rendered a decision at that time.

21 MR. CHAIRMAN: Were they favorable or unfavorable for Mr.
22 Robinson?

23 MR. FULMER: Unfavorable.

24 MR. CHAIRMAN: Did you appeal that decision?

25 MR. ROBINSON: I haven't yet. I talked to you about it.

1 MR. PRESLEY: I have got a copy of the letter they mailed me
2 to have a further review of my application for rejection.
3 It was mailed the 2nd day of September and I received it
4 10/15/92. And I go to the post office everyday.

5 MR. ROBINSON: I was told they didn't receive mine, but I have
6 a receipt where they did receive it. Mr. Fulmer said he
7 didn't receive it and I had a receipt where somebody did
8 sign for it on September 10th.

9 MR. FULMER: I do not disagree with that, Mr. Chairman. All I
10 am saying is I didn't have written objections in front of
11 me according to statute.

12 MR. CHAIRMAN: Anything else? You have one other witness?

13 MS. MCCLANAHAN: Yes. And just for the record I would submit
14 that these objections to the permits being drilled are
15 irrelevant at this particular hearing.

16 MR. CHAIRMAN: Sustained.

17 MS. MCCLANAHAN: The next witness I would like to call is
18 Claude Morgan.

19

20

21

CLAUDE MORGAN

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

24

25

DIRECT EXAMINATION

BY MS. MCCLANAHAN:

Q. Mr. Morgan, I will show you a resume that is entitled, Claude D. Morgan, Manager of Gas Projects. Is this your resume reflecting work history, qualifications and your educational background?

A. Except that it Manager of Gas Projects, Consol, Inc. instead of Consolidation Coal Company.

Q. Okay.

MS. MCCLANAHAN: I would request that this exhibit be marked for identification as Exhibit 8 and I would move the introduction of Exhibit 8.

MR. CHAIRMAN: Admitted.

Q. (Ms. McClanahan continues.) Mr. Morgan, have you been qualified as an expert witness previously before the Gas and Oil Board?

A. Yes, I have.

MS. MCCLANAHAN: I would submit Mr. Morgan as an expert witness.

MR. CHAIRMAN: You may proceed.

Q. (Ms. McClanahan continues.) Mr. Morgan, the location map that's labeled "Location Map P-40" -- and I would identify this as Exhibit 9. Could you please identify this map for the Board?

1 A. This map shows the Oakwood Extension with the 80 acre
2 units superimposed over the land for CSP's reserve coal
3 properties at proposed Hurricane Branch Mine. It also
4 shows the location. It says "PG-408" but it's "PG-400
5 and PG-602."

6 MS. MCCLANAHAN: I move the introduction of Exhibit 9 with
7 that change showing the well as 400 instead of 408.

8 MR. CHAIRMAN: Any questions?

9 Q. (Ms. McClanahan continue.) Mr. Morgan, were these
10 locations and these permits issued for 602 and 400
11 consistent with statewide spacing rules that were in
12 effect in this particular area?

13 A. Yes, they were.

14 Q. Can you please explain for the Board what the purpose of
15 the particular location of these two wells is?

16 A. The wells were located to fit the proposed mine plan.
17 You will see CBM PG-400 is located in an area there and
18 it shows two small lines. That area is a proposed
19 barrier area for the Hurricane Branch Mines. That
20 location would allow that well to drain the Pocahontas #3
21 seam from the projected main going east, projected
22 bleeders going north and projected sub-mains going north
23 immediately beside of that well location. The Well 602
24 is located immediately over top of a proposed longwall
25 panel. It is also located right on a crest of a steep

1 ridge, which goes off steep on each side and it was on an
2 existing road and small bench that came around there to
3 it that dictated its location. It is RCP's desire that
4 all wells be located either in the longwall panel or in a
5 barrier area as insurance against potential roof damage.

6 Q. So that would also be a safety consideration, is that
7 correct?

8 A. That's correct.

9 MR. CHAIRMAN: Is that RCP Coal Company?

10 MR. MORGAN: That's Reserve Coal Properties.

11 MR. MCGLOTHLIN: Does that belong to Consolidation or Consol?

12 MR. MORGAN: It's a subsidiary of Consol Energy.

13 MR. CHAIRMAN: Other questions?

14 MR. EVANS: I have got one. Obviously, these are closer than
15 300 feet to that unit boundary. How close are they?

16 MR. ROBINSON: They are -- I would be safe in saying they are
17 about 200 feet from my water well.

18 MR. EVANS: That is not my question.

19 MR. ROBINSON: Boundaries? 50 feet of property boundaries.

20 MR. EVANS: No, that was not my question either.

21 MR. ALBERT: Mr. Evans, if I might. Well 400 is approximately
22 210 feet from the line running north/south and about 284
23 feet from ' line running east/west. Well 602 is about
24 158 feet from the north/south unit boundary and about 140
25 feet from the east/west unit boundary.

1 MR. EVANS: Mr. Morgan, these wells are located (inaudible) to
2 the mine plan?

3 MR. MORGAN: Yes, sir.

4 MR. MCGLOTHLIN: Mr. Albert, whose property is Tract 1 and
5 also whose property is Tract 9?

6 MS. MCCLANAHAN: I believe that would be a better question
7 asked of Mr. Arrington, if you don't mind.

8 MR. ARRINGTON: It's P. J. Brown. And in Tract 9 it's the
9 Franks estate.

10 MR. CHAIRMAN: Other questions?

11 MR. MASON: Yes, sir. Mr. Robinson, on this map right here
12 which tract is yours?

13 MR. ROBINSON: I own Tract 8, 6 and 18. I own that whole
14 circle. Mr. Presley owns Tract 7, that came out of this
15 original tract. I own all the way joining Tract 9.

16 MS. MCCLANAHAN: Just to clarify, that's not what our records
17 show.

18 MR. ARRINGTON: Mr. Robinson, if you would at the amended
19 pages, Exhibit 4. The orange book.

20 MR. ROBINSON: There again, if there has been an amendment we
21 were suppose to have been issued as amendment, weren't
22 we?

23 MR. CHAIRMAN: That's the purpose of the hearing. They can do
24 that here today.

25 MR. ROBINSON: Okay. All of Tract 8 and 18.

1 MR. MASON: What's the scale? I know it's on here somewhere.
2 Is it 1" to 400 feet?
3 MR. ALBERT: Yes, it is.
4 MR. MASON: Mr. Robinson, do you reside on this property?
5 MR. ROBINSON: Yes, sir.
6 MR. MASON: This map doesn't reflect any residence on here.
7 About where do you live on here?
8 MR. ROBINSON: I have a building on both of the arrows on 8.
9 I have two trailers on the tract across the highway
10 there. And I have a home on the lower arrow there on 8.
11 I have three residences.
12 MR. MASON: So you have some tenants here, as well?
13 MR. ROBINSON: My son. Am I correct in saying that the N&W
14 did not acquire the gas under that tract?
15 MS. MCCLANAHAN: On Tract 18, is that what you are referring
16 to?
17 MR. ROBINSON: Yes.
18 MS. MCCLANAHAN: I believe, Mr. Arrington, perhaps you should
19 answer this question since the title opinions were
20 rendered to Pocahontas Gas Partnership.
21 MR. ARRINGTON: Tract 18 is Norfolk Southern.
22 MR. ROBINSON: Not according to my -- my brother-in-law did
23 not sell the gas rights.
24 MS. MCCLANAHAN: Mr. Arrington, have you has a title opinion
25 rendered on this particular tract?

1 MR. ARRINGTON: Yes, we have.

2 MS. MCCLANAHAN: And your title opinion reflects that Norfolk
3 Southern owns the oil and gas on that tract, is that
4 correct?

5 MR. ARRINGTON: Yes, they do.

6 MS. MCCLANAHAN: And the title opinions that you had rendered
7 on Tract 8 that show Mr. Robinson owning what?

8 MR. ARRINGTON: In acreage I would have to reflect back -- but
9 he does own the surface oil and gas on Tract 8.

10 MS. MCCLANAHAN: And you show on it this revised exhibit I
11 believe as 8.31 acres?

12 MR. ARRINGTON: Yes.

13 MS. MCCLANAHAN: And does Mr. Robinson, according to your
14 title opinions, own any other interest in this particular
15 unit?

16 MR. ARRINGTON: No.

17 MR. ROBINSON: Well, this right here says I got 15.94 in one
18 tract and an acre in the other tract.

19 MR. ARRINGTON: Correct. But I had to revise those.

20 MR. ROBINSON: Are you saying I don't own it now? I pay the
21 tax on it.

22 MR. ARRINGTON: Well, I had to revise our map because there
23 was one tract I was that you had that I was showing
24 incorrectly.

25 MS. MCCLANAHAN: And I believe the title opinion once you

1 received it on that particular tract that's what caused
2 you to change these exhibit was consistent with the title
3 opinions?

4 MR. ARRINGTON: Yes.

5 MR. ROBINSON: Are you saying that I don't own the sixteen
6 acres? Now, something is wrong. Let's just tell the
7 facts.

8 MS. MCCLANAHAN: Just so the Board understands, the title
9 opinions that you are referring to, Mr. Arrington, are
10 only for oil, gas and coal or any other mineral, is that
11 correct? That's the ownership that's shown here on your
12 exhibits?

13 MR. ARRINGTON: Yes.

14 MR. MASON: So it doesn't relate to surface?

15 MS. MCCLANAHAN: We are not relating surface ownership here.
16 That's correct.

17 MR. ARRINGTON: No. Those two tracts that I was referring to I
18 had to change that was a surface tract also.

19 MS. MCCLANAHAN: What you are saying is that the surface was
20 with the oil and gas on that particular tract?

21 MR. ARRINGTON: Yes.

22 MS. MCCLANAHAN: That your Exhibits C, D and E do not reflect
23 an surface ownership.

24 MR. ARRINGTON: Correct.

25 MR. ROBINSON: Whatever the surface I would automatically own

1 the gas and oil because it has never been sold off. The
2 only thing that I figure what you done -- here is what I
3 think you have done. You took half of my property and
4 put it on Well 602 and the other half on 400. Is that
5 correct? Because you have got me divided up --

6 MR. CHAIRMAN: No, the units that have been approved it's all
7 in that unit. It's all in that unit.

8 MR. MASON: Both of those wells are in a single unit.

9 MR. ROBINSON: Are you saying I just own 8 acres of gas?

10 MR. CHAIRMAN: I'm not representing anything. I don't know
11 what you own.

12 MR. ROBINSON: Are you saying you are going to draw 8 acres
13 off of 602 and 8 acres off of 400?

14 MR. ALBERT: Mr. Robinson, our title reflects that you own
15 8.31 acres of that 80 acre unit in oil and gas. That's
16 all we are saying. Not representing what you own in
17 entirety. It refers to this one unit. Your percentage
18 of ownership in this unit is 8.31 acres of oil and gas as
19 reflected by our title opinions.

20 MR. ROBINSON: Well, that dog won't hunt. You show right here
21 that I own 6 and 8 and 18, right? That dog won't hunt.
22 You can that is more acres than 8 acres. I'm looking at
23 your map that you are trying to amend.

24 MS. MCCLANAHAN: 8 is the only one that is listed.

25 MR. ALBERT: Our title does not reflect you owning anything

1 in Tract 18, Mr. Robinson.

2 MR. ROBINSON: You mean to tell me I don't live there.

3 MR. MCGLOTHLIN: Excuse me. That's what your people repre-
4 sented a minute ago. 18, 8 and 6.

5 MR. ROBINSON: Have you moved me down to Grundy? Where do you
6 think I live?

7 MS. MCCLANAHAN: Mr. McGlothlin, we just indicated that on
8 Tract 8 there is 8.31 acres.

9 MR. MCGLOTHLIN: Who owns Tract 18?

10 MR. ROBINSON: I do. I live there.

11 MS. MCCLANAHAN: The Hirt McGuire heirs own the coal and the
12 coal lessees are Jewell Smokeless for above drainage,
13 Reserve Coal Properties below drainage and Norfolk
14 Southern oil and gas.

