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VIRGINIA OIL AND GAS BOARD

HEARING OF APRIL 16, 1996

9:00 A.M.

AT THE SOUTHWEST VA. 4-H CENTER
HILLMAN HIGHWAY
ABINGDON, VIRGINIA

Appalachian Court Reporting Services, Inc.

P. O. Box 833
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April 16, 1996

This matter came on to be heard before the Virginia Gas and Oil Board on this the 16th day of April, 1996 at the Southwest Virginia 4-H Center, Hillman Highway, Abingdon, Virginia pursuant to Section 45.1-361.19.B and 45.1-361.22.B of the Code of Virginia.

~~RE: HARRIS:~~

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ITEM I

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3 MR. CHAIRMAN: Good morning. I'd like to convene today's
4 hearing of the Virginia Gas and Oil Board. I'm Bill
5 Harris. I'll be acting as chairman for today's
6 meeting. I'm a public member from Wise County. I'd
7 like the other Board members to introduce themselves
8 starting with Dennis.

9 MR. GARVIS: My name is Dennis Garvis from Fairfax County.

10 MR. KING: My name is Clyde King from Washington County.

11 MR. LEWIS: Max Lewis from Buchanan County, public member.

12 MS. RIGGS: Sandra Riggs with the Office of the Attorney
13 General.

14 MR. KELLY: Bill Kelly, oil and gas industry representative.

15 MR. EVANS: Ken Evans, coal industry representative.

16 MR. HARRIS: Thank you. We have two items on the agenda
17 today. Item I is the Virginia Gas and Oil Board will
18 consider a petition from William Rogers McCall,
19 attorney, on behalf of Mrs. Diana Graham to modify the
20 existing pooling order issued by the Board for docket
21 VGOB-94/10/24-0475 for the Unit U-19 to reflect her
22 interest therein and further amend the order to
23 consider the effect of a sealed gob mine relative to
24 her interest. The unit in question is located in the
25 Hurricane District of Buchanan County, Virginia. The

1 docket number for that is VGOB-96/04/16-0542. Would
2 everyone who wishes to speak pertaining to this item
3 please come forward?
4 MR. EVANS: Mr. Chairman, before you continue I'm going to
5 have to excuse myself from this particular docket item.
6 MR. HARRIS: Okay.
7 MR. McCALL: Good morning. My name is William Roger McCall
8 and I'm representing Mrs. Graham.
9 MR. HARRIS: If you will come to the table, if you could, we
10 have the microphones there.
11 MR. RATCLIFF: Before you get started may I hand out this to
12 each of the Board members?
13 MR. HARRIS: Is that relative to this particular issue? If
14 you will, let him make a presentation since he's the
15 first on the docket and then we'll let you do that.
16 MS. RIGGS: Let me suggest something. The Gas and Oil
17 Inspector has a presentation with respect to the second
18 item which is the sealed gob unit. If you want him to
19 go forward it might put this in prospective a little
20 better because he has some maps and so forth that will
21 demonstrate where these wells are located. If you want
22 to take them out of order, that's just a suggestion
23 that you might want to consider.
24 MR. McCALL: I think this is Mr. Ratcliff. I think you all
25 knew that. He introduced himself to me just a moment

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ago. I'm representing Mrs. Graham who has a tract of property that is within the unit that has been designated. I think that would be a good idea. Whatever you all want to do.

MR. HARRIS: Board members? What we will do is do Item II first and that way that should give us some information concerning how that's to work with Item I. So we will do Item II first.

ITEM II

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3 MR. HARRIS: Item II is the Board will bring on for hearing
4 upon its own motion the impact of Consol Inc's notice
5 to the Board that as of January 26th, 1995 it completed
6 the sealing of the shaft of the Beatrice Pocahontas
7 Company's Beatrice Mine P.N. 1400493, MI #00580AB
8 located in Buchanan County, Virginia thereby creating a
9 sealed gob area within an area subject to the following
10 field rules heretofore established by the Board
11 pursuant to Virginia Code Section 45.1-361.20 and/or
12 pooling orders established pursuant to Virginia Code
13 Section 45.1-361.21 and 45.1-361.22: 1) The Oakwood
14 Coalbed Gas Field Order No. OGCB 3-90, as amended by
15 VGOB-93-0316-0325 and VGOB-93-0316-0348, 2) The
16 Oakwood Coalbed Gas Field II Order No. VGOB-91-1119-
17 0162 as amended by VGOB-93-0216-0336, VGOB-93-0365-0348
18 and VGOB-93-0316-0349 and, 3) Force Pooling Order for
19 Oakwood Field Unit U-19, Vansant Quadrangle, Buchanan
20 County, Virginia, VGOB-94-1024-0475. In addition the
21 Board will consider the impact of the creation of the
22 sealed gob area on Vertical Ventilation hole #12
23 drilled by Beatrice Pocahontas Company in compliance
24 with and pursuant to Virginia's Mine Safety Act to vent
25 or relief methane gas pressure from the active works of

1 the Beatrice Mine which Vertical Ventilation Hole #12
2 is within the sealed gob area and is purportedly being
3 used as an unpermitted gas well by the surface property
4 owner who will not allow entry and/or consent to the
5 plugging of said same. I know that was very long but
6 we had to read that item into the record. People
7 wishing to speak -- Tom, do you have a presentation?

