

VIRGINIA GAS AND OIL CONSERVATION BOARD

HEARING OF SEPTEMBER 21, 1993

9:00 A. M.

IN THE CONFERENCE ROOM

4-H CENTER

ABINGDON, VIRGINIA

1 September 21, 1993

2 This matter came on to be heard on this the 21st day of
3 September, 1993 before the Virginia Gas and Oil Board in the
4 Dickenson Conference Center Room at the Southwest Virginia 4-H
5 Center, Abingdon, Virginia pursuant to Section 45.1-361.19.B
6 and 45.1-361.22.B of the Code of Virginia.

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8 MR. CHAIRMAN: Good morning. My name is Benny Wampler. I'm
9 Deputy Director of the Virginia Department of Mines,
10 Minerals and Energy and Chairman of the Gas and Oil
11 Board. I'll ask the Board members to introduce them-
12 selves starting with Mr. Harris.

13 (MEMBERS INTRODUCED.)

14 MR. CHAIRMAN: We'd like to welcome our new Board member, Mrs.
15 Joyce Presley from Buchanan County. She is a public
16 member and we welcome her to our meeting today.

17 MRS. PRESLEY: Thank you.
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ITEM 2

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3 MR. CHAIRMAN: Are the folks from Tazewell National Bank here?
4 (Pause.) I don't see anyone. If not, I'm go to our
5 second item on the agenda and that's Tom Fulmer who is
6 Principal Executive to the staff of the Gas and Oil Board
7 to present a summary of the actual well costs on units
8 which are subject to a Board order.

9 MR. FULMER: Thank you, Mr. Chairman. Mr. Chairman, the first
10 thing I'd like to advise the Board on is when you look at
11 cost there are some variable costs involved in the
12 shaping or the formulation of the DWE or an AFE and those
13 can vary from well to well to well depending on the
14 amount --as far as compulsory pooling, as far the Board's
15 concerned, it could be lease cost, title cost and legal
16 cost which may be different from well to well to well,
17 site construction cost depending on the difficulty of
18 the site. Contract drilling costs could vary from
19 company to company depending on their own contracts
20 depending on what the market withstands, equipment costs
21 may vary, transportation. Transportation here meaning
22 the cost of transporting the drill rig back and forth.
23 The transportation cost on stimulation, transportation
24 cost on cementing, these vary. Well head production
25 equipment, not all companies use the same well head

1 production equipment which may include -- in permitting
2 may include the pipeline also associated with it. Some
3 wells that come before the Board have not included
4 pipeline and some wells have included pipeline. So these
5 costs vary from well to well to well depending on the
6 company. The proposed stimulation -- really stimulation
7 is not formulated until at the time that the formation is
8 designated to be stimulated and the size and amount of
9 stimulation which may include different horsepower,
10 different amount of sane, different amount of oxygen. It
11 depends on what frack technique they use, too. Casing
12 costs vary from year to year to years depending on the
13 amount of steel available, the amount of casing available
14 in the market. Then you have an overall catch-all which
15 is a non-anticipated costs which could be costs which
16 occur because of hole difficulty, equipment failure,
17 things of that nature. So just bear in mind when we look
18 at these figures that I've put together in regards to the
19 wells that have been pooled or within a Board order
20 pooling -- you'll see these varied costs come out as to
21 what the original AFE was. (Pause.) To give you a
22 general idea of what orders have occurred where the Board
23 has ordered, we've had 52 what we in the support staff
24 call CPNC which is compulsory pooled non-conflicting
25 claimants -- we've had 52 of those and these are normally

1 conventional wells. I think we have rarely one or two
2 coalbed methane wells that would not fall into that
3 category -- would not fall into the CPC. The CPCs,
4 compulsory pooled conflicting, under the Oakwood I we've
5 had 75. CPC, again under the Oakwood I, we've had 45.
6 Under the CPC longwall paneled or sealed gob we've had
7 12. So those types of orders total up to 184. That's as
8 of that time. We've passed some more since then, but to
9 give you a general idea. As far as the distribution of
10 compulsory pooled non-conflicting you've had a total of
11 52. 27 of the orders have been drilled and completed.
12 Six orders have expired. We've had one by Conico, one by
13 Excell Energy, one by Maverick, four by Amvest, seventeen
14 by Virginia Gas Company, and 28 by EREX. As far as the
15 cost -- the AFE versus the actual cost, one of the
16 constants in formulating or trying to get this out, one
17 of the constants that I had to look at or what I consid-
18 ered the most constant is the depth of the proposed
19 wells -- overall depth of proposed wells. I've broken
20 it down into 500 foot intervals. In other words, taking
21 the total of 27 wells that we surveyed as far as actual
22 costs versus proposed AFE cost, if we look at the depth
23 on wells that were drilled from 4,450 foot we have a
24 different -- an actual cost difference of 240,000 versus
25 292,000. Close to \$52,000 difference. If we look at

1 4,500 to 5,000 foot we have 247,000 versus 273,000.
2 Roughly about \$28,000 difference. As we get deeper from
3 5,000 to 5,500 we have 262,000 versus 267,000. About a
4 \$5,000 difference. Then when we go from 5,500 to 6,000
5 we have 250,000 to 252,000. About \$2,000 difference.
6 That's on the compulsory pooled non-conflicting.
7 MR. HARRIS: Tom, there seems to be a trend almost, that the
8 deeper the well the less over run?
9 MR. FULMER: Well, again you have to take under consideration
10 the different varied costs like I did on the first chart.
11 I mean, trying to justify numbers is hard because you
12 have to look at each particular well, what happened on
13 that particular well.
14 MR. HARRIS: But it's not consistent from well to well?
15 MR. FULMER: It does look like a trend, as you go deeper the
16 costs are more accurate. But in each individual well
17 there may be a particular situation that's drove the cost
18 up.
19 MR. KELLY: Do you see any one factor that overrides others
20 as far as the principle?
21 MR. FULMER: Well, the most overriding factor is site con-
22 struction. Some of them have been way under estimated.
23 MR. KELLY: What about pipeline cost, is that a --
24 MR. FULMER: Pipeline cost in most of these right here really
25 doesn't become a factor because they're usually permitted

1 separately.

2 MR. KELLY: I guess the only other thing I can think of would
3 be title cost in some areas where you've got a lot of
4 small tracts versus where you've got big blocks.

5 MR. FULMER: That has a difference in legal -- the title and
6 the lease costs go much higher in some of these because
7 of the number of small tracts within the unit.

8 MR. KELLY: It's probably that some of the deeper wells are in
9 areas that are on bigger blocks.

10 MR. FULMER: Right.

11 MR. KELLY: Where the shallow ones are in areas that have
12 smaller tracts.

13 MR. FULMER: Much smaller tracts on some of these. Especially
14 the latest ones in the last year or so have had a number
15 of tracts and so forth which drive the cost up on titles
16 and so forth. Anymore questions? (Pause.) As far as
17 the distribution of compulsory pooled conflicting orders
18 we've had a total of 74. 35 of the 75 orders have been
19 drilled and completed. We've had ten orders that were
20 issued to EREX, seventeen orders have been issued to
21 Pocahontas Gas Partnership, and 48 have been issued to
22 Buchanan Production Company. Again using the same
23 criteria I used on the compulsory pooled non-conflicting,
24 looking at the cost variation as to well on depth --
25 common depth -- on the shallower wells we have about an

1 \$11,000 difference on the average. Going up on a 200
2 foot interval from 1,600 to 1,800 we have roughly a
3 \$24,000 difference. From 1,800 to 2,000 we had roughly a
4 \$7,000 difference. Then going up from 2,000 to 2,200 we
5 had roughly a \$32,000 difference. Then 2,200 to 2,400 we
6 had a difference of \$60,000/\$80,000, something like that
7 on an average. This one was interesting, the 2,200 to
8 2,400, because that's about the average depth of the
9 Pocahontas. So a majority of your wells were drilled in
10 that area in that type of situation. Then above 2,400 we
11 had roughly a \$38,000 difference. For obvious reasons -
12 -- well, maybe not obvious. When we look at the longwall
13 paneling and the sealed gob and some of the Oakwood II
14 orders that the Board has issued the cost -- you can't
15 use it as far as a well to well basis because if you
16 remember some of the wells were done on a short-hole.
17 Given a common figure of 14,000 for that particular
18 hole. The hole is already drilled. Some had two wells
19 in it. Some had no wells in it. So you really can't
20 compare those figures. A lot of them were actual costs
21 that the Board -- when they were presented to the Board
22 were actual costs at that time anyhow. So they didn't
23 vary any either. But the single well units is what
24 basically I looked at. As far as what the costs present-
25 ed to the Board on a single well unit these are the

1 figures that came out.

2 MR. CHAIRMAN: Tom, approximately how many of those wells were
3 in the 2,200 to 2,400 range? Do you have any background
4 tables that gave you the actual numbers of that that you
5 could give us?

6 MR. FULMER: (Pause.) Thirteen.

7 MR. CHAIRMAN: All right. Any other questions?

8 MR. MCGLOTHLIN: Tom, could you tell on that 2,200 to 2,400
9 what led the cost to be that much greater?

10 MR. FULMER: It varied from well to well to well. Some of it
11 was stimulation costs. There was a bad hole on one well.
12 There was also some lease cost that was high on the
13 lease cost. There was some instances of site construc-
14 tion which was fairly high. A lot of time it varies
15 between the wells as to what that cost might incur and
16 might have went higher.

17 MR. MCGLOTHLIN: So you can't put your thumb on one
18 particular --

19 MR. FULMER: I couldn't put it on one particular one. I mean,
20 overall I did these on an average basis as to what would
21 be the average cost because -- I could point out one well
22 versus one well and one would be higher and the other
23 would be lower. Overall in looking at it I think two
24 percent over all the wells I did these -- I think it was
25 two percent over all the wells were under the AFE costs.

1 So 98 percent were over the AFE cost or DWE cost.

2 MR. EVANS: Tom, just one question. Did you happen to take a
3 maximum end on each one of your categories there --
4 minimum cost for a well between \$1,400 and \$1,600 and a
5 maximum cost for that same well so that we get -- an
6 average is one thing, but the medium or an extreme --

7 MR. FULMER: No, I didn't do any mediums. I did averages only
8 on the number of wells that were done versus actual costs
9 of those numbers.

10 MR. EVANS: Did you happen to mark down of thirteen wells
11 2,200 to 2,400 feet deep the least that anybody drilled
12 one of those for was \$275,000 and the most was \$376,000
13 -- just getting a range?

14 MR. FULMER: I can give you that figure. (Pause.) The most
15 was \$319,234.

16 MR. EVANS: 319?

17 MR. FULMER: Uh-huh.

18 MR. EVANS: And the least?

19 MR. FULMER: The least was \$211,920.

20 MR. KELLY: But that's overall depth ranges or just that one?

21 MR. FULMER: That was overall depth ranges. That was in the
22 average.

23 MR. MCGLOTHLIN: On that 319 --

24 MR. FULMER: As far as depth ranges, no. On the 2,200 to
25 2,400 that was the medium figure.

1 MR. EVANS: That was the spread?
2 MR. FULMER: Yes.
3 MR. KELLY: that's why I was asking if it was overall depth
4 ranges or just for that one range.
5 MR. EVANS: So you have a \$100,000 difference in that one
6 range. Did that show up, that same type of -- that's a
7 pretty good spread. Did that same type of spread show up
8 in all your other depth categories?
9 MR. FULMER: In some cases it did and in some cases it went
10 under. I had some under and some over. In mostly the
11 depth ranges you had one or two wells that were really
12 out of balance. Most of them were within the \$20,000 to
13 \$40,000 range which is not too bad considering you're
14 doing an estimate.
15 MR. MCGLOTHLIN: The well that costs \$319,000, do you have the
16 DWE figure for that well?
17 MR. FULMER: \$319,460. The original DWE was \$233,071.
18 MR. CHAIRMAN: Any other questions?
19 MR. KELLY: No particular cost category seemed to be more
20 prevalent than others as far as running up the cost
21 on --
22 MR. FULMER: No.
23 MR. KELLY: It's pretty widely spread over all cost
24 categories.
25 MR. MCGLOTHLIN: Do you find that the difference in the actual

1 and proposed cost is -- the percentage is decreasing as
2 time is going on or is it running about the same?

3 MR. FULMER: Actually they're going higher than what they
4 originally anticipated.

5 MR. CHAIRMAN: So the gap is getting wider?

6 MR. FULMER: Well, I don't say the gap's getting wider. It's
7 just that you take a number that's been presented before
8 the Board and most of them have been within the last year
9 and a half. A lot of them are not drilled for a year.

10 MR. CHAIRMAN: Right.

11 MR. FULMER: So right now you're just getting the feel of what
12 those actual costs are going to run you.

13 MR. MCGLOTHLIN: So the companies were estimating -- giving
14 better estimates two years ago than they are now?

15 MR. FULMER: No. It wasn't two years ago. Again I have to
16 emphasize that on some of these wells, when you get down
17 to actual costs there may be some occurrence in that well
18 that will cause it to go higher. Like some of the
19 319,000 -- I had one well that had hole problems.

20 MR. KELLY: You're talking about unanticipated occurrences?

21 MR. FULMER: Unanticipated costs.

22 MR. KELLY: So what that seems to say is that people should be
23 including a greater contingency factor?

24 MR. FULMER: Most certainly I would believe that some of the
25 AFEs being proposed to the Board are being very conserva-

1 tive. One thing also about AFEs, too, as Bill may know,
2 you've got a number of wells that you're going to drill
3 and the anticipated AFE costs aren't going to go over
4 your budget. So you -- when you submit your AFEs it's
5 usually to meet your budget, whatever budget you may
6 have at that time. That doesn't necessarily mean that
7 that's what's going to happen.

8 MR. KELLY: Sometimes you can never put in enough contingency.
9 It's always good to have enough to the best of your
10 estimation.

11 MR. EVANS: Tom, did you happen to take a look at the time
12 differential? I was just wondering if there was an AFE
13 or DWE that was proposed or submitted and the drilling
14 commenced and was completed relatively quickly after
15 that. I would think that after a year's time or more the
16 estimated cost can change considerably based on other
17 cost factors unless you have a solid contract for
18 supplies and material or whatever else, if that --

19 MR. FULMER: Most of these wells were done within the year
20 after the order was issued.

21 MR. EVANS: So it's relatively quick.

22 MR. CHAIRMAN: Any other questions? Thank you, Tom. Do we
23 have the representative from the Tazewell National Bank?

24 MR. KING: Yes, sir.

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ITEM 1

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3 MR. CHAIRMAN: As the Board members know, the Tazewell
4 National Bank is acting as the escrow agent for the
5 Board to handle the funds that are pooled under forced
6 pooling orders which we'll get into more a little later.
7 They're today giving us the first report which will be
8 the annual report to the Board.

9 MR. KING: I'm passing around a little -- I just call it a
10 summary or fax sheet.

11 MR. CHAIRMAN: Just a second. State your name for the record,
12 please.

13 MR. KING: Okay. My name is William F. King. I'm with the
14 Tazewell National Bank and, of course, we're the escrow
15 agent for the VGOB escrow fund.

16 MR. CHAIRMAN: The Board has received a copy of the allocation
17 report through June, 1993. I believe all of you have
18 that as part of your record. Proceed.

19 MR. KING: Basically I just felt like what we needed to
20 provide was some facts and see what questions you all
21 might have. The first sheet -- I'll probably jump
22 around, but the first money came in on August 31st, 1992.
23 The report you have and most of the figures here are as
24 of June 30th. I can probably provide some update to that
25 if need to. The current balance in the fund, and this is

1 actually as of today, is a figure there of \$399,489. In
2 going to the summary as of June 30th -- I'll show how we
3 get back to the 399, but the total receipts for the
4 period ending 6/30 was \$504,772. Interest income was
5 \$3,706 and the fees paid at that point were \$2,250.
6 Those are the escrow agent fees. That brings us a total
7 in the account on June 30th of \$506,228. As you may be
8 aware, we found out I guess somewhere during the summer
9 -- July maybe -- that there were funds forwarded to the
10 escrow account that weren't to be in the fund. They were
11 not a Board order issue. So on July 26th \$171,165 was
12 returned to Conico that represented seventeen units for
13 seventeen accounts on our system. The ending figure of
14 June plus the repayments and then the additional deposits
15 from that time through today is somewhere in the neigh-
16 borhood of \$70,000 and that brings us to the current
17 figure just under \$400,000. The total number of accounts
18 or units at June 30th is 70. That's exclusive of the
19 amounts that were returned. That number right now is
20 only 71 or 72 as far as the number of units that we're
21 receiving deposits on. To give you an idea of the fees
22 -- maybe I should go over that schedule, as to what
23 that's based on.

24 MR. CHAIRMAN: I think that would be good and then we'll see
25 if the Board members have questions.

1 MR. KING: The basic schedule is really computed in two
2 different aspects. There's a \$10 per month per unit fee
3 which is -- we call it a transaction or activity fee for
4 every unit where there is a receipt for a particular
5 month. There is a \$10 charge. There is a management fee
6 based on the market value of the fund and it's one
7 percent. These are both -- at this point we're computing
8 these monthly. The figure 2,250 was -- the first fee
9 that was taken at some time -- I think it was in February
10 and that was \$10 per month per deposit fee. We did not
11 take the bulk of the fees until after June 30th. I think
12 these fees were taken -- the figure you see there as
13 total fees to date of \$7,126 includes the \$2,250. The
14 balance of those were taken in August. Until probably
15 February or after the fund really wasn't of sufficient
16 size to begin collecting a fee. So we just delayed that.
17 At this point those are being taken monthly and computed
18 monthly. It's much easier to keep track of. Just to
19 give you an idea of the system, we have a general trust
20 accounting system for every account that we manage.
21 There is a monthly report that goes to the staff that
22 shows all the transactions for the month and a list of
23 the current holdings -- current balance of the account.
24 That is on this general accounting system and is more of
25 a picture of the entire fund. On that system, just to

1 give you an idea, on monthly transactions we average
2 about 55 as deposits coming in, interest, purchasing the
3 funds and so forth. The report you have which is done on
4 another system is the allocation system where we have the
5 70 accounts. Obviously there's a lot more transaction
6 there. Really this is only based on the last couple of
7 months and this figure 690 transaction per month is, I'm
8 sure, much less in the early part of this account. But
9 now it's going to be probably getting more and more.
10 Finally, at the present and up until now we've used
11 strictly a money market fund in the account. The current
12 yield on that fund is about 2.9 percent. I might say the
13 objective as we understand it at this point has really
14 been to maintain the funds and we're pretty much operat-
15 ing at this point on a zero risk approach, at least from
16 a market risk of fluctuation. We look at this as an
17 escrow fund where the money will eventually be going back
18 out. This is one area where maybe if there are questions
19 -- maybe it would be helpful for us to ask impute from
20 the Board. But the feeling has been and we've discussed
21 with the staff that at least while the fund is growing --
22 it may reach a point where -- another thing that's
23 important is the time frame where we can estimate what
24 kind of time frame we're talking about. Then we can
25 probably increase that without taking any great deal of

1 risk. That's pretty much what I have to report. I'll be
2 happy to answer any questions or do any research to get
3 answers back to you.

4 MR. CHAIRMAN: Thank you, Mr. King. Any questions, members of
5 the Board?

6 MR. MCGLOTHLIN: Mr. King, on the seventeen units that was
7 returned to Conico, did we pay that \$10 monthly charge on
8 that or did we get rebate on that?

9 MR. KING: That was paid, in fact, by Conico. What happened,
10 that money was earning interest and those fees were paid
11 out of the interest. So the funds went back net to
12 Conico. The original principal -- I can't personally
13 break that down, but I would say about 171 -- a huge
14 portion of that was the original deposits.

15 MR. MCGLOTHLIN: I just didn't want us to pay for something --

16 MR. KING: Right. That's the way we looked at it, too. It
17 wouldn't be fair. In fact, we probably should have
18 realized from the money coming in there wasn't an order.
19 But at that point I think maybe we were too new in the
20 game and -- at any rate, no, it did not have any adverse
21 effect on the balance of the fund.

22 MR. MCGLOTHLIN: Secondly, where are you putting the money?

23 MR. KING: The money is in a government money market fund. In
24 other words, it's not -- that's a good question. It
25 could go into the bank as a deposit. We generally would

1 not do that as we see that as possible conflict number
2 one. And number two, with this amount it would be
3 involved in insured limits. So this is invested in a
4 money market fund comprising entirely of government
5 treasury obligations.

6 MR. MCGLOTHLIN: You're getting one percent a year on the
7 total account and 2.9 percent yield. That's not making
8 an awful lot of money.

9 MR. KING: That's right.

10 MR. MCGLOTHLIN: Of course, we're not in the business to make
11 money but we're in business to protect the account.

12 MR. KING: Right. The real crucial question that we have is
13 -- actually we can expand even using very short CDs and
14 even if they're 100 or under it's spreading around we can
15 do that. That's something that we've had in mind, that
16 we should do as the fund gets to a reasonable size which
17 I think it is now. That would probably increase the
18 yield by about 50 percent over what it is now -- the
19 gross yield. We can do that without very much -- well,
20 really without any fluctuation risk. We did a lot of
21 research in the beginning and looked at Virginia statutes
22 and -- of course, even since the time we started that's
23 changed. Basically now as a trustee we're guided by a
24 prudent trustee rule and our range of investments is
25 pretty much unlimited. But as an escrow agent where we

1 don't have a long term time horizon on these funds I
2 think we really have to weigh our decision heavily -- let
3 me give you an example. I mentioned this money market
4 fund because it's mostly of treasuries. We could go into
5 a five, ten year or longer treasuries and a treasury note
6 is the safest investment in the world generally recogniz-
7 ed. But if I buy a treasury today and as pretty much
8 most of us feel a couple of years down the road rates are
9 higher and we have to cash out of it and distribute the
10 funds we're going to take a loss. So that's what we're
11 faced with as far as trying to increase the yield. Now,
12 obviously with CDs you stay short and they stagger you
13 probably would do pretty well.

14 MR. MCGLOTHLIN: I'm just concerned at 2.9 percent. I mean,
15 my mesally little savings account is not anymore yield
16 than that and for \$400, 000 it seems to me it ought to be
17 a little bit higher.

18 MR. KING: Actually we can get this up to four, four and half
19 percent using certificates of deposits.

20 MR. MCGLOTHLIN: What's the Fed rate for overnight deposit
21 now?

22 MR. KING: It's in that range. Probably less than 2.9
23 actually. The average maturity of this fund is more like
24 six months. So the overnight rate would actually be a
25 little bit less than that. It jumps all around.