15 MR. ROBINSON: That's only two acres is all that is. Norfolk
16 Southern didn't buy the gas rights. I own the tract. I
17 live right here, Honey. I haven't moved -- I mean, I
18 hope they haven't moved me out.

19 MR. CHAIRMAN: But you are representing to the Board mineral
20 acreage, right?

21 MS. MCCLANAHAN: That's correct.

22 MR. EVANS: These maps only indicate mineral acres?

23 MS. MCCLANAHAN: That's right. They don't have any surface
24 acreage reflected, pursuant to the statutory requirements
25 that we only submit mineral acreages.

1 MR. MASON: It sounds to me like we have a conflicting claim
2 as to who owns the minerals under Tract 18.

3 MR. PRESLEY: You have got the same mess-up on my mother-in-
4 law. You have got her Margaret Cole one place, 3 acres,
5 and another place Margaret Cole heirs. And she had a
6 will.

7 MS. MCCLANAHAN: Pursuant to this particular hearing we will
8 be more than happy to list Mr. Robinson as testifying.
9 We can notify Norfolk Southern that he is claiming oil
10 and gas under the tracts that our title opinion shows he
11 owns and we can escrow that money pursuant to statute.

12 MR. ROBINSON: I would still have 16 acres if you take that
13 out.

14 MR. EVANS: Mr. Robinson, there is a difference here. Their
15 map that you are looking at does not indicate surface
16 ownership. It's only the minerals that they are looking
17 at. So when you look at a tract map or whatnot and you
18 are not listed that means that their title opinion says
19 that you don't have the minerals. You may own the
20 surface, but you don't have the minerals.

21 MR. ROBINSON: Well, what I am saying is I own all minerals
22 that's under the property that I own. They have not been
23 sold off.

24 MS. MCCLANAHAN: Let me make sure I have this right for
25 purposes of this hearing. Mr. Robinson is claiming the

1 oil and gas under Tract 8 as it is shown on here. Also
2 under Tract 18. Is there any other tracts?

3 MR. ROBINSON: And #6 Tract.

4 MS. MCCLANAHAN: No, look on this new map.

5 MR ROBINSON: Okay. You have got three eights right there.

6 MS. MCCLANAHAN: Okay. So under all three eights. And then
7 what other tracts?

8 MR. ROBINSON: And I am saying part of the 18 Tract. Or all
9 of the 18 Tract really. Because -- let me show you
10 something right here. See, this thing right here. That
11 means it is hooked together. That means that this tract
12 right here is hooked together and I own that tract, if
13 you look at the map right. It shows that I own it because
14 it is hooked.

15 MS. MCCLANAHAN: Okay. That's right. So all of 18.

16 MR. MASON: So, Members, what they are saying is there is some
17 question as to who owns this. But they are going to
18 recognize as a result of this hearing that is a conflict-
19 ing claim to the oil and gas under all of Tract 8 and all
20 of Tract 18.

21 MR. ROBINSON: No, I know under 8 I definitely own all of
22 that.

23 MR. MASON: Is there any dispute as to that?

24 MS. MCCLANAHAN: We don't know of any.

25 MR. MASON: So 18 is the only one in which there is a con-

1 flicting claim?

2 MS. MCCLANAHAN: Right.

3 MR. ROBINSON: Well, Pocahontas Gas says I own 18.2 acres of
4 gas. That's what they told me on their lease that they
5 brought me. Now, where has 10 acres of oil and gas
6 disappeared to since then?

7 MR. MASON: Well, they indicated, as I understand it, that as
8 a result of one of these boundary lines with this Norfolk
9 & Western tract that they re-evaluated and found that the
10 boundary was incorrect --

11 MR. PRESLEY: There's not but 2 acres there and there is 10
12 acres gone.

13 MR. ROBINSON: There is 10 acres missing.

14 MR. MASON: Well, we can't adjudicate anyway those acres. We
15 can recognize that there is a dispute about it. Do you
16 understand that what they are saying is that as a result
17 of that any royalties generated as a result of that
18 conflicting claim would be escrowed until that is
19 settled? Then you would have an opportunity to do
20 whatever necessary to settle or resolve that dispute.

21 MR. ROBINSON: Okay. Then, am I to draw royalties off of 602
22 and 400?

23 MS. MCCLANAHAN: Yes, you would. That's correct. For both
24 the wells in the unit according to your percentages.

25 MR. ROBINSON: Did you divide that up and put 8 acres in one

1 well and 8 acres in the other well?

2 MS. MCCLANAHAN: No, sir. It's all in one unit.

3 MR. CHAIRMAN: It will all be treated as the same --

4 MR. ROBINSON: Then I am coming up short somewhere. Very
5 short. 10 acres short. I can't come up 10 acres short.

6 MS. MCCLANAHAN: Well, could you show us on this map where
7 your 10 acres is located?

8 MR. ROBINSON: No, I can't show you because I own the whole
9 thing.

10 MR. MASON: The dispute is whether this 10 acres -- you are
11 saying that you only gave Norfolk & Southern 2 acres and
12 they are saying that the title appears to say you
13 conveyed them some larger number. There is a conflict to
14 that. Is that right?

15 MR. ROBINSON: They are saying I own 8 acres.

16 MR. MCCLANAHAN: -- predecessors, in the chain of title.

17 MR. ROBINSON: I own more than the 8 acres. That's the
18 dispute. I have to own more than 8 acres because I am
19 paying taxes on more than 8. Surface and mineral is the
20 same. If I own 1 acre of surface I own 1 acre of gas.

21 MS. RIGGS: Not if your predecessor in title sold off --

22 MR. ROBINSON: It wasn't sold off.

23 MS. RIGGS: Well, their title shows that it may have been and
24 you are saying that it wasn't. And that is the dispute
25 right there.

1 MR. ROBINSON: Not it's not a dispute. They say right here --
2 let me show you. It's plainly printed. What does say
3 right there? "Kyle Robinson, 15.94 acres. Plus 1 acre."
4 There it is.

5 MCCLANAHAN: That's been revised.

6 MS. RIGGS: That's not the one before us. Look in the orange
7 book.

8 MR. ROBINSON: Well, what have you done with the other 10
9 acres?

10 MS. MCCLANAHAN: It's under Paragraph 18. And we are not
11 disputing -- we are just saying that our title opinion
12 shows one thing and your are claiming something else. So
13 we will put your name down as a conflicting claimant for
14 Tract 18 in this particular unit.

15 MR. CHAIRMAN: Any other questions?

16 MR. MCGLOTHLIN: Mr. Robinson, when a conflicting claimant --
17 nobody gets that money until it's decided by a court of
18 law who owns that. Then that money will be distributed
19 to whoever the court says owns the oil and gas.

20 MR. EVANS: By the way, just as a clarification, that means
21 that they won't get it either. None of the royalty
22 owners -- if there is a conflicting claim that money goes
23 into the bank until the claim is sorted out by the court.
24 And nobody gets the money off it. It stays in the bank
25 until then.

1 MR. ROBINSON: I have never seen an indication that N&W say
2 they own the gas and oil.

3 MR. CHAIRMAN: You will received copies of all that notifica-
4 tion.

5 MR. MASON: Is there any dispute as to your acreage?

6 MR. PRESLEY: My deed calls for .68. They have got me down as
7 .66 so there's not much difference. I won't worry about
8 it. It won't make no difference no how. We never will
9 see nothing out of it.

10 MR. CHAIRMAN: Anything further? Do we have a motion?

11 MR. MASON: Mr. Chairman, based on the facts I move the
12 approval of this petition, subject to the amendment
13 reflecting the conflicting claim.

14 MR. CHAIRMAN: I have a motion to approve as amended.

15 MR. EVANS: Second.

16 MR. CHAIRMAN: I have a second. Any further discussion? With
17 no further discussion, all in favor signify by saying
18 yes.

19 BOARD: Yes.

20 MR. CHAIRMAN: Opposed say no. (None) Motion carries.

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1
2 ITEMS 13 and 14
3

4 MR. CHAIRMAN: The next item on the Board's agenda, Item 13,
5 Docket Number VGOB-93/02/16-0331 has been continued until
6 the next hearing. That will leave us the petition for
7 force pooling for Equitable Resources Exploration for V-
8 2735. This is Docket Number VGOB-93/02/16-0332. We
9 would ask the parties that wish to address the Board in
10 this matter to come forward at this time.

11 MR. TWEED: Mr. Chairman, Douglas Tweed and Jim Kiser with
12 Hunter, Smith & Davis law firm here on behalf of Equit-
13 able Resources Exploration, along with their representa-
14 tives Dennis Baker and Bob Dallin, who will be our
15 witnesses with respect to this force pooling petition.
16 And they should be sworn at this time.

17 COURT REPORTER: (Swears witnesses.)

18 MR. TWEED: Mr. Chairman, my first witness would be Dennis
19 Baker.
20

21 DENNIS BAKER

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

DIRECT EXAMINATION

BY MR. TWEED:

Q. By whom are you employed, Mr. Baker?

A. Equitable Resources Exploration.

Q. And in what capacity?

A. As a leasing supervisor.

Q. And have your responsibilities as a leasing supervisor include lands involved here with this petition and the surrounding area?

A. Yes.

Q. And are you familiar with the Equitable's application for the establishment of drilling unit and pooling order for Well V-2735 dated 1/19/93?

A. Yes, I am.

Q. And I believe that a permit on this is dated 1/18/93, is that correct?

A. That is correct.

Q. And is Equitable seeking to force pool the drilling rights underlying the drilling and spacing units as depicted on Exhibit A of the application?

A. Yes, that is correct.

Q. And does Equitable own drilling rights in the units involved here?

A. Yes, they do.

1 Q. Does the proposed unit depicted at Exhibit A to the
2 application include all the acreage within 2,640 feet,
3 that is a 1,320 radius of proposed Well V-2735?

4 A. Yes, it does.

5 Q. And for clarification I believe you do have an amended
6 Exhibit B with respect to the interest of Equitable and
7 the interest of others in the unit?

8 A. There is no revised exhibit.

9 Q. And what is the interest of Equitable in the unit?

10 A. 96.42 percent leased.

11 Q. And are you familiar with the ownership of the drilling
12 rights of parties other than Equitable underlying this
13 unit?

14 A. Yes.

15 Q. And what is the interest of others?

16 A. 3.58 percent being unleased interest.

17 Q. And are all the unleased parties set out in Exhibit B
18 filed with the application?

19 A. Yes, they are.

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

24 A. Yes, they were.

25 Q. I understand that the only two unleased respondents are

1 unknown heirs that will be subject to escrow, is that
2 correct?

3 A. That is correct.

4 Q. And in your efforts here with respect to these unknown
5 heirs were they diligent and reasonable and were sources
6 checked including deed records, probate records, asses-
7 sors records, treasurers record as well as secondary
8 sources such as telephone directories, city directories,
9 family and friends?

10 A. That is correct.

11 Q. Have you been accepted as expert witness in your field
12 before this Board in the past?

13 A. Yes.

14 Q. And that would include Board hearings last month?

15 A. Yes, it would.

16 MR. TWEED: Mr. Chairman, I was unfamiliar with the reference
17 made by Ms. McClanahan to the Chairman's request for
18 resumes and we did not bring a resume at this time. If
19 it your desire in the future to have us do that we will
20 certainly make sure we are prepared --

21 MR. CHAIRMAN: I think that stipulating the background and
22 the qualifications of the individual is fine. What she
23 was doing -- I had requested in order to expedite the
24 hearing is that as you went to each hearing that she
25 didn't have to repeat that or have them sworn in, just to

1 remind them. And she referred to that as the Chairman's
2 request.

3 MR. TWEED: I would like to offer Mr. Baker as an expert
4 witness in his field, Mr. Chairman.

5 MR. CHAIRMAN: Okay.

6 Q. (Mr. Tweed continues.) And in your professional opinion
7 was due diligence exercised to locate all the respondents
8 in this application, Mr. Baker?