8 MR. FULMER: Yes, Mr. Chairman. If you will bear along with
9 me. Good morning, Mr. Chairman, members of the Board.
10 This morning what I'd like to do is present you with
11 some information for your information that pertains to
12 the two items you have on your docket. Both items as
13 they read are separate issues but they are interrelated
14 as far as the jurisdiction of the Board. I have passed
15 out to you a series of exhibits which represent the
16 history and actions that have been taken by the
17 Department and the Board to date concerning the two
18 items. Also I've prepared for visual assistance a map
19 of the Beatrice Mine with the location of the U-19 unit
20 which is Board Order VGOB-94/1024-0475 which is the
21 yellow unit listed here, and the location of the well
22 which is the Ratcliff #1 Well here and the location of
23 the VVH #12 Well which is here. These are the mines
24 workings -- again, the current mine workings of the
25 Beatrice mine. The first exhibit is Order VGOB-

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93/1221-0421 rendered by the Board and on appeal to the Director's decision regarding the issuance of a permit for the #1 Ratcliff Well in Buchanan County. The permit had been conditioned upon the applicant to file with the Virginia Gas and Oil Board a petition to establishing a unit within 120 days from the issuance of the permit and that no production must be derived from the well until such time a unit had been formed. The Board upheld the decision of the Director but modified the conditions of the permit to allow additional time for filing and to allow Mr. Ratcliff private use of gas for his home. Exhibit #2 is the Board Order VGOB-94/1024-0475 issued to Ratcliff Gas Company for the U-19 unit under the Oakwood I Field Rules as established by the Board with subsequent modifications of that order. The order allowed for Mr. Ratcliff to designate the Ratcliff Gas Company as the operator of the unit in an active gob area in the Beatrice Mine. At present the operator Ratcliff Gas Company has not submitted a supplemental for establishment of an escrow account in the case of conflicting claims under the order. Under the order Mr. Ratcliff was granted time to secure a means of transporting production from the unit. As you will see later, this was accomplished in December of 1995. During 1994 and

1 1995 Island Creek Coal Company notified the Department
2 of its intent to seal the Beatrice Mine. Exhibit #3 is
3 notification to the Board and the Department of the
4 existence of three vertical ventilation holes in the
5 Beatrice Mine which was presently being used by private
6 land owners as a source of gas. Island Creek Coal
7 Company is under an order of the Division of Mines and
8 Division Mine Land Reclamation to plug and reframe all
9 vertical ventilation holes under permit to the Depart-
10 ment. This activity was to be conducted in conjunction
11 with the sealing of the shaft portals. At the time the
12 surface owners had refused entry to Island Creek Coal
13 Company to perform under the Department order. Two of
14 the vertical ventilation holes have been plugged, the
15 Beatrice #6 and #334. The remaining Beatrice #12 has
16 not been plugged and is located on the surface property
17 owned by Mr. Paul Ratcliff who has refused entry onto
18 the property to Island Creek Coal Company. Exhibit #4
19 is a notification by Island Creek Coal Company to the
20 Department that the sealing of the Beatrice Mine shafts
21 would be completed by January 26th, 1995. You will
22 note in the letter that ICC had also informed Ms.
23 Winchester, Mr. Claude Ratcliff and as a courtesy to
24 Mr. Wyatt Ratcliff of Ratcliff Gas Company by letter of
25 the sealing of the Beatrice Mine. On February 3rd,

1 1995 the Division of Mines by letter, Exhibit #5,
2 acknowledged to Island Creek Coal Company the sealing
3 of the Beatrice Mine and further inquired as to Island
4 Creek Coal Company's plan to plug and abandon existing
5 VVHs in the mine since the VVHs use is no longer
6 required by the mining. Exhibit #6 is a letter from
7 Island Creek Coal Company to the Division of Mines to
8 tell them their intentions and plan of action for the
9 existing vertical ventilation holes in the Beatrice
10 Mine. Exhibit #7 is a listing of the gas pressure
11 readings of the Ratcliff #1 Well conducting by DGO
12 staff after the shafts had been sealed by Island
13 Creek. The purpose was to determine if there would be
14 any significant increase in pressure at the Ratcliff
15 Well due to the closing of the shafts. As you will
16 note, well pressure remained around 318 PSIG during the
17 monitoring period. In October and November of 1995
18 Island Creek Coal Company was not able to obtain
19 permission to enter on the Claude Ratcliff property to
20 complete compliance of the Division of Mines' order for
21 plugging and reclaiming the site of Vertical Ventil-
22 ation Hole #12. The matter was referred to the
23 Division of Gas and Oil because of the use of the gas
24 from the vertical ventilation hole for private use.
25 The Division informed Mr. Ratcliff by letter, Exhibit

1 #8, that under Title 45.1-361 and Regulation VR-
2 480522.1, Section 1.05, was required to either permit
3 the well, vent the well with the approval of the
4 Director, or plug the well. Mr. Ratcliff was granted
5 time to respond. Exhibit #9 is Mr. Ratcliff's response
6 to the December 6th letter sent to him by the Division
7 of Gas and Oil. It is apparent from the response the
8 gas from the VVH is being used privately by Mr.
9 Ratcliff. After review of the response from Mr.
10 Ratcliff the Division felt another letter, Exhibit #10,
11 was warranted to be sent to Mr. Ratcliff to further
12 inform Mr. Ratcliff of the position of the Division and
13 the Department of the requirements of the law. The
14 Division has not received any response from Mr.
15 Ratcliff upon this letter. Since this matter is
16 related to actions which may be taken by the Board
17 concerning the Beatrice sealed gob issues before it no
18 action has been taken till such time that the Board
19 will take up the matter, which is Item II on today's
20 agenda. Exhibit #11 is a copy of a memo which I have
21 presented to the Board during the February meeting.
22 The memo points out that a potential claimant of the
23 coalbed methane gas may exist in the U-19 unit operated
24 by the Ratcliff Gas Company and under Board Order VGOB-
25 94-1024-0475 which had not previously been listed in