1 MR. McGLOTHLIN: I understand that. So you're telling me
2 we're not doing too well then on our yield?

3 MR. KING: Well, we're doing what is average for a money
4 marketing account. We are not below average for a risk
5 free money market fund. If we use that as a measuring
6 stick we're okay. One of the things that we're --
7 actually we would like to have is just some impute on
8 this, whether you would like to -- if you would like to
9 have us earn a little more and are willing to take a
10 small amount of additional risk -- we're not really
11 talking about much risk of loss of fund if we're going to
12 two and three years. My question would be -- I mean, my
13 understanding is that this fund will be around for at
14 least that period of time.

15 MR. CHAIRMAN: Well, one guiding principal has to be -- and
16 I'll go ahead and say this -- from the Board's standpoint
17 is the contract in which we've entered into with you
18 which requires that you pay out on demand. Within that
19 obviously it would be to all of our interest that we earn
20 all the money we can earn within those constraints.

21 MR. KING: Right.

22 MR. CHAIRMAN: But the contract that the Board has with
23 Tazewell National Bank is the guiding principal for all
24 this. We couldn't take action here until we were to
25 issue a new RFP that would change the parameters of that

1 contract.

2 MR. KING: That is the one advantage of this fund. 100
3 percent of the money can be paid out in one days notice
4 without any loss of principal. That's been our guiding
5 principal.

6 MR. HARRIS: I do have a couple of questions, Mr. King. The
7 one percent, is it annually or is that monthly? I know
8 you said one percent.

9 MR. KING: That's annually. And, of course, that would be
10 divided by twelve.

11 MR. HARRIS: I don't have the contract in front of me, but if
12 we earn money on the money that's there who gets that
13 money that's earned? I know you all collect a fee and
14 there's a certain amount of money, of course, that has to
15 aside to pay out.

16 MR. KING: The system allocates that to the various units and
17 the eventual payees will share in that.

18 MR. HARRIS: Will there ever be a time that your fees will
19 exceed what we're getting out -- I'm looking at this 2.9
20 percent. Will there ever a time when the fees will
21 exceed the interest?

22 MR. KING: No.

23 MR. MCGLOTHLIN: There's a possibility of that.

24 MR. KING: I think it is extremely remote. I don't think --
25 as a matter of fact, that's why we -- the fund at the

1 beginning took a while to build up and these market value
2 fees were something like \$10 or \$20 the first few months.
3 We waited until there were sufficient funds to collect
4 any fees so that we weren't taking more than the inter-
5 est.

6 MR. MASON: Refresh my memory about the contract. There's a
7 \$10 transaction fee. Is the one percent a management
8 fee?

9 MR. KING: Right. Yes.

10 MR. MASON: The bench market government select fund, is that a
11 fund of your banking group or is it an outside fund?

12 MR. KING: No. That's an outside fund that's actually managed
13 by the Northern Trust Company in Chicago.

14 MR. MASON: Do they charge a management fee within the context
15 of that fund?

16 MR. KING: They would charge. In other words, there's no load
17 going in or out of the fund but there would be a manage-
18 ment fee. That 2.9 would be net.

19 MR. MASON: I understand that. So we're paying both them and
20 you a management fee for the same money?

21 MR. KING: That's true.

22 MR. MASON: And a summation of all this really comes down to
23 is that we have deposited this sum of money into this
24 escrow account and the people who have an interest in
25 this have \$3,000 less than they started with?

1 MR. KING: No. Explain to me your figures there.

2 MR. MASON: Well, you take the fact that you've earned \$3,706
3 and you've taken out \$7,126 it appears to me that you
4 have \$3,000 less than you started with.

5 MR. KING: Okay. That 3,706 interest figure was through June
6 30th. The interest since that date -- the difference --
7 let's see. 3,500 or something. But the difference since
8 that date has covered the 7,000. I'd say to date today
9 we're probably at about a break even on the interest.
10 We're at a point now where the monthly interest is
11 substantially greater than the monthly fees.

12 MR. MASON: You're telling me that from this report I can't
13 really tell?

14 MR. KING: To date, no. Like I said, most of our figures for
15 this meeting were through June 30th. I'd be happy to --

16 MR. MASON: I understand. I just want to know what to date is
17 the net effect of whether we've made more than we started
18 with or whether we have less than we started with and
19 you're telling me that I can't tell that from this
20 report.

21 MR. KING: That's right. I'll be happy to get that figure for
22 you, though.

23 MR. MASON: Thank you.

24 MR. CHAIRMAN: Any other questions?

25 MR. MCGLOTHLIN: The current balance -- seventeen units to me

1 have got this whole thing all screwed up. I can't tell
2 what you've done here. I think you need to go back and
3 present us with a annual report as of June 30th, 1993.
4 You have current yields. You have current -- what you've
5 taken out as of date. That's doesn't tell us what we
6 did last year. I'm really disappointed in what you're
7 presenting here today, Mr. King.

8 MR. KING: What would you like to see, the actual transaction
9 report in total?

10 MR. MCGLOTHLIN: I want to see something that we can tell
11 what's going on here. You've got a current balance of
12 399. Take those seventeen units out -- those weren't
13 ours. We don't need that 504 up there as the -- the
14 summary of it because that money didn't belong to us.

15 MR. KING: Right.

16 MR. MCGLOTHLIN: Or didn't belong to the people.

17 MR. CHAIRMAN: Couldn't you, in fact, as of the end of
18 September when you were to report back, say, at the
19 October meeting -- would you have enough time by that
20 date to give a September 30th report that could reflect
21 -- that would show the change in the interest earned and
22 those kind of things because, as you said early on, the
23 fees were accruing but the interest -- the amount in
24 accounts were so low that that was driving that figure
25 negatively, but now that the interest is driving up that

1 has changed.

2 MR. KING: Right. The management fee will always stay pretty
3 much in proportion. The \$10 really wasn't at the
4 beginning. I think that's the problem, say, for the
5 first six or eight months.

6 MR. MASON: I might suggest for purposes, I think, of giving
7 us a feel for that about what point did the funds start
8 to match out on cost and expense? Do you have any idea?

9 MR. KING: No. I really don't.

10 MR. MASON: I was thinking for instance if you wanted to do
11 two summaries, like one for June 30th which would show
12 income and cost to that point and then another one
13 perhaps for July, August -- whatever. It would give us a
14 better example of what it looks like once it's gotten up
15 to where the two things may match each other.

16 MR. KING: Whatever would be what you all would want. I'll be
17 happy to get it. As I say, I can run the report -- what
18 we're doing now, currently we're sending to the staff a
19 transaction report that's showing everything each month
20 on the overall account. From that I can run something
21 through both June 30th and through September 30th, say,
22 and then summarize that and show both. Netting out, in
23 other words, you want to net out the money that was
24 returned and not even show that through June.

25 MR. MCGLOTHLIN: As I recall the contract we entered into with

1 Tazewell National Bank was that we were to get quarterly
2 reports. I think we need to do that.

3 MR. NASON: He said he sends the staff a monthly report.

4 MR. MCGLOTHLIN: I think that Premiere ought to be here
5 quarterly until we get things straightened out on how we
6 want them to present this report to us. I think it might
7 be helpful for both.

8 MR. KING: That's fine. We'd be happy to come as often as
9 necessary because we're -- it is a unique account and one
10 that -- we want to provide exactly what you want. The
11 best possible service and we're willing to do whatever it
12 takes.

13 MR. CHAIRMAN: To Mr. King's defense, we have not until this
14 point asked them to appear and we feel like the funds are
15 now at a point that the Board need to start seeing that.
16 Early on the accounts were low and just started and I
17 think probably some of your months by months would show
18 that. You might want to pick out and the Board would be
19 interested in some selected reports that went back to
20 just a monthly report that would show some of the actual
21 earnings versus deposits and those kind of things. Just
22 pick out a few monthly reports that you received.

23 MR. KING: All right.

24 MR. CHAIRMAN: And just put it in there. Is it okay to do
25 that at random, three or four of them?

1 MR. KING: Sure.

2 MR. CHAIRMAN: So we can see how that's running.

3 MR. MCGLOTHLIN: We had a quarterly report after we initiated
4 the account and I expected that account to loose money
5 because of the transaction fees and the amount of money
6 going in. But it's just -- I'm at a loss here because
7 you've got me a summary as of 6/30 and then you've got me
8 a current one and then you say you had to subtract this
9 amount. I understand the amount being subtracted but I
10 don't think we need to see that. We need to see what was
11 the balance as of 6/30 and then --

12 MR. KING: Not including the funds that were returned.

13 MR. MCGLOTHLIN: Right. And how much we took in or you took
14 in on interest or generated interest on that, what you
15 fees were that we paid out were, and then we kind of have
16 an idea of what we're doing.

17 MR. CHAIRMAN: Will you be able to come back for the October
18 meeting?

19 MR. KING: What is the date?

20 MR. CHAIRMAN: What is the date is that, Tom. It's the third
21 Tuesday. I know that.

22 MR. EVANS: In your allocation report -- your status summary,
23 active 70. I got that number. Terminated 13. What was
24 terminated?

25 MR. KING: Those were the -- actually what we did was categor-

1 ize the accounts that were returned. I noticed I have
2 seventeen. I believe that's suppose to be thirteen.

3 MR. EVANS: Thank you.

4 MR. KING: Thirteen was the -- the money was there at June
5 30th we put that classification on them as terminated.

6 MR. EVANS: Thank you.

7 MR. FULMER: October 19th.

8 MR. CHAIRMAN: October 19th is our next meeting.

9 MR. KING: Yes. I can. I'll verify that. I'm going out of
10 town to a conference that starts the next day. I think
11 that will work fine on the 19th. Let me just reiterate
12 here. I'm going to prepare a report as of June 30th and
13 September 30th where I'll show receipts, interest earned.
14 There won't be any disbursements. It will be net of
15 those fees paid. And then I'll also pick out some
16 selected month ends, say, last October and December just
17 to show what the balance was, how they grew from time to
18 time.

19 MR. HARRIS: We received in our mail-out an allocation report.
20 Do we answer this monthly? I mean, not monthly but for
21 each of the -- I was just kind of surprised as I read
22 through it and I thought this really didn't give me a lot
23 of information except maybe a few specifics about --

24 MR. CHAIRMAN: No. I think they simply submitted it to show
25 the type of account -- you may want to address this.

1 MR. HARRIS: My question is concern for use of paper and I'm
2 wondering if we need -- when I got this and started
3 flipping through it I thought this is not --
4 MR. CHAIRMAN: They were just showing us how they were
5 managing the accounts.
6 MR. KING: We are going to submit that report to the staff
7 semi-annually as of the end of June and the end of the
8 year. I think probably at this time it's a good idea you
9 see how what the bookkeeping system is for the alloca-
10 tion. Probably the important thing and what you're
11 telling me is the big picture and that's the report that
12 now goes monthly. Actually when we started out that
13 report was going quarterly to Tom and we decided that it
14 would be better for that to be monthly and then this one
15 semi-annually. This one -- really the only important
16 time for this report when we're distributing. What this
17 really does is allocate the receipts coming in to the
18 various units and then the interest the same way so that
19 when time comes to pay out the funds we'll have every-
20 body's balance.
21 MR. HARRIS: It's very useful. I just was a little concerned
22 that if we got this every month or every quarter that --
23 MR. KING: Killing a lot of trees, yes.
24 MR. CHAIRMAN: Other questions? Thank you, Mr. King.
25 MR. KING: Thank you. I'll see you in October.

1 MR. CHAIRMAN: We'll take a five minute break and then we'll
2 call our first item on the agenda which will be Virginia
3 Gas Company's docket number.
4 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)

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ITEM I

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3 MR. CHAIRMAN: The next item on today's agenda is a petition
4 from Virginia Gas Company for modification of a temporary
5 order for testing of the Price and Little Valley forma-
6 tions previously issued by the Board and modified to
7 include an additional 40 units. This is docket number
8 VGOB-93/09/21-0404. We'd ask the parties that wish to
9 address the Board in this matter to come forward at this
10 time.

11 MR. EDWARDS: Good morning, Mr. Chairman and members of the
12 Board. My name is Michael L. Edwards. I'm president of
13 the Virginia Gas Company. I've previously testified
14 before the Gas and Oil Board and would request to be
15 accepted as an expert witness.

16 MR. CHAIRMAN: Anyone else wishing to address the Board in
17 this matter? The record will show there are none. You
18 may proceed. Do you want to be sworn in and provide
19 testimony?

20 MR. EDWARDS: Is that the --

21 MR. CHAIRMAN: I think so.

22 COURT REPORTER: (Swears witness.)

23 MR. EDWARDS: Mr. Chairman, as we continue with our program of
24 testing the Early Grove Field for its suitability for
25 conversion to underground gas storage we would like to

1 request to have four additional units included within the
2 provisions of the testing order. These four units
3 produce primarily from the Little Valley formation. So
4 this represents the addition of a second producing
5 formation to the testing. Notice has been given to all
6 the landowners in the field and publication was done with
7 the Bristol Herald Courier and last week we provided
8 affidavits to the Inspector's office of the proof of
9 notice and publication. I didn't have a major amount of
10 additional prepared testimony. I'd be more than happy to
11 entertain questions from the members of the Board and
12 staff.

13 MR. HARRIS: Mr. Edwards, how does this testing work?

14 Actually what's involved when you do testing?

15 MR. EDWARDS: There's a number of things that have to be
16 determined when you're testing a reservoir for its
17 suitability to conversion to gas storage. One of the
18 most important parameters is to insure that there is, in
19 fact, a sealed reservoir here and that gas injected into
20 the underground strata aren't going to escape into other
21 formations. Some of the other critical elements are the
22 rate at which the different reservoirs will accept gas,
23 the rate at which gas can be withdrawn from the reserv-
24 oir. And that data is helpful in trying to determine the
25 effective size of the reservoir. It's difficult to make

1 a direct determination of the reservoir size and you have
2 to use basically indirect methods to incur that.

3 MR. HARRIS: Let me ask you this way. Are these previously
4 drilled wells?

5 MR. EDWARDS: Yes, sir.

6 MR. HARRIS: These are wells that have been depleted or still
7 producing or what?

8 MR. EDWARDS: They're still producing. We estimate that the
9 field is probably about 75 to 80 percent depleted.

10 MR. HARRIS: So what we're doing is putting the gas back in
11 and storing it?

12 MR. EDWARDS: That's correct.

13 MR. HARRIS: I know there was reference to -- oh, I've
14 forgotten the terminology. Native gas as opposed to a
15 gas that you all are putting in.

16 MR. EDWARDS: Yes, sir. The nomenclature that we're using
17 here is to designate the gas that was originally present
18 in the reservoir as native gas and that's also -- and the
19 gas that we're injecting into the reservoir. We try to
20 differentiate between those two classes of gas.

21 MR. HARRIS: I have one other question. This is probably
22 stupid, but why do we need to do this? Why do we need to
23 store it underground that way?

24 MR. EDWARDS: There's a number of reasons why underground gas
25 storage is valuable. The most important is to be able to

1 meet peak day demand for gas. Looking at the United
2 States as a whole, for example, peak day demand for gas
3 and the coldest day in the winter is approximately
4 double the productive capacity of all the gas wells in
5 the country. So to meet that demand you either have to
6 drill twice as many wells as you need to meet the average
7 demand and then to leave them idle throughout most of the
8 year or to store the gas close to the market areas during
9 low demand periods and then to release it in high demand
10 periods.

11 MR. HARRIS: So this is like a known quantity that you're
12 storing -- pretty much known quantity. It makes sense to
13 do it that way.

14 MR. EDWARDS: Yes. Gas has been stored in this fashion in the
15 United States since about 1915. There's several hundred
16 storage reservoirs of this type in other states. This
17 would be the first of this type in the Commonwealth of
18 Virginia. There are literally hundreds of them in other
19 states in the country.

20 MR. HARRIS: How are royalties paid on that, when it's taken
21 out of the first well or when it's taken out of the
22 second well or out of the storage well? At what time are
23 royalties paid?

24 MR. EDWARDS: Typically the -- well, let me back up. The
25 provision that we've proposed in the original testing

1 order was that an engineering estimate would be made of
2 the remaining gas reserves in each well and that during
3 the period while we're testing the field for conversion
4 of storage that royalties would be paid on the basis of
5 the estimated remaining production. Once the field is
6 converted to storage there would be no payment of
7 royalties and at that point a payment would be in the
8 form of a storage rental payment of a certain number of
9 dollars per acre per year.

10 MR. HARRIS: But as far as the gas itself, though, because
11 you're taking it out of one well and putting it in
12 another basically. That's what you're doing, right?

13 MR. EDWARDS: No. Actually what we're doing is we're bringing
14 it in from pipeline and putting it into the field. We're
15 not moving it from one well in the field to another well.
16 It's coming from a third party source.

17 MR. HARRIS: Okay. I didn't understand that.

18 MR. CHAIRMAN: Have your tests to date indicated that you have
19 a viable field here?

20 MR. EDWARDS: The results so far are certainly encouraging.
21 I'm certain that significant additional work still
22 remains to be done to determine the viability of the
23 project as a whole, but we've been very encouraged by
24 what we've seen so far.

25 MR. MASON: Mr. Edwards, in your earlier testimony with regard

1 to the proposal in this field I assume that you are
2 proposing that all the earlier -- some of the safety safe
3 guards, testing procedures, other engineering information
4 that you presented and how you would go about doing that
5 would also apply to these wells, is that correct?

6 MR. EDWARDS: Yes, sir. That is correct.

7 MR. CHAIRMAN: This field configuration that you have as
8 Exhibit B where you've highlighted the additional wells
9 that you are requesting from the Board the authorization
10 to test, when you look at the field configuration it goes
11 -- it doesn't have a north arrow here. But these
12 additional wells that are being tested do not go to the
13 end of the field so to speak. Would you expect the need
14 to test EH-99, for example, or any of those others at
15 some future date?

16 MR. EDWARDS: Yes, sir. And, in fact, we have applied for the
17 October hearing to extend the testing order to all the
18 units in the entire field. I would think that that will
19 be -- so in answer to your question, yes. I think we
20 will eventually perform some kind of work on just about
21 all the wells in the field.

22 MR. MCGLOTHLIN: Mr. Edwards, are all the wells in the Early
23 Grove Field shown on Exhibit B? Are there other wells
24 north or south of --

25 MR. EDWARDS: There are several dry holes that were drilled in

1 the 1980s in the left hand side of the field. There are
2 also several of the old wells that were drilled in the
3 1930s that are in the central portion of the field that
4 are not shown on this exhibit. I believe that they were
5 all noted in the original application that we made last
6 year.

7 MR. MCGLOTHLIN: I know last month we approved EH-96 because
8 you felt you were getting a bleed from one of the other
9 units. Do you see that in 10491 or 95?

10 MR. EDWARDS: We have not seen any evidence of that at this
11 time.

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

13 MR. KELLY: I'm just curious. Are you still pumping into the
14 original wells that are being tested?

15 MR. EDWARDS: Yes. That's correct.

16 MR. KELLY: The pressure is up to what point now?

17 MR. EDWARDS: We haven't been able to get a shut-in pressure.
18 We've been injecting pretty much continually. So the
19 only pressure that we're able to measure is the flowing
20 tubing or casing pressure.

21 MR. KELLY: So you've been doing that now for roughly five
22 months?

23 MR. EDWARDS: Yeah. Since June 1st.

24 MR. KELLY: I thought you were approved originally in April.
25 Do you think another two months is going to be adequate

1 to test these additional wells here? Are you going --
2 MR. EDWARDS: That's what we've applied for in this applica-
3 tion. I would anticipate that the total requirement for
4 determining the commerciality of the field as a whole
5 will be something like two years.
6 MR. KELLY: So you're going to be looking maybe for some
7 additional extensions --
8 MR. EDWARDS: Yes. That's correct.
9 MR. KELLY: -- or just as you see what your needs are as you
10 go along?
11 MR. EDWARDS: Yeah. We plan to begin test withdrawals on
12 November 1st. So the only thing that we're asking for
13 for these units at this time is for injection up through
14 October 30th. But in our application that will be before
15 the Board in October we are requesting that it be applied
16 to the entire field and that the testing period be
17 extended to twenty-four months which I would anticipate
18 will be sufficient to fully evaluate the entire field.
19 MR. CHAIRMAN: Other than the additional wells are you
20 requesting any different relief than exists in the
21 original order?
22 MR. EDWARDS: No, sir, not at this time.
23 MR. MCGLOTHLIN: One other question as a point of interest. I
24 know you're placing gas in the field right now. How do
25 you anticipate paying the royalty when you start drawing

1 from the field?

2 MR. EDWARDS: We prepared decline curve based engineering
3 projections of what the wells would produce in the
4 remainder of their economic life and we'll pay royalties
5 based on those projected production rates times the then
6 going market price for the gas.

7 MR. MASON: Just to clarify a point here, Mr. Edwards, isn't
8 it true that in a situation like this that in order to do
9 this storage area you have to have gas storage agreements
10 with all the leased land just as if you were doing -- you
11 have an oil and gas lease that either contains storage
12 provisions or you go back in and get an additional
13 storage agreement with them which provides for a payment
14 of a fee per month generally, I think, to people who have
15 their formations or their lease areas being used as
16 storage.

17 MR. EDWARDS: Yes.

18 MR. MASON: And what you're talking about is in case where
19 there's native production as well as storage withdrawal
20 you're engineering people make an allocation based on
21 estimated remaining reserves and when you take X number
22 of feet out of a well then you pay so much royalty based
23 on what percentage of that's considered to be native gas
24 and then on the balance you just pay the storage fee
25 based on your contract, isn't that correct?

1 MR. EDWARDS: Essentially yes. However, I think that in the
2 interim while testing is going on payments will be based
3 on the estimated royalty amounts, that the storage -- the
4 provisions of the storage agreements won't go into effect
5 until the field is actually set up as a full
6 certificated --

7 MR. MASON: I see. So you're not paying a storage fee until
8 you complete your testing?

9 MR. EDWARDS: That's correct.

10 MR. MASON: I see. Thank you.

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

12 MR. MCGLOTHLIN: I move that we approve the petition as
13 submitted.

14 MR. MASON: Second.

15 MR. CHAIRMAN: We have a motion and a second. Further
16 discussion? All in favor signify by saying yes. (ALL
17 AFFIRM.) Opposed say no. (NONE.) Unanimous approval.