9 A. Yes.

10 Q. And the last know addresses for respondents are the
11 addresses set out in Exhibit B?

12 A. That is correct.

13 Q. And you are requesting the Board to force pool all
14 unleased interests listed in Exhibit B?

15 A. Yes.

16 Q. Does Equitable seek to force pool drilling right of each
17 individual respondent, if living, and if deceased the
18 unknown successor or successors to each deceased individ-
19 ual respondent?

20 A. That is correct.

21 Q. And is Equitable seeking to force pool drilling rights of
22 the person designated as trustee if acting in the
23 capacity of trustee and if not acting in such capacity is
24 Equitable seeking to force pool the rights of the
25 successor of any trustee?

1 A. That is correct.

2 Q. Are you familiar with the fair market value of drilling
3 rights in the units here and in the surrounding area?

4 A. Yes, I am.

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

6 A. \$5 per acre consideration. A 5 year term and 1/8
7 royalty.

8 Q. Did you gain your familiarity by acquiring oil and gas
9 leases and other agreements involving the transfer of
10 drilling rights in units involved here and in the
11 surrounding areas?

12 A. Yes.

13 Q. In your opinion do the terms that you have testified to
14 represent the fair market value of and a fair and
15 reasonable compensation to be paid for drilling rights
16 within this unit?

17 A. Yes.

18 Q. And based upon that and as to respondents who have not
19 voluntarily agreed to pool do you recommend that the
20 respondents listed in Exhibit B who remain unleased be
21 allowed the following options with respect to their
22 ownership interest within the unit, 1: Participation 2: A
23 cash bonus of \$5 net mineral acre plus a 1/8 of 8/8's
24 royalty or 3: In lieu of cash bonus and 1/8 of 8/8's
25 royalty share in the operation of the well on a carried

1 basis as a carried operator under the following condi-
2 tions, that the carried operator shall be entitled to
3 the share of production for the tracts pooled according
4 to his interest exclusive of any royalty or overriding
5 royalty reserved in any leases, assignments thereof or
6 agreements related to such tracts, that only after the
7 proceeds allocatable to his share equal either A) 300
8 percent of the share of such cost allocatable to the
9 interest of the carried operator of the leased tract or
10 portion thereof or B) 200 percent of the share of such
11 cost allocatable to the interest of the carried operator
12 but unleased tract or portion thereof?

13 A. Yes, that is correct.

14 Q. Do you recommend that an order provide that elections by
15 respondent be made in writing and sent to applicant at
16 the address of our law firm, 1212 N. Eastman Road, P.O.
17 Box 3740, Kingsport, Tennessee, 37664, Attention: Douglas
18 S. Tweed.?

19 A. That is correct.

20 Q. And should this be the address for all communication with
21 applicant concerning the force pooling order?

22 A. Yes.

23 Q. Do you recommend that the force pooling order provide
24 that if no writing election is properly made by a
25 respondent that the respondent should be deemed to have

1 elected the cash royalty option in lieu of participation?

2 A. Yes.

3 Q. And should the unleased respondents be given 30 days from
4 the date of the order to file written elections?

5 A. That is correct.

6 Q. And if an unleased respondent elects to participate
7 should that respondent be given 45 days from the latter
8 of the date of the mailing or the recordation date of the
9 order to pay applicant for respondent's proportion of the
10 share of the well costs?

11 A. Yes.

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

15 A. Yes.

16 Q. Should applicant be allowed 60 days following the
17 recordation date of the order and thereafter annually on
18 that date until production is achieved to pay or tender
19 in a cash bonus becoming due under the force pooling
20 order?

21 A. Yes.

22 Q. Do you recommend that the force pooling order provide
23 that if respondent elects to participate but fails to pay
24 respondent's proportionate share of well costs satisfac-
25 torily to applicant for payment of well cost then

1 respondent's election to participate be treated as
2 having been withdrawn and void and such respondent should
3 be treated just as if no initial election had been filed
4 under the force pooling order?

5 A. Yes.

6 Q. Do you recommend that the force pooling order provide
7 that where a respondent elects to participate but
8 defaults in regard to the payment of well costs and a
9 cash sum becoming payable to such respondent be paid
10 within 60 days after the last date on which respondent
11 could have paid or made satisfactory arrangements for the
12 payment of well costs?

13 A. Yes.

14 Q. Do you recommend that the force pooling order provide
15 that if respondent refuses to accept any payment due
16 including any payment under said order or any payment of
17 royalty or cash bonus or said payment cannot be made to a
18 party for any reason or there is a title defect in a
19 respondent's interests that operator create an escrow
20 account for the respondent's benefit until the money can
21 be paid to the party or until the title defect is cured
22 to operator's satisfaction?

23 A. Yes.

24 Q. And who should be named operator under this force pooling
25 order?

1 A. Equitable Resources Exploration.

2 MR. TWEED: Mr. Chairman, I have no further questions for this
3 witness.

4 MR. CHAIRMAN: Any questions, members of the Board? You may
5 call your next witness.

6 MR. TWEED: I call Mr. Bob Dallin.

7

8 BOB DALLIN

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

11

12 DIRECT EXAMINATION

13

14 BY MR. TWEED:

15 Q. By whom are you employed, Mr. Dallin?

16 A. I am employed by EREX.

17 Q. In what capacity?

18 A. I'm operations specialist.

19 Q. And have you testified before this Board and have your
20 qualifications as an expert witness previously been
21 accepted by the Board with respect to your professional
22 duties?

23 A. Yes, I have.

24 Q. And do your responsibilities including lands involved in
25 the area of this application and the surrounding area?

1 A. They do.

2 Q. Are you familiar with proposed exploration and develop-
3 ment of units involved under applicant's proposed plan of
4 development here?

5 A. Yes, sir.

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

8 A. 4,625 feet.

9 Q. And would you list for the Board the formations that are
10 included to be consistent with the well work permit that
11 is now pending?

12 A. The Devonian shell, the Berea, Weir, Big Lime and Maxim
13 and Ravencliff formations.

14 Q. And will this depth be sufficient in your opinion to
15 penetrate and test the common sources of supply in the
16 subject formations?

17 A. Yes, sir, they would.

18 MR. TWEED: I have asked for an opinion here. We would offer
19 Mr. Dallin as an expert witness, Mr. Chairman, with
20 respect to his opinion in this and future regards.

21 MR. CHAIRMAN: Okay.

22 Q. (Mr. Tweed continues.) And is applicant requesting the
23 force pooling of conventional gas reserves not only to
24 include the referenced formations but any other forma-
25 tions excluding coal formations which may be between

1 those formations designated from the surface to the total
2 depth drilled?

3 A. Yes, sir, we would.

4 Q. Will the well be in a legal location?

5 A. Yes, sir.

6 Q. And what are the estimated reserves of the unit?

7 A. We estimate 400,000,000 cubic foot of gas be assigned to
8 this drilling unit.

9 Q. Are you familiar with the well costs of the proposed
10 initial unit well under applicant's plan of development?

11 A. Yes, sir.

12 Q. And has a signed AFE been reviewed and submitted to the
13 Board by EREX?

14 A. It has.

15 Q. And was the AFE prepared by an engineering department
16 knowledgeable in the preparation of AFE's and knowledge-
17 able in regard to well costs in this area?

18 A. It was.

19 Q. In your opinion does this AFE represent a reasonable
20 estimate of the reasonable well costs for the proposed
21 initial well unit under the applicant's plan of develop-
22 ment?

23 A. Yes, sir.

24 Q. And what are the dry hole costs with respect to this
25 unit?

1 A. \$132,000.

2 Q. And the completed well costs?

3 A. \$238,100.

4 Q. And do these costs anticipate a multiple completion?

5 A. Yes, sir, they do.

6 Q. And does the AFE include a reasonable charge for super-
7 vision?

8 A. Yes, sir.

9 Q. And I believe, in fact, because of some questions last
10 month that we have confirmed that EREX does have a
11 quality management system in place to assess the accuracy
12 of our AFE's in the engineering department by comparison
13 on monthly basis as to actual completed well costs?

14 A. Yes, sir, we do.

15 Q. And it's your opinion, is it not, based upon those that
16 there have been reasonable accuracy with comparison to
17 the AFE's and the completed well costs in the units that
18 have been drilled?

19 A. That's correct.

20 Q. In your professional opinion will granting of this
21 application be in the best interest of conservation, the
22 prevention of waste and the protection of correlative
23 rights?

24 A. Yes, sir, it would.

25 MR. TWEED: I have no further questions of this witness.

1 MR. CHAIRMAN: Questions members of the Board? One that I
2 would like to ask while they are coming up with their
3 questions is on Page 3 of the application, when you are
4 identifying the formations you have identified Sunberry.
5 Could you clarify that for me, please?

6 MR. BAKER: We have on rare occasions perforated the interval
7 between the Berea and the Weir. It is a hot shell. It's
8 identified as the Sunberry shell. We have perforated it,
9 completed it. It's not very commonly recognized as a
10 conventional gas producer. It has not been listed on the
11 permit application, however. It is a very rare exception
12 to where we complete.

13 MR. CHAIRMAN: I just hadn't seen the formation listed in
14 Virginia. I didn't know. Or at least don't recall it.

15 MR. EVANS: I am aware of a Sunberry shell up through the
16 north.

17 MR. FULMER: Mr. Chairman, sometimes it is called a peak zone.

18 MR. BAKER: In reviewing the ANR history for the years prior
19 to our developing it we ran across a completion and we
20 wanted to be consistent with any possible completions.
21 That was subsequent to the permit application, however
22 and that's the inconsistency.

23 MR. MASON: On your notice I draw your attention to the
24 applicant. Don't you mean a Division of Equitable
25 Resources Energy Company?

1 MR. TWEED: That's what it should say.

2 MR. MASON: What I have got says a Division of Equitable
3 Resources --

4 MR. TWEED: A division of itself. I don't think it has an
5 adverse effect on the propriety of the application.

6 MR. MASON: I don't suggest that it does, I'm just drawing
7 your attention to it. Your application is certainly
8 dated -- I mean, the execution is by -- I am not picking
9 on you.

10 MR. TWEED: Thank you. We will pick that up the next time.

11 MR. CHAIRMAN: Okay. Anything further? (Pause.) Could I ask
12 you to go back to one thing that you asked the previous
13 witness when you talked about escrow provisions. Would
14 you find that in your notes and review what you said
15 would be the determinant for escrowing so we could just
16 have that clear for the record.

17 MR. TWEED: We had two questions on it. The first question
18 was a reference to the fact that only unleased respond-
19 ents or unknown heirs would subject to escrow. And then
20 the second question was that the force pooling order
21 provide that if respondent refuses to accept any payment
22 due, including any payment due under said order or any
23 payment of royalty or cash bonus or said payment cannot
24 be made to a party for any reason or there is a title
25 defect in a respondents interest that operator create an

1 escrow account for respondent's benefit until the money
2 can be paid to the party or until the title defect is
3 cured to operator's satisfaction.

4 MS. RIGGS: I think the way the Board order normally reads it
5 goes into escrow until -- resolved in accordance with law
6 or in accordance with further order of the Board.

7 MR. TWEED: And I certainly would have anticipated that. But
8 for the record, Mr. Baker, any escrowed accounts would be
9 subject, of course, to legal directives and supplemental
10 directives of the Board, is that correct?

11 MR. BAKER: Yes.

12 MR. CHAIRMAN: That's all I have. Any other questions,
13 members of the Board?

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

15 MR. CHAIRMAN: Motion to approve.

16 MR. EVANS: Second.

17 MR. CHAIRMAN: I have a second. Any further discussion? All
18 in favor signify by saying yes.

19 BOARD: Yes.

20 MR. CHAIRMAN: Opposed say no. (None.) Unanimous approval.

21

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ITEMS 15 and 16

MR. CHAIRMAN: The next item on the Board's agenda, Item 15, Docket Number VGOB-93/02/16-0333 has been withdrawn by applicant. Item 16, petition for well location exception for V-2692 from Equitable Resources Exploration. This is Docket Number VGOB-93/02/16-0334. We would ask the parties that wish to address the Board in this matter to come forward at this time.