1 the original application by Mr. Ratcliff. This is the
2 issue that's before the Board in Item I of today's
3 agenda. The final exhibit, Exhibit #12, is a photo-
4 graph taken of the well head hook up from Virginia Gas
5 Distribution Company to the Ratcliff Well. The VGDC
6 hooked up the well to it's distribution lines on
7 approximately December 7th, 1995. Production from the
8 well as reported since the hook up is 1,295.5 MCF.
9 Prior to the hook up 81 MCF had been produced from the
10 well in 1995. The information I've presented to you
11 this morning is to give the Board an idea of the
12 interrelationship of the two items before it. Both of
13 them involve the Beatrice Mine and the wells in the
14 Beatrice Mine in the sealed gob areas. I know that was
15 fast and furious and there's a lot of information in
16 there, but I wanted to give you a little bit of
17 background before you entered these two items because
18 they are interrelated. Is there any questions the
19 Board would like to ask?

20 MR. HARRIS: Any questions or discussion? Would you all
21 need a few minutes to read over the materials to
22 consider what questions you might have? You did have a
23 question?

24 MR. GARVIS: I do. I can ask it now or wait.

25 MR. HARRIS: No. Go ahead.

1 MR. GARVIS: What is the original genesis of the -- I know
2 you just refreshed our mind. But how did it go back
3 initially? Were there approved wells? At the very
4 beginning, if you could just review that part.

5 MR. FULMER: The original issue before the Board that came
6 before the Board involved this well here which at the
7 time the well was being used privately. The Department
8 or the Division informed Mr. Ratcliff -- Mr. Wyatt
9 Ratcliff that he was not in compliance with the
10 statutes and regulations. The issue -- Mr. Ratcliff
11 applied for a permit for that well to the Division.
12 The Division issued a permit and the condition of that
13 permit as normal procedure because there was a potent-
14 ial claimant issue here conditioned that Mr. Ratcliff
15 would have to approach the Board with a petition for
16 pooling. At that time the Division -- the direction of
17 my decision was to give Mr. Ratcliff 120 days which was
18 a procedure we had used before. When the issue came
19 before the Board essentially the Board upheld the
20 pooling part -- the requirement for pooling but it also
21 disagreed with the 120 days and there was a granting of
22 an extension in order for Mr. Ratcliff to complete his
23 hook up or sell the gas and some of the other things
24 that he wanted to do and also to use the gas for his
25 own private use which was granted by the Board. So Mr.

1 Ratcliff was issued a permit. The Board issued a board
2 order in regards to his unit at the time that he deemed
3 to come back to the Board and petition for a unit.
4 After the decision -- the appeal of the Director's
5 Decision by the Board Mr. Ratcliff did come back to the
6 Board with a petition for pooling of that particular
7 unit which is the U-19 unit. The Board granted that
8 petition at that time and that's the 94-1024-0475
9 order. Did that answer your question?

10 MR. GARVIS: Yeah, which is the one now that's in question,
11 the VVH #12?

12 MR. FULMER: The vertical ventilation hole is located here
13 in the Beatrice Mine. And the reason I point this out
14 to you, even though up to this point in time this has
15 been departmental enforcement procedures we have done
16 on this well, it becomes an intrical part of this whole
17 system because that will be the only two wells that is
18 actively open to the Beatrice Mine. Originally this --
19 to go a little bit further, originally this unit was
20 approved under the Oakwood I order --

21 MS. RIGGS: II. Active gob.

22 MR. FULMER: I have a hard time remembering. The Oakwood II
23 order, active gob. Now that since the mine is sealed
24 it is no longer an active gob. It's a sealed gob, the
25 mine itself. By the actual function of sealing the

1 mine you become -- it changes the status of this
2 particular unit down here. Does that help you any,
3 Dennis?

4 MR. GARVIS: Uh-huh.

5 MS. RIGGS: The Board has never established field rules for
6 sealed gob in this area. They have Oakwood I Field
7 Rules that apply in advance of mining. They have
8 Oakwood II that applies to active gob. But the Board
9 has never acted with respect to sealed gob for this
10 area. So there are no field rules. What you have is a
11 pooling -- a pooled unit but no field rules overlying
12 it because the one under which it was originally pooled
13 is no longer applicable because the nature of the pool
14 has changed by the sealing operation.

15 MR. FULMER: One other thing I'd like to point out, there's
16 a couple other units that are in this mine basically.
17 One of the units is here and the other unit is here,
18 that were OXY units and I think that's pretty much in
19 Exhibit #11. In the illustration there you will see
20 Unit 18 and V-19.

21 MR. HARRIS: Other questions?

22 MR. FULMER: Any other questions from the Board?

23 MR. MCCALL: Mr. Chairman, I have a comment about Exhibit
24 #11. The third page is a map that purportedly shows
25 Diana Graham's interest tract. I can make this now or

1 wait until we actually get to this, but I will offer a
2 possible correction of that from what we can gather
3 about property lines in that area. I don't know if it
4 would be appropriate to make it now or --

5 MR. HARRIS: Would that affect the issue?

6 MR. RATCLIFF: That's what this letter here is pertaining
7 to, just what he mentioned there. If I could hand each
8 of the Board members one so that they could read it and
9 they would understand that I'm in agreement with you
10 and that you are right.

11 MR. HARRIS: But we're back over into Item I now.

12 MS. RIGGS: Why don't we reserve to Item I.

13 MR. MCCALL: I do not pertain that what is in this exhibit
14 here as far as property lines and so forth are correct.
15 These are just all taken from information in the files.
16 So this is what has been submitted. The purpose of
17 trying to -- and what I wanted to do this morning is
18 try to show the Board the interrelationship between
19 these two items because they all involve the Beatrice
20 Mine. That's all I have, Mr. Chairman.