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3 ITEM II

4 MR. CHAIRMAN: The next item on our agenda is a petition from
5 Equitable Resources Exploration for force pooling a
6 drilling unit V-2714. This is docket number VGOB-
7 93/09/21-0409. We'd ask the parties that wish to address
8 the Board in this matter to come forward at this time.

9 MR. KAISER: Jim Kaiser and Doug Kiser of the law firm of
10 Hunter, Smith and Davis appearing on behalf of Equitable
11 Resources. Our witnesses in this matter will be Mr.
12 Dennis Baker and Mr. Bob Dahlin.

13 MR. CHAIRMAN: For the record, are there any others that wish
14 to address the Board in this matter? The record will
15 show there are none. You may proceed.

16 MR. KAISER: Mr. Baker will be our first witness. If they
17 both could be sworn at the same time.

18 COURT REPORTER: (Swears witnesses.)
19
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. KAISER:

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

A. Equitable Resources Exploration. I'm employed as a leasing supervisor.

Q. And do your responsibilities include the land involved here and in the surrounding area?

A. Yes. That's correct.

Q. And you have testified on these matters before the Board on many different occasions and have been accepted as an expert witness?

A. Yes.

MR. KAISER: Mr. Chairman, we move that Mr. Baker be accepted as an expert witness in this matter.

MR. CHAIRMAN: He's accepted. Go ahead.

Q. (Mr. Kaiser continues.) Are you familiar with Equitable's application for the establishment of drilling units and pooling order for EREX well V-2914 dated August 20th, 1993?

A. Yes, I am.

Q. Has EREX applied for a permit and is a permit now pending before the DMME?

A. Yes. The permit has been applied for dated September 14th, 1993.

1 Q. Is Equitable seeking to force pool the drilling rights
2 underlying the drilling and spacing unit as depicted at
3 Exhibit A of the application?
4 A. Yes.
5 Q. Does Equitable own drilling rights in units involved
6 here?
7 A. Yes, we do.
8 Q. Does the proposed unit depicted at Exhibit A include all
9 acreage within 2,640 feet -- a 1,320 radius of proposed
10 well V-2714?
11 A. Yes. That's correct.
12 Q. What is the interest of Equitable in the unit?
13 A. At the time of application we had 92.60 percent interest
14 leased. At this time we have presently 94.12 percent of
15 the unit leased.
16 Q. Are you familiar with the ownership of drilling rights of
17 parties other than Equitable underlying this unit?
18 A. Yes, I am.
19 Q. And what is that interest?
20 A. The unleased interest at the time of application was 7.40
21 percent. At this time we currently have 5.88 percent
22 leased.
23 Q. Are all unleased parties set out at amended Exhibit B?
24 A. Yes.
25 Q. Prior to filing the application were efforts made to

1 contact each of the respondents and an attempt made to
2 work out an agreement regarding the development of the
3 units involved?

4 A. Yes, they were.

5 Q. Subsequent to the filing of the application have you
6 continued to attempt to reach an agreement with the
7 respondents listed at Exhibit B?

8 A. Yes, we have.

9 Q. And as a result of these efforts have you acquired other
10 leases from any of these respondents and are these leases
11 reflected on revised Exhibit B?

12 A. Yes, they are.

13 MR. CHAIRMAN: While he's handing that out would you describe
14 your efforts to reach a lease with the other parties?

15 THE WITNESS: We have talked with the individuals that we've
16 been able to contact regarding obtaining a voluntary oil
17 and gas lease -- trying to negotiate terms and create the
18 price. Basically just trying to explain to them what we
19 have done and what we're trying to do. At this point
20 most of them have refused leasing for various reasons.
21 Some of them want to sell their property or their
22 interest or they're just not interested in leasing. Most
23 of them have a very small interest in the property, but
24 we do try to contact everyone.

25 MR. CHAIRMAN: Have you been unable to locate or contact any

1 of them?

2 THE WITNESS: There are a few individuals that we have been
3 unable to locate through talking, of course, with family
4 members and trying to locate them through the public
5 records at the courthouse and tax assessors's records.
6 We have not been able to find anyone that can give us any
7 leads that would be able for us to locate them.

8 MR. CHAIRMAN: You may go ahead.

9 MR. KAISER: Mr. Chairman, let me point out that everyone has
10 received proper notice. We do have the returns -- the
11 green cards from everyone in the unit.

12 MR. CHAIRMAN: I was simply exploring the efforts you made to
13 obtain a lease along those lines. Thank you.

14 Q. (Mr. Kaiser continues.) Mr. Baker, would you list the
15 reflected changes on revised Exhibit B, please?

16 A. Yes. On Page 2 of the revised Exhibit B below tract
17 eleven, Charles and Phyllis Upperman are currently leased
18 to EREX. On Page 7 of the exhibit, tract 29, the
19 following people are now leased with EREX; Billy Ray
20 Ringley and Gaye Nell Ringley, McAurther Ringley and
21 Brenda S. Ringley, Ricky L. Ringley and Janet S. Ringley,
22 Timothy J. Roop and Paul M. Roop, Charlotte Arrington and
23 Josephus Arrington, Shirley M. Parker. That's all of the
24 individuals that we have at this time.

25 Q. Were any efforts made to determine if the individual

1 respondents were living or deceased or their whereabouts,
2 and if deceased were efforts made to determine the names
3 and addresses and whereabouts of the successors to any
4 deceased individual respondent?

5 A. Yes, there were.

6 Q. Were reasonable and diligent efforts made and sources
7 checked to identify and locate these unknown heirs to
8 include primary sources such as deed records, probate
9 records, assessors records, treasurers records, and
10 secondary sources such as telephone directories, city
11 directories, family and friends?

12 A. Yes. That's correct.

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

15 A. Yes.

16 Q. With the exception of those parties which you are hereby
17 dismissing from this proceeding are you requesting that
18 the Board force pool all other unleased interests listed
19 at Exhibit B?

20 A. Yes.

21 Q. Does Equitable seek to force pool drilling rights of each
22 individual respondent if living and if deceased the
23 unknown successor or successors to any deceased individ-
24 ual respondent?

25 A. Yes. That's correct.

1 Q. Is Equitable seeking to force pool drilling rights of the
2 person designated as trustee if acting in capacity of
3 trustee, and if not acting in such capacity is Equitable
4 seeking to force pool the drilling rights of the success-
5 or of such trustee?

6 A. Yes.

7 Q. Are you familiar with the fair market value of drilling
8 rights in the units here and in the surrounding area?

9 A. Yes, I am.

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

11 A. Yes. \$5 per acre consideration, a five year term, and a
12 one-eighth royalty.

13 Q. Did you gain your familiarity by acquiring oil and gas
14 leases and other agreements involving the transfer of
15 drilling rights in units involved here and in the
16 surrounding area?

17 A. That's correct.

18 Q. In your opinion do the terms you have testified to
19 represent the fair market value of and a fair and
20 reasonable compensation to be paid for drilling rights
21 within this unit?

22 A. Yes.

23 Q. Based on this and as to respondents who have not volun-
24 tarily agreed to pool do you recommend that the respond-
25 ents listed on amended Exhibit B who remain unleased be

1 allowed the following options with respect to their
2 ownership interests within the unit: 1; Participation.
3 2; A cash bonus of \$5 per net mineral acre plus a one-
4 eighth of eight-eighths royalty. 3; In lieu of cash
5 bonus and one-eighth of eight-eighths royalty, share in
6 the operation of the well on a carried basis as a carried
7 operator under the following conditions: Such carried
8 operator shall be entitled to the share of production
9 from the tracts pooled accruing to his interest exclusive
10 of any royalty or overriding royalty deserved in any
11 leases, assignments thereof or agreements relating
12 thereto of such tracts but only after the proceeds
13 allocable to his share equal A; 300 percent of the share
14 of such cost allocable to the interest of the carried
15 operator of a leased tract or portion thereof. Or B; 200
16 percent of the share of such cost allocable to the
17 interest of the carried operator of an unleased tract or
18 portion thereof?

19 A. Yes. That's correct.

20 Q. Do you recommend that the order provide that the elect-
21 ions by respondents be in writing and sent to the
22 applicant at Equitable Resources Exploration, P.O. Box
23 1983, Kingsport, Tennessee, 37662-1983, attention Dennis
24 R. Baker, regulatory?

25 A. Yes.

- 1 Q. Should this be the address for all communications with
2 applicant concerning the force pooling order?
- 3 A. That's correct.
- 4 Q. Do you recommend the force pooling order provide that if
5 no written election is properly made by a respondent that
6 such respondent should be deemed to have elected to cash
7 royalty option in lieu of participation?
- 8 A. That is correct.
- 9 Q. Should the unleased respondents be given 30 days from the
10 date of the order to file written elections?
- 11 A. Yes.
- 12 Q. If an unleased respondent elects to participate should
13 that respondent be given 45 days to pay applicant for
14 respondent's proportionate share of well costs?
- 15 A. That's correct.
- 16 Q. Does the applicant expect a party electing to participate
17 to pay in advance that party's share of completed well
18 costs?
- 19 A. Yes.
- 20 Q. Should the applicant be allowed 60 days following the
21 recordation date of the order and thereafter annually on
22 that date until production is achieved to pay or tender
23 any cash bonus becoming due under the force pooling
24 order?
- 25 A. Yes.

- 1 Q. Do you recommend the force pooling order provide that if
2 a respondent elects to participate but fails to pay
3 respondent's proportionate share of well costs satisfact-
4 ory to applicant for payment of well cost the respond-
5 ent's election to participate should be treated as
6 having been withdrawn and void and such respondent should
7 be treated just as if no initial election had been filed
8 under the force pooling order?
- 9 A. Yes. That's correct.
- 10 Q. Do you recommend the force pooling order provide that
11 where a respondent elects to participate but defaults in
12 regard to the payment of well cost any cash sum becoming
13 payable to such respondent be paid within 60 days after
14 the last date on which such respondent could have paid or
15 made satisfactory arrangements for the payment of well
16 cost?
- 17 A. Yes.
- 18 Q. Do you recommend the force pooling order provide that if
19 a respondent refuses to accept any payment due, including
20 any payment due under said order or any payment of
21 royalty or cash bonus or if said payment cannot be paid
22 to a party for any reason or there is a title defect in
23 the respondent's interest that the operator create an
24 escrow account for the respondent's benefit until the
25 money can be paid to the party or until the title defect

1 is cured to the operator's satisfaction?
2 A. Yes.
3 Q. Who should be named the operator under the force pooling
4 order?
5 A. Equitable Resources Exploration.
6 MR. KAISER: I have no further questions for this witness, Mr.
7 Chairman.
8 MR. CHAIRMAN: Any questions, members of the Board?
9 MR. MASON: I'd like to call your attention to Page 4 of the
10 revised Exhibit B. At the bottom on the number of tracts
11 it skips from 24 to 25, Angela Mullins?
12 THE WITNESS: She has an undivided interest in tract 24.
13 MR. MASON: Did you talk to her?
14 THE WITNESS: Yes, sir. Not personally, but she has been
15 contacted.
16 MR. MASON: How was she contacted?
17 THE WITNESS: Through the mail and I believe we had some
18 individuals that contacted her by telephone.
19 MR. MASON: So they have talked to her by telephone?
20 THE WITNESS: Yes, sir.
21 MR. MASON: What I want to know is particularly what effort
22 was made to lease from her?
23 THE WITNESS: She was approached and offered the same terms
24 under an oil and gas lease that the rest of the individ-
25 uals were.

1 MR. MASON: I understand that, but how? What did you mail to
2 her?

3 THE WITNESS: We have a letter that we send to the individuals
4 that states the terms that we're trying to lease the oil
5 and gas rights. We try to contact them by telephone if
6 they're not local people to talk with them personally to
7 see if they have any concerns or questions and if they do
8 we try to answer those for them. We just to date have
9 not received any response from her one way or the other
10 as to whether she wants --

11 MR. MASON: Do you know for a fact that someone talked to her
12 on the phone?

13 THE WITNESS: Yes. We have agents that contact all of them.

14 MR. MASON: Do you know what her response was?

15 THE WITNESS: Apparently she's not interested in leasing
16 because we haven't received one back yet.

17 MR. MASON: Did anyone personally go talk to her?

18 THE WITNESS: No, not that I know of. I'm not familiar with
19 where Bowling Green, Virginia is. If it's a local
20 community, yes, we do try to contact all of them in
21 person.

22 MR. MASON: But if it's not you don't?

23 THE WITNESS: We do it by mail or telephone.

24 MR. MASON: And you think that's due diligence to get a lease?

25 THE WITNESS: Yes, I do.

1 MR. MASON: Thank you.

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

3 MR. MCGLOTHLIN: I was just wondering how they -- legally what
4 their stantz was since she has an undivided interest but
5 yet they have Dennis Wayne Flemming and his wife leased.
6 Legally how are you going to approach that?

7 THE WITNESS: We are approaching the VGOB for the purpose of
8 compulsory pooling her interest.

9 MR. CHAIRMAN: On the attachment to Exhibit A, going to tract
10 18, Lola Wright.

11 MR. KAISER: The plat?

12 MR. CHAIRMAN: Yes. Exhibit A. I'm going directly into the
13 attachment to that identified as 7-A, tract 18-R.

14 MR. KAISER: The letter R?

15 MR. CHAIRMAN: Yes. Lola Wright. It shows a dash tract
16 acreage -- three dashes to be exact. If I look over at
17 the revised Exhibit B, tract 18, interest within the
18 unit, should that correspond with that same number per
19 tract acreage? 2.046?

20 THE WITNESS: If you'll notice on the attachment the percent
21 of the unit for tract R or Lola Wright is 2.046 percent.
22 The Exhibit B only reflects the interest that the
23 individuals have within the unit. The tract acreage --
24 she may, in fact, have a tract larger than that. But
25 what participation it is within the unit is the 2.046

percent.

2 MR. CHAIRMAN: Right. What I'm trying to determine is what is
3 her tract acreage. Can we determine that? Is that left
4 out for any reason?

5 THE WITNESS: I'm not sure what purposes it was left out. I
6 can obtain that information for you.

7 MR. CHAIRMAN: I think we need to have that just to make sure
8 all the other numbers work out okay. Other questions,
9 members of the Board?

10 (Witness stands aside.)

11 MR. CHAIRMAN: You may proceed with your next witness.

12 MR. KAISER: Mr. Dahlin has been sworn.

13

14

BOB DAHLIN

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

17

18

DIRECT EXAMINATION

19

20 BY MR. KAISER:

21 Q. Mr. Dahlin, you are employed by whom and in what capac-
22 ity?

23 A. I'm employed by EREX as an operations specialist.

24 Q. And you've testified before the Virginia Gas and Oil
25 Board on numerous occasions and you're qualifications as

1 an expert witness have been accepted by the Board?

2 A. Yes, I have.

3 MR. KAISER: Mr. Chairman, we move that Mr. Dahlin once again

4 be accepted as an expert witness.

5 MR. CHAIRMAN: Any objection? Okay. Proceed.

6 Q. (Mr. Kaiser continues.) Do your responsibilities include

7 the lands involved here and in the surrounding area?

8 A. They do.

9 Q. Are you familiar with the proposed exploration and

10 development of the units involved here on the applicant's

11 proposed plan of development?

12 A. Yes, sir, I am.

13 Q. What is the total depth of the proposed initial well

14 under applicant's plan of development?

15 A. Approximately 6,125 feet.

16 Q. And that will include what formations?

17 A. The Devonian Shells, Berea, Weir, Big Lime, Raven Cliff,

18 Max, (Inaudible.) and Lee Sands.

19 Q. Will this be sufficient to penetrate and test the common

20 sources of supply in subject formations?

21 A. Yes, sir, it will.

22 Q. Is the applicant requesting the force pooling of conven-

23 tional gas reserves not only to include the designated

24 formations but any other formations excluding coal

25 formations which may be between those formations design-

1 ated from the surface to the total depth drilled?

2 A. Yes, sir, we are.

3 Q. Will the initial well be at a legal location?

4 A. It will be a legal location.

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

6 A. We anticipate 750 million cubic foot of gas to be

7 assigned to the drilling unit.

8 Q. Are you familiar with the well costs for the proposed

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

10 A. I am.

11 Q. Has an AFE been reviewed, signed and submitted to the

12 Board?

13 A. Yes, sir, it has.

14 Q. Was the AFE prepared by an engineering department

15 knowledgeable in the preparation of AFEs and knowledge-

16 able in regard to well costs in this area?

17 A. Yes, sir.

18 Q. Does this AFE represent a reasonable estimate of the well

19 cost for proposed unit well under applicant's plan of

20 development?

21 A. It does.

22 Q. What is the dry hole costs?

23 A. Dry hole costs are \$150,950.

24 Q. And the completed well cost?

25 A. \$263,250.

1 Q. Do these cost anticipate a multiple completion?
2 A. Yes, sir, it does.
3 Q. Does this AFE include a reasonable charge for supervi-
4 ion?
5 A. Yes, sir.
6 Q. In your professional opinion will the granting of this
7 application be in the best interest of conservation,
8 prevention of waste and protection of correlative rights?
9 A. Yes, it would.
10 MR. KAISER: I have no further questions of this witness, Mr.
11 Chairman.
12 MR. CHAIRMAN: Questions, members of the Board?
13 MR. EVANS: Mr. Dahlin, is the top of the lowest coal forma-
14 tion above all the formations that you are requesting
15 this order for?
16 THE WITNESS: There may be in the Lee section some coal
17 occurrences not typically -- not predominant coal that we
18 produce, for instance. But we intend not to stimulate or
19 produce from anything other than the conventional sources
20 of gas which would only be the Lee formation.
21 MR. EVANS: So there is a potential for coal measures to be
22 located below the uppermost formation that you gave on
23 your list there?
24 THE WITNESS: I believe yes, it probably would in this
25 situation. There is an occasional un-continuous deposi-

1 tion of coal in the Lee section. We typically don't
2 produce it. It is listed in the permit application.
3 This application consists of the fact.

4 MR. KELLY: This would be behind the surface pipe though,
5 correct?

6 THE WITNESS: Yes, it would. This section would be larger.
7 The Lee section would contain it but the coal protection
8 stream would be through all the coals.

9 MR. CHAIRMAN: Other questions?

10 MR. MCGLOTHLIN: Mr. Dahlin, could you refresh my memory --
11 and I know we've gone over this before -- on the proced-
12 ure that EREX uses to contract the labor for fracking and
13 drilling purposes?

14 THE WITNESS: We have a precument done once per year where we
15 secure bids from all third parties. It's part of that
16 process.

17 MR. MCGLOTHLIN: So they bid on a per well basis?

18 THE WITNESS: No. It's a service bid, a type of service where
19 we try to describe for them what we anticipate doing in
20 the year and we secure from them their bid to provide the
21 preparations.

22 MR. MCGLOTHLIN: On a drilling unit, that would be bid on a
23 per footage basis?

24 THE WITNESS: What's your question again?

25 MR. MCGLOTHLIN: Would the drilling bid be on a per footage

1 basis?

2 THE WITNESS: Yes, sir, it is.

3 MR. MCGLOTHLIN: And the fracking on a per well basis?

4 THE WITNESS: Footage drilling is typical. Where it's not
5 applicable we go to a daily rate. We request that from
6 them. The fracking again is anticipated on a per well
7 basis, but there's nothing to preclude them from coming
8 back in and doing another stage, for instance, on a well
9 at a later time. It's a service type request.

10 MR. MCGLOTHLIN: Do they bid on a per well basis plus the
11 number of fracks they do?

12 THE WITNESS: We try to give them some estimate of the volume
13 of work we anticipate doing during the course of a year.
14 There's no guarantees made, though, to those people at
15 that time.

16 MR. MCGLOTHLIN: I guess what I'm asking is do you pay them on
17 a -- do you pay an X amount of dollars for the well to be
18 on the site and then X amount of dollars per fracking?

19 THE WITNESS: Could you rephrase that? You lost me.

20 MR. MCGLOTHLIN: I'm having trouble phrasing it myself. When
21 you pay for a fracking service their bid will -- when you
22 let it out on bid or ask for proposals for the bid what
23 do you state in that proposal that request from them?

24 MR. KAISER: In other words, how does their bid break down.
25 Are they bidding on a hundred well frack jobs for the

1 year? Does the cost they give you in that bid reflect
2 what it costs to complete one well -- frack one well? I
3 think that's what he's asking.

4 MR. MCGLOTHLIN: Yeah.

5 THE WITNESS: Okay. We specify for them the different types
6 of fracks we do. We may do a foam frack on one well and
7 a conventional sand frack on another, a straight nitrogen
8 on one. We tell them what we anticipate doing, what
9 depths and what approximate volumes and they submit to us
10 based on sand loads, horsepower that was mentioned
11 earlier, various variables that we anticipate encounter-
12 ing during the drilling program for the upcoming year.
13 It's all done well in advance for the following year. We
14 tell them what we anticipate doing and then they give a
15 bid on a per stage basically completion.

16 MR. CHAIRMAN: Other questions?

17 MR. TWEED: Mr. Wampler, the total tract acreage on Lola
18 Wright is seven acres.

19 MR. CHAIRMAN: Seven acres?

20 MR. TWEED: Is that correct, Mr. Baker?

21 MR. BAKER: Yes, sir.

22 MR. EVANS: Mr. Chairman, I still have a question. This is a
23 technical question. If you set a coal protection stream
24 and say there's a coal seam but you're going to produce
25 from a formation higher than that, how do you do that?

1 THE WITNESS: I think probably what we're getting confused on
2 here is I have noticed on our logs that we have seen a
3 log response in that section that would be a typical coal
4 log response. It's not something we typically produce
5 from. It's not a commonly occurring coal -- am I going
6 in the direction of your question?

7 MR. EVANS: Yeah. My question is you're asking for a force
8 pooling to be able to produce from certain formations and
9 I can see a situation in this case -- and this is for my
10 own edification. Suppose that coal seam doesn't become
11 minable at some point in time. How do you produce
12 conventional gas from a formation that's above a coal
13 seam and protect the coal seam from the differential in
14 pressures and -- how do you do that is what I'm asking.

15 THE WITNESS: Again, probably I have alluded to the fact of a
16 coal occurrence that's probably not even named to my
17 knowledge. We don't, in this permit application, have
18 any recognized coals in the intervals that we're propos-
19 ing. I'm not sure if there's someone out that there may
20 have named the straight coal. I can't answer your
21 question probably to your satisfaction. But the zones we
22 anticipating producing from here are conventional
23 recognized formations that have been produced for a
24 numbers of years.