MR. TWEED: Mr. Chairman, same counsel and personnel here on behalf of the applicant, Equitable Resources Exploration. Our witnesses in this case will be Lee Talbot and Bob Dallin. Mr Dallin was previously sworn, but Mr. Talbot was not and should be sworn at this time.

COURT REPORTER: (Swears witness.)

MR. TWEED: Mr. Chairman, I would ask Mr. Talbot to go ahead and distribute to the Board members and Mr. Fulmer copies of the exhibits that will be of assistance and presented through his testimony. By way of general description, while that exhibit is being provided, this location exception is created by applicant's efforts to continue to comply with plans that basically came out of the U. S. Forest Service. And what we are dealing with is some property privately owned that is more or less a little

1 island within property that is owned by the U. S. Forest
2 service. We will be making reference to a previous
3 environmental assessment plan that was submitted and
4 considered with the testimony of Jim McIntyre by this
5 Board with respect to Docket numbers VGOB-02/19/81-85
6 that were heard by this Board on February 19, 1992. And
7 we will be requesting at the appropriate time to incor-
8 porate that testimony in reference with respect the
9 explanation for the wells that are positioned around this
10 unit and that dictate this unit's position.

11
12 LEE TALBOT

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

15
16 DIRECT EXAMINATION

17
18 BY MR. TWEED:

19 Q. Mr. Talbot, would you state who you work for and what
20 your job is?

21 A. My name is Lee Talbot and I am a land administrator for
22 Equitable Resources Exploration.

23 Q. And have your qualifications responsibilities as an
24 expert witness in your area previously been accepted by
25 this Board?

1 A. They have.

2 Q. Do your responsibilities include the lands involved here
3 and the surrounding area?

4 A. Yes, they do.

5 Q. And are you familiar with the application for location
6 exception to Well V-2692 and the relief being requested
7 in the application?

8 A. Yes.

9 Q. Has EREX applied for permit for this well and has a
10 permit now pending before DMME?

11 A. That is correct. EREX applied for a permit on 12/16/92.

12 Q. Making reference to an exhibit, which we would offer as
13 Exhibit B, the plat that was submitted with the applica-
14 tion. I believe in the color coded that the central
15 unit, the hub of this particular spoked wheel is the unit
16 covered by the application, correct?

17 A. Correct.

18 Q. And the lined areas on this topographical map refer to
19 U. S. Forest Service property, is that correct?

20 A. That's correct.

21 Q. I note a variety of green and pink -- the two pink well
22 locations are the units where the location is being
23 requested, is that correct?

24 A. That is correct.

25 Q. And the green units are other units that are effected by

1 the plan with respect to the location of this unit, is
2 that correct?

3 A. That is correct.

4 Q. And I believe that all of the units that are in the U. S.
5 Forest Service area are units that are previously
6 positioned by the environmental impact study and the
7 testimony of Mr. McIntyre before this Board, is that
8 correct?

9 A. That is correct.

10 Q. State the relief that is specifically being requested
11 here in this application.

12 A. BREX has requested a location exception from Well V-2345
13 located to the northeast approximately 2,600.48 feet.
14 And also a location exception from Well V-2326 located in
15 a westwardly direction 2,077.49 feet.

16 Q. And it's my understanding that all interested parties
17 have noticed as required by Section 4-B of the VGOB
18 regulations and that Diane Davis received copies of
19 certified mailing by cover letter dated 2/4/93, is that
20 correct?

21 A. Yes, sir.

22 Q. And as far as the ownership of the surface underlying
23 this location and the offset wells it is my understanding
24 that Ellis Kent Hopkins owns the surface rights with
25 respect to the drill site and that the Clay heirs and the

1 U. S. Forest Service are the surface owners with respect
2 to the surrounding exterior of the unit, is that correct?
3 A. That's correct. And also the offset surface is owned by
4 the U. S. Forest service in both instances.
5 Q. Does the Roaring Fork Partnership own 100 percent of the
6 working interest under this location exception unit?
7 A. Yes, sir. Also, 100 percent of the operating rights is
8 held by EREX.
9 Q. Would you indicate the ownership of the oil and gas
10 underlying the unit for V-2692?
11 A. The ownership of the oil and gas is owned by Penn-
12 Virginia Resources, Corporation, Mr. Ellis Kent Hopkins
13 and the Clay heirs, to make up the entire unit.
14 Q. I think you have already covered that the Wells 2345 and
15 2326 they are 100 percent leased to Roaring Fork Partner-
16 ship, correct?
17 A. That is correct.
18 Q. Was an environmental impact statement conducted on the
19 Forest Service property which lies to the northeast and
20 west where these offset wells are located?
21 A. That's correct. The final impact statement was adopted
22 by the U. S. Forest Service on 2/24/88.
23 Q. And I think the study was actually for the oil and gas
24 development within the Jefferson National Forest and the
25 surrounding area of the Coeburn Filed, is that correct?

1 A. Yes, sir.

2 Q. And the activities that were considered in the study
3 included pipeline construction, road construction,
4 drilling activities and other related activities, is that
5 correct?

6 A. That is also correct.

7 MR. TWEED: Mr. Chairman, we would request since it has been
8 visited before by the Board and pretty well locked on as
9 to the U. S. Forest Service property at this time that
10 this record incorporate by reference the record of VGOB-
11 02/19/81-85, which was heard on February 19, 1992 which
12 is Jim McIntyre's testimony with respect to this environ-
13 mental impact study.

14 MR. CHAIRMAN: Okay. That's fine. Then only clarification
15 that I would ask is we would accept that -- when you were
16 referring to that earlier you mentioned about the
17 document itself. The Board, to my knowledge, has never
18 received the actual environmental impact study. We just
19 had the testimony you just now referenced.

20 MR. TWEED: Very well. So we would only incorporate what is
21 already in the record.

22 Q. (Mr. Tweed continues.) Mr, Talbot, in your opinion are
23 the correlative rights of each of the affected parties
24 protected by the granting of this location exception?

25 A. Yes.

1 Q. And in your opinion is this location exception necessary
2 to maximize the recovery of oil and gas and in order to
3 comply with the plan of development that was approved by
4 the EIS and this environmental assessment that we have
5 referenced?

6 A. Yes, that is also correct.

7 Q. Would you explain very briefly, but fully, to the Board
8 why the particular unit location that we had placed
9 there the one that is most applicable under the cir-
10 cumstances and why it's dictated by the location of the
11 wells in the U. S. Forest Service property?

12 A. Certainly. In prior testimonies by Mr. McIntyre of the
13 Forest Service we noted that all these locations which
14 are shown surrounding our well were approved by the
15 Forest Service and actually placed there by EIS study.
16 And, consequently, there is no area that we can relocate
17 the well to that we would not need a location exception.
18 The area to the south does appear that it could possibly
19 be moved, however, if you look at the locations on the
20 southern part of the Forest Service boundaries and also
21 notice that the wells in between those use the maximum
22 acreage in order to protect all correlative rights of not
23 only the Forest Service, but also the mineral owners
24 inside of that little arrow-type window, which is not
25 Forest service property.

1 Q. Mr. Talbot, if we were to move the unit south enough to
2 try to avoid location exceptions with the units could you
3 tell the Board what type of wastage we would be looking
4 at up in what I am going to call the upper portion -- the
5 little triangular portion of this property?

6 A. Yes. There is approximately 100 acres more or less that
7 would be wasted if we would not use the location as it is
8 permitted.

9 Q. I believe Mr. Dallin is able to testify as to the
10 potential waste in terms of production?

11 A. Yes, sir.

12 Q. Is it your professional opinion, Mr. Talbot, that this
13 well location exception is required to safeguard the
14 environment, accommodate other mineral interests and
15 effective land management practices and avoid wastage and
16 avoid maximizing or increasing the number of location
17 exceptions in this area?

18 A. Yes, with all the contributing factors that is my
19 opinion.

20 MR. TWEED: I have no further questions of this witness.

21 MR. CHAIRMAN: Questions members of the Board?

22 MR. EVANS: With respect to Wells 2690 and 2723 you talked
23 about wastage up in this upper area. It appears that
24 there is going to be an island created between 2692, the
25 well in question, and 2690 and 2723 that will be outside

1 the range of statewide spacing and therefore will present
2 the same problem to you.

3 MR. TWEED: Could you answer that, Mr. Talbot?

4 MR. EVANS: The reason for not moving it south was to prevent
5 waste.

6 MR. TALBOT: For not moving the location 2692?

7 MR. EVANS: Right. I heard you say that the reason for that
8 is so that you don't have waste. But by putting the
9 location where you are are you not opening up a gap
10 between the two wells that I just mentioned?

11 MR. TALBOT: Yes, I understand your question. No, sir, you
12 are not due to the fact that if you also notice there is
13 Well 2691 to the south of 2690, which would then be in
14 conflict with Well 2327 which is location stipulated by
15 the U. S. Forest Service. Therefore, if we would move
16 down we would actually loose a location as they would
17 shuffle each other down and force each location to a
18 southerly direction. So by having 2692 at its present
19 location we can fully maximize the correlative rights of
20 everyone in this area.

21 MR. EVANS: I'm sorry. My copy -- I must not be seeing --
22 when I look at this sometimes the lines run through the
23 numbers and I can't read which one we are talking about.

24 MR. TALBOT: It's the most southerly well, sir.

25 MR. EVANS: Is 2690 already drilled?

1 MR. TALBOT: 2690 has a permit being prepared at the present
2 time to be submitted to the Division of Oil and Gas.
3 MR. EVANS: And it's going to be 3,042 feet, is that what I
4 read?
5 MR. TALBOT: Yes, sir.
6 MR. EVANS: 2723 is going --
7 MR. TALBOT: That is in the same status and it's --
8 MR. EVANS: 3,475?
9 MR. TALBOT: Yes, sir.
10 MR. EVANS: So you have got a couple hundred feet, I guess --
11 I guess I am having trouble seeing how this location is
12 going to prevent waste -- 100 acres of waste.
13 MR. TALBOT: If you would imagine a 1,320 radius arc from all
14 existing locations you could see that this entire area is
15 almost saturated with drillable locations. It is Equit-
16 able's attempt to keep as many locations exceptions as
17 possible from not having to come to the Board to request
18 these.
19 MR. KISER: We are trying to minimize the location excep-
20 tions.
21 MR. EVANS: I understand that. I am also trying to maximize
22 the coverage of your unit, if possible. This land in
23 particular is not on the Forest Service land and is not
24 subject to that EIS. So therefore you have a little more
25 discretion as to where you put this well.

1 MR. TALBOT: This particular well. However, please notice
2 that the surrounding -- the border there is dictated by
3 the U. S. Forest Service, which still keeps our spacing
4 requirements.

5 MR. TWEED: Mr. Evans, Mr. Dallin will be able I think to
6 address some of the aspects of what you are asking a
7 little further. Because we have looked hard at it, too,
8 trying to find a way to place --

9
10 BOB DALLIN

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

13
14 DIRECT EXAMINATION

15
16 BY MR. TWEED:

17 Q. Go ahead.

18 A. Okay. Topographic considerations are a part of location
19 2692. Greater in the decision to put it here, however,
20 based on our development of the NR properties from about
21 the end of January last year, we have seen no communica-
22 tion when looking at 2,000 foot spacing. We have
23 attempted to develop all the private ownership locations
24 inside the Forest Service, the arrow if you will. The
25 engineering input from that point allowed encroach to

1 this degree on the existing wells. It's also a flat spot
2 up in there and we feel we can drill a well. We could
3 move the well south, the few hundred foot that you
4 mentioned. It would be putting us in a quite precarious
5 situation. And also this well was on the Board's docket
6 last year for force pooling. We secured leases in there
7 with the land owners looking at our development and
8 trying to get their ownership protected. We had their
9 input on the location of 2692. That coupled with the
10 lack of interference at 2,000 feet on the initial study
11 we have looked at engineering-wise makes us feel comfort-
12 able with the development of the well up in close. We
13 have laid out not only 2692 to 2690, 2723 and the well
14 that Lee Talbot mentioned to the south of that. We have
15 tried, basically, a grid over that area to maximize
16 whatever reserves we feel that are not specifically
17 impacted by the Forest Service.