21 MR. HARRIS: Thank you. Any other questions or comments?

22 MR. GARVIS: What is the real issue here? Is the real issue
23 that the coal company wants to seal off that part of
24 the mine, thereby -- and then seal ventilation shafts
25 and thereby forever closing -- I mean, are there any

1 other wells in that area that's to be sealed? In other
2 words, is that gas to be permanently sealed forever?

3 MR. FULMER: That mine is permanently sealed, yes.

4 MR. GARVIS: So what happens to the gas that's down there?

5 MS. RIGGS: You would access it through new wells pursuant
6 to Board field rules or pooling orders. There have
7 been none filed to date except for these two, but that
8 doesn't preclude future applications for someone to
9 come in and apply either as the operator of the entire
10 sealed gob area -- or I suppose under statewide spacing
11 if there are no field rules it would depend upon the
12 field rules that get established by this Board with
13 regard to that sealed gob area.

14 MR. HARRIS: As I understand, though, the U-19 which is on
15 Mr. Ratcliff's property is the one remaining VVH. From
16 what I've read so far I think that's --

17 MR. LEWIS: There's another one, he said, down below.

18 MR. FULMER: This one right here, of course, is already
19 under a Board order. This one right here is the one
20 that we suspect is the only remaining VVH hole that has
21 not been plugged in the mine.

22 MR. HARRIS: I stand to be corrected. I was thinking I had
23 read that they -- I've misread something here in the
24 packet. But I was thinking that the mining company
25 wanted to use that as the vertical ventilation. I've

1 misread something somewhere. I'm sorry.

2 MR. FULMER: Actually, the mining company when they went in
3 to seal this is currently under order by the Division
4 of Mines to plug the vertical ventilation holes because
5 they are under permit and they're no longer of use in
6 the Beatrice Mine since it's sealed. You'll see a
7 number of these wells -- these are all VVH holes that
8 have been drilled in the past and as far as my knowle-
9 dge is that this is the only two holes that are open to
10 the Beatrice Mine at this point in time. The shafts
11 have been sealed. The vertical ventilation holes have
12 been plugged. And the only two holes we have to the
13 Beatrice Mine are here and here. I may be corrected
14 later on by Consol or Island Creek or so forth re-
15 presentatives, but as of right now that's what know-
16 ledge I have of it. There may be something different
17 that I'm not aware of.

18 MR. GARVIS: You said those are were other wells at one time
19 that have all been plugged?

20 MR. FULMER: Yes.

21 MR. GARVIS: Why were they plugged up? Why were they
22 sealed?

23 MR. FULMER: Because they were sealing the mine.

24 MS. RIGGS: They weren't gas wells. They were ventilation
25 holes for mining purposes.

1 MR. GARVIS: I see.

2 MS. RIGGS: And under the mine safety laws the Division of
3 Mines which is separate than gas and oil production
4 requires that once the mining is ceased that those
5 vertical ventilation holes be plugged.

6 MR. LEWIS: Wasn't that really one of the reasons they
7 drilled this Ratcliff well here?

8 MS. RIGGS: It started out, I believe, as a vertical
9 ventilation hole.

10 MR. FULMER: Yes, as a vertical ventilation hole.

11 MS. RIGGS: That's correct.

12 MR. FULMER: And then it was converted over by a permit from
13 Mr. Ratcliff which we granted and that's --

14 MS. RIGGS: Once the vertical ventilation hole is permitted
15 under the Division of Gas and Oil it's no longer a VVH.
16 It's then a coalbed methane well. It's no longer
17 referred to as a ventilation hole. It then moves to
18 the jurisdiction of the Division of Gas and Oil under
19 it's permit.

20 MR. GARVIS: Again, what is the real issue here so I can get
21 to the bottom line?

22 MR. FULMER: The issue here -- there's actually two issues
23 you're seeing on the agenda. One involves the interest
24 rights. However, that unit is in the overall scheme of
25 things in the Beatrice Mine which is now a sealed gob

1 area by virtue of sealing the mine. The original order
2 issued to the Ratcliff unit was under an active gob
3 order. So by circumstances of an action taken by the
4 mining company to seal the mine it has become now from
5 an active gob to a sealed gob and under a different
6 scenario than it originally was approved by the Board.

7 MR. HARRIS: So what we're saying is that -- I guess what
8 we're saying is we need to do something about that
9 conversion. Somehow establish some --

10 MR. FULMER: It would be the Board's pleasure -- what the Board
11 pleasure may want to be done on this. But it's a
12 matter of the status occurring now that I'm bringing to
13 the attention of the Board because the Board has
14 addressed other sealed gob areas.

15 MS. RIGGS: If I could make one more comment. The pooling
16 order that Mr. Ratcliff has, which is this thicker
17 package you have, was issued under an active gob
18 scenario. That scenario no longer exists. Therefore,
19 there are no field rules upon which this pooling order
20 rests in terms of allocation of royalties and so forth.
21 The 80 acre unit, that square was established under
22 Oakwood II. Well, Oakwood II no longer applies.
23 Therefore, the 80 acre no longer applies. Therefore,
24 the allocation is not defined by this order anymore
25 because the field rule upon which it was based no