25 MR. EVANS: Are the Lee Sands part of those?

1 THE WITNESS: Yes, sir. You may well ask the same question
2 for all the other wells that have been drilled to date
3 and the same ambiguous answer would apply, I suppose, is
4 the best answer I can give you.

5 MR. EVANS: The reason I asked the question to begin with is
6 generally -- and I'll just say that you stop with the
7 Raven Cliff as a general rule and the Lee Sands don't
8 appear in your request.

9 THE WITNESS: Typically that's right. Again, I don't know
10 exactly why we have chosen in the permit application to
11 list the Lee Formation. As a matter of keeping our
12 application for force pooling consistent with the permit
13 it's appeared on the application.

14 MR. KAISER: Mr. Evans, as you know, the record will reflect
15 from the testimony by Mr. Dahlin that we're only seeking
16 to force pool the conventional gas. We have the wrap-
17 around question from the surface to the total depth
18 drilled and it will be excluding all the coal formations.

19 MR. EVANS: I do understand what you said right there as far
20 as it goes. What I'm asking you is how do you different-
21 iate and how do you protect a "potential coal seam" or
22 coalbed methane gas if you want to call it that?

23 THE WITNESS: In the completion -- during the pipe phases of
24 the operations we cement the annular volumes which
25 segregates the migration of that gas into a well bore.

1 The only other time that you can reestablish that
2 communication is during the stimulation at which time you
3 go through and with a chemical charge, burn through the
4 pipe, cement and communicate once again with those
5 reserves. That would, I suppose, be our protection of
6 the coalbed methane as we would not perforate any section
7 that is not named in a conventional formation in this
8 application. So the communication to the well bore would
9 be done in that manner.

10 MR. EVANS: Okay. That was a question I was asking technical-
11 ly, how do you go about doing that.

12 THE WITNESS: I'm sorry I couldn't pick up on that earlier.
13 During the drilling all these zones are commingled.
14 They're allowed to flow into the well bore. But subseq-
15 uent to that cementing then pipe then segregates the
16 formations. The reestablishment of the communication's
17 only done after perforations.

18 MR. CHAIRMAN: Other questions?

19 MR. McGLOTHLIN: One another, Mr. Chairman. Mr. Dahlin, on
20 your DWE or AFE, which ever one you refer to it as.

21 THE WITNESS: AFE.

22 MR. McGLOTHLIN: On the second page, IDC completion, you have
23 surface rig and per diem charge. Is that a total charge
24 that you anticipate or is that \$2,600 per day?

25 THE WITNESS: That's a total charge that we anticipate in the

1 clean-up.

2 MR. MCGLOTHLIN: Thank you.

3 MR. CHAIRMAN: Other questions?

4 (Witness stands aside.)

5 MR. CHAIRMAN: Do you have anything further?

6 MR. KAISER: Nothing further, Mr. Chairman.

7 MR. MASON: Mr. Chairman, I move the approval of this
8 petition.

9 MR. CHAIRMAN: Motion to approve.

10 MR. MCGLOTHLIN: Second.

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

12 If not, all in favor signify by saying yes. (ALL

13 AFFIRM.) Opposed say no. (NONE.) Unanimous approval.

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ITEM III

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3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 appeal from Jewell Smokeless Corporation of the
5 Director's decision, docket number VGOB-93/09/21-0408.
6 We'd ask the parties that wish to address the Board in
7 this matter to come forward at this time.

8 MR. FULMER: Mr. Chairman, I have some additional papers the
9 Board failed to received. (Pause.)

10 MR. CHAIRMAN: We'd ask the parties to identify themselves,
11 please.

12 MS. MORGAN: Good morning. My name is Jill Morgan. I'm with
13 Penn, Stuart, Eskridge & Jones here in Abingdon. I
14 represent Jewell Smokeless Coal Company this morning and
15 with me is Bob Brendlinger.

16 MR. McQUIRE: Grant McQuire for Ashland Exploration. To my
17 left is Steve Parks, Ashland Exploration. To my right is
18 Mr. Whitt, consultant to the Rogers interests.

19 MR. JOHNSON: Donald R. Johnson. I represent the Lon B.
20 Rogers-Bradshaw trust number one and Lon B. Rogers-
21 Bradshaw trust number two.

22 MR. CHAIRMAN: You may proceed.

23 MS. MORGAN: Mr. Chairman and members of the Board, what I
24 would like to do first is advise the Board that in our
25 petition for appeal we listed a number of technical

1 objections and they are shown as Paragraph 4-A and a
2 little six. We will withdraw those objections at this
3 time. The only thing that will be remaining for the
4 Board to look this morning, there will be two items, one
5 which I'll address first because the other will make the
6 second moot depending on the Board's decision. What we
7 would like to address at this time would be the applica-
8 tion of the law to the findings of the fact so that this
9 time what we would present will be our legal arguments
10 with regard to the decision that was reached by the
11 Director.

12 MR. McGLOTHLIN: Would you repeat what you're dismissing?

13 MS. MORGAN: It's 4-A and it's a little roman numeral six.

14 That's two pages worth of technical objections that we're
15 withdrawing.

16 MR. McGLOTHLIN: 4-A and one through six or just --

17 MS. MORGAN: No. The little roman numeral six that starts on
18 Page 3, runs to Page 4. Oh, I am sorry. I apologize.
19 My mistake. I didn't mean to throw you all off to start
20 with.

21 MR. McGLOTHLIN: 4-A seven and A through what?

22 MS. MORGAN: It ends on Page 5.

23 MR. CHAIRMAN: The entire section.

24 MS. MORGAN: Yes. We withdraw that entire section. I
25 apologize for that.

1 MR. CHAIRMAN: You may proceed.

2 MS. MORGAN: In the Director's decision -- and I'll paraphrase
3 from this so that -- I won't read it to you since you
4 have it in front of you. The Director found that the
5 proposed well by Ashland Exploration Inc. would interfere
6 with the present projected coal operations by Jewell
7 Smokeless and he specifically cited Virginia Code
8 annotated 45.1-361.11.B, Sections 1 and 4. I've provided
9 in the documents that I gave to you a copy of that Code
10 Section so that you would have it for you ease of
11 reference. Section 1 deals with the drilling location
12 and its proximity to the mining operations, specifically
13 looking at a shaft, entry travel way, air way, etcetera.
14 Then Section 4 deals with the extent to which the
15 proposed drilling unit or drilling location -- in our
16 situation it's the drilling location -- will unreasonably
17 interfere with the safe recovery of coal, oil and gas.
18 In Paragraph D on that same sheet it states that in
19 deciding on objections by a coal owner to the establish-
20 ment in our situation to the permit for a new well the
21 following safety aspects shall first be considered and no
22 order or permit shall be issued where the evidence
23 indicates that the proposed activities will be unsafe.
24 There is a specific prohibition against the issuance of a
25 permit. There is no discretion. There is no flexibil-

1 ity. And in this situation a decision was entered by the
2 Director where there was a finding of interference with
3 these two specific criteria. However, a permit was
4 issued last week. That is in direct contradiction to the
5 prohibitions listed in this statute. For that reason
6 alone, for this statutory violation, the decision of the
7 Director should be overrules and the permit should be
8 revoked. In addition to that operational issues have
9 come up. As I know the Director is aware, when a coal
10 operator comes within 500 feet and 200 feet of a well
11 then they must issue notice to the Director as well as to
12 the oil and gas operator. On a form -- I've provided a
13 form in the packet of information that I gave you and
14 that is the form that is sent out at 500 feet. The form
15 states that the undersigned mine operator proposed to
16 extend mine workings to within 500 feet of a referenced
17 well or vertical ventilation hole either permitted or
18 projected under an approved permit. The issuance of a
19 permit has issued the MSHA and the DMLR regulations on
20 this. Jewell Smokeless has therefore had to send out
21 notices because they are now within 70 feet of this 500
22 foot limit. For a well in which a permit has been issued
23 in violation of a statute but a stay is on it to where
24 the well at a most optimum conditions could be drilled
25 within six months which is now under appeal to the Board.

1 It is inconceivable that the Director's decision working
2 in conjunction with MSHA and the DMLR regulations to
3 require Jewell Smokeless to have to issue these notices
4 for a well that's not even existing and will not exist in
5 the next few months at a minimum. In addition to that,
6 once we hit that 200 foot mark the notice that is
7 required to go out, as again Mr. Chairman is aware, would
8 require that notice be given to the oil and gas operator.
9 At that time the oil and gas operator under the regula-
10 tions and the statutes has a fifteen day period in which
11 they may object to the mining within the 200 feet. When
12 that happens then a hearing is held. Now, this is
13 something that's outside of what you as a Gas and Oil
14 Board deal with, but it's simply for your informational
15 purposes so that you know the process that this permit --
16 the issuance of a permit is kicked in. There is then a
17 hearing. The coal operator cannot go within that 200
18 foot area until the hearing is held. So essentially
19 their mining operations are halted. In this instance if
20 an objection were filed and a hearing were required then
21 mining operations would be halted for a well is not there
22 and will not be there at least for a minimum of six
23 months under this order. Based on one, the legal
24 argument that we've presented as far as the statutory
25 violation that has occurred and then secondly the

1 operational issues that have been kicked in because of
2 the issuance of the permit we would ask that the decision
3 of the Director be overruled and that the permit be
4 revoked. In the alternative there is a provision for a
5 two year moratorium on drilling operations for the Board
6 to consider. The second issue that I would address is
7 one that is an objection to a finding of fact and I will
8 reserve that until Mr. McQuire makes his legal argument
9 on this issue so I won't take up the Board's time
10 unnecessarily.

11 MR. CHAIRMAN: Let me ask you just one question and then I'll
12 ask other Board members if they have questions. Can you
13 show me where you raised the argument of 500 foot in the
14 informal hearing? Or did that come --

15 MS. MORGAN: No, sir. That did not come up because the issue
16 of the permit -- the permit was not issued at that time
17 and until the permit is issued those requirements don't
18 kick in. The permit was not issued till last week. So
19 it did not become an issue until last week.

20 MR. CHAIRMAN: Thank you. Other questions, members of the
21 Board?

22 MS. MORGAN: Oh, I'm sorry. Mr. Brendlinger has informed me -
23 I have some other page cites but that was brought up in
24 the transcript at the time. Mr. Brendlinger has advised
25 me of that.

1 MR. CHAIRMAN: I was just not able to recall it or see it.

2 Well, I take that back. It's on Page 9.

3 MS. MORGAN: Yes, sir. It sure is. I just found that also.

4 MR. CHAIRMAN: Thank you. Mr. McQuire.

5 MR. McQUIRE: I have to admit I never cease to be surprised by
6 the angle of attack in this case. I have appeared and
7 been through permit application hearings and I thought
8 that the objections raised would be about safety or
9 interference with their coal. The testimony which I have
10 not heard Jewell rebut is that they were mining in the
11 Red Ash seam. We had filed a permit application and a
12 few days after the filing of the permit they filed some
13 mine plans saying they were going to mine through that
14 location. Our testimony down below dealt with their
15 objection to our drilling and I've not seen this issue
16 raised in any of the written objections filed to the
17 Inspector or anything filed with this Board. And frankly
18 I'm not prepared to address it. I'll let you all make
19 your decision on it, but we don't have a permit that's --
20 in effect, we have a permit that has been stayed. A
21 permit that was issued last week. It was contemplated
22 after the Inspector's decision that it would be issued
23 and it was issued. But Ashland can't do anything on that
24 permit for at least six months and I don't know where the
25 prejudice is to Jewell who testified at the hearing that

1 they would be in this area and out in five months. In
2 in three months, out in two months. And I've not heard
3 anything by Jewell rebutting that or objecting to the
4 Inspector's finding about that. If my calculations are
5 correct they should have already been through this area
6 and proceeding to start back out again as of this date.
7 I am prepared to put on some evidence about how this
8 procedure took place if necessary.

9 MR. CHAIRMAN: Mr. Johnson.

10 MR. JOHNSON: Thank you very much. For the Board's informa-
11 tion I represent a coal owner who is approximately -- I
12 think we've measured about 510 feet away from the
13 location and also an oil and gas owner who owns gas
14 around this particular location. Let me say that it's my
15 feeling as far as what the Inspector has done and on
16 behalf of my client --

17 MS. MORGAN: I raise just one objection, Mr. Johnson. I know
18 Mr. Johnson quite well. I'm not sure how you have
19 standing in this matter.

20 MR. JOHNSON: I represent an oil and gas owner that was
21 present at all the hearings.

22 MS. MORGAN: Is there a statutory standing which that falls
23 under?

24 MR. JOHNSON: We're also a coal owner that is approximately
25 50 feet away from this well site.

1 MS. MORGAN: Did you file an appeal of the decision that was
2 entered by the Inspector?

3 MR. JOHNSON: No, I did not. I was present at all the
4 hearings on behalf of my client and participated in those
5 hearings and shown as being there representing my clients
6 at those hearings.

7 MS. MORGAN: I believe, Your Honor -- you can tell I spend
8 more time in court than here. Under 361.36.A a person
9 withstanding under the provisions of 45.1-361.30 who is
10 aggrieved by the decision of the Director may appeal to
11 the Board subject to the limitations imposed by subsec-
12 tion B of this section by petition to the Board filed
13 within ten days following the appealed decision. I
14 believe under the terms of this 361.36.A a petition
15 should have been filed by any person who is considered
16 aggrieved by the Director's decision.

17 MR. CHAIRMAN: Are you aggrieved by the Director's decision?

18 MR. JOHNSON: No. I'm here in support of it. I'm not
19 aggrieved by it. My clients stood on the side of Ashland
20 Exploration in this matter. Believe that or not it's
21 true.

22 MS. MORGAN: Just for the record, Mr. Chairman, I would note
23 our objection to any statements made by Mr. Johnson and
24 that's only for the purposes of a record.

25 MR. CHAIRMAN: It's noted. So noted. You may proceed.

1 MR. JOHNSON: I would like to say what I was going to say.
2 Let me just tell the Board my feeling about what the
3 Inspector did here. This is the first time that I'm
4 aware that the Inspector had looked at a situation like
5 this and decided it based upon what he felt was the best
6 way to handle the situation under the provisions of
7 361.11. What he did was he said, they say they've got a
8 coal mine and it's right there. It's not miles away.
9 It's right on top of this location. So I'll give them
10 six months and let them get out of the way, let them have
11 their opportunity. Now, that's what he did. He said
12 here's the coal mine, it's right there, they say they
13 want to mine this site. We'll give them that opportu-
14 nity. So the permit gets issued but it's stayed for six
15 months under the terms of the Inspector's order. And he
16 was looking at 361.11.C.3 which is the feasibility of a
17 drilling moratorium for not more than two years in order
18 to permit the completion of coal mining operations. The
19 testimony was that the coal mining operations were right
20 on top of this location and that they were going to be
21 done in just a matter of a couple of three months. Now
22 the operator comes in and says to the Board, now wait a
23 minute, after the Inspector's made this decision I want
24 to complain to you because there are other regulations
25 that are not oil and gas regulations that impinge upon

1 our rights. I'm sorry about that. If that's the
2 situation I'm sorry for the coal operator. But the
3 Inspector and this Board have to uphold the oil and gas
4 act. They can't sit around and say well, wait a minute,
5 there are other regulations that might be applicable that
6 may give the coal operator some concern. This particular
7 oil and gas operator cannot do anything with respect to
8 the drilling of any gas wells for six months and that's
9 set in stone by the decision of the Inspector. Ashland
10 didn't want a drilling moratorium. Ashland wanted to
11 drill its well. And the Inspector decided that the best
12 thing to do in the Inspector's mind was to allow the coal
13 operations to be completed. This act provides for that.
14 The Inspector did something that he's not allowed to do
15 with regard to surface owners or other folks. He said
16 hey, wait a minute. And I think that was entirely proper
17 and I think that the objection of some interference by
18 other regulations after the fact of the issuance of the
19 Inspector, that's not something that this Board ought to
20 consider particularly since it wasn't raised at the
21 hearing and also particularly that it falls outside of
22 the realm of this Board's authority. It's something that
23 concerns the mining division of the DNME and I feel like
24 that the Board ought to look at what the Inspector has
25 said and whether or not that's proper under the Oil and

1 Gas Act. Conflicts between different regulatory schemes
2 I don't believe is something this Board ought to be
3 looking at in order to find that the Inspector did
4 something wrong.

5 MS. MORGAN: If I may, I have rebuttal on each point that was
6 raised. With regard to the operations being completed in
7 five months, if you'll note in your transcript on Pages 8
8 through 10 the discussions were regarding the Red Ash
9 seam of coal. Later there was discussion concerning the
10 Jaw Bone seam. On reference I particularly remember was
11 at the bottom of Page 27 in which Mr. McQuire and Mr.
12 Brendlinger are discussing operations in the Jaw Bone
13 seam being completed or occurring in 1998. That's
14 definitely not within a five month period. Second of
15 all with regard to us coming in afterwards and complain-
16 ing about the other possible regulations, as you will
17 note, we found on Page 9 of the transcript that that was
18 discussed at the hearing. In spite of all of this
19 that's an after thought. The main problem -- the main
20 objection that Jewell Smokeless has is exactly in what
21 Mr. Johnson said, that the Director did what he felt was
22 the best way to handle this decision. I have no doubt
23 that that is what he did, but it is not in accord with
24 the statute. It is in violation of the statute as his
25 findings are. That is the main issue upon which this

1 decision should be made.

2 MR. CHAIRMAN: Would you restate how it's not in accordance
3 with the statute?

4 MS. MORGAN: Yes, sir. Under 45.1-361.11.B it states that in
5 deciding on objections by a coal owner to the establish-
6 ment of a permit for a new well, which is what applies to
7 us, the following safety aspects will first be consider-
8 ed. No order or permit shall be issued where the
9 evidence indicates that the proposed activities will be
10 unsafe. Then in the decision it states the Director
11 finds that the proposed well by Ashland Exploration Inc.
12 would interfere with the present projected coal opera-
13 tions by Jewell Smokeless in accordance with the stand-
14 ards set out in 45.1-361.11.B of the Code of Virginia,
15 particularly subsections B.1 and B.4 at this time. So
16 here we have a statement that yes, it will interfere but
17 then we have an issuance of a permit.

18 MR. CHAIRMAN: Can you show that it's unsafe to have the well?
19 I mean, that's going back to the statutory language,
20 talking about concern over safety. How is it unsafe?

21 MS. MORGAN: We are not at this time objecting to the findings
22 of fact that are shown here. The only thing that we're
23 objecting to is the application of the law to fact. The
24 decision has already been made that interference would
25 occur. That decision has already been made.

1 MR. MASON: Let me just ask you, if you read the second part
2 of the Director's decision regarding this it seems to me
3 that it's not less than six months and submit a signed
4 agreement by both parties.

5 MS. MORGAN: Yes, sir.

6 MR. MASON: As I understand it this permit cannot be effective
7 until two things have occurred. One; six months have
8 expired and secondly that there's a signed agreement by
9 Ashland and Jewell Smokeless that the drilling can
10 commence. Is that correct?

11 MS. MORGAN: Yes, sir. That's what it states.

12 MR. MASON: If you refuse to sign that agreement can you not
13 effectively stop the drilling?

14 MS. MORGAN: yes, sir, we could.

15 MR. MASON: Than how are you prejudiced?

16 MS. MORGAN: Because of the issuance of the permit and the
17 MSHA and DMLR regulations that come into effect we are
18 required to leave a pillar of coal of 200 feet around a
19 well that does not exist. Now, if the permit had not
20 been issued we would be able to mine straight through.
21 There would be no problems as far as leaving --

22 MR. MASON: I understand that, but this Code Section specific-
23 ally says that you have -- the right to object and not
24 have this permit issued all relate to mine safety.
25 You're talking about -- the issue here is a question of

1 how much recoverable coal there is.

2 MS. MORGAN: That's a completely separate issue.

3 MR. MASON: I know that but --

4 MS. MORGAN: The decision has already been made as far as the
5 safety factors.

6 MR. MASON: But --

7 MS. MORGAN: I'm sorry. I don't follow what you're saying.

8 MR. MASON: Well, 361.11 provides that the Director will not
9 issue the permit if the proposed activities will be
10 unsafe and then it cites in 1 and 4 the two he relied on.
11 What you're telling us is that you're complaint relates
12 to the effect of having the permit issued --

13 MS. MORGAN: At this time. Yes, sir.

14 MR. MASON: And the effect that has on the amount of recover-
15 able coal that your client can remove, is that correct?

16 MS. MORGAN: That's one factor. Yes, sir.

17 MR. MASON: How does that relate to safety?

18 MS. MORGAN: We have already addressed that at the other
19 hearing. That decision has already been made by the
20 Director, that it would interfere. And we're not
21 objecting to that. We're not raising any issue of that.
22 We're agreeing with it. I mean, this is an entirely
23 different issue as far as the safety factors are concern-
24 ed. That was something that was decided at the July
25 hearing. I'm sorry. I don't follow you.

1 MR. CHAIRMAN: Will you complete the mining or have you
2 completed the mining in the area within six months?
3 MR. BRENDLINGER: At our last hearing on July 27th which was
4 approximately a month and a half ago -- we are within 570
5 feet today. We are turning our panel going off to the
6 right hand side. We will in all probability complete the
7 mining within the time that we've stated. Of course,
8 again there are things that come up. We are in the
9 process of acquiring another adjoining tract. As we
10 enlarge our mining boundary then also our mining projects
11 changed accordingly.
12 MR. CHAIRMAN: If you had a permit issued with a stay would
13 that not, in fact, allow you to present that information
14 -- I'm not trying to -- I'm going to draw the same lines
15 as you are about us getting into MSHA and the Division of
16 Mines territory. But could you not show that the intent
17 of that was that you be allowed to go ahead and mine that
18 area prior to that well going in by that very issuance
19 and stay which stipulated that?
20 MR. BRENDLINGER: On your current forms and policy at 500 feet
21 and at 200 feet we need to give notification on a
22 permitted well.
23 MR. CHAIRMAN: I understand.
24 MR. BRENDLINGER: So then as we -- we have sent a notification
25 yesterday -- the 500 foot notification that we'd be

1 mining within the 500 feet to the Oil and Gas Director
2 and to the well operator and to the Division of Mines.
3 MR. CHAIRMAN: Do you anticipate any problems of being able to
4 go ahead and mine within the 500 feet or the 200 feet?
5 MR. BRENDLINGER: The 200 feet there is a possibility that an
6 objection may be rose -- come about within the fifteen
7 days that Mr. Childress has.
8 MS. MORGAN: I believe, just for further verification if you
9 would allow hearsay, Mr. Brendlinger spoke to Mr.
10 Childress about this very problem and correct me if I'm
11 wrong but he indicated that he could not say yes, no,
12 maybe as far as what would happen within the 200 foot.
13 He could make no statements about that.
14 MR. MASON: I'm just trying to get it clarified. We talked
15 about the Red Ash and the Jaw Bone. Are we talking about
16 both seams or --
17 MS. MORGAN: Both seams. Now, Red Ash will only be completed
18 if everything goes optimum within the next five to six --
19 well, from the July hearing, within that five to six
20 month time period. But the Jaw Bone seam is not project-
21 ed, and this is in your transcript, to be mined until
22 1998.
23 MR. MASON: I understand that. But the discussion that you're
24 making about the permit and the notice that you all have
25 had to file on the 500, has that all occurred with

1 respect to both seams or just one?