18 Q. Mr. Dallin, wouldn't in your opinion -- and of course,
19 you have previously testified and I would offer again Mr.
20 Dallin as an expert -- what is your opinion as to the
21 projected loss of reserves to the north in this area,
22 what I call the triangle where the word "Mountain" is, if
23 the well were pushed down south enough to try and avoid
24 location exceptions?

25 A. Let me answer that in a different way. 2692, where it is

1 located in front of the Board today, we estimate
2 375,000,000 cubic feet of gas. If it were to move the
3 well to a legal location to the southeast there would be
4 an odd shaped piece of mineral left that would comprise
5 about 100 acres. It would not be a circle nor would it be
6 a square. But it would be a substantial portion of a
7 drilling unit that we are proposing to develop reserves
8 under.

9 MR. TWEED: I think one of the things -- it has to be moved
10 far enough south from its present site, Mr. Evans, as to
11 actually go south in order to avoid being an exception
12 with 2369 and 2362. It has to be pushed further south
13 than just a little bit in order to get down there.

14 A. (The witness continues.) The couple hundred foot that
15 looks like an obvious move -- I have a little sketch
16 here. It's just a work copy for me. It's not anything
17 I brought to enter to the Board, but it's a substantial
18 move. It's not a couple hundred foot. If we moved it
19 down to a legal location it would be the better part of a
20 drilling unit.

21 Q. Mr. Dallin, I take it your areas of responsibility do
22 include drilling completion and production, correct?

23 A. That is correct.

24 Q. And you have referenced the estimated loss of reserves
25 and amount of reserves with respect to this. In your

1 opinion is this location, and particularly this location
2 with respect to the other proposed locations, existing
3 locations in the private unit as well as the Forest
4 Service, is that plan of development important and in
5 your opinion necessary to make sure that we prevent waste
6 and maximize recovery and minimize location exceptions?

7 A. Yes, sir.

8 Q. Should all the formations from the surface of the unit of
9 the unit to the total depth anticipated of 2,500 feet
10 including the Devonian shells, Berea, Sunberry, Weir, Big
11 Lime, Ravencliff, and Maxim formations be covered by any
12 order issued by the Board in this regard?

13 A. What was the footage you --

14 Q. That was my error. What is the footage involved?

15 A. It should be 4,500. That's correct.

16 Q. In your professional opinion is there any other feasible
17 location which will allow this well to be drilled without
18 requiring a location exception and still avoid the
19 wastage that we are talking about in this 100 acres?

20 A. No, sir,

21 Q. In your opinion will granting of the location exception
22 be in the best of preventing waste, protecting correla-
23 tive rights, and maximizing the recovery of gas reserves
24 underlying Well V-26927

25 A. Yes, sir, it would.

1 MR. TWEED: I have no further questions, Mr. Chairman.

2 MR. MCGLOTHLIN: Mr. Dallin, referring to Exhibit A, just for
3 clarification how far is your well from the mobile home?

4 MR. DALLIN: I don't know. Maybe Lee would be more ap-
5 propriate to answer that.

6 MR. TALBOT: It's approximately 245 feet.

7 MR. MCGLOTHLIN: Do you feel that this is a safe margin
8 between a residence and a well?

9 MR. TALBOT: Yes, we do. However, we have had personal
10 contact with Mr. Hopkins, with our land agent. At the
11 present time Mr. Hopkins feels that it won't be a problem
12 for him.

13 MR. CHAIRMAN: Any further questions? (Pause.) Do you have
14 any other evidence?

15 MR. TWEED: No, sir.

16 MR. CHAIRMAN: Is there anyone in the audience who wishes to
17 address the Board in this matter? The record will show
18 there are none.

19 MR. EVANS: Mr. Chairman, I move we grant the location
20 exception.

21 MR. MASON: Second.

22 MR. CHAIRMAN: Motion is seconded. Further discussion? All
23 in favor signify by saying yes.

24 BOARD: Yes.

25 MR. CHAIRMAN: Opposed say no. (None). Unanimous approval.

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3 ITEM 17
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5 MR. CHAIRMAN: The final item on today's agenda is a petition
6 for force pooling from Equitable Resources Exploration
7 for V-2525. This is Docket Number VGOB-93/02/16-0335.
8 We would ask the parties that wish to address the Board
9 in this matter to come forward at this time.

10 MR. TWEED: Mr. Chairman, while we are waiting for those
11 parties I do have proposed report with respect to the
12 location exception and I would like to present that to
13 the Board. Our witnesses have been previously sworn with
14 respect to this application and they are Dennis Baker and
15 Bob Dallin. We would ask that the record incorporate his
16 prior testimony from earlier applications heard by this
17 Board today with respect to his capacity, expert qualifi-
18 cations and etc.

19 MR. CHAIRMAN: That's fine. It's admitted.
20
21

22 DENNIS BAKER

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

DIRECT EXAMINATION

BY MR. TWEED:

Q. By whom are you employed, Mr. Baker?

A. Equitable Resources Exploration.

Q. And in what capacity?

A. As a leasing supervisor.

Q. And have your responsibilities as a leasing supervisor include lands involved here with this petition and the surrounding area?

A. Yes.

Q. And are you familiar with the Equitable's application for the establishment of drilling unit and pooling order for EREX Well V-2525 dated 1/19/93?

A. Yes, I am.

Q. And has EREX applied for a permit and is a permit now pending before DMME with the permit dated 1/208/93?

A. That is correct.

Q. And is Equitable seeking to force pool the drilling rights underlying the drilling and spacing units as depicted on Exhibit A of the application?

A. Yes, that is correct.

Q. And does Equitable own drilling rights in the units involved here?

A. Yes, they do.

1 Q. Does the proposed unit depicted at Exhibit A to the
2 application include all the acreage within 2,640 feet or
3 a 1,320 radius of proposed Well V-2525?

4 A. Yes, it does.

5 Q. And I believe in this case you do have an amended Exhibit
6 B that reflects continued efforts by BREX Equitable to
7 lease since the application was originally filed, is that
8 correct?

9 A. Yes, that is correct.

10 MR. TWEED: Mr. Kiser, would you hand those to the Board
11 members? And also at the same time there is an amended
12 Exhibit A. I would by way of explanation state what
13 happened here is there was an original Exhibit B with the
14 application. There was an amended Exhibit B submitted
15 when we sent in the certified plat, because we had some
16 corrections to make at that time. When Mr. Baker leased
17 some further units and set up his new amended Exhibit B,
18 which you are receiving at this time, there was a
19 reference to one ownership unit involving a David and
20 Betty Tussey which was listed as a single ownership unit
21 and single tract on Exhibit A, the plat, but is listed on
22 the newest Exhibit B as basically being broken down into
23 to two. This is on Page 3 of the new Exhibit B. And so
24 we are filing a new amended Exhibit A at the same time
25 because it will reflect consistently with the newest

1 Exhibit B. It is a paperwork problem to make sure there
2 is no confusion.

3 Q. (Mr. Tweed continues.) Mr Baker, what is the interest
4 of Equitable in the unit at this time?

5 A. The leased interest at present is 64.16 percent.

6 Q. And as to that percentage and other percentages this is
7 rounded off to the nearest hundredth, correct?

8 A. That is correct.

9 Q. And you are familiar with the ownership of the drilling
10 rights of parties other than Equitable underlying this
11 unit?

12 A. Yes.

13 Q. And what is the unleased interest of others at this time?

14 A. At the present time there is 35.84 percent being un-
15 leased.

16 Q. And in the newest amended Exhibit B that has just ben
17 handed out to the Board are all the unleased parties set
18 out?

19 A. Yes, they are.

20 Q. And would you briefly inform the Board as to what the
21 changes are with respect to this newest Exhibit B?

22 A. The lease status being on Page 1 of the Exhibit B you
23 just received at the bottom of the page, Margaret
24 Robinette is now leased to EREX. At the top of Page 2,
25 Jennifer and George Collins is now leased to EREX. On

1 Page 3 at the top of the list, Shirley Manly is now
2 leased to EREX.

3 Q. And for clarification , Mr. Baker, I refer you to Page 3
4 of the newest Exhibit B where it says, "5; David and
5 Betty Tussey and 6; David and Betty Tussey" -- do you see
6 that?

7 A. Yes.

8 Q. Was that the reason for the amended Exhibit A so that we
9 could reflect that tract as being Tract 5 and 6?

10 A. That is correct.

11 MR. TWEED: Any questions from the members of the Board with
12 respect to the new amended Exhibit B?

13 MR. CHAIRMAN: No. Go ahead.

14 Q. (Mr. Tweed continues.) Prior to filing the application
15 were efforts made to contact each of the respondents in
16 an attempt to work out an agreement regarding the
17 development of the units involved?

18 A. Yes, they were.

19 Q. Does the newest amended Exhibit B reflect a continued
20 attempt of EREX subsequent to the filing of the applica-
21 tion?

22 A. Yes, that is correct.

23 Q. Were efforts made to determine if the individual respond-
24 ents were living or deceased or their whereabouts and if
25 deceased were efforts made to determine names and

1 addresses and whereabouts of the successors to any
2 deceased individual respondents?

3 A. Yes, they were.

4 Q. And were these efforts diligent and reasonable and were
5 sources checked including deed records, probate records,
6 assessors records, treasurers record as well as secondary
7 sources such as telephone directories, city directories,
8 family and friends?

9 A. That is correct.

10 Q. And in your professional opinion was due diligence
11 exercised to locate all the respondents in this applica-
12 tion?

13 A. Yes, they were.

14 Q. And the addresses set out in the newest amended Exhibit
15 B are the last known addresses of the respondents?

16 A. That is correct.

17 MR. TWEED: We would ask that the newest amended Exhibit B and
18 the amended Exhibit A be accepted by the Board as amended
19 exhibits to this application.

20 MR. CHAIRMAN: Any objections, members of the Board? Any
21 objections from those parties wishing to address the
22 Board today? (Pause.) The record will show there are
23 none. They shall be amended.

24 Q. Mr. Baker, are you requesting the Board to force pool all
25 other unleased interests listed in Exhibit B?

1 A. Yes, I am.

2 Q. Does Equitable seek to force pool drilling right of each
3 individual respondent, if living, and if deceased the
4 unknown successor or successors to each deceased individ-
5 ual respondent?

6 A. Yes, we are.

7 Q. Are you familiar with the fair market value of the
8 drilling rights in the units here and in the surrounding
9 area?

10 A. Yes, I am.

11 Q. What are those?

12 A. \$5 per acre consideration. A 5 year term and 1/8
13 royalty.

14 Q. Did you gain your familiarity by acquiring oil and gas
15 leases and other agreements involving the transfer of
16 drilling rights in units involved here and in the
17 surrounding areas?

18 A. Yes.

19 Q. In your opinion are these terms fair and do they repre-
20 sent the fair market value of and a fair and reasonable
21 compensation to be paid for drilling rights within this
22 unit?

23 A. Yes.

24 Q. And as to any person designated as trustee if acting in
25 that capacity are we seeking to force pool the rights of

1 the person designated as trustees and if not their
2 successor of any trustee?

3 A. That is correct.

4 Q. Based upon your testimony and as to respondents who have
5 not voluntarily agreed to pool do you recommend that the
6 respondents listed in Exhibit B who remain unleased be
7 allowed the options of participation or a cash bonus of
8 \$5 net mineral acre plus a 1/8 of 8/8's royalty or the
9 option of -- in lieu of those of sharing in the operation
10 of the well in the same manner as the application for
11 force pooling that we submitted earlier today?

12 A. Yes, that is correct.

13 Q. Do you recommend that an order provide that elections by
14 respondent be made in writing and sent to my law firm and
15 to my attention as per your testimony on the previous
16 force pooling application today?