1 longer applies because Oakwood II does not apply to
2 sealed gob gas. Does that help a little bit?
3 MR. HARRIS: Other questions or discussion? Again, thank
4 you, Tom, for that information.
5 MR. FULMER: You're welcome.
6 MR. HARRIS: Do we need to do anything? I guess this is
7 informational primarily. So now what we'll do is go
8 back to Item I.
9 MR. SWARTZ: Could the audience have an opportunity to
10 comment?
11 MR. HARRIS: Yes. I'm sorry. Let's go back to Item II. If
12 you would, just identify yourself.
13 MR. SWARTZ: I'm Mark Swartz and I represent Buchanan
14 Production Company. Could I borrow your pointer, Tom,
15 for just a second?
16 MR. FULMER: Sure.
17 MR. SWARTZ: I don't really have a position here, but I
18 would like to give you an indication of what I think
19 the issues are and what your options are so that maybe
20 it's a little clearer than mud when you're wrestling
21 with dirt. There are some real issues here that are
22 new issues to this Board. Essentially the history of
23 coalbed methane production is we've had three kinds of
24 production. We've had wells drilled in the solid
25 blocks of coal which are fracked wells and those are

1 subject to the Oakwood I Order. We can drill a well
2 into a coal seam and frack that seam. It's never
3 mined or the mining is way into the future and you're
4 essentially producing from gas from solid coal. That's
5 Oakwood I. The Oakwood I Order specifically says it
6 does not apply to gob gas. So if you're under Oakwood
7 I you're under it with a fracked well or a well in
8 solid coal. As soon as you get into active gob where
9 you would mine through the well or a sealed gob Oakwood
10 I no longer applies. Oakwood II was adopted by the
11 Board to deal with longwall mining and the production
12 of gas from longwall panels basically. And the typical
13 Oakwood -- I mean, some of this you guys know and
14 remember. But the typical Oakwood II scenario for
15 active gob is that you would either pool or obtain
16 leases. I mean, there's voluntary aspect to this but
17 if you can't obtain enough leases then you would force
18 pool it. But you would pool or obtain leases and
19 create voluntary units with regard to all units that --
20 all 80 acre units that intersect the panel. And if we
21 just pick this panel here, for example, there are -- a
22 unit boundary line kind of runs here and there are
23 units on either side of this. So you'd wind up pooling
24 roughly ten units to cover that panel and the produc-
25 tion from that panel. And that historically is what

1 the Board has been -- has approved and has required
2 people to do with regard to active gob production. If
3 someone was going to produce from this hole and/or this
4 hole while the mining was ongoing you would be required
5 to pool all 80 acre units that are a part of this
6 longwall panel. Sealed gob production, again, is not
7 covered by Oakwood II. So as soon as you go from
8 active mining to sealing a mine I'm not sure what
9 happens in an Oakwood II order when that happens, but
10 it no longer would govern the mechanism of payment
11 because the mechanism of payment under Oakwood II is to
12 take the total acreage in the 80 acre units that
13 intersect this. You've got all those folks basically
14 -- all those interests or claims. And then you take
15 the acreage in the panel, whatever that is -- let's say
16 it's 1,000 acres, for example -- and if this unit had
17 25 acres out of 1,000 you'd put 25 over 1,000 and
18 that's the allocation to that particular unit. I mean,
19 that's how Oakwood II works in terms of allocating
20 royalty. Once you get to a sealed gob the argument can
21 be made -- and I'm not testifying as a reservoir
22 engineer. But once you get to a sealed gob and you no
23 longer have general mine ventilation -- I mean, the
24 theory of this Board was when the mine is actively
25 being mined the holes in a panel can essentially be

1 regarded as draining that panel because there is
2 general mine ventilation with regard to the entries.
3 There are holes in the other panels and as long as the
4 mine is open and active, you've got general mine
5 ventilation and you're sucking on all of these holes to
6 keep the mine safe, the assumption of the Board, which
7 I think is reasonable, is that wells in a panel are
8 going to produce from a panel and you should allocate
9 to the people who have an interest in those panels.
10 But once you seal this mine you no longer have general
11 mine ventilation. You've plugged the shafts and you've
12 plugged, as in this situation, virtually all the
13 holes. An argument can be made that this hole, which
14 is a rouge hole at this point, is draining gas owned by
15 people who have an interest over here. I mean, that's
16 a problem that you need to think about. And that is,
17 to me, the real issue here. This Board has created
18 sealed gob units in the past and I'm sure you know
19 that. Typically they either encompass -- well,
20 typically they encompass a portion of a mine and seals
21 have been put in place so that you have physically --
22 the mining company and the gas company have physically
23 isolated a portion of a mine. And then the Board says
24 visa itself that that, in fact, has happened and it's
25 been physically isolated and contained and then

1 everyone who has -- for example, if this area was
2 sealed off you would then have to do title on this
3 entire area to figure out what everybody's interests
4 were as a percentage of the total area and then the
5 allocation of royalty would be done accordingly. So
6 the real issues, in my mind, are you have an order in
7 place which exists that pooled a unit in this shape
8 which was the only time you have ever pooled an active
9 gob that was shaped in any shape other than basically
10 the units along the longwall panel. I mean, this was
11 an -- I viewed this as an accommodation on the Board's
12 part of Mr. Ratcliff. To accommodate him to allow him
13 to produce active gob gas and to allocate to the people
14 in a unit of this shape and size. And what has
15 subsequently happened is the mine has been sealed and
16 it's now a sealed gob situation. So this order is
17 there but the allocation to people in an 80 acre unit
18 is by prior Board action currently inappropriate and
19 you need to make -- the real issue is you need to make
20 some kind of decision as to who is entitled to share in
21 production from holes in a sealed mine and are you
22 going to limit it to the people who have an interest in
23 80 acres, are you going to include people up here, are
24 you going to include these people? Are you going to
25 include everybody who has an interest in the entire