2 MS. MORGAN: Just the Red Ash seam.

3 MR. CHAIRMAN: Do you have a mine plan on file for the Jaw

4 Bone?

5 MS. MORGAN: I don't know.

6 MR. BRENDLINGER: The Jaw Bone we do have a plan on file. We

7 have a PMU through the DMME.

8 MR. CHAIRMAN: For this area?

9 MR. BRENDLINGER: For this particular area.

10 MR. McQUIRE: I'm sorry, but on Page 27 of the transcript you

11 say that you don't have one on file.

12 MR. BRENDLINGER: What's happened with us is we have picked up

13 -- there's two small adverse tracts that we have picked

14 up early in the past year. The one that this particular

15 well is on is -- I guess Ashland refers to it as the Ray,

16 et al. We refer to it as the Ray Intra-Lavisa tract.

17 It's a 74.1 acre tract which we acquired on May 11th and

18 we sent in the notice to DMLR as far as the extended PMU

19 to cover the area. And then we have the area in both --

20 well, the Tiller seam and above. So that covers the Jaw

21 Bone and Red Ash seams.

22 MS. MORGAN: I have a copy of what was filed on May 28th for

23 both seams. I only have one. I'm sorry.

24 MR. McGLOTHLIN: May 28th of this year?

25 MS. MORGAN: Yes, sir.

1 MR. BRENDLINGER: We have other copies. We were just follow-
2 ing our standard procedures as far as what we have to do
3 as far as regulatory agencies, as far as submittal, as
4 far as DMLR and the Division of Mines and MSHA. We're
5 just following the policies that are out there.

6 MS. MORGAN: Under 45.1.27 which is the statute concerning the
7 filing of maps coal operators are required to file maps
8 and update them on a regular interval twice within every
9 twelve months; between December 1st and February 1st and
10 between June 1st and August 1st. Those are the statutory
11 requirements for a coal operator.

12 MR. MCGLOTHLIN: This can be answered by either party. When
13 was the original permit for the well filed?

14 MR. McQUIRE: I think it may help if I give you a chronology.
15 The original permit was filed in February of 1993.
16 Jewell filed an objection. We had our first hearing on
17 March 31st. The parties agreed to agree upon alternate
18 locations.

19 MS. MORGAN: I object to that paraphrasing.

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

21 MR. McQUIRE: You can refer to the transcript, if you would.
22 A letter went out on April 27th from Ashland Exploration
23 giving Jewell four alternate locations. On May 5th --
24 this is in the transcript and I can put the letters into
25 evidence -- Ashland received a letter from Jewell saying

1 that the third location, location 35-C, was the preferred
2 location. On June 14th Ashland filed its permit applica-
3 tion for the 35-C location. On June 17th Jewell wrote a
4 letter to Ashland saying this location is fine but you
5 must agree to a seven point stipulation. Then on June
6 18th Jewell filed mine plans on the Red Ash seam that
7 went right through the area on which Ashland had filed a
8 permit unknown to Ashland and frankly it caught Ashland
9 and the Inspector by surprise at the hearing that there
10 were mine plans filed after Ashland had filed its permit
11 for the location that Jewell preferred and given notice
12 to Jewell.

13 MR. McGLOTHLIN: Would you like to give your interpretation of
14 the permit chronology?

15 MS. MORGAN: Yes, thank you. I only have a few minor objec-
16 tions. With regard to the letter dated May 5th that Mr.
17 McQuire mentioned, I would like to complete the rest of
18 the letter that he mentioned. We stated, "We have
19 determined at this particular time the 35-C location is
20 the preferred location. Please understand that our
21 present approval of this particular location is not
22 intended to be a continuing approval but would be
23 dependant on our mineral lease acquisitions in this area
24 and any mine plans that we develop concurrent with those
25 lease acquisitions." The other thing that I have an

1 objection to is the "complete surprise" with which Mr.
2 McQuire and his clients were taken. There has been
3 knowledge for many months that this acreage was under
4 bargaining as far as negotiating for the acquisition of
5 this tract. This document was filed on May 28th with
6 DMLR which includes a map which is not a mine map but it
7 does include a map showing that this acreage was included
8 in the acquisition. Then there's also a statement --

9 MR. MCGLOTHLIN: Are you in agreement that the original permit
10 was asked for in February of 1993?

11 MS. MORGAN: For a different location. The application for
12 this permit was not filed until June 14th, I believe. I
13 may be wrong about the 14th but I'm sure about June.

14 MR. MCQUIRE: She's right about the different location. There
15 were some problems and we worked with Island Creek and
16 with Jewell to accommodate them and agreed that we would
17 dismiss it and agree upon alternate locations which
18 Ashland did. It submitted four alternate locations and
19 then received the correspondence saying this is the one
20 we prefer.

21 MR. MASON: Mr. McQuire, in looking at this 200 foot and 500
22 foot coal situation, what is your position -- I mean,
23 what can you all live with as far as how close they can
24 mine to your drilling operations? Can you make a
25 statement about that?

1 MR. McQUIRE: We assumed, as did the Board, that they would
2 mine completely through it. There is no well there.
3 There's no safety concern for us. We assumed during
4 this moratorium that they would mine all the way through
5 and all the way back out.
6 MR. MASON: And you wouldn't object to that?
7 MR. McQUIRE: No.
8 MS. MORGAN: If Ashland would be willing to sign a waiver
9 today of their right to object to the 200 foot limit on
10 the Red Ash seam that would take care of that operational
11 problem as far as we're concerned. It would not take
12 care of the issuance of the permit problem that we have
13 in violation of the statute, but that would
14 definitely --
15 MR. MASON: If you solve it with regard to the Red Ash seam
16 then the other objection you have is the effect on the
17 Jaw Bone seam, is that correct?
18 MS. MORGAN: Yes, sir. That's correct.
19 MR. MASON: If we could resolve that wouldn't that resolve it
20 all?
21 MS. MORGAN: If we could resolve it, yes, sir.
22 MR. McQUIRE: It was testified their Jaw Bone plans were not
23 on file --
24 MR. MASON: I understand that.
25 MR. McQUIRE: -- and it was 1998.

1 MR. MASON: Do you know what your operational limits are as
2 far as what you all can operate within safely as far as
3 the coal pillars for that Jaw Bone seam?

4 MS. MORGAN: I have an operational question. I am not by any
5 means an engineer. But if this particular seam is mined
6 through, the well goes into place, is there any problem
7 with drilling the well through a mined out area? Is that
8 not something that Ashland has done on many occasions?
9 So that in the Red Ash seam a pillar of coal would not
10 require -- there wouldn't --

11 MR. MASON: That's correct.

12 MR. McQUIRE: We wouldn't require it and assume that it
13 wouldn't be there frankly.

14 MR. MASON: Yeah. That's what he's saying.

15 MS. MORGAN: Then the problem would arise if the well goes in
16 at a later date in the years to come when Jewell Smoke-
17 less reaches the well in the Jaw Bone seam.

18 MR. MASON: Right.

19 MS. MORGAN: If Ashland would agree to plug the well when we
20 reach that area -- I'll try for anything.

21 MR. MASON: What about the fact -- the mine plan that's on
22 record with respect to the Jaw Bone seam, is it a
23 longwall operation?

24 MR. BRENDLINGER: Yes.

25 MR. MASON: Are the panels in there? Do you know where this

1 well would currently overlay those panels? Does anybody
2 know?
3 MS. MORGAN: Do we have that?
4 MR. BRENDLINGER: It would be in the location as proposed
5 35-C.
6 MR. MASON: I understand that, but do you know how that fits
7 into your mine plan? Are we talking about something -- I
8 mean, how much of a problem would it be -- it seems to me
9 that one, that the Red Ash seam that there isn't a
10 problem. If they're going to let you --
11 MS. MORGAN: If we have a waiver of objection then you're
12 right.
13 MR. MASON: Okay. He says he'll do that.
14 MS. MORGAN: Okay.
15 MR. McQUIRE: If they can do it within the six months.
16 MR. MASON: I understand.
17 MR. BRENDLINGER: We basically try to work out an agreement
18 which we have worked out with several other companies
19 that do -- it does state as far as temporary or permanent
20 plug in as required by a mining plan. And that's
21 something that was discussed with Ashland and we could
22 not come to agreement with that on the Jaw Bone seam.
23 MR. McQUIRE: We had a seven point stipulation given to us and
24 we said basically we can live with all of them except you
25 are asking Ashland to bear the plugging costs and the

1 cost of moving gathering connection lines. We ordinarily
2 don't bear that cost. If the mine operator wants to go
3 through then they bear the cost. But we had no problem
4 in our discussion with agreeing to plugging or moving the
5 lines temporarily. This Jaw Bone is so hypothetical.
6 We've seen Red Ash move around and we're talking about
7 1998. I'm not sure -- there were no plans on file. I'm
8 not sure what will ever happen in 1998.

9 MR. CHAIRMAN: Well, Mr. Mason was trying to see if there's a
10 point of agreement of the parties and if that can work
11 out, fine. I think clearly what we have before us and
12 what I'll go ahead -- unless the parties want some time
13 to talk this over we'll go ahead and deal with the issue
14 of whether or not the Inspector improperly issued this
15 permit.

16 MS. MORGAN: Yes, sir.

17 MR. BRENDLINGER: We did, Mr. Chairman, discuss this issue
18 prior to the start up of the last hearing on -- I guess
19 it was July 27th and we could not come to terms then.

20 MS. MORGAN: So if the Board would make their decision then
21 the parties can go on from there with the rights that
22 they wish to follow.

23 MR. CHAIRMAN: I think it has been clearly laid out for the
24 Board what its decision must rely upon. The Board has to
25 go to in deciding on objections by a coal owner to

1 establish -- this is 361.11.B. Establishment of drilling
2 unit, a permit for a new well or the stimulation of
3 coalbed methane gas the following safety aspects shall be
4 considered. No other permit shall be issued where the
5 evidence indicates that the proposed activities will be
6 unsafe. It's been alleged that the permit as issued is,
7 in fact, in direct conflict with that portion of the
8 statute. Are there any further questions of the members
9 of the Board or any further statements?

10 MR. McQUIRE: I would just say that it's not a permit in the
11 sense -- it is an ineffective lifeless permit that is
12 stayed for six months.

13 MR. JOHNSON: I'd like to say something about that. What
14 Section B is talking about is no permit will be issued
15 which will create a safety problem. What Mr. Fulmer has
16 done is he said wait a minute, we're not going to have a
17 safety problem here because I'm going to take the
18 moratorium provision and I'm going to put a requirement
19 in addition to that that says that the operator and --
20 the well operator and coal operator have to agree that
21 it's okay. So what he's done is he's said this is safe
22 if the coal is gone. This is entirely safe. Whether or
23 not Jewell Smokeless might have to leave a small barrier
24 to allow the well to be drilled, that's a whole other
25 issue. But in terms of whether or not the Inspector has

1 complied with the statute I think he absolutely complied
2 with the statute in that he took the lead that the
3 statute allows to give a moratorium to the drilling of a
4 well which made the drilling of the well safe because the
5 coal mining would already have been completed when the
6 well is drilled. That's the decision the Inspector made.
7 I also want to point out is I don't think the Board
8 really has any business to project and think about some
9 coal mine that might come down the pipe five or six years
10 from now based on a bunch of maybes. I believe these
11 operators want to work these things out. I don't think
12 that anybody ought to be required by this Board to
13 permanently or temporarily plug wells at their own
14 expense. Certainly if they want to agree to that that's
15 their own business. I don't think the Board should be
16 making those kinds of decisions based upon speculative
17 mining operations in the future. I do believe that what
18 the Inspector did was entirely lawful and did not violate
19 any statutes. He is not proposing to anyone that this
20 permit effects the safety of coal miners.

21 MR. McQUIRE: And I would say it was also the relief requested
22 by the petitioner both at the hearing and in the objec-
23 tion to the Inspector, please give us a moratorium, the
24 longer the better.

25 MS. MORGAN: Mr. Brendlinger has just informed me that as far

1 as this being a make-believe mine that a permit was
2 issued for the Jaw Bone seam in early 1990. Therefore,
3 all the permitting processes would have been gone through
4 for this mine in order for the permit to be issued.

5 MR. CHAIRMAN: Is this area which would be designated the
6 location of this well in the approved mine plan or has a
7 mine plan been on file?

8 MR. BRENDLINGER: Well, what we haven't done is -- the PMU and
9 all that has been addressed.

10 MR. MCGLOTHLIN: What is PMU?

11 MR. BRENDLINGER: Proposed mining area through the DMLR, we've
12 address that. That encompasses all the area prior to --

13 MR. CHAIRMAN: But you don't have a mine plan for that
14 particular area in the Jaw Bone, is that correct?

15 MR. BRENDLINGER: We have a mine plan. It's the not -- the
16 one with this particular area is not on file. But the PMU
17 was -- we amended the PMU to cover that on May 28th, to
18 cover that additional area. So that was prior to the
19 submittal of their permit application on June 14th.

20 MR. CHAIRMAN: You have submitted one that does have the mine
21 plan?

22 MR. BRENDLINGER: With the PMU which addresses that we'll be
23 mining within that area at some point.

24 MR. CHAIRMAN: Not the PMU but the mine plan itself?

25 MR. BRENDLINGER: The mine plan itself, we have not submitted

1 the recent mine plan.

2 MS. MORGAN: Those are two separate documents.

3 MR. CHAIRMAN: Right. I understand. But it has statutory
4 significance as well.

5 MS. MORGAN: Yes, sir.

6 MR. KELLY: I'd like to ask if a waiver by Ashland on these
7 notifications requirements would satisfy that concern on
8 Red Ash?

9 MS. MORGAN: As to the Red Ash seam, yes, sir, it would.

10 MR. KELLY: Is Ashland willing to do that?

11 MR. McQUIRE: I guess if Jewell will then agree to sign that
12 agreement in six months saying it's safe for us to drill.

13 MS. MORGAN: No.

14 MR. MCGLOTHLIN: I don't think the question is for us to
15 determine if Ashland will sign an agreement or not.
16 That's something that should be worked between the
17 parties privately.

18 MR. CHAIRMAN: I think the Board members were just trying to
19 see if the parties were that close can you go ahead and
20 work it out among yourselves. But it appears that that
21 possibility has been explore and the parties --

22 MR. McQUIRE: It has at length and we even took a lengthy
23 break at the beginning of the Inspector's decision and
24 talked it out.

25 MR. CHAIRMAN: I sense that the parties don't think that a

1 resolution is here but perhaps after the decision it will
2 be worked out anyway.

3 MR. HARRIS: I have a question about the moratorium. It's a
4 legal question actually. If the permit is issued and
5 then a moratorium is in place is the permit legally still
6 there?

7 MR. CHAIRMAN: Yes. That's a valid permit.

8 MR. HARRIS: The other question about the 200 feet and the 500
9 feet -- I know that's not in front of us -- but those
10 things do have to be done then -- the filing and all?

11 MR. CHAIRMAN: Right. Any other questions? Do I have a
12 motion?

13 MR. MCGLOTHLIN: I move that we uphold the Inspector's
14 decision.

15 MR. CHAIRMAN: A motion to uphold the Inspector's decision.

16 MR. MASON: Second.

17 MR. CHAIRMAN: A motion and a second. Any further dis-
18 cussion? If not, all in favor signify by saying yes.
19 (SOME AFFIRM.) Opposed say no. (MR. EVANS DENIES.) One
20 no by Mr. Evans.

21 MS. MORGAN: May I address we second issue which I was saving
22 so I wouldn't have to take up the Board's time? The
23 second issue that we have in an objection to a finding
24 of fact which states -- it's at number E -- that Jewell
25 in the hearing agreed in cross-examination that mining on

1 and in the vicinity of the proposed well would be
2 completed in five months. I've included in each of your
3 packets our proposal of what we would like the finding of
4 fact to state as to E. This specifically -- the five
5 months dealt only with the Red Ash seam. And in the
6 hearing both the Red Ash seam and the Jaw Bone seam were
7 discussed. There should be a single sheet of paper in
8 what I handed to you. I gave a packet to Mr. McQuire
9 also.

10 MR. McQUIRE: I have lots of papers in front of me.

11 MR. CHAIRMAN: One page, one paragraph.

12 MS. MORGAN: Yes.

13 MR. McGLOTHLIN: You're asking to submit this?

14 MR. MASON: She wants it made a part of the record.

15 MS. MORGAN: We would like under the finding of fact E to be
16 revised to read as this because it's in the transcript.
17 What appears here is complete as far as it goes for the
18 Red Ash seam, but it does not discuss the Jaw Bone seam.

19 MR. CHAIRMAN: Mr. Fulmer, let me ask you a question. What is
20 your reasoning for not including the provision on the Jaw
21 Bone?

22 MR. FULMER: There was no mining plan.

23 MR. CHAIRMAN: Do you have anything, Mr. McQuire?

24 MR. McQUIRE: Frankly I think this is what we were talking
25 about here -- the five months we were talking about the

1 Red Ash. And that was the safety concern that was
2 addressed by the Inspector.

3 MS. MORGAN: Would you have any objection then to making the
4 finding of fact read as what I've placed before you?

5 MR. McQUIRE: I've talked with my co-counsel and we'd like to
6 put a period after five months and delete the rest of it
7 because I think that's what we were talking about. It
8 was the Red Ash seam and I don't mind --

9 MR. JOHNSON: Just make it clear on the record it's the Red
10 Ash seam.

11 MR. McQUIRE: The record speaks for itself that we did talk
12 about the Jaw Bone seam.

13 MS. MORGAN: On Page 27.

14 MR. CHAIRMAN: To me what we really need to go to as far as
15 the Board is concerned -- and I'm certainly acting here
16 stepping aside from the chair and as a Board member is we
17 really need to see on which basis the Inspector made his
18 decision and whether or not the Inspector would consider
19 that a finding, not necessarily whether the parties would
20 agree that it's the finding.

21 MR. MASON: Yeah. Plus I don't see how we can turn around and
22 tell the Inspector what he thinks.

23 MS. MORGAN: That's the purpose of Section 9-6.14:12. The
24 agency shall afford opportunity for the formal taking of
25 evidence upon relevant fact issues. And that's the

1 position that we are taking, that you have the authority
2 under this statute which is the administrative procedure
3 act.

4 MR. CHAIRMAN: That this is a relevant fact that was not
5 considered?

6 MS. MORGAN: Well, it was --

7 MR. CHAIRMAN: Was not identified as a formal --

8 MS. MORGAN: In the finding of fact, that we discussed it,
9 correct.

10 MR. MCGLOTHLIN: Mr. Chairman, if we uphold the Inspector's
11 decision and that decision is based on the finding of
12 fact of A through E do we not condone that what Mr.
13 Fulmer has put here was correct to begin with?

14 MR. CHAIRMAN: Well --

15 MS. MORGAN: For the record then I will note our objection to
16 the findings of fact as Paragraph E in the Director's
17 decision.

18 MR. CHAIRMAN: That's fine. For the record, if the Board
19 wishes to act on this -- let's go ahead and take a vote
20 here. Do you want to act on this or not? Does the Board
21 consider that it's already accepted the Inspector's
22 finding of fact and the prior decision?

23 MR. MASON: Can I interject one thing before we do that?

24 MR. CHAIRMAN: Yes.

25 MR. MASON: Would you read that again?

1 MS. MORGAN: Uh-huh. "The agency shall afford opportunity for
2 the formal taking of evidence upon relevant facts and
3 issues in any case in which the basic laws provide
4 expressly for decisions upon and after hearing and may do
5 so in any case to the extent that informal procedures
6 under Section 9-614.11 have not been had or have failed
7 to dispose of the case by consent." And then it talks
8 about the reasonable giving of notice and then Section C
9 says, "In all such formal proceeding the parties shall
10 be entitled to be accompanied by and represented by
11 counsel, to submit oral and documentary evidence and
12 rebuttal proofs, to conduct such cross-examination." --
13 it goes through about that. "The residing officers of
14 such proceedings are in power to administer oaths and
15 appramations, receive probative evidence, exclude
16 irrelevant, immaterial and substantial privileged or
17 repetitive proofs" which I'll probably see with us and
18 "oversee an accurate verbatim recording of the evidence."
19 Then there's a whole other list of --

20 MR. MASON: Mr. Chairman, let me suggest something. I don't
21 think that provides personally our counsel can -- I don't
22 see how that gives us a right to go back and change some
23 finding he made. If she wishes to put on evidence and
24 put this into evidence before this Board to make this
25 statement, put him under oath, put this into evidence,

1 and have it as part of the record as a fact present today
2 it can be there. I don't see how we can go back and
3 change what he found. But if she wants to have that as a
4 part of the record as an uncontroverted fact it seems to
5 me the appropriate way to do that would be to have that
6 evidence presented today as a part of this hearing.

7 MS. MORGAN: That's what I've done in presenting the tran-
8 script to you for your consideration.

9 MR. MCGLOTHLIN: But is that part of this hearing?

10 MS. MORGAN: I will make it an exhibit.

11 MR. MASON: Yeah. It's already in the record.

12 MR. MCQUIRE: I won't object to it.

13 MR. CHAIRMAN: It's part of the record anyway.

14 MR. MASON: Okay.

15 MR. CHAIRMAN: You know, going back to the fact that the
16 Inspector's decision has been upheld by the vote of the
17 Board and then after the Inspector's decision is upheld
18 we have the additional request, I'm asking the Board do
19 you want to consider the additional request after having
20 made the decision?

21 MS. MORGAN: Well, as I indicated when I first started, if the
22 decision had been prog to Jewell Smokeless it would have
23 made moot this complete issue and I did not wish to waste
24 the Board's time by bringing it up.