17 A. Yes, that is correct.

18 Q. Do you recommend that force pooling order incorporate the
19 same terms on lack of written election and other re-
20 sponses as to unleased respondent that you testified to
21 with respect to the prior force pooling application
22 today?

23 A. Yes.

24 Q. And who should be named the operator under this force
25 pooling order?

1 A. Equitable Resources Exploration.

2 MR. TWEED: Mr. Chairman, assuming that it is permissible with
3 the Board for me to adopt prior testimony in this area of
4 elections, which would be duplicative that would be all
5 the questions we have for this witness.

6 MR. CHAIRMAN: Without objection you can go ahead and do that.
7 Any questions, members of the Board? You may call your
8 next witness.

9 MR. EVANS: Which tract is the well located on? Just so I
10 know how to read this. Is that Tract 4?

11 MR. FULMER: Yeah.

12 MR. EVANS: And where is Tract 1?

13 MR. BAKER: Tract 1 is shown as the P. H. Robinette estate.

14 MR. CHAIRMAN: There are some other parties here today that
15 have asked to address the Board. Would you like to make
16 any statement to the Board and, if so, please identify
17 yourself for the record?

18 MR. WYLES: My name is Clayton Wyles. I am representing the
19 parties for P. H. Robinette. (Inaudible.)

20 MR. CHAIRMAN: We are going to need you to come up. She is
21 having trouble hearing you.

22 MR. WYLES: Those interest for -- the ones that they got to
23 sign a lease in this amended Exhibit B those are in this
24 undivided P. H. Robinette's land. And some of our
25 concerns with the location of this well, in my opinion,

1 will have to be resolved before their interest can be
2 counted as them having 64 point something of the leased
3 property.

4 MR. CHAIRMAN: What is the dispute over? Of the location?

5 MR. WYLES: There is a whole two or three pages. Most of the
6 people in this Exhibit A they are heirs to this 50 acre
7 tract of land here.

8 MR. CHAIRMAN: Just for the record we are talking about
9 amended Exhibit B, right? Tract 1?

10 MR. WYLES: Yeah. First, they amended it because had gotten
11 some of the leases -- some of the heirs to sign those
12 leases.

13 MR. CHAIRMAN: For Margaret Robinette and Jennifer and George
14 Collins and Shirley Manly?

15 MR. WYLES: Yeah. Right. They are all in Tract 1. And all
16 these others are in Tract 1.

17 MR. CHAIRMAN: The unleased ones?

18 MR. WYLES: Yes. And my point is how are they going to
19 determine where their interest lies? Because we have a
20 question with the location of the well. The reason I am
21 bringing this up is we have a dispute with their location
22 of the well itself. Because in the location of this well
23 they are denying us access to -- we have the coal rights
24 to this. None of the coal on this piece of property has
25 ever been mined. All the seams are there to be mined.

1 But when they sink this well they are denying us a big
2 chunk of that coal which can be mined. Because as you
3 know state law will not let you mine within 500 feet of a
4 well. And after this South Mountain deal you may not
5 mine within 1,000 feet of it. So for them to get this
6 well where it is at they are basically taking our gas
7 plus denying us the right to mine our coal.

8 MR. TWEED: Mr. Chairman, if I could by way of clarification,
9 I am well aware of the fact that the Board wants people
10 to be fully adherent with respect to any application. I
11 would like to point out that Mr. Wyles has filed a timely
12 objection to the permit application. His objection to
13 the permit application which was by his letter of 1/28/93
14 is pending for an informal hearing on the 22nd and his
15 objection is limited to an objection that may or may not
16 be jurisdictionally permissible concerning the use of an
17 access road. And his second objection is with respect to
18 the sediment and erosion control plan as not being
19 adequate to protect some pasture land. That is the scope
20 and course of his objection. We, obviously, would object
21 to testimony on location as being irrelevant to our
22 purposes here today with respect to the force pooling
23 application, noting that he will have an opportunity to
24 be heard with respect to his timely objections on the
25 22nd before the Director.

1 MR. CHAIRMAN: Do you have anything further or anything to
2 add?

3 MR. WYLES: You are force pooling our oil rights, right?

4 MR. TWEED: Yes.

5 MR. WYLES: And you are taking this force pooling in this
6 circle around this well, right?

7 MR. CHAIRMAN: If the Board approves the application.

8 MR. WYLES: Right. Your rights are around this circle. You
9 are force pooling the gas in this circle, right?

10 MR. CHAIRMAN: Right. The circle is established by the
11 location of the well.

12 MR. WYLES: And the circle is established by the position of
13 the well.

14 MR. CHAIRMAN: That's right.

15 MR. WYLES: Where do you get that I don't have an objection to
16 the position of this well if you are taking 31.21 percent
17 of the gas in this pool?

18 MR. TWEED: I understand, Mr. Wyles. I think the way to put
19 it is this. If you are successful in opposing the
20 location of well through legal means by the hearing on
21 the 22nd or otherwise and that location is not authorized
22 and that permit is not granted then this force pooling
23 won't be worth anything. But the force pooling is going
24 to be worth something if the location is permitted. So
25 we are asking that the force pooling be granted today and

1 your location exception is already geared toward a
2 separate hearing before the Director on a separate matter
3 and isn't relevant to what we are doing today is what I
4 am trying to say.

5 MR. WYLES: No, no. You are twisting it around just a little
6 bit. What I am objecting to on the permit has nothing to
7 do with the pooling. It don't pertain to the pooling of
8 the gas. The location of this well has to do with the
9 pooling of this gas.

10 MR. CHAIRMAN: Is the location of the well as purposed is it
11 on Tract 1?

12 MR. WYLES: No, it is on Tract 2.

13 MR. BAKER: No, it's on Tract 4.

14 MR. CHAIRMAN: That's right. That's what Ken was going back
15 to.

16 MR. WYLES: How are they numbered?

17 MR. EVANS: You got to kind of look for them.

18 MR. WYLES: I can't find them.

19 MR. CHAIRMAN: Mr. Dallin, could you help him find them?

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

22 MR. CHAIRMAN: Any other questions?

23 MR. ROBINETTE: I'm Mike Robinette. I am the owner of Tract 2
24 and my father owns Tract 3. Of course, I have some of
25 the same concerns as Mr. Wyles here as to the way these

1 wells are spaced out. We are the mineral owners of the
2 gas, oil, coal and everything here. And even though it
3 don't list it that way -- there is like only one seam
4 that my grandfather had sold out years ago. But this
5 coal is accessible. I worked for the coal company for 12
6 years and it is not going to be feasible if you have got
7 these wells all over the area around it. You can't cut a
8 mine in and zigzag around to get that coal if we in turn
9 decided we wanted to do something with that coal. And I
10 have spoken with one of the land agents from Greater
11 Wise, which I am sure EREX is familiar with them for they
12 have a lot of property around. And they said they have
13 the option of vetoing any well that EREX wanted to put
14 down because of that very reason. I just wanted to ask
15 as a private individual "what rights do we have concern-
16 ing the same situation?"

17 MR. CHAIRMAN: They are correct. The coal operators do have
18 that right.

19 MR. ROBINETTE: As an individual and a mineral and a surface
20 owner where does our rights come in there that we have
21 any say so in this? I have not filed any kind of
22 (inaudible.)

23 MR. MASON: Your question is you are a coal owner, too, is
24 that what you are saying?

25 MR. ROBINETTE: Right.

1 MR. MASON: Then you have the right as a coal owner -- you
2 have the same rights as any other coal owner.

3 MR. ROBINETTE: With the location of all these other wells --
4 I talked with Mr. Powell from EREX. I think he is their
5 land agent. He showed me a proposal of wells that are
6 going to be on the other side of our property up here.
7 And like I said these acres are like pieces of pie the
8 way they divided that up when my grandfather passed away.
9 And it is going to encompass me all the way around. We
10 are concerned about how feasible its going to be for
11 some company with we in turn try to sell that coal to
12 anybody.

13 MR. CHAIRMAN: Well, as a coal owner you have the same rights
14 as any other coal owner. You have a right to object.
15 You have like what you said veto power or what have you.

16 MR. ROBINETTE: Yeah, that's the word he used.

17 MR. CHAIRMAN: I have heard of that before.

18 MR. MASON: It looks like coal owners value that very highly.

19 MR. ROBINETTE: There's a lot more money in coal than there is
20 in gas and oil. With the royalty you get off the gas,
21 the 1/8 of 1 percent -- I don't know who determines that.
22 Who determines that 1/8 of 1 percent as being fair? I
23 know it cost them something to operate these wells but
24 who designates these numbers?

25 MS. RIGGS: Those would be part of the Board order that would

1 come out of this. When you hear them testifying to fair
2 market value they are putting on evidence of what leases
3 in the voluntary market normally brings. It's evidence
4 to the Board to establish in its Board order and the law
5 sets out the elections that you would have. And if you
6 make no election then the law says you are deemed to have
7 leased under the terms set forth in the Board order. So
8 if the Board should approve this application the order
9 that comes out is about a 10 page order and it sets out
10 all of that information, what the terms of a forced lease
11 would be and what the royalty would be and so forth.

12 MR. CHAIRMAN: It's like most other situation. The market
13 place is what dictates it.

14 MR. WYLES: Yeah, but who sets the market?

15 MR. CHAIRMAN: Private individuals.

16 MR. WYLES: The gas company sets the markets. They set all
17 the prices that they pay you. They set what you will
18 get. And what they failed to mention here in this Board
19 meeting is that EREX receives -- my understanding is they
20 can receive up an 80 percent return from tax breaks on
21 their drilling of a well, yet if we don't go along with
22 what they say we have to pay at least 100 percent of what
23 that well costs before we get anything. Is that right?

24 MR. DALLIN: No.

25 MR. CHAIRMAN: Not 100 percent. It would depend on your

1 percent of ownership.

2 MR. WYLES: They would receive off the top the 100 percent of
3 the cost of the well and then in turn turn around and
4 receive 80 percent tax credit for the well that has
5 already been took out of the money.

6 MR. CHAIRMAN: I don't propose to know anything about tax law.

7 MR. MASON: You are talking about if you elect to have a
8 carried interest is what you are referring to.

9 MR. WYLES: No, I am not talking about being a carried
10 interest, because I am not going to be a carried inter-
11 est. I may be forced pooled -- but that is what I am
12 saying. Don't they take up to 300 percent of the cost
13 of the well?

14 MR. MASON: You are talking about two different things. You
15 have a right -- there is a royalty interest here that we
16 are talking about in which this 12.5 percent -- they
17 presented evidence that the fair market value, what's
18 normally paid for royalty interests in this area, is X.
19 And you have the right to come in and say, "That's not
20 right. I know about so and so who got Y and somebody
21 else that got so much." And if you can bring in evidence
22 to demonstrate that, in fact, what they are saying is the
23 market is then we have to make a decision as to who is
24 right. And we do that. With respect to what you are
25 talking about, a recovery of the costs of drilling the

1 well, has to do with whether you elect to participate in
2 the working interest as opposed to the royalty interest.

3 MR. DALLIN: Which is the balance of 87 percent.

4 MR. MASON: That's correct. Which is the balance of the well
5 ownership above the royalty interest. And the law
6 provides that you can elect to be carried or you can
7 elect to put up your proportionate share of the costs.

8 MR. WYLES: In other words it's double talk. That's all
9 double talk. Do you understand it?

10 MR. MASON: Yes, sir.

11 MR. WYLES: I talked to them during the break and they don't
12 understand it. I don't understand it.

13 MR. DALLIN: We were debating about the tax benefit.

14 MR. WYLES: They said they had so many tax benefits that they
15 don't need it.

16 MR. KISER: That doesn't have any relevance to this.

17 MR. WYLES: Did you say that?

18 MR. CHAIRMAN: The Board will not be making any -- I am not
19 trying to cut you off. I just want you to understand
20 that we are not making any decisions regarding tax
21 benefits.