1 sealed gob. An alternative which you need to be aware
2 of and it would, I think somewhat inconsistent with
3 what you've done in the past but there is statewide
4 spacing in gob units. And the statute that deals with
5 statewide spacing does not differentiate between sealed
6 gob and unsealed gob. And it basically says -- and
7 Sandy can give me her advice on this issue -- but it
8 basically says that sealed gob units can be spaced on
9 500 feet and to the extent that pooling isn't required
10 presumably you could produce from the gob by just
11 getting a permit from Mr. Fulmer's office. Here it
12 looks at least with regard to this unit that pooling
13 probably is required and that wouldn't be a solution.
14 But drilling statewide units is potentially a way to
15 deal with this. The problem of that is if you've got a
16 sealed mine and you're only paying people in a 500 foot
17 radius around a hole it's a problem. And in terms of
18 the Board's history of implementing global solutions
19 that treat everybody the same so that somebody doesn't
20 come here six months from now and get a royalty
21 allocation that's different than somebody who was here
22 today or was here six months ago. In terms of coming
23 up with a global solution I think field statewide
24 spacing just is not a fair global solution. The real
25 issue is what are you going to do in a sealed gob

1 situation to allocate royalty. That's the question.

2 MR. GARVIS: Is the whole mine -- is it contemplated that
3 everything there in the dark areas will be sealed?

4 MR. SWARTZ: It is sealed. It is but for these two holes.

5 MR. GARVIS: Right, with those two exceptions.

6 MR. SWARTZ: Right. And the history of this hole -- there
7 was a law suit involving this hole. This was drilled
8 originally as a vertical ventilation hole permitted as
9 a mine hole. And as part of the settlement of the law
10 suit title to this hole passed to Mr. Ratcliff. He
11 never repermited it until very, very recently. So the
12 permit was in Island Creek's name even though they no
13 longer owned or controlled the hole. He did apply for
14 a permit which I think Mr. Fulmer ultimately granted
15 and it is now permitted in Mr. Ratcliff's company's
16 name, I think. In any event, it has a gas well permit.
17 This is a different situation. This is still a VVH
18 hole. It was permitted as VVH. The permit is still in
19 Island Creek's name but they can't get on the property
20 because they don't own the surface to plug the hole.
21 And there may be some litigated solution to plugging
22 this hole that's not your problem. But there is a
23 difference between something that's been permitted as a
24 gas well and the status of this -- it's a permitted gas
25 well. This is a VVH that is not permitted to produce

1 gas and should be plugged. I hope that helps. Maybe I
2 mis-spoke. VVH #12 is a problem because the surface
3 owner is producing gas from a VVH which is not permit-
4 ted as a gas well. That's the problem with VVH #12.

5 MR. GARVIS: Is this the first such situation where we have
6 a mine that's basically being closed down? And I guess
7 the following question would be are there others like
8 this to be -- likely to be presented before us in the
9 future? Is this the first of many problems?

10 MR. HARRIS: I'm sure we'll see this again, maybe not with a
11 property ownership where we have a permitted well but
12 in terms of removing gas from a sealed mine, yes.

13 MR. GARVIS: So that's likely to be seen in the future.

14 MR. SWARTZ: We've done it where we have had -- not that
15 long ago where we had a multitude of 80 acre units
16 that involved active gob production and we sealed a
17 portion of the mine and we converted those to a sealed
18 gob. There's a mechanism in the orders that you all
19 have been issuing to allow a change-over as of a date.
20 I mean, we've been here before. That has happened and
21 will continue to happen. The variation here is you're
22 being asked to, I guess, either allow continued
23 production from an 80 acre unit in a sealed mine or to
24 not impose a requirement that title be done on the
25 entire mine and that the entire mine be pooled which

1 is different. When we've been here before and we've
2 sealed a portion of a mine and we've had, let's say,
3 ten active gob units in there that doesn't occupy all
4 of it but a good chunk of it we come in and say we had
5 ten orders, we're now sealing this, we need to re-
6 allocate all of this and we're picking a cut off date
7 as to when it was sealed and the prior orders expire
8 and the new allocation kicks in. That's what you've
9 seen in the past. Where title has been done and the
10 allocation's been done on the entire area that is
11 arguably being drained. What's different here is the
12 area that's being drained. It's clearly more than 80
13 acres.

14 MS. RIGGS: With respect to the law on the area being
15 drained, once it went into sealed gob there are no
16 field rules. Therefore, the only legal guideline you
17 have are the guidelines under statewide spacing which
18 is Statute 45.1-361.17. And it says that unless prior
19 approval has been received by the Board or a provision
20 of the field or pool rules so allow then wells drilled
21 in search of coalbed methane gas shall not be located
22 closer than -- and it's 500 feet for a coalbed methane
23 gas well located in a gob. So if you have 500 feet
24 between wells what you have is the well and a 250 foot
25 circle around it. So if you created -- reconfigure the

1 unit under statewide spacing you're talking about that
2 circle created by that spacing requirement. The only
3 other alternative that the Board has is to come in
4 under 45.1-361.20 and impose a field rule for the
5 sealed gob area. And to do that you need --well, to do
6 that you need to go through the process of notice to
7 create the field rules and bring on the testimony
8 necessary to do that.

9 MR. LEWIS: At the time this well was drilled we didn't have
10 these rules here, though, did they?

11 MS. RIGGS: It was a vertical ventilation hole drilled
12 under --

13 MR. LEWIS: Are you saying that it comes back under the
14 grandfather and pulls this in with that?

15 MS. RIGGS: No. The permit that was issued -- which well
16 are you talking about?

17 MR. LEWIS: I'm talking about the Ratcliff.

18 MS. RIGGS: The permitted well. The permit that was issued
19 was conditioned upon them coming before this Board and
20 getting a pooling order to determine how the royalties
21 will be allocated. And that pooling order was entered
22 in this docket that you have, 94-1024-0475. But it was
23 entered based upon an active gob 80 acre unit and that
24 no longer is applicable. So that the escrow account
25 that has been set up that identifies the parties that

1 are entitled to receive the royalties in this particu-
2 lar case are based on that 80 acre unit. The 80 acre
3 no longer applies because it's now sealed gob. So what
4 the Board now has to determine is what allocation
5 process is going to be used. How are you going to
6 configure the entitlement based upon new field rules
7 for the sealed gob or in the absence of that it would
8 be based upon statewide spacing requirements which
9 would be the 500 foot circle. In any event, the
10 pooling order has to be amended to identify who those
11 people are so that the escrow agent knows who he's
12 holding the money for.