25 MR. CHAIRMAN: I understand. We respect that. I'm not trying

1 to dismiss what we're doing. I'm trying to just get us
2 to the heart of the matter for the vote.
3 MR. McGLOTHLIN: Will Ms. Morgan certify to us that all owners
4 of the Jaw Bone seam within this area have been noticed
5 for this hearing today?
6 MS. MORGAN: No, sir.
7 MR. McGLOTHLIN: Then I see we might have a notice problem if
8 they're discussing Jaw Bone.
9 MS. MORGAN: How would that be relevant to the issue of our
10 objection? I don't know that we're required statutorily
11 or regulatory to give such notice to those individuals.
12 MR. JOHNSON: They got notice in the well application. They
13 would have notice that there was a hearing on the well
14 application.
15 MS. MORGAN: And if they did not attend and be represented
16 then they would waive any additional notice to any
17 additional procedures under that permit.
18 MR. JOHNSON: This statute narrows the participants if you
19 read it carefully. It is a microscopic type of statute.
20 MR. McGLOTHLIN: I just wanted to make sure.
21 MR. CHAIRMAN: We're clear on those.
22 MR. McQUIRE: I won't pretend to lecture on a field procedure,
23 but it is an issue that could be raised on appeal asking
24 the Court above to direct so and so to make specific
25 findings of fact that they think we're made.

1 MR. MASON: I would move that we not consider this on the
2 basis that our previous decision has rendered any
3 consideration as moot and note that the Board does, in
4 fact, recognize that the transcript of the hearing before
5 the Director included this information.

6 MR. KELLY: I second that.

7 MR. CHAIRMAN: We have a motion and a second. Further
8 discussion? All in favor signify by saying yes. (ALL
9 AFFIRM.) Opposed say no. (NONE.) The motion carries.

10 MS. MORGAN: Thank you for your time.

11 MR. CHAIRMAN: Thank you. We're going to adjourn for lunch.
12 We'll be back about 1:10.

13 (AFTER A LUNCHEON RECESS, THE HEARING CONTINUED AS
14 FOLLOWS:)

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ITEM IV

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3 MR. CHAIRMAN: The next item on the agenda is a petition from
4 Ashland Exploration for force pooling of a drilling unit
5 XXX-34. This is docket number VGOB-93/09/21-0405. We'd
6 ask the parties that wish to address the Board in this
7 matter to come forward at this time.

8 MR. McQUIRE: Ashland Exploration represented by Grant
9 McQuire, attorney, and witnesses Bernard Ulinco and
10 Richard Vanucun and as another party representative of
11 Pine Mountain Oil and Gas, Richard Rore.

12 MR. CHAIRMAN: Are there any others that wish to address the
13 Board in this matter? The record will show that there
14 are none. You may proceed.

15 MR. McQUIRE: Board members, as you know, Ashland has been
16 objecting to coalbed methane petitions before this Board
17 for many years and to my knowledge we've taken them upon
18 appeal and there's been no ruling as to the constitution-
19 ality or other issues that Ashland has raised. So today
20 we come to you in a new and unusual position as an
21 applicant. In doing so we're taking advantage of the
22 very statute that we have actually challenged. We're
23 doing it as a special circumstance and without prejudice
24 or arguments upon appeal, but we realize that if we win
25 upon appeal it may adversely affect our application that

1 we're bringing before you today. However that may be, we
2 are also in the unusual position of working with a coal
3 company, Pittston, Clichfield Coal, Pine Mountain.
4 Ashland still believes that it owns the coalbed gas as an
5 oil and gas lessee but realizes that that's a title
6 question and it's not before this Board. We also realize
7 that this Board has accepted certain arguments before and
8 that if Ashland hopes to process applications before this
9 Board it needs to do so consistently with the information
10 that you all have received before and have blessed
11 before. The only party that we seek to force pool today
12 is Georgia Pacific. Ashland has a lease -- an oil and
13 gas lease with Georgia Pacific. It is not a coalbed
14 methane specific lease. Ashland takes the position that
15 it includes coalbed methane, but we understand that there
16 may be a title dispute and my testimony will show that we
17 have talked to Georgia Pacific and just haven't disagreed
18 but haven't been able to reach an agreement. We ask that
19 their percentage be force pooled and escrowed. My first
20 witness I would like to present is Bernard Ulinco. I'd
21 like him to be sworn in if that pleases the Board.

22 COURT REPORTER: (Swears witnesses.)
23
24
25

1 BERNARD ULINCY

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. Please state your name for the record.

9 A. My name is Bernard J. Ulinicy.

10 Q. Where are you employed?

11 A. I'm employed with Ashland Exploration, Inc.

12 Q. Do your duties include management of the application
13 that's before this Board?

14 A. Yes, they do.

15 Q. Tell this Board your educational background.

16 A. I have a four year college degree. I graduated in 1975
17 from (Inaudible.) University in Pennsylvania. I attended
18 graduate school for two years in 1975 to 1977 at Indiana
19 State University in Indiana. After attending graduate
20 school I worked for a corporation in Houston by the name
21 of Aero-Surface Corporation for two years. In 1979 I
22 moved on to Amex Petroleum Corporation where I entered
23 the oil and gas industry as a land man and worked in
24 various capacities in the land department securing oil
25 and gas leases, securing titles, settling damage claims.

1 I moved from Amex Petroleum in Houston to Mitchell Energy
2 Corporation in Columbus, Ohio in 1981. I worked there
3 till 1985 again employed as a land man. I continued
4 securing oil and gas leases, clearing titles, working on
5 joint development contracts and a laesione for the
6 company on Federal leases. In 1985 I moved on to Ashland
7 Exploration, Inc., my current employer, in Ashland,
8 Kentucky and have been with them since 1985 doing a lot
9 of the same type duties as a senior land man with other
10 obligations such as representing the corporation in board
11 hearings, continuing in joint development contracts,
12 negotiating operating agreements, settling damage claims
13 and working with other companies to insure development of
14 the company's assets.

15 Q. Do you hold any offices in any professional associations?

16 A. Currently I am the president of the Appalachian Associa-
17 tion of Professional Land Men which represents a group of
18 about 240 land men in Virginia, West Virginia, Kentucky
19 for this past year.

20 MR. McQUIRE: At this time I would like to introduce and have
21 this Board accept Mr. Uliny as an expert witness in the
22 field -- as an expert land man and be able to testify as
23 an expert in title matters. Also he will be testifying
24 as a fact witness about the application.

25 MR. CHAIRMAN: Any objections? Without objection.

1 Q. (Mr. McQuire continues.) Mr. Uliny, are you familiar
2 with the application in this matter?
3 A. Yes, I am.
4 Q. Does Ashland Exploration intend to force pool the
5 drilling rights to the coalbed methane beneath the Tiller
6 Seam in the unit?
7 A. Yes.
8 Q. Does Ashland have a lease on a tract drilled within the
9 unit?
10 A. Yes.
11 Q. Will Ashland be the operator?
12 A. Yes.
13 Q. What is the nature of this well?
14 A. We have a joint venture agreement with the Pittston
15 Company, a coal company in the area. We are going to be
16 drilling a quadi-conventional well that's situated on
17 this property. Actually a twin location to an existing
18 conventional well that's situated on our Clinchfield coal
19 lease.
20 Q. Were efforts made to determine the addresses of the
21 interested parties?
22 A. Yes, they were.
23 Q. Are the addresses correct?
24 A. Yes.
25 Q. Did you cause notice of the application to be mailed to

1 those parties thirty days or more prior to this scheduled
2 hearing?

3 A. Yes.

4 Q. Are the green cards for the notices in your possession?

5 A. Yes, they are.

6 Q. Did all receive notice?

7 A. Yes.

8 Q. At this time I'd like for you to turn in those green
9 cards to Mr. Fulmer. (Pause.) Prior to the hearing were
10 efforts made to contact the parties to work out agree-
11 ments?

12 A. Yes.

13 Q. What efforts have you made?

14 A. Well, we're operating under an existing oil and gas lease
15 with Georgia Pacific Corporation. We are producing
16 conventional gas under that lease which is currently held
17 by production. At this point in time we don't have a
18 coalbed specific lease but we feel that our oil and gas
19 lease gives us the right to operate a coalbed methane
20 well on the property.

21 Q. You have approached Georgia Pacific about voluntarily
22 going along with this, have you not?

23 A. Yes.

24 Q. Have you received any definitive response from them?

25 A. No, I have not.

1 Q. If you have to offer a lease under this application what
2 would the terms be?
3 A. We would offer \$5 per acre as a bonus consideration for a
4 five year lease with a one-eighth royalty.
5 Q. Do you recommend that this order provide that any
6 election be sent to Ashland at its address in Section 1.1
7 of the application?
8 A. Yes.
9 Q. Should this be the address for all communications with
10 Ashland concerning pooling matters?
11 A. Yes.
12 Q. How much time from the date of the order should persons
13 have to file written elections?
14 A. Ten days.
15 Q. And if any person elects to participate how much time
16 from the date of the order do you recommend that such
17 person pay Ashland his or her share of the well cost?
18 A. Fifteen days.
19 Q. Does Ashland expect the electing party who participates
20 to pay in advance that party's share of drilling and
21 completion costs?
22 A. Yes.
23 Q. Does Ashland have available today a copy of the drilling
24 well estimate attached to the application in this matter?
25 A. Yes.

1 Q. Do you recommend that the force pooling order provide
2 that if any person elects to participate but fails to pay
3 or furnish security satisfactory to Ashland for payment
4 of well costs then such person's election to participate
5 shall be treated as having been withdrawn and such person
6 should be treated as if no initial election had been made
7 or such entity should be treated as if not initial had
8 been filed under the force pooling order?

9 A. Yes.

10 Q. Do you recommend that the force pooling order provide
11 that where a person elects to participate but is more
12 than 30 days in default with regard to payment of well
13 costs that any cash sum becoming payable to such person
14 or entity be paid instead towards such entity or person's
15 pro rata cost of such well costs?

16 A. Yes.

17 Q. Does Ashland seek to have any person who does not make an
18 election under the force pooling order to have been
19 deemed to have leased his interest in gas to Ashland
20 Exploration as the coalbed methane gas operator?

21 A. Yes.

22 Q. How large an area do you propose to pool?

23 A. We will be pooling an 80 acre square grid, 3X34.

24 Q. This is in the Oakwood Bed Extension area, isn't that
25 right?

1 A. That's correct.

2 Q. Are there any parties to this application which you wish
3 to drop?

4 A. No.

5 Q. You have an understanding with Clinchfield Coal Company
6 about this process, is that right?

7 A. That's correct.

8 Q. In Exhibit D on escrow recommendation Ashland has
9 provided on the small tract owned by Georgia Pacific
10 their interest for royalty, on the large tract -- there
11 are two tracts of coal as explained on the map. A small
12 triangular tract and what I will refer to as the large
13 tract. Is it my understanding that Georgia Pacific has a
14 20 percent interest in the oil and gas on the large
15 tract?

16 A. That's correct.

17 Q. And they have a 20 percent interest in the coal on the
18 large tract?

19 A. That's correct.

20 Q. Ashland has note on Exhibit D that the total royalty
21 interest to be escrowed on the large tract is 98.95
22 percent of the unit. Do I understand that you have
23 talked with Clinchfield Coal and they would like their 80
24 percent of that portion -- of royalties paid directly to
25 them pursuant to the agreement?

1 A. Yes.

2 MR. McQUIRE: At this time I want to introduce Mr. Brillhart
3 from Clinchfield Coal and simply have him affirm that
4 that is what they would like to do. If he could be taken
5 out of order and sworn just to affirm that.

6 MR. CHAIRMAN: That's fine.

7 MR. McQUIRE: I appreciate it.

8 COURT REPORTER: (Swears witness.)

9 MR. McQUIRE: Mr. Brillhart, you've heard testimony by Bern
10 Ulinco. Can you affirm that Clinchfield Coal would like
11 its 80 percent royalty to be paid directly to it and not
12 be escrowed?

13 MR. BRILLHART: That is correct. Both Pine Mountain and
14 Clinchfield are wholly owned subsidiaries of Pittston
15 Coal Company. Pine Mountain is the operator of oil and
16 gas interests which means coalbed methane as well as
17 conventional gas for development. Internally we have an
18 agreement with Clinchfield Coal that all royalties be
19 paid to Pine Mountain through Clinchfield, both being
20 subsidiaries.

21 MR. McQUIRE: I just have one last question for Mr. Ulinco.

22 Q. (Mr. Mcquire continues.) Are there any parties that you
23 now want to drop?

24 A. No.

25 MR. McQUIRE: That's all the questions I have of this witness.

1 MR. CHAIRMAN: Any questions, members of the Board?
2 MR. McQUIRE: I will be having a witness talking about well
3 costs.
4 MR. CHAIRMAN: Do you have permission from Pine Mountain and
5 Clinchfield to frack in the coalbed?
6 THE WITNESS: Yes, we do.
7 MR. CHAIRMAN: You do have that?
8 THE WITNESS: Uh-huh.
9 MR. CHAIRMAN: Is that on record?
10 MR. McQUIRE: It is before the Inspector. The Inspector found
11 in the permit hearing that we have satisfied the consent
12 to stimulate.
13 MR. McGLOTHLIN: Mr. Mcquire, are I right in my thinking that
14 the oil and gas and coal owner of this 79.163 acres is
15 the same?
16 MR. McQUIRE: Georgia Pacific has 20 percent, one-fifth.
17 Legally the coal owner and the oil and gas owner are
18 separate parts of Pittston if I'm not mistaken. They are
19 a sister or brother or affiliate company and that way
20 they're the same. But legally they are different
21 companies. Clinchfield Coal is a different company from
22 Pine Mountain Oil and Gas, both of whom have four-fifths
23 interest in their --
24 MR. McGLOTHLIN: Wholly owned subsidiaries of a different
25 company?

1 MR. BRILLHART: Wholly owned subsidiaries of Pittston Coal
2 Company.

3 MR. MCGLOTHLIN: Right. I was just looking to see if there
4 was any third party out there.

5 MR. BRILLHART: No.

6 (Witness stands aside.)

7 MR. McQUIRE: At this time I would like to introduce Mr.
8 Richard Vanucun to the Board and ask that he be sworn in.

9 COURT REPORTER: (Swears witness.)

10

11

RICHARD VANUCUN

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

14

15

DIRECT EXAMINATION

16

17 BY MR. McQUIRE:

18 Q. Mr. Vanucun, have you testified before this Board as an
19 expert before -- either this Board or its predecessor
20 board?

21 A. Yes, both.

22 Q. Would you briefly tell the Board your duties at Ashland
23 Exploration?

24 A. My duties at Ashland Exploration -- my title is engineer-
25 ing advisor. My duties primarily include analyzing

1 basically investments in the oil and gas industry. I
2 review wells with our geologists to determine the
3 reserves and the value of the proposals and make recom-
4 mendations to management on whether or not to drill
5 wells. That's my primary duty. I have other duties
6 relating to trouble shooting for production operations
7 and that sort of thing. I'm the reservoir and production
8 engineer.

9 MR. McQUIRE: At this time I would like to offer Mr. Vanucun
10 as an expert as a reservoir and production engineer.
11 I'll put testimony on about the value of drilling costs
12 and reservoir values.

13 MR. CHAIRMAN: Any objections? You may proceed.

14 Q. (Mr. McQuire continues.) Mr. Vanucun, what are the
15 estimates for production for this well in this unit?

16 A. We've estimated the recoverable reserves at 370 million
17 cubic feet.

18 Q. The estimates for production are 370 million.

19 A. Right.

20 Q. What are the estimated reserves for the unit?

21 A. Estimated reserves are 800 million cubic feet of gas.

22 Q. How much are the total estimated costs for the well?

23 A. \$215,000.

24 Q. That's reflected on Exhibit C, is it not, your AFE?

25 A. That's correct.

1 Q. Prior to this hearing you informed me that your estimated
2 costs would remain the same but did not inform me that
3 there were at least two items that need amending on the
4 AFE? Is that correct?

5 A. That's true. This AFE was actually prepared for a
6 somewhat slightly different location. This well has been
7 changed by a lease a little bit and this location was
8 prepared before the final currently permitted proposed
9 location was established. The overall costs should be
10 about the same. Since we are pointing this well -- or
11 the first line item on there, location, preparation and
12 maintenance should be considerably lower than the
13 estimated cost. However, the proposed TD on the original
14 well was fifteen to 150 feet. The proposed TD for this
15 well is 2,100 which in turn increases the cost of the
16 well. But the bottom line is pretty much close. We'll
17 stick with this total as a net cost of \$215,000.

18 Q. Does Ashland have a blanket bond on file to cover
19 reclamation costs?

20 A. They do.

21 MR. McQUIRE: I have no further questions for Mr. Vanucun. If
22 this Board would like to ask him questions.

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

24 MR. MCGLOTHLIN: Mr. Vanucun, Did you prepare this AFE?

25 THE WITNESS: No, I did not. It was prepared by the drilling

1 and engineering department.

2 MR. MCGLOTHLIN: First of all, it's not signed. I'd like to
3 bring that to your attention. Secondly, I think you're
4 offering us an invalid AFE. If you're telling me that
5 the site and prep is different and the drilling cost is
6 different I think you need to resubmit an AFE -- accurate
7 AFE.

8 MR. McQUIRE: I have to apologize. I did not know until after
9 filing this the inaccuracy. I wonder -- the costs that
10 are estimated, total costs, are accurate to Mr. Vanucun's
11 knowledge. I wonder and would request this Board if it
12 chooses to bless this application to allow us to file
13 within five days an AFE that reflects that Mr. Vanucun
14 has testified to today. I apologize for not having the
15 accurate numbers in front of you.

16 MR. MCGLOTHLIN: Also what's the -- if basically the gas and
17 oil and coal and everything is owned by the same people
18 why can't you just stimulate -- frack the coal seam and
19 stimulate and draw from the same well? Why do we need a
20 separate well?

21 THE WITNESS: It's cheaper to do it this way. Are you talking
22 -- a well completed in the Berea. It's continuing to
23 produce from the Berea. We're going to twin it with a
24 separate well. For example, the well will be hooked to
25 the pumping unit. To have a twin well with a pumping

1 unit on it is a something we don't want to get into.
2 It's not impossible, but it's kind of a nightmare and it
3 causes a lot of problems. You also have four and a half
4 inch casing in the existing well bore and have two
5 strings of piping -- two separate completions and a four
6 and half inch casing is ill advised. A prudent operator
7 would not set up a well for this that way.
8 MR. MCGLOTHLIN: You don't want to mingle the gas?
9 THE WITNESS: It's not a question of commingling the gas.
10 After the well is set up with a -- it has a separate
11 completion, a packer separating them, because you have to
12 set a pumping unit of some kind to dewater the coal.
13 Unless you want to dump all the water from the coal seams
14 down on the Berea and attempt to pump it back up from the
15 Berea, it's just -- as I say, it would be a mechanical
16 nightmare.
17 MR. MCGLOTHLIN: What are we talking about price wise?
18 THE WITNESS: Pardon me?
19 MR. MCGLOTHLIN: What are we talking about in the difference
20 in prices to drill a separate well or to twin this well?
21 THE WITNESS: What would it cost to twin the existing well?
22 MR. MCGLOTHLIN: Yes, sir.
23 THE WITNESS: I don't have a cost estimate for that and I
24 would not prepare one because it's -- as I point out,
25 from a production standpoint it's ill advised. You

1 wouldn't want to do it. Sometimes the initial cost of an
2 operation like that is not as significant as the cost of
3 trying to maintain and operate it. If you have some
4 mechanical problem later on you have to go in, say, to
5 recover tubing or something and when you have two strings
6 of tubing and a four and a half inch casing it becomes
7 very unlikely that you will be able to rework a well. It
8 would be ill advised. I wouldn't advise anybody to put
9 their money into a project like that. As I say, I can't
10 tell you that it's impossible to do that. It just
11 wouldn't be -- it's not generally done. It causes
12 problems and difficulty with working with such things
13 wrench pipes and small casing, not to mention rods --
14 there's a couple of rod pumps on a well and so forth. So
15 it's not practical -- what I'm testifying to is it's not
16 a practical possibility to duly complete this well as a
17 Berea and coal seam gas well.

18 MR. CHAIRMAN: Other questions?

19 (Witness stands aside.)

20 MR. McQUIRE: That's all I have.

21 MR. EVANS: Again with the AFE, when you sign it --

22 MR. McQUIRE: Pardon me?

23 MR. EVANS: With the AFE or DWE --

24 MR. McQUIRE: We will get that signed and updated with
25 accurate costs within five days.

1 MR. EVANS: Update your dates, too.

2 MR. McQUIRE: Update it as well.

3 MR. CHAIRMAN: Anything further? Do I have a motion?

4 MR. EVANS: I move that we accept the petition with the
5 stipulation that an accurate updated signed DWE is
6 submitted to the Inspector within five days -- five
7 working days.

8 MR. KELLY: I second that.

9 MR. CHAIRMAN: A motion and a second. Further discussion?
10 If not, all in favor signify by saying yes. (SOME
11 AFFIRM.) Opposed say no. (ONE DENIES.) The motion
12 carries.

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ITEM VI

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3 MR. CHAIRMAN: The next item on the agenda is a petition from
4 Ashland Exploration for force pooling of PKG-18 well.
5 This is docket number VGOB-93/09/21-0406. We'd ask the
6 parties that wish to address the Board in this matter to
7 come forward at this time.

8 MR. McQUIRE: Ashland Exploration by Grant McQuire. I want to
9 inform this Board that when we filed this force pooling
10 application there were many parties who had oil and gas
11 interest and there were six unleased Tolliver heirs.
12 Since the filing of this application four of those
13 Tolliver heirs have leased and I believe Mr. Uliny must
14 have read Mr. Mason's mind because yesterday he called
15 the two people who had not leased and they said that they
16 appreciated the call, that it had not been at the top of
17 their agenda but they would like to lease. Based upon
18 that information we would like to withdraw this because
19 we believe we will have everyone leased voluntarily.

20 MR. CHAIRMAN: Mr. McQuire, do you want to withdraw it or
21 continue it to the next time in case -- in the event the
22 lease didn't go through?

23 MR. McQUIRE: Well, if it wouldn't burden the Board I would
24 appreciate a continuance. I know I've begged for
25 continuances from time to time and I hate to ask for too

1 many.

2 MR. CHAIRMAN: I think under this circumstance the Board has
3 generally been favorable for continuances so you wouldn't
4 have to go back out and repetition in the event something
5 didn't happen.