22 MR. WYLES: I know you are not. But that's what I am saying
23 is you all make the decision on what percent of the well
24 that they deduct --

25 MR. DALLIN: On a carried basis.

1 MR. CHAIRMAN: The law makes that really.

2 MR. WYLES: You basically give them that money, plus they get
3 the 80 percent back off the cost the well. That's what I
4 am saying.

5 MR. MASON: Well, I can tell you that if you elect to partici-
6 pate in this well and you pay 31 percent of the cost of
7 the well they don't take the tax deduction for that, you
8 will. It depends on who pays it.

9 MR. WYLES: We won't get enough out of it to even qualify to
10 file for a tax deduction.

11 MR. TALBOT: That's a working interest partner. This
12 gentleman is entitled to receive all the benefits and tax
13 credits as any other working partner or operator to drill
14 a well. His rights are the same as ours as to working
15 interest. He would be responsible for his proportionate
16 share for the costs of drilling. He would also recoup
17 his proportionate share.

18 MR. CHAIRMAN: Going back to the question on the coal owner.
19 You will find that in 45.1-361.11.

20 MR. TWEED: If I could for the record a couple of questions.
21 Mr. Wyles, I don't think you have existing coal mining
22 activity going on in proximity to this well at this time.

23 MR. WYLES: No, but --

24 MR. TWEED: And you don't have any situation where you have
25 survey and platted the coal mine in proximity to this

1 mine, have you?

2 MR. WYLES: No.

3 MR. TWEED: And as I understand it you had filed an objection
4 to the permit --

5 MR. WYLES: She just informed me -- see, I don't know. We
6 live a pretty good distance apart. She said that they
7 had been contacted about someone wanting to mine the
8 coal, which I didn't know about till just now. The point
9 is once that well is drilled down there -- you can plug
10 the well or do whatever you want to and move off to
11 another state, but our rights still remain the same. We
12 can't mine right now at the present time within 500 foot
13 of that well.

14 MR. TWEED: Well, the questions I had for you were with
15 respect to whether there was existing mining going on or
16 a coal mine survey or platted. I do have one question
17 also for Mr. Talbot that might help their interest or
18 concern.

19

20

21

LEE TALBOT

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

24

25

DIRECT EXAMINATION

BY MR. TWEED:

Q. Mr. Talbot, what has EREX's policy been with respect to the issue of waiver in the 500 foot distance restriction with respect to coal mines from a permitted gas well?

A. EREX has in the past and will continue to work with any coal owner in regards to a waiver of the maximum distance from a well at the time that you are ready to operate a mine.

MR. WYLES: I'm not talking about EREX. I am talking about the State Mining Board. They have got a law --

MS. RIGGS: I think the way that law reads if you are going to mine within 500 feet you give notice to the Division of Mines what your plans are. And then if you get within 200 feet you have actually seek permission by showing that you can do so safely. So it is a two --

MR. WYLES: Is that the new law on it.

MS. RIGGS: That's my understanding of it.

MR. CHAIRMAN: Are you talking about the General Assembly law?

MR. WYLES: I am talking about the mining law that says you cannot operate a mine within 500 feet of a gas well.

MR. CHAIRMAN: It's just like she said --

MR. WYLES: They done away with that?

MR. CHAIRMAN: No.

1 MS. RIGGS: You have to give notice if you are going to mine
2 within 500 feet and that alerts the Division of Mines
3 that there could be safety concerns. And then if you get
4 within 200 feet you have to actually seek permission
5 showing that you can do so safely.

6 MR. WYLES: That's what I am trying to tell you. What they
7 are basically doing is knocking us out of the coal.

8 MR. RIGGS: Well, there is no prohibition there. You just
9 have to show how you are going to protect against the
10 safety consideration when you get that close to a well.
11 At 200 feet then you have to make that showing. At 500
12 feet you just give notice.

13 MR. CHAIRMAN: You can plug it an mine through it, in fact.

14 MR. ROBINETTE: Well, that was my concern. If they are
15 spacing wells all around us it won't be feasible for a
16 company to go in and try to dodge these things in every
17 direction. It's juts not going to be feasible for a
18 company to look at doing anything with this.

19 MR. WYLES: You see I have study the Virginia mining law. I
20 took and passed for first class mining papers. The way I
21 read the law it said you would not mine within 500 foot
22 of a gas well. It didn't have no exceptions. I have
23 worked in the mines 28 years and I don't know of any
24 exceptions. And after this South Mountain deal it may go
25 farther than that.

1 MR. CHAIRMAN: I may be wrong but I understood that this well
2 is not located on your property.

3 MR. WYLES: It is located within 400 foot of it.

4 MR. MCGLOTHLIN: This young man back here at the table, are
5 you the owner of the property where the well is?

6 MR. ROBINETTE: No, I am the owner of Tract 2 down here on the
7 lower side. My concern is -- this well is not directly
8 involved in the problem I have. But after talking EREX's
9 people he showed me the proposals for the wells at the
10 other end of our property. I am just asking some
11 questions about what is coming up here. I know that is
12 not pertaining to this particular deal but I am just
13 curious about what is going to happen once these things
14 are all put in here around us. And even though I am just
15 a small piece of this pie we were just concerned if
16 everybody gets around us we are going to be wiped out as
17 far as doing anything with our coal if we ever decide to
18 do that. I was just wondering what consideration we
19 would have as far as some these royalty rights -- if we
20 could get anymore out of that since we are at a loss
21 here.

22 MR. MCGLOTHLIN: That's certainly in your dealings with EREX
23 in negotiating a lease. If you can get more than what
24 they are offering or testifying it is today then that's
25 fine.

1 MR. WYLES: Let me explain what was in the lease that they
2 sent us. They said we would take what they offered or we
3 would be forced pooled. That's the way it was worded in
4 the lease. We didn't have any option of negotiating.
5 They said we would take what we were offered or we would
6 be forced pooled.

7 MR. MCGLOTHLIN: I'm sure that EREX would be more than happy
8 to sit down and try to negotiate something with you.

9 MR. WYLES: Well, I don't know about that because that one
10 contract was all I ever saw.

11 MR. CHAIRMAN: Anything further?

12 MR. TWEED: Mr. Chairman, we would ask the Board to approve
13 the application. We feel that the objections with
14 respect to the location that has been made in a timely
15 manner by Mr. Wyles in a letter dated 1/28/93 which is
16 subject to a later hearing and does not involve objec-
17 tions as a coal owner. We would also point out that
18 with no survey or platted or operating coal mine and
19 based on what he said and particularly what his son has
20 said the objections don't appear to fit any of the
21 categories under Section 45.1-361.11. We would point out
22 that EREX is flexible as to the concerns, particularly of
23 the son, to looking at waivers when and if they might be
24 applicable, and to discussing future plans on other wells
25 to see if we can work something out. We don't think that

1 there has been evidence to support a rejection of the
2 force pooling application before the Board today.

3 MR. CHAIRMAN: Anything further, members of the Board?
4 What's your pleasure?

5 MR. MASON: Has not this Board in the past inquired as a part
6 of this process the requirement that the person seeking
7 to force pool have a right to consent to stimulate?

8 MR. CHAIRMAN: For coalbed methane only. There is no proposal
9 to stimulate the coal in this application. Is that
10 correct?

11 MR. DALLIN: That's correct.

12 MR. MASON: On your DWE you show an item for carbon dioxide
13 nitrogen.

14 MR. DALLIN: Yeah. That's either of two -- basically, they
15 are both inert gases that we use.

16 MR. MASON: I understand that. I'm not familiar with that.
17 Is it part of the stimulation technique?

18 MR. DALLIN: Yes, it is. We use a foamed (inaudible) that's
19 part surfacturing soap. Basically, what it is -- it's a
20 sand-laden fluid, water, that's enhanced energy-wise with
21 either carbon dioxide or nitrogen. It's used to prevent
22 wetting of the formation. It's also used to aid in
23 clean-up of formations.

24 MR. MASON: You are talking about actually a total frac cost
25 of about \$63,000?

1 MR. DALLIN: That's right. We anticipate two or three stages,
2 depending on what zones we encounter in area. In been our
3 experience in the past year that we could expect at
4 least two and probably three formations to stimulate.

5 MR. MASON: Do these use like clay stabilizers?

6 MR. DALLIN: We do that, too. That's part of the frac
7 treatment. It's not specifically coded to that number
8 you see over there. Also, at times you will see that
9 carbon dioxide/nitrogen included in the fracturing code.
10 It's lumped in with but not specifically broken out of
11 the treatment.

12 MR. MASON: Yeah. I was just looking at acidized frac and
13 then carbon dioxide/nitrogen.

14 MR. DALLIN: We do that for internal reasons. It's a large
15 percentage of the treatment. And in order to track the
16 results we have that fingerprint in there that we can
17 pull out and see what reserves versus types of stimula-
18 tions.

19 MR. MASON: Is this particular type of stimulation fairly
20 common in this area?

21 MR. DALLIN: It is. Particularly in the Devonian shell
22 sections which is more productive here and west. The
23 higher the clay content the more benefit it is in not
24 wetting the formation.

25 MR. MASON: Do you have a clay migration problem in here?

1 MR. DALLIN: We feel it is near the well bore. We do coring.
2 We do analysis. We try to determine with ongoing
3 engineering studies. Our results have been pretty
4 favorable. We don't feel we have got a real big problem,
5 but it is also why we do use carbon dioxide/nitrogen as
6 part of the frac.

7 MR. MASON: Do you all have any process or anything in hand to
8 track these costs when they actually occur so you will
9 know what these estimates are?

10 MR. DALLIN: Yes. As part of the questioning from the last
11 time I was somewhat at a loss as far as our accounting
12 codes go. I do know that that is the intent to capture
13 that particular service, if you will. We have internally
14 a monthly AFE analysis that goes to management. We have
15 an accounting at that point that is from inception to
16 date and an overrun or underrun of the AFE. Which I
17 might say, too, if anyone is a joint venture partner in
18 this particular situation that we are talking about -- we
19 did discuss this at the break -- they would sign an
20 operating agreement and those books would be open and
21 available to them to track at their discretion.

22 MR. TWEED: Mr. Chairman, your day has been longer than mine
23 because I was sitting listening, but I feel that in the
24 jump-around as respect to testifying and response to Mr.
25 Wyles that we may not have covered a couple of aspects of

1 the application with respect to the formations and the
2 AFE. I am not sure we actually got that testimony in
3 from Mr. Dallin on this force pooling application. If I
4 could I want to do that quickly.

5
6 BOB DALLIN

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

9
10 DIRECT EXAMINATION

11
12 BY MR. TWEED:

13 Q. I understand, Mr. Dallin, that the total depth for this
14 proposed well is 5,150 feet.

15 A. That's correct.

16 Q. That's to include formations consistent with the well
17 work permit now pending before DMME including the
18 Devonian shells, Berea, Sunberry, Weir, Big Lime,
19 Ravencliff, and Maxim?

20 A. That's correct

21 Q. It's your professional opinion that that will be suffi-
22 cient to penetrate and test the common sources of supply
23 in the subject formation?

24 A. Yes, sir.

25 Q. And the applicant is requesting the force pooling of the

1 conventional gas reserves not only as to the designated
2 formations but any other formations excluding coal
3 formations which may be between those formations desig-
4 nated from the surface to the total depth drilled?

5 A. That's correct.

6 Q. What are the estimated reserves in the unit?

7 A. We assigned 450,000,000 cubic feet of gas to this
8 drilling unit.

9 Q. A signed AFE has been reviewed and submitted to the Board
10 after having been prepared by an engineering department
11 knowledgeable in the preparation of AFE's?

12 A. Yes, sir.

13 Q. And it is in that area that you were speaking to the
14 Board members earlier. What are the dry hole costs on
15 the AFE for this well?

16 A. \$168,350.

17 Q. And the completed well costs?

18 A. \$320,150.

19 Q. And these costs do anticipate a multiple completion and a
20 reasonable charge for supervision is included?

21 A. Yes, sir.

22 Q. And in your opinion do this signed AFE represent a
23 reasonable estimate of the reasonable well costs of this
24 proposed unit the plan of development of the applicant?