13 MR. LEWIS: On this sealed gob area how many acres does
14 this --

15 MS. RIGGS: The whole mine?

16 MR. LEWIS: The whole mine is not sealed.

17 MS. RIGGS: The whole mine is sealed.

18 MR. LEWIS: Yeah, but there's certain proportions inside
19 that mine that's sealed.

20 MS. RIGGS: I don't think so.

21 MR. LEWIS: They're not?

22 MS. RIGGS: I don't think they've established interior
23 seals. I think it's the whole mine right now.

24 MR. LEWIS: But aren't there interior seals in that mine?

25 MS. RIGGS: I don't think so. I don't believe that was the

1 testimony. You'd have to ask --

2 MR. McCALL: This gentleman here just said the whole mine
3 was sealed.

4 MR. LEWIS: Yeah. We know that but are there particular
5 places in that mine that's sealed?

6 MS. RIGGS: Is it subdivided into parts or is the whole mine
7 a single --

8 MR. RATCLIFF: I think you'll find that the mine is not
9 subdivided. It is open all the way through.

10 MR. HARRIS: So is this the information we have, that it's
11 sealed on the exterior but not inside?

12 MR. LEWIS: On the interior it's not been sealed -- not
13 sections in that mine?

14 MR. RATCLIFF: Let me add some more information before the
15 Board. We do have several wells that have not been
16 sealed and Mr. Fulmer stated that he wasn't sure if
17 they were or not. There is some in the area that is
18 not sealed and that needs to be addressed by the Gas
19 and Oil, Board, to find these wells and get them
20 closed.

21 MS. RIGGS: Well, are they being used as --

22 MR. RATCLIFF: No, ma'am. It's just abandoned in the
23 mountains.

24 MS. RIGGS: Then that's the Division of Mines' jurisdiction
25 as the ones they're permitted under through the

1 Division of Mines. And that is an ongoing effort.
2 Division of Gas and Oil only gets jurisdiction once
3 that VVH is being produced --

4 MR. RATCLIFF: This was something that happened back in
5 1992, 1965. These wells have been abandoned. They're
6 back in the mountains. They're bleeding this mine.
7 They need to be sealed.

8 MS. RIGGS: If you know where those are that's through the
9 Division of Mines who has jurisdiction over the
10 vertical ventilation holes. They think or thought that
11 they had identified all of the VVHs.

12 MR. RATCLIFF: I will talk with Mr. Morgan about it. I
13 imagine he would be interested in that information.

14 MS. RIGGS: Okay. And let the Division of Mines know so
15 that they can include them in their inventory of the
16 wells within this mine.

17 MR. RATCLIFF: Yes.

18 MR. HARRIS: So, again, as I understand it what we need to
19 do ultimately is make some type of decision and I think
20 what we'll do is address field rules for sealed gob --
21 because of the notice that we have to send to people
22 and whatever, there's nothing we're going to do by a
23 motion here today. And, again, we still need to go
24 back to Item I but in Item II again one of the options
25 is to amend the order that currently stands to allow

1 production to continue or in some basis -- I don't know
2 if this needs to be in the form of a motion but at some
3 point today we'll have to decide.

4 MR. RATCLIFF: Before you go ahead, sir, I'd like to say
5 that the well now as of December 8th is producing well
6 for our community. We have approximately 52 homes now
7 that are being served in our community from this well
8 and one other small community in Buchanan County are
9 the only two communities being served by all the
10 natural gas that's being produced in Buchanan County.
11 We're happy that people are happy with it and it's one
12 of the things that we've worked and fought hard for.
13 We thought the Board ought to know that it is serving
14 the community in the Oakwood area now.

15 MR. HARRIS: Thank you, Mr. Ratcliff. I don't think we need
16 to take a motion at this point. I think what we might
17 want to do is listen to Item I. Again, the purpose of
18 Item II was to give us information concerning what the
19 problem is. We may want to go back to Item I before
20 making any type of decision on this and we get all of
21 the information. So we'll go back to Item I which was
22 read previously.
23
24
25

ITEM I

1
2
3 MR. HARRIS: This is docket number VGOB-96/04-16-0542.

4 We'll go ahead and hear that item and again, those
5 people who are speaking just for the record, if you
6 would, state your name and your interest.

7 MR. McCALL: May it please the Board, my name is W.R. McCall
8 and I'm representing Diana Graham pursuant to an
9 application and petition which has been filed. There
10 are several elements which are, as you pointed out,
11 interrelated. My client has a claim of ownership into
12 the oil and gas estate under a portion of the unit and
13 she is described in the previous order. The purpose is
14 to ask the Board to recognize the ownership of Ms.
15 Graham to a tract of property which is in the unit and
16 yet has not been heretofore made known to the Board.
17 The principal reason was that Ms. Graham in the
18 previous hearing which occurred back in February of
19 1995 was not given notice that she should appear or
20 that she should somehow or another be before the Board.
21 So she had no way of knowing to be here. And I notice
22 that in the list of claimants which are exhibits to the
23 previous order that there are pages and pages of
24 individuals who are apparently asserting a claim to the
25 oil and gas estate and yet Ms. Graham was not listed

1 despite the fact that her property line is approximate-
2 ly 50 to 75 feet from the location of this well. By
3 that as it may, we did then realized what had happened
4 and petitioned the Board and took the list that was
5 attached as an exhibit to the previous order of the
6 Board and sent certified letters to 50 to 75 in-
7 dividuals including several corporate entities. I've
8 attached an affidavit to the exhibit showing that these
9 notices were sent out. I'd like to ask if anybody is
10 in this room today -- if anybody is here pursuant to
11 the notice that was sent out by my office? You are,
12 sir? Could I have your name, please?