6 MR. McQUIRE: We've made arrangements to send people out to
7 contact those two people, both of whom are out of the
8 State of Kentucky, and meet with them next week in hope
9 to have that under lease.

10 MR. CHAIRMAN: If there's no objection from the Board we will
11 continue that case until next hearing.

12 MR. McQUIRE: Would the Board allow me to dismiss this by
13 written notice to the Inspector once we have the said two
14 under lease without having to come back before the Board?

15 MR. CHAIRMAN: Yes. You may do that.
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ITEM VII

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3 MR. CHAIRMAN: The next item on the agenda is a petition from
4 Ashland Exploration for force pooling of the GPA-3 well.
5 This is docket number VGOB-93/09/21-0407. We'd ask the
6 parties that wish to address the Board in this matter to
7 come forward at this time.

8 MR. McQUIRE: Ashland Exploration by Grant McQuire, it's
9 attorney. I will also have Bernard Ulincoy from Ashland
10 Exploration testifying and Richard Vanucun from Ashland
11 Exploration testifying.

12 MR. CHAIRMAN: I'll just remind your witnesses they are under
13 oath and have been accepted to testify.

14 MR. McQUIRE: To summarize, we came before this Board earlier
15 this year with three force pooling petitions. In April
16 we withdrew those petitions based upon our understanding
17 with the parties. We felt we could voluntarily put them
18 together in voluntary units. One of the parties is a
19 school, Mountain Mission, and my testimony will show that
20 they have been contacted and have expressed a willingness
21 to lease not only what is in the circular unit but other
22 acreage as well. They're a nonprofit organization and
23 rely upon pro bona attorneys for work and Ashland has
24 consulted with a Grundy attorney who later consulted with
25 an Abingdon attorney. For whatever reason -- and I will

1 have testimony -- Mountain Mission has not been able to
2 respond to us, but upon information from Mr. Swartz I
3 don't believe they would oppose being force pooled. It's
4 just that it's not been a high priority for their
5 attorneys because they've been so busy on other matters.
6 It has been a high priority for Ashland to get this well
7 drilled and if we can work out something in the next
8 couple of weeks with Mountain Mission that is fine. But
9 it is important to Ashland to produce this well. At this
10 time I'd like to remind Mr. Ulincy that's he's under
11 oath. I would like to submit him as an expert land man
12 and have him testify as to title in this matter. Mr.
13 Ulincy has previously qualified as an expert before this
14 Board today. I will hand his resume out as an exhibit
15 qualifying him again. (Pause.) I would ask the Board to
16 accept his testimony as an expert land man and as a fact
17 witness as to the application.

18 MR. CHAIRMAN: Go ahead.
19
20

21 BERNARD ULINCY

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

DIRECT EXAMINATION

BY MR. McQUIRE:

Q. Mr. Uliny, are you familiar with the application in this matter?

A. Yes.

Q. Does Ashland Exploration intend to force pool the drilling rights in this unit?

A. Yes.

Q. Does Ashland have a lease on the tract drilled within the unit?

A. Yes.

Q. Will Ashland be the operator?

A. Yes.

Q. Are the addresses correct of the interested parties?

A. Yes.

Q. Were efforts made to determine the addresses of those interested parties?

A. Yes.

Q. Did you cause notice of the application to be mailed to those parties thirty days or more prior to this hearing?

A. Yes.

Q. Are the green cards for the notices in your possession?

A. Yes.

Q. Did you receive all of the returned receipts?

1 A. Yes.

2 Q. Would you please hand the green cards to Mr. Fulmer as
3 part of the record?

4 A. Yes.

5 Q. Prior to this hearing were efforts made to contact
6 parties to work out voluntary agreements?

7 A. Yes.

8 Q. What efforts have you made?

9 A. There is a small tract in the west end of the unit that's
10 owned or leased to C&R.

11 Q. In the unit map which is attached as Exhibit A is that
12 the shaded portion?

13 A. That's correct. That tract, as I was saying, is leased
14 to C&R. They have told us verbally in a phone conversa-
15 tion that they will farm out their interest to us and
16 they are currently in the position of preparing that
17 agreement. I do not have it in my possession right now.
18 Additionally we have another tract that makes up about
19 thirty percent of the unit, the tract that Mr. McQuire
20 referred to as the Mountain Mission tract. I've had
21 contact with them -- initially with a Ms. Debbie Dye who
22 represents the Mountain Mission School who directed me to
23 an attorney that represents them in Grundy. I've had a
24 conversation with him both on the phone and in person and
25 it appeared that we were moving toward an agreement of

1 lease. Unfortunately I'm here today to say that we do
2 not have that lease. He has enlisted the assistance of
3 another attorney as Mr. McQuire alluded to earlier, an
4 Abingdon attorney, and since the point in time when I
5 originally met with the attorney in Grundy I have had a
6 number of phone calls that I've attempted to make to this
7 attorney and I have not received any response.

8 Q. If you have to offer a lease to Mountain Mission what
9 would the terms be?

10 A. At this point in time if we were to offer a lease to
11 Mountain Mission Schools I would offer \$5 per acre as a
12 bonus consideration for a five year lease bearing a one-
13 eighth royalty interest.

14 Q. Do you recommend that the order provide -- let me make
15 sure. You rely upon C&R's word as far as the farm out,
16 is that correct?

17 A. That's correct.

18 Q. And you're not seeking to force pool them, is that
19 correct?

20 A. No, I am not.

21 Q. You are confident that you have an agreement with them?

22 A. I think it's pretty safe to say we have approached C&R on
23 other leases that they have, in fact, before this Board
24 on the Georgia Pacific A-4 and A-5 units, circular units
25 that were approved by the Board a number of months back.

1 C&R also farmed out their interest to us under other
2 leases, also the lessor being Buchanan Reality who's the
3 property that's under lease in this unit.

4 Q. Do you recommend that the order provide that any election
5 be sent to Ashland at its address in Section 1.1 of the
6 application?

7 A. Yes.

8 Q. Should this be the address for all communications with
9 Ashland concerning pooling matters?

10 A. Yes.

11 Q. How much time from the date of the order should these
12 persons have to file a written election?

13 A. Ten days.

14 Q. If any person elects to participate how much time from
15 the date of the order should such person have to pay
16 Ashland his or her share of the well costs?

17 A. Fifteen days.

18 Q. Does Ashland expect the electing party who participates
19 to pay in advance that party's share of the drilling and
20 completion costs?

21 A. Yes.

22 Q. Does Ashland have available today a copy of the drilling
23 well estimate attached to the application in this matter?

24 A. Yes.

25 Q. Do you recommend that the force pooling order provide

1 that if any person elects to participate fails to pay or
2 furnish security satisfactory to Ashland for the payment
3 of well costs then such person's election to participate
4 should be treated as having been withdrawn and such
5 person should be treated as if no initial election had
6 been made or entity should be treated as if no initial
7 had been filed under the force pooling order?

8 A. Yes.

9 Q. Do you recommend that the force pooling order provide
10 that where a person elects to participate but is more
11 than thirty days in default with regard to payment of
12 well costs that any cash sum becoming payable to such
13 person or entity be paid instead toward such entity or
14 person's pro rata cost of such well costs?

15 A. Yes.

16 Q. Does Ashland seek to have any person who does not make an
17 election under the force pooling order to have been
18 deemed to have leased his interest in gas to Ashland
19 Exploration as the gas well operator?

20 A. Yes.

21 Q. Do you recommend that the force pooling order provide
22 that if any person elects to lease his interest but
23 refuses to accept cash bonus or cash bonus cannot be paid
24 to a party for any reason or there is a title defect with
25 such person's interest that the operator create an escrow

1 account under the appropriate provisions of the Virginia
2 Code or otherwise to hold the money in an account to the
3 owner's benefit until the money can be paid to the party
4 or until the title defect is cured to the owner's
5 satisfaction?

6 A. Yes.

7 Q. Are you aware of the contractual unit which encroaches
8 onto the proposed unit A-3?

9 A. Yes.

10 Q. Is that unit reflected on the map attached as Exhibit B?

11 A. Yes, it is.

12 Q. How did you become aware of this unit?

13 A. We were informed by C&R.

14 Q. And you became aware of this after you had filed the
15 first force pooling application in this matter, isn't
16 that correct?

17 A. That's correct.

18 Q. Do you propose to include or overlap the encroaching unit
19 -- include it within the circle?

20 A. We propose to include the overlapping area of the
21 existing C&R conventional unit. It appears that is the
22 way that the Board has wished it to be treated in the
23 past.

24 Q. You reflect one could go either way, is that correct?

25 A. That's correct.

1 Q. But you are including it within this unit?
2 A. That's correct.
3 Q. How large of any area do you propose to include in the
4 unit?
5 A. It will be a 125.66 acre circle.
6 Q. Are there any parties leased that you now wish to drop?
7 A. No.
8 MR. McQUIRE: That's all the questions I have for Mr. Uliny.
9 MR. CHAIRMAN: Mr. Mcquire, how do you propose that we include
10 C&R in any pooling order? It would be all interest that
11 would be unleased.
12 MR. McQUIRE: If that's the Board's position we have no
13 problem with that. We do have a -- technically we're not
14 under lease. We don't have a farm out with them in
15 writing today. If the Board feels more comfortable
16 including them in the order we don't have any problem
17 with it.
18 MR. CHAIRMAN: I think at this point in time that -- of
19 course, I can ask our attorney. We have a proposal that
20 C&R is part of the unit being force pooled and they're
21 confident that they're going to obtain a lease but ask
22 that they not be included. I was just raising the issue
23 that all -- I believe our position has been and I
24 believe that the law says all interest within the unit
25 being pooled that are unleased would have to be pooled --

1 all interest would be pooled.

2 MS. RIGGS: All interests are pooled and those unleased are
3 force pooled.

4 MR. CHAIRMAN: Right.

5 MS. RIGGS: The only thing I could suggest is if you lease
6 them that perhaps they could amend their Exhibit B and if
7 it was into us within the next few days before the order
8 was entered --

9 MR. McQUIRE: Okay. Let me do this. If we're not able to do
10 this then they should be included.

11 Q. (Mr. McQuire continues.) What are the terms -- the farm
12 out terms that you would recommend as being customary
13 with C&R?

14 A. The farm out terms that we would offer would be that they
15 would receive a one thirty-second of eight-eighth
16 override proportionately reduced to the amount of acreage
17 that they're contributing to this unit. They would get
18 well information copies of logs, things of that nature.

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

21 (Witness stands aside.)

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

23 MR. McQUIRE: My next witness is Richard Vanucun.
24
25

1 RICHARD VANUCUN

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

5 DIRECT EXAMINATION
6

7 BY MR. McQUIRE:

8 Q. Mr. Vanucun, I'll remind you that you are still under
9 oath and I will tender to the Board a copy of your
10 resume as an exhibit. (Pause.) In leu of qualifying you
11 orally as an expert I believe you've qualified before
12 this Board earlier today as an expert, is that correct?

13 A. That's correct.

14 MR. McQUIRE: I would like to offer Mr. Vanucun as an expert
15 witness -- he's an engineer -- for production purposes.
16 Also as giving value to the reserves and giving testimony
17 about estimated well costs.

18 MR. CHAIRMAN: You may proceed.

19 Q. (Mr. McQuire continues.) Mr. Vanucun, what is the
20 primary objective strata for the well?

21 A. The primary objective strata for this well is the
22 Devonian Shell.

23 Q. Are there any other secondary objectives?

24 A. Yes. The Raven Cliff Sand is a secondary objective.
25 That's producing some offsets.

1 Q. You don't know if you would encounter that or not?

2 A. That's true. I don't know. We have high hopes of it,
3 but it's not reliable.

4 Q. What are the estimates for production?

5 A. The estimated production from the Devonian Shell is 300
6 million cubic feet.

7 Q. What are the estimated reserves for the unit?

8 A. 400 million cubic feet.

9 Q. Would you like to amend Section 2.6 of cost and produc-
10 tion to reflect your testimony? I believe that there are
11 some typographical errors in that. I believe that it
12 reads currently 26 MCFD. I believe your testimony is
13 that the estimates for production is 300 MMCF, is that
14 correct?

15 A. That's correct.

16 Q. And the estimated amount of reserves are 400 MMCF, is
17 that correct?

18 A. That's correct.

19 Q. What are the total estimated well costs for this well?

20 A. \$302,000.

21 Q. Does Ashland have a blanket bond on file to cover
22 reclamation costs?

23 A. Yes, it does.

24 MR. McQUIRE: I have nothing further. If this Board would
25 like to ask Mr. Vanucun about AFEs or any other questions

1 it may do so.

2 MR. CHAIRMAN: Do you have the same offer on the AFE as you
3 had before?

4 MR. McQUIRE: I do. I guess initials just don't quite make a
5 signature.

6 MR. HARRIS: I have a question about the AFE also. It is
7 initialled but the date is 5/20/92. I'm a little
8 concerned about the currency of the information.

9 MR. VANUCUN: The currency of the information is pretty good.
10 There's not that much variability in -- not a lot of
11 inflation in coal field drilling costs right now.
12 Deflation if anything. It's pretty stable. So it's
13 relatively current. If we estimated the cost to drill a
14 well a year ago it would be pretty much what we estimate
15 now.

16 MR. HARRIS: I don't know what our regulation says as far as
17 currency of information.

18 MR. CHAIRMAN: As the Board's policy it's been within the last
19 90 days.

20 MR. VANUCUN: I will say to you that if we come in -- if you
21 want a new estimate we will, but it will probably not be
22 much different from this. I have no reason to believe it
23 will be any different within the tolerance of an esti-
24 mate.

25 MR. McQUIRE: And as I said, I will make the same offering. I

1 will within five working days provide you with a current
2 AFE signed.
3 MR. CHAIRMAN: Other questions, members of the Board?
4 (Witness stands aside.)
5 MR. CHAIRMAN: Do you have anything further?
6 MR. McQUIRE: Nothing further.
7 MR. MASON: I move that we approve the petition based upon
8 the submission to the Board within five working days of
9 this date of an appropriate AFE which is currently dated
10 and executed.
11 MR. HARRIS: Second.
12 MR. CHAIRMAN: Further discussion?
13 MR. McGLOTHLIN: If you obtain a lease from Mountain Mission
14 in the near future how do you propose --
15 MR. McQUIRE: I would propose -- if I obtain a farm out -- if
16 Ashland obtains a farm out from C&R I'll notify the
17 Inspector and the Board of that immediately prior to the
18 entry of the order. If we obtain a lease from Mountain
19 Mission I would come to the Board and inform them and ask
20 that -- frankly we would not need this force pooling and
21 ask that the Board take whatever appropriate action is
22 needed to make the force pooling order null and void.
23 Ashland doesn't really like to have to go through all
24 this procedure and would rather do things voluntarily.
25 But because of time constraints --

1 MR. McGLOTHLIN: Mr. Chairman, I might be out of order and
2 please inform me if I am. I'll ask a question of -- the
3 arrangements now being made with Mountain Mission School,
4 are they equal to or greater than what the pooling order
5 would allow?

6 MR. VANUCUN: They'd be the same.

7 MR. McQUIRE: They are the same. In fact, I spoke with
8 Mountain Mission's counsel who is not here and we are
9 talking about leasing the entire acreage that they have
10 rather than just the small acreage within the unit. I
11 think both sides would like to work toward doing that.
12 But the terms would be the same.

13 MR. McGLOTHLIN: I just don't know about going back to anybody
14 and saying well -- when you're in the process of leasing
15 them now and then you come in -- if were negotiating at
16 a higher figure or if they wanted a higher figure then
17 you're going to come up and say well, we've already force
18 pooled you at \$5 an acre. I don't like to -- I'm sure we
19 probably have put somebody in that predicament but I
20 certainly hate to do that to anybody, especially Mountain
21 Mission.

22 MR. CHAIRMAN: Anything further? All in favor signify by
23 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.) The
24 motion carries.

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

ITEM VII

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3 MR. CHAIRMAN: The last item on the Board's agenda is the
4 Board on it's own motion will receive testimony and
5 evidence on the issue of whether or not to amend certain
6 pooling orders previously entered by the Board to change
7 the Board's designated unit operator of the following
8 units from OXY, USA, Incorporated to Consolidation,
9 Incorporated effective September 30th, 1993. The docket
10 numbers are attached as part of the agenda today. We'd
11 ask the parties that wish to address the Board in this
12 matter to come forward at this time.

13 MR. SWARTZ: Mark Swartz representing OXY, USA, Inc., Buchanan
14 Production Company and Consol.

15 MR. CHAIRMAN: Are there any others that wish to address the
16 Board in this matter? The record will show there are
17 none. You may proceed, Mr. Swartz.

18 MR. SWARTZ: My clients would like to join together in
19 requesting that the Board undertake to amend or to change
20 the designated operator from OXY, USA to Consol, Inc.
21 with regard to the units that have been identified in
22 this month's docket. Those units are suppose to and we
23 believe represent all of the units in which OXY, USA has
24 been appointed operator by this Board or has been
25 designated operator by this Board. I think the reason to

1 undertake an inquiry as to whether or not the designated
2 operator should be changed and the reason to actually
3 undertake the changes, I'm sure, is essentially the sale
4 that occurred this summer. I'm sure that most of the
5 Board members are aware of the fact that Oxydental
6 Petroleum was the direct and indirect parent of OXY, USA,
7 Buchanan Production, Oakwood Gathering and Island Creek
8 sold stock in certain corporations that Oxydental
9 Petroleum owned either directly or indirectly to Consol,
10 Inc. That sale occurred this past summer. It has been
11 phased in over the course of the summer and OXY and
12 Consol and Conico to some extent who is a contractor for
13 Consol, Inc. have been involved in an orderly transition
14 in terms of management of the various assets. All of the
15 entities that the Board has been dealing with -- and I
16 think it's important that you know this and you recall
17 this. All of the entities that this Board has been
18 dealing with -- and that would be Buchanan Production
19 Company who has been the applicant with regard to most of
20 these force pooling applications. Buchanan Production
21 Company still exists. It is still a Virginia partner-
22 ship. It's two partners, Appalachian Operators, Inc. and
23 Appalachian Methane, Inc. still exist and are the
24 corporate partners. Oakwood Gathering, Inc. still
25 exists. So all the entities that either the DMME --

1 Division of Gas and Oil or this Board have been dealing
2 with are still entities that exist that retain the assets
3 that they have had throughout their dealings with this
4 Board. I've prepared two kind of organization charts for
5 you all to give you some indication of the companies and
6 the corporate organization in terms of what Oxydental
7 Petroleum owned and how it was organized and then what
8 the effect of the sale of stock into Consol, Inc. had.
9 So you've got one that's entitled "Virginia CBM Project"
10 and then another chart that has a few more blocks on it
11 entitled Virginia CBM Project after Consol, Inc. Acquisition.
12 Essentially what these charts show is that you
13 had Oxydental Petroleum -- there may have been some
14 intermediate corporations, but Oxydental Petroleum was
15 the parent of a company called Glen Springs and every-
16 thing below Glen Springs changed hands in the trans-
17 action. Glen Springs essentially conveyed or transferred
18 the stock in Island Creek Coal, Inc. which owned the
19 stock of all the companies underneath it either directly
20 or indirectly. And that stock in Island Creek Coal, Inc.
21 went to Consol, Inc. So if you look after the sale
22 you'll see that Consol, Inc. is over here and owns the
23 tree that you see on the first chart. We've added a few
24 blocks to the after acquisition organization chart to
25 kind of complete the picture. What you have to complete

1 the picture is an explanation of Pocahontas Gas Partner-
2 ship. I'm sure that you all know from prior hearings
3 involving PGP Consolidation Coal Company and Conico are
4 50/50 partners or owners of the partnership Pocahontas
5 Gas Partnership. You may or may not recall that Pocahon-
6 tas Gas Partnership is a 50 percent owner of a company
7 called Cardinal States Gathering Company which is a
8 partnership. Oakwood Gathering and OXY Oxydental
9 Company was the other partner in Cardinal States. That
10 is a partnership which owns the 45 or 50 mile pipeline
11 that was built from the gathering systems up into Grant,
12 West Virginia to connect to the Columbia transmission
13 line to market the gas that was produced by Pocahontas
14 Gas Partnership and that was produced by Buchanan
15 Production. So this kind of gives you an overview of
16 what happened in the sale. I think there was some
17 confusion that perhaps assets had been sold and that
18 certainly did not happen. It was corporate stock and all
19 these companies and the partnership still survive. The
20 other small exhibit which I have tendered to you all
21 contains four pages should be somewhat familiar to the
22 Board members. As you will recall, Buchanan Production
23 Company really has no employees and Buchanan Production
24 Company's partners, Appalachian Operators, Inc. and
25 Appalachian Methane, Inc., delegated the management

1 responsibilities to OXY, USA to act as professional
2 manager for Buchanan Production Company. After the stock
3 transfer and as this whole transaction was phased in
4 Consol, Inc. who now is the indirect parent of the two
5 corporate partners in Buchanan Production Company has
6 acted to replace OXY, USA as the professional manager of
7 Buchanan Production -- bearing in mind that Buchanan
8 Production as far as I know still has no employees. So
9 Consol, Inc. in this group of paper work or documents
10 that you have has been appointed by Buchanan Production
11 Company as of September 1, the date of these documents,
12 to act as professional manager and has been given the
13 authority to explore, develop and maintain the properties
14 and assets of Buchanan Production Company which are owned
15 on the date of the delegation or hereafter acquired. In
16 addition, Consol, Inc. has done something very similar to
17 what OXY, USA did. With regard to the authority to
18 manage the affairs of Buchanan Production Company Consol,
19 Inc. has specifically named three people and kind of
20 delineated the authority that they have. You've got a
21 general manager who's Claude Morgan, a land manager who's
22 Mr. Gillenwater, and Randy Albert is the regulatory
23 manager. There is also in these documents a consent by
24 Consol to the selection of the professional manager by
25 the management committee of Buchanan Production. In the

1 last document in this packet of four documents is
2 something that you have seen before -- in a way it is.
3 In any event, whenever Buchanan Production would apply
4 for a pooling order there would always be -- they would
5 always ask that OXY be designated the operator. There
6 was always a consent in the exhibits whereby OXY would
7 consent. There is a consent to appointment as designated
8 operator attached here. It specifically pertains to the
9 matter that's before the Board today and you'll notice
10 that it is a consent to act -- accept appointment as
11 designated operator in the event that the Board should
12 agree or allow the proposed change to happen today with
13 regard to the units that are identified in the docket
14 that we have before us. So this kind of gives you the
15 details with regard to the transaction, gives you the
16 status of Buchanan Production in terms of who is its
17 professional manager at this point, who has authority
18 within Consol, Inc. to perform management functions for
19 Buchanan Production and gives their consent -- Consol's
20 consent to accept. There are a couple of other things
21 that are ongoing that I think you need to be aware of
22 which I think also caused this change of designated
23 operator and makes some sense. Consol, Inc. is obviously
24 registered with DMME, has posted a blanket bond acquired
25 by the Code of the Commonwealth of Virginia with regard