25 A. It does.

1 Q. In your professional opinion will the granting of this
2 application be in the best interest of conservation, the
3 prevention of waste and the protection of correlative
4 rights?

5 A. Yes, sir.

6 MR. TWEED: That would conclude my questions of this witness.

7 MR. CHAIRMAN: Anything further, members of the Board? What
8 do you recommend?

9 MR. MCGLOTHLIN: I think Mr. Wyles has a -- if I understood
10 him correctly -- I know this is jumping ahead a little
11 bit on his informal fact finding hearing coming up. But
12 I see if he is able to have that well moved 100 foot or
13 200 foot one way or the other that's going to make a
14 difference in the force pooling on who we pool and the
15 amounts.

16 MR. CHAIRMAN: That's true. If it moves at all that will make
17 a difference. It would negate the force pooling hearing
18 that we are having today.

19 MR. TWEED: I think that is our position. We understand that
20 he is making an objection to location. We think we will
21 prevail on that and we recognize what his rights are.
22 But we would like to have force pooling granted in the
23 anticipation that we are correct. And we recognize that
24 if we are incorrect we will have to come back for a new
25 force pooling and bear that expense. But we would not

1 like to have to bear it again assuming we are correct on
2 our ability to prevail on location.

3 MR. MCGLOTHLIN: We also have a problem -- prove me wrong if I
4 am. But I just don't feel like EREX has taken the time
5 and the effort to sit and to explain to these people
6 exactly what their rights are and what their options are.

7 MR. WYLES: Today is the first time I have ever seen anybody
8 from EREX.

9 MR. TALBOT: Other than Bob Powell.

10 MR. WYLES: I haven't seen Bob Powell.

11 MR. EVANS: May I offer a motion? That we conditionally grant
12 this force pooling application based upon and conditioned
13 upon the outcome -- that the applicant prevails in their
14 quest to keep the well location as it is. Do you
15 understand what I am saying? In other words, we will
16 conditionally grant the force pooling -- if you win at
17 your hearing this is like it never happened, okay?

18 MR. WYLES: Let me point out one thing. On my objections to
19 their permitting I didn't object to where they have the
20 well. We were objecting o their access road to the well
21 and their sediment from the well. You have to understand
22 this well sits right beside of a pond. On this it don't
23 show it, but I own the surface rights to almost 17 acres
24 than runs within 100 foot of this well. And this branch
25 that runs out of this sediment pond runs though my 16

1 acres, all the way through it and all the way back up and
2 down again. And this is within -- their drainage from
3 their well, this branch goes within 15 or 20 foot of it.
4 They will be lucky if they get their specs in on their
5 well site. That's what we were objecting to in their
6 permitting. We were objecting to this on the location of
7 the well. I mean, for my part. I don't know how the
8 rest of them feel. But for my family's part we couldn't
9 care less whether there is ever a cubic meter of gas took
10 off that place. The coal is worth more than all the gas
11 -- it's not worth more, but it's more than what we would
12 get out of it. We could get something out of the coal,
13 but we can't get nothing out of the gas. By your own
14 rules I can't object to where the location of that well
15 is because that wasn't stipulated in my objections. We
16 are going to go right back to square one. I am not
17 allowed to object to it.

18 MR. CHAIRMAN: You are correct. You will be confined to what
19 you raised this objection on.

20 MR. TWEED: -- to the degree that he is making an objection
21 today under 45.1-361.11 our position is that his test-
22 imony hasn't met any of the burden that he has to prove
23 as a coal owner to establish that this location is
24 unacceptable under the statutes and regulations. There
25 is no surveyed mine, there's no active mine. There's no

1 indication through proper testimony that any of these
2 aspects of safety concerns or problems exist. And we
3 would add to the degree that if he comes to the very end
4 of his property, which is not evidenced before the Board
5 -- but if he were to go there and get within 500 feet
6 then I think what counsel for the Board has referenced
7 plus the reference from Mr. Talbot concerning our
8 willingness to deal with a waiver to the degree that it
9 is appropriate to satisfy those concerns. I just don't
10 hear what he has said that establishes under the regula-
11 tions an evidenced, established proper objection as to
12 the force pooling application.

13 MR. MCGLOTHLIN: What are the estimated reserves?

14 MR. DALLIN: 450,000,000 cubic feet.

15 MR. MASON: Over what period? What's the estimated life?

16 MR. DALLIN: We run everything on 20 years.

17 MR. MASON: A very high decline (Inaudible)?

18 MR. DALLIN: Initially.

19 MR. MASON: Flushed for how long?

20 MR. DALLIN: Our first well on the NR Properties is at the end
21 of January. We are still learning quite a bit. We don't
22 have a handle on piece properties we do and are typical
23 operated areas. We don't have a real good handle on that
24 yet.

25 MR. CHAIRMAN: Anything further?

1 MR. EVANS: I still make a motion that we approve the applica-
2 tion conditionally based on the fact that that well does
3 not move its present platted designated location.

4 MR. MASON: Well, I think that is inherent -- any time you are
5 pooling a well under statewide spacing that would be the
6 effect of it, wouldn't it? If you move the well you have
7 got property within the spacing in which there are
8 unnoticed --

9 MR. EVANS: I guess all I am recognizing is that there is a
10 dispute out there.

11 MR. MASON: I am not disagreeing with you. I am just trying to
12 understand it.

13 MR. TWEED: In all fairness to Mr. Wyles I think he has
14 correctly stated the limitations of where his dispute is
15 on the 22nd, too.

16 MR. KISER: His objections on the 22nd is as a surface owner.

17 MR. MASON: I think the problem is -- Mr. Wyles, the Board is
18 very sympathetic to you and we would kind of like to help
19 you out but we don't know how to do it.

20 MR. WYLES: Well, I didn't figure you would. Because I have
21 sat here all day and listened to you and I didn't figure
22 you had any. Because the way the law is written -- and
23 it's going to be changed. I feel strongly that the law is
24 going to be changed, because enough people are going to
25 kick about until it is going to be changed. I have sat

1 there and listened. You all let the gas companies tell
2 you what to do, when to do it and how to so it. Am I
3 right?

4 MR. CHAIRMAN: I think that what we do is we enforce the law
5 and there are a lot of times that the law stops far short
6 of what surface owners would like to see it do. Within
7 the confines of the law I don't feel that we do any of
8 that as far as favor one over the other. But we are
9 bound within the restrictions of the law.

10 MR. WYLES: And another thing. They say they can okay this
11 going around -- like I said I have worked in the mines.
12 I venture to say that no of these gentlemen have ever
13 worked in a mine before.

14 MR. DALLIN: I have been in mines before. My dad is a
15 foreman.

16 MR. WYLES: You have worked?

17 MR. DALLIN: Yes, sir, I have.

18 MR. WYLES: Well, did you ever work close to a gas well?

19 MR. DALLIN: Not to my knowledge.

20 MR. WYLES: I haven't either. You don't get within 500 feet
21 of one. The Division of Mines will not allow it. We
22 have been there.

23 MR. DALLIN: As a matter of clarification could I ask -- your
24 500 foot is that a notification to the operator?

25 MR. FULMER: It's a notification to the gas well operator and

1 the Division of Mines. At 200 feet you have to notify
2 the Division of Gas and Oil and the well operator. This
3 is the mine operator. At that point in time the Division
4 of Gas and Oil and the well operator has a right to
5 object for that mining occurring any closer to the well
6 bore.

7 MR. DALLIN: Between 200 and 500 feet whose rights are at
8 risk?

9 MR. FULMER: Between 200 and 500 the only people at risk there
10 is the well operator --

11 MR. DALLIN: Which is EREX. I just represented to this fellow
12 during the break that we have the right to sign a waiver
13 to allow him to mine within 400 feet, is that accurate?

14 MR. FULMER: That's accurate. We have had mining within 50
15 feet of a well.

16 MR. DALLIN: We do this all the time, too. There is just some
17 misunderstanding about the rights.

18 MR. FULMER: I'm just quoting you what the law says.

19 MR. DALLIN: Do you understand why I was saying we had the
20 right to give a waiver within 400 feet?

21 MR. WYLES: I have always been under the impression -- I know
22 the mines that I have worked in we weren't allowed to
23 mine -- we stopped mining within 500 feet.

24 MR. CHAIRMAN: There are some that won't do that. They don't
25 want to go through the notification or anything. There

1 is no question about that.

2 MR. DALLIN: We are working real close with Greater Wise,
3 Penn-Virginia. We work in Kentucky. We raise wells, we
4 lower wells. We let them come within 200 foot, depending
5 on the conditions. If that is the only stumbling block
6 here I think I can speak for EREX that we will sign a
7 waiver for you to mine within 400 foot of our well. If
8 you want to make it conditional on that I will speak with
9 EREX.

10 MR. CHAIRMAN: We had a motion that hasn't had a second. Any
11 other motions?

12 MR. MASON: Wait a minute. What was your condition that you
13 were willing to agree to?

14 MR. DALLIN: We have the right to grant a waiver from mining
15 within a 200 to 500 foot perimeter.

16 MR. MCGLOTHLIN: No. You have a right to waiver mining within
17 200 feet.

18 MR. DALLIN: I am speaking of the area between 200 feet and
19 500 feet that doesn't involve anyone else other than
20 EREX. If his property is 400 feet away I will represent
21 for EREX that will sign or make conditional this pooling
22 order to grant him a waiver to mine within 400 foot of
23 our well.

24 MR. FULMER: No, I take that back. I think there is still a
25 misunderstanding. From 500 to 200 feet the mine

1 operator has to notify the Division of Mines. At 200
2 feet then they have to notify the well operator, the
3 Division of Gas and Oil. And those two have a right to
4 object of mining within 200 feet.

5 MR. TWEED: There is no restriction on their coal mining.

6 MR. MASON: But between 500 and 200 the Division of Mines has
7 a right -- or has the power to make the mine owner submit
8 some sort of safety plan on mining within that 500 feet,
9 do they not?

10 MR. FULMER: I don't know how they would do that.

11 MR. CHAIRMAN: Yeah, depending on the type of mining.

12 MR. WYLES: Can EREX guarantee me that when we get -- say we
13 mine within 500 feet that the Division of Mines will
14 allow us to mine closer?

15 MR. CHAIRMAN: No. I was going to say that we can't do
16 anything like that.

17 MR. WYLES: Right. They can guarantee that they won't object
18 but they cannot guarantee that the Division of Mines
19 won't object.

20 MR. CHAIRMAN: That's right. And it would all depend on the
21 type of mining. There are too many factors there that
22 none of could predict from that standpoint. Is there any
23 other motions? The chair is not going to make a motion.

24 MR. MCGLOTHLIN: I thought we had a motion on the --

25 MR. CHAIRMAN: Well, nobody seconded the motion.

1 MR. MCGLOTHLIN: What was your motion again, Mr. Evans.

2 MR. MASON: He moved that we approve the application condi-
3 tioned upon EREX prevailing on the exceptions to the
4 permit, is that correct?

5 MR. EVANS: Correct.

6 MR MCGLOTHLIN: Second.

7 MR. CHAIRMAN: Motion is seconded. Any further discussion?

8 All in favor signify by saying yes.

9 BOARD: Yes.

10 MR. CHAIRMAN: Opposed say no.

11 MR. MASON: No.

12 MR. CHAIRMAN: One opposed vote. Motion carries.

13 Meeting ended at 6:35 P.M.

14
15 (End of proceedings for
16 February 16, 1993.)
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1
2 CERTIFICATE
3


4 COMMONWEALTH OF VIRGINIA

5 COUNTY OF WASHINGTON
6

7 I, Cleadys D. Griffin, Notary Public in and for the
8 Commonwealth of Virginia, at Large, do hereby certify that the
9 foregoing proceedings of the Virginia Gas and Oil Board
10 meeting held on February 16, 1993 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 28th day of February, 1993.
19

20 
21 CLEADYS D. GRIFFIN
22 NOTARY PUBLIC
23

24 My commission expires March 19, 1993.
25