1 to the wells that it would be appointed designated
2 operator. In addition, all permits which were issued to
3 OXY, USA as permittee were permits -- to the extent that
4 there were any gathering line permits, although most of
5 those would be in the Oakwood Gathering, if not all.
6 Permit transfer applications have already been filed and
7 it's an ongoing process. Some of them have been approv-
8 ed. Many are awaiting approval. But in a matter of time
9 all of the OXY permits will be transferred to Consol,
10 Inc. That's a process that's independent of this Board,
11 but in terms of the status with the DMME all OXY permits
12 will be in the foreseeable future -- certainly all the
13 transcript of the applications will be filed. And that
14 would be in the hands of Consol, Inc. With regard to
15 accounting functions -- and I think the reason for the
16 large document in front of you which I do not propose to
17 spend a lot of time with unless it provokes question --
18 but the Pocahontas Gas Partnership royalty accounting has
19 been done by a contract basis by Conico who is also a
20 partner in PGP. Conico has been doing the accounting.
21 Obviously we are aware of the fact that in requesting a
22 change of operator it is incumbent upon OXY and Consol,
23 Inc. to demonstrate that there is current accounting
24 information which will allow Conico to continue to track
25 and allocate royalty and other revenue. Essentially what

1 you're getting today is just a fluke but the reports that
2 you get from -- that you talked about this morning that
3 you got from the escrow agent, the last section of this
4 document -- the last half is essentially a copy of the
5 accounting information which accompanied every check that
6 was paid to the escrow agent. So each page here pertains
7 to a check or series of checks that were issued to the
8 escrow agent and deals with volumes, prices, calculates
9 the royalty, deals with deduces and so forth. So the
10 backup information for every dollar that was paid to the
11 escrow agent is contained in here. The tab immediately
12 in front of it is a summary which just lists every check
13 without the detail. What Consol, Inc. -- their plans
14 with regard to Buchanan Production are is that Conico
15 will take over the accounting functions with regard to
16 gas accounting or well accounting basically and will
17 perform the function that it has been performing -- I
18 hope I said Conico -- will perform that accounting
19 function that it has been performing for Pocahontas Gas
20 Partnership for Buchanan Production. And, in fact, a
21 copy of what we've given you today is being delivered to
22 Conico and Consol for their use in carrying forward the
23 retaining of the records of each of the units. This
24 information that you have before you deals with July's
25 production. The royalty checks would have been issued

1 on or about -- or put in the mail on or about August
2 25th. So the information shows July's production which
3 in the ordinary course would be paid for the end of
4 August and usually OXY cuts or mails them around the
5 25th. There will be one more report to track the August
6 production that has to be run. Those August royalties
7 will not be paid or escrowed until September 25th which
8 is, of course, after the date of this hearing. And those
9 further reports will, of course, be turned over to
10 Consol, Inc. and Conico, Inc. so that they can ingrate
11 that into their accounting. The balance of this book
12 which is most -- more than half of it deals with payments
13 made to the escrow agent. Whether or not this causes you
14 to feel secure or insecure, we borrowed a copy of the
15 escrow agent's report as of June 30th and compared it to
16 some of the accounts and amazingly they actually balanced
17 which was encouraging. The balance of this document
18 deals with money that's being held in suspense and as you
19 may or may not remember -- you've dealt with this at
20 escrow hearings and at other times -- many of the
21 Buchanan Production Company leases provide for an
22 internal company escrow or a suspense treatment of
23 revenue. To give you an example, if Buchanan Production
24 Company has a lease that covers 100 percent of the oil
25 and gas and 100 percent of the coal interest on a given

1 tract and they have leases from both sides those leases
2 provide that until ownership is resolved OXY can retain
3 the royalty interest in a suspense account. So to the
4 extent that there are lease properties with conflicting
5 claims that have not been force pooled by you all those
6 suspense accounts are tracked. There are other reasons
7 that the money may be suspended with regard to total
8 amounts payable less than -- there are also -- there's a
9 tracking in here too small by owner and this also
10 captures small amounts of money paid monthly until they
11 reach \$25 and a check is cut. OXY's procedure is that --
12 it costs them about eight dollars to write a check and
13 they do not write checks until they have \$25 or until
14 December happens. So that money is tracked in here as
15 well. I don't know if you want to spend a lot of time on
16 this, but if you just pick any pages or any group of
17 pages -- probably the best place to start maybe would be
18 the escrow agent. It identifies -- just take the first
19 page. It identifies the CBM unit which is S-14. It
20 gives the VGOB number so when the escrow gets a check
21 they know what unit and what number they're talking
22 about. And it tells the escrow agent which tract in the
23 unit the money is attributable to and gives an acreage
24 figure and obviously it's addressed to the escrow agent.
25 Then there is the details with regard to how the interest

1 is calculated and the period of time that is covered. On
2 the inside page front cover there is kind of a code
3 explanation with regard to some of the codes. To the
4 extent that you have questions we tried to pick the codes
5 that would be most relevant. In summary with regard to
6 the accounting information we felt as if it was incumbent
7 upon us in joining in a request that the change of
8 operator issue be resolved favorable in favor of a change
9 of operator from OXY to Consol, Inc. that we demonstrate
10 that we do have the kind of accounting information which
11 will allow Conico and Consol to carry this project
12 forward, to answer questions that the escrow agent might
13 have in the future. This basically is the information --
14 the raw data that's going to be given and has been given
15 to Conico and Consol and there will be one more month's
16 report before they take over the accounting function. I
17 know that Conico has been meeting in Oklahoma with OXY
18 representatives and have been at this for quite a while
19 to get this integrated into their computer system.
20 Obviously the PGP people -- Les Arrington and Randy and
21 Claude have been working from the land side to get the
22 division of interests to Conico and are handling that
23 sort of like Marty and Sam were handling for OXY. This
24 is process is well on its way. Conico, at least as I
25 understand it, has been at it for months and will start

1 the gas accounting as of September's production. That's
2 about the end of my -- There's only one other thing I
3 need to tell you about this booklet to the extent that
4 you actually spend any significant amount of time looking
5 at it. The first section is a lease ownership report.
6 This report was printed in September. The balance of the
7 information was printed as of August 30th. There were
8 some changes in ownership that are reflected in this
9 document that was printed in September because they were
10 impute the first of September that are not consistent
11 with what you have through August. What I'm suggesting
12 is if someone -- if a title problem arises it would be
13 reflected and -- there might be some things that are
14 shown in ownership as being in suspense that have not
15 been suspended before that date because a title issue
16 arose. On the other hand, if a lease was obtained
17 people who may have been subject to escrow or whatever
18 prior to August 30th are now getting a royalty check. So
19 there will be some inconsistencies although the vast
20 majority of the ownership entries and the payment codes
21 will be the same. But to the extent that there are a few
22 variations it's just the timing of the reports, that
23 those changes of status are impute twice monthly. So
24 there were some changes made September 1st that weren't
25 reflected on August 30th. In summary I think that the

1 best reason or group of reasons to actually change the
2 operator from OXY, USA to Consol, Inc. are essentially
3 because of the sale, because of the fact that Consol,
4 Inc. is already the professional manager of Buchanan
5 Production, Inc., because the permits are being transfer-
6 red, essentially because Conico will be taking over the
7 accounting function as a contractor for Buchanan Produc-
8 tion, essentially every duty, obligation and responsibil-
9 ity that's been discharged by OXY has either passed or is
10 about to pass and the Board ought to recognize the
11 reality of the situation. Obviously the parties want the
12 public to be the only -- the people who are actually
13 doing the work as well. So I think that a change of
14 operator is appropriate under the circumstances.
15 Obviously if you have any questions I've got people here
16 who can answer them.

17 MR. CHAIRMAN: Going back to just a couple of things and then
18 I'll ask the Board members. On your resolution of
19 management committee of Buchanan Production Company who
20 is R.E. Smith, C.W. McDonald and Claude Morgan? If you
21 would identify those for us.

22 MR. SWARTZ: Claude.

23 MR. MORGAN: I'm Claude Morgan. I am manager of gas projects
24 for Consol, Inc. and have been appointed general manager
25 of Buchanan Production as well as appointed a member of

1 the management committee. R.E. Smith is Ronald E. Smith.
2 He is Consol, Inc.'s executive vice president explora-
3 tion, engineering and environmental affairs. C.W.
4 McDonald is executive vice president of operations.
5 MR. CHAIRMAN: Any questions, members of the Board?
6 MR. MASON: I just wanted to ask, in this Virginia CBM Project
7 how does OXY, USA, Inc. fit into that?
8 MR. SWARTZ: It is a subsidiary of Oxydental Petroleum.
9 MR. MASON: So it's up here on another line?
10 MR. SWARTZ: It did not own any of this stuff that changed
11 hands.
12 MR. MASON: I understand that.
13 MR. SWARTZ: There are tons of other companies, but OXY -- I
14 think OXY is a directly owned subsidiary of Oxydental
15 Petroleum. So there's a number of other companies
16 that --
17 MR. MASON: So OXY never owned any part of Appalachian
18 Operators or Appalachian Methane or Buchanan Production?
19 MR. SWARTZ: I know with regard to Appalachian Operators and
20 Appalachian Methane OXY never owned that stock.
21 MR. MASON: That was owned by Island Creek?
22 MR. SWARTZ: No. This stuff was moved around before the sale.
23 I think Oxydental Petroleum Corporation owned -- okay.
24 Oxydental Petroleum owned Oakwood Gathering indirectly.
25 OXY did not.

1 MR. MASON: Do what now?

2 MR. SWARTZ: No? Okay. Chuck, why don't you just state your
3 name for us.

4 MR. TWILINGER: Chuck Twilinger.

5 MR. SWARTZ: Who owned Oakwood Gathering before there was a
6 reconfiguration for the sale?

7 MR. TWILINGER: Before all of the entities were reconfigured
8 Oakwood Gathering was owned by OXY, USA as a direct
9 subsidiary.

10 MR. SWARTZ: Who owned Appalachian Operators and Appalachian
11 Methane, Inc.?

12 MR. TWILINGER: Those were both owned by Oxydental Oil and
13 Gas, USA.

14 MR. MASON: Okay. It concerned me a little bit because this
15 configuration is greatly in conflict with earlier
16 testimony in regard to Island Creek's relationship with
17 these companies and I wanted to clarify for the record
18 that we haven't sat here and approved a lot of these
19 business transactions between Island Creek and Oakwood
20 and some of these other people when, in fact, they were
21 all owned by the same people.

22 MR. SWARTZ: Well, what happened, Glen Springs which may be a
23 familiar name, Glen VanGolen --

24 MR. MASON: I understand.

25 MR. SWARTZ: -- was created for purposes of this sale. Reed

1 Holdings is Jim Beckett's middle name which was created
2 for purposes of this sale. Those two companies didn't
3 exist until the sale was going to occur. In addition,
4 assets were transferred under the Island Creek Coal, Inc.
5 to allow --

6 MR. MASON: All I'm interested. All I'm trying to do is just
7 establish for the record that, in fact, when we did a lot
8 of these things and approved a lot of these agreements
9 between Island Creek ownership entities and OXY that they
10 were, in fact, not parent subsidiary relationship. They
11 were brother/sister corporations of Oxydental Petroleum.

12 MR. SWARTZ: Right.

13 MR. MASON: And that's how it was represented to us. This
14 makes it appear in a different configuration. I just
15 want to clarify for the record that that's, in fact, the
16 way it was and that this has all been redone for the
17 sale.

18 MR. SWARTZ: That's right. In fact, Island Creek Coal --

19 MR. MASON: Didn't even exist before this.

20 MR. SWARTZ: There was an Island Creek corporation that was
21 created to hold assets for reasons I won't get into it.
22 But at least three of these companies on the CBM project,
23 Glen Springs, Reed Holdings and possibly Island Creek
24 Coal, Inc., were creatures of how do we organize this to
25 sell it.

1 MR. MASON: I understand. I just wanted to clarify that
2 point. I'd like to leave here today not feeling foolish
3 about it.

4 MR. SWARTZ: Well, Beckett is very upset that they sold Reed
5 Holdings and held on to Glen Springs.

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

7 MR. SWARTZ: Chuck has explained to me that Island Creek
8 Corporation was completely out of the OXY chain as you
9 understand it. They were sister companies but they were
10 not --

11 MR. MASON: I understand. That's what had been represented to
12 us and since this is a part of the record I want it
13 clearly understood that at the time we acted on those
14 things they were in a different configuration.

15 MR. MCGLOTHLIN: Is OXY going to leave a support person here
16 to go over this and teach us how to read it -- ha ha --
17 so we understand this report?

18 MR. SWARTZ: I can give you Sam's phone number. What has
19 happened and the reason that this information is -- I
20 mean, part of the reason this information was produced
21 is we're hoping that some of you won't take this home
22 with you and that you're only going to need like three or
23 four copies because we need some copies to distribute.
24 But Consol and Conico will have this information and
25 believe me, from dealing with these guys they understand

1 this stuff. They can answer questions. You're not going
2 to have to call Oklahoma to work through it.

3 MR. CHAIRMAN: Mr. Swartz, do you represent these charts as
4 accurate and the current holdings of Consol, Inc. as it
5 relates to the Virginia gas production?

6 MR. SWARTZ: After Consol, Inc. acquisition Claude and I have
7 been through and as of yesterday and again this morning
8 and he can argue with me, but I believe they are accurate
9 as of today.

10 MR. MASON: I was just going to ask the question of what do we
11 have that reflects OXY, USA's resignation as operator?

12 MR. SWARTZ: We can testify to that. There is a document
13 which we probably don't have with us today. But Claude
14 and Chuck are familiar with that status. Either one of
15 you can respond.

16 MR. MASON: Counsel has made the point that we're appointing
17 someone in these pooling orders as an operator or that's
18 the proposal when, in fact, we have nothing from the
19 current operator removing them --

20 MR. SWARTZ: Well, I think you're asking me two questions.
21 I'm representing OXY here today and I am asking that you
22 change the operator. I think you can assume that I am
23 authorized to speak on OXY's behalf that they want to be
24 replaced as operator. I'm here as their counsel of
25 record. So I'm asking -- they're joining in this motion

1 and I'm their counsel. There are two issues. Consol,
2 Inc. has now appointed a new management committee and
3 that management committee on behalf of Buchanan Produc-
4 tion has delegated the professional manager authority to
5 run the business on a day to day basis to Consol, Inc.
6 You have those documents in front of you. There has been
7 a phase in and phase out of OXY, USA. But all of that
8 does not change the designated operator officially. The
9 official designated operator -- visa vi the Commonwealth
10 and visa vi the people who will be pooled in these units
11 which is something that you as a Board have done. I
12 mean, we can't just resign.

13 MR. MASON: It's the pooling order that creates that design-
14 ated operator.

15 MR. SWARTZ: Right. And what we're asking you to do is change
16 that. Now, in terms of -- let me just ask Mr. Twilinger.
17 Has OXY tendered a notice of resignation?

18 MR. TWILINGER: We tendered a notice of resignation to Consol
19 on about July 5th or 6th.

20 MR. SWARTZ: And you had to give advance notice of resignation
21 and that's why it came out in July?

22 MR. TWILINGER: Yes.

23 MR. CHAIRMAN: Excuse me. I think just so we have a clear
24 record if we could have sworn testimony.

25 COURT REPORTER: (Swears witness.)

1 MR. TWILINGER

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

4
5 DIRECT EXAMINATION

6
7 BY MR. SWARTZ:

8 Q. Mr. Twilinger, has OXY tendered a resignation as profess-
9 ional manager to Consol, Inc.?

10 A. Yes, they have.

11 Q. And about when did that occur -- the tender of it?

12 A. Approximately July 5th.

13 Q. Was there an agreement that OXY had to give a certain
14 amount of notice of resignation?

15 A. Yes, there was.

16 Q. What was the amount of notice?

17 A. 90 days.

18 Q. Has Consol -- have you been advised that Consol has
19 acknowledged receipt of that and accepted it?

20 A. Yes. They have.

21 MR. MASON: Is there any document in which OXY has actually
22 asked to be replaced as the operator in the pooling
23 orders by Consol?

24 MR. SWARTZ: They can't do that to us.

25 MR. MASON: Pardon?

1 MR. SWARTZ: They can't do that.

2 MR. MASON: We can do it, but they have -- we're here on our
3 motion.

4 MR. SWARTZ: But remember who I'm representing today. I'm
5 here representing --

6 MR. MASON: I know who you're representing. You represent
7 everybody.

8 MR. SWARTZ: -- Consol, Inc., Buchanan Production and OXY.
9 And they are joining together to accomplish a change of
10 operatorship. So I guess -- and this is on the Board's
11 own motion. So we would not have filed a petition or
12 something. But the parties who are going to be affected
13 -- the owner of the leases is Buchanan. The coal
14 operator is OXY and the operators -- they are here
15 together saying please do this. It makes sense for the
16 reasons I've summarized. So there wouldn't be something
17 in writing. If OXY wrote to Consol and said change us as
18 designated operator they'd write us a nasty letter or
19 something like "Hey, stupid. You have to go to the
20 Board."

21 MR. MASON: But you're telling us on the record in your
22 capacity as an authorized representative of OXY, USA that
23 they consent to the removal of themselves as operator and
24 the substitution thereof with Consol.

25 MR. SWARTZ: It's even more so than consent. They're asking

1 you to please do it. Buchanan Production Company is
2 making the same request.

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

5 MR. MASON: Would you sign that in black?

6 MR. SWARTZ: You don't hear my clients arguing with me. I
7 assume I still have authority.

8 MR. MASON: I was just teasing. It's a pretty significant
9 thing to do.

10 MR. SWARTZ: I don't think it has any significant effect.

11 MR. MASON: The change in the designated operator?

12 MR. SWARTZ: Unless you're prepared to give OXY, USA a release
13 of all liability. See, we're not asking for that. So I
14 don't think it really does have a significant effect. I
15 mean, we're passing the accounting information along with
16 the understanding that there is a responsibility for the
17 stewardship -- the period that OXY, USA was stewards and
18 we're not seeking any kind of declaration one way or the
19 other in that regard.

20 MR. MASON: Okay. Thank you.

21 MR. CHAIRMAN: Anything further?

22 MR. MASON: I make a motion that the Board approve the change
23 of the designated operator in accordance with the Board's
24 own notice for hearing today.

25 MR. CHAIRMAN: And amend all the orders?

1 MR. MASON: Yes. Amend all the prior orders to make that
2 substitution effective as of today.
3 MR. SWARTZ: Could we make it effective -- would you like
4 it at midnight on the 30th?
5 MR. MASON: Actually it should be 12:01, shouldn't it,
6 on the first?
7 MR. SWARTZ: As long as it's 12:00 or 12:01.
8 MR. MASON: I just got into a world of crude over one of
9 those designations.
10 MR. SWARTZ: For insurance.
11 MR. MASON: This had to do with a wonderful State Corporation
12 Commission.
13 MR. CHAIRMAN: Effective on October 1st?
14 MR. MASON: Yes. 12:01 A.M. October 1st.
15 MR. CHAIRMAN: I have a motion.
16 MR. EVANS: I second it.
17 MR. CHAIRMAN: A motion and a second. Further discussion?
18 MR. McGLOTHLIN: Only that it's been a pleasure working with
19 OXY in the past years and that their presence will be
20 greatly missed before this Board.
21 MR. GORDON: It goes both ways. We've enjoyed the relation-
22 ship we've had with the Board, with the Inspector, with
23 everyone. It has been a very learning experience for all
24 of us.
25 MR. MASON: I won't particularly miss you all.

1 MR. CHAIRMAN: A motion and a second. Further discussion?
2 MR. MORGAN: Excuse me. I don't know that it makes any
3 difference, but your notice said September 30th. I don't
4 know if you need to stick with that.
5 MR. SWARTZ: That was kind of why I was making it midnight.
6 MR. MASON: What if I change my motion to make it effective
7 as of the end of September 30th.
8 MR. EVANS: Second.
9 MR. CHAIRMAN: Further discussion? All in favor signify by
10 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
11 It's a unanimous approval.
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3 ITEM 3

4 MR. CHAIRMAN: The other item on today's agenda for the Board
5 is we had that the Gas and Oil Board will review and
6 discuss the Attorney General's opinion on retroactive
7 statewide spacing requirements contained within 361.17 of
8 the Code of Virginia, 1950 as amended. It has been
9 published and we just received it. (Pause.) We're going
10 to take a few minutes to read this and then if there's
11 any discussion we will be happy to entertain that.

12 (AFTER A BRIEF PAUSE OFF THE RECORD, THE HEARING CONTIN-
13 UED AS FOLLOWS:)

14 MR. CHAIRMAN: It's a clear cut decision. I don't know as far
15 as merits of any further discussion on it. I think we
16 asked for a decision. We laid out our requests and I
17 believe we got a response. I think we can certainly
18 answer the question we've had before us from the citizens
19 who have requested us to apply -- to interject the
20 Board's authority in these areas and to apply this
21 retroactively. We now have a decision that says it
22 cannot be done and we're not in power to do it. Is there
23 any further discussion? Thank you for coming. The
24 meeting is adjourned.

25 (End of Proceedings for
September 21, 1993.)

1
2 CERTIFICATE
3

4 COMMONWEALTH OF VIRGINIA

5 COUNTY OF WASHINGTON
6

7 I, Deborah J. Bise, Notary Public in and for the Common-
8 wealth of Virginia, at Large, do hereby certify that the
9 foregoing is a true transcript of the hearing of the Virginia
10 Gas and Oil Conservation Board held on September 21, 1993, at
11 the 4-H Center, Abingdon, Virginia; that all of said proceed-
12 ing was electronically recorded and was reduced to writing by
13 me and that said transcript is true and correct to the best of
14 my ability.

15 I further certify that I am not a relative, counsel or
16 attorney for either party, or otherwise interested in the
17 outcome of this action.
18

19 GIVEN under my hand this 7th of October, 1993.
20

21 _____
22 DEBORAH J. BISE
23 NOTARY PUBLIC

24 My commission expires September 30, 1996.
25