13 MR. RATCLIFF: Don Ratcliff.

14 MR. MCCALL: Did you get the notice from my office?

15 MR. RATCLIFF: Yes, sir.

16 MR. HARRIS: Excuse me. Sir, could you just come forward.

17 Are you going to ask him a series of questions or --

18 MR. MCCALL: No. I just wanted to -- the purpose of this is
19 to -- Mr. Ratcliff, you are certainly welcome to come
20 up and sit. The purpose of this was to let the Board
21 know that I assume that if anyone had an interest in
22 this proceeding that they had notice to be here today
23 and were sent certified letters. I only received two
24 back, I might add, and I'd like to ask that these be
25 entered as an exhibit, the purpose of which is to

1 indicate to the Board that all of these individuals
2 and/or entities were, in fact, given notice to be here
3 today if they had any interest in protecting their
4 property rights. Ms. Graham -- and I'm here on her
5 behalf. Mr. Don Ratcliff indicates he is here on his
6 behalf, I'm sure, and obviously Mr. Wyatt Ratcliff is
7 here also. I sent notice to him. I think I better ask
8 that these be filed as an exhibit, if I could, for
9 consideration of this petition. The second part of
10 this petition then is to essentially ask that the Board
11 do what you've already discussed being done, which is
12 to decide whether or not you're going to create a unit
13 approximately the size of the present unit and/or
14 create another unit which will be different. That is,
15 of course, the responsibility of the Board to decide.
16 I would like to indicate that the approximate property
17 line that is, I think, applicable to Ms. Graham's
18 interest here. I understand that my client's father,
19 Mr. Lester and Mr. Wyatt Ratcliff have met and discuss-
20 ed the property line. And I believe -- Mr. Don
21 Ratcliff, are you an adjacent owner here?

22 MR. RATCLIFF: Yes, sir.

23 MR. McCALL: And I think maybe you met with Mr. Lester or
24 Mr. Ratcliff and you all have agreed on where the line of
25 Ms. Graham is?

1 MR. RATCLIFF: Yes, sir.

2 MR. McCALL: I don't think there was any discussion about
3 that. My problem is she's presenting this to the Board
4 because what appears here on the map may not be what is
5 actually on the ground. This is our interpretation of
6 it, though, and I'll just show that to Mr. Don Ratcliff
7 since he's an adjacent owner. I assume that the Board
8 is not going to get into the situation of how long this
9 well had been used for commercial or quasi commercial
10 purposes. I don't suppose that you want to delve into
11 that problem, but I would like to suggest that the
12 effect as Mr. Swartz has pointed out is far more
13 encompassing now than it was previously. I don't know
14 how many ventilation holes and/or wells are within this
15 exhibit that Mr. Fulmer referred to which are, in
16 effect, bleeding gas out of the ground. But it appears
17 that there are very few and according to the testimony
18 that has been given the entire mine has been sealed
19 from the exterior and therefore, the effect on my
20 client being an adjacent owner is far more pronounced
21 than perhaps previously. I don't know that there's any
22 -- I'd like to offer this as an exhibit, if I could,
23 also the map if you all want to look at it.

24 MR. HARRIS: Yes.

25 MR. McCALL: I can't represent to the Board that that is the

1 exact line. However, as best I understand that's the
2 approximate line showing Ms. Graham's interest to the
3 east of that well. You may know or may not know that
4 the well is located 50 to 75 feet approximately from
5 the creek. Ms. Graham's line, in fact, calls for the
6 meanders of the creek which means generally the center
7 line of the creek. So it encompasses a substantial
8 portion of the adjacent acreage, if I might say that.
9 I would like to ask that the Board consider a couple of
10 related questions, please, in acting on this petition.
11 I don't understand or maybe it's not clear to me as to
12 whether or not an escrow account has, in fact, been set
13 up for this particular unit and if so, when was it set
14 up and what is the status of it, ie., where is the
15 money, how much money is in it, how much interest is
16 being applied to the money. The second question is is
17 the gas being commercially produced and that the date
18 of this commercial production be established.

19 MR. HARRIS: I'm sorry. Would you state that one again?

20 MR. MCCALL: To date of the commercial production be
21 established. By commercial production I mean not when
22 necessarily the gas was sold to, as I understand,
23 Virginia Gas Company but when the gas was used by
24 whomever took the gas out of the well here for commer-
25 cial or quasi commercial purposes; ie, if this gas was

1 used for commercial purposes by selling to Virginia Gas
2 Company that it's fairly easy to determine how much was
3 sold and what price was obtained. However, if the gas
4 was previously utilized or is still being utilized as
5 part of an agreement with a landowner to provide
6 utility service or fuel, in effect, for a home or
7 something and that anyone that's been getting revenue
8 from that based upon an enhanced value then it seems to
9 me that that may or may not be relevant but I would ask
10 that the Board consider that.

11 MR. HARRIS: Mr. Fulmer, do you have any information that
12 might answer either of those two questions?

13 MR. FULMER: The answer to the first one is no, no, no.
14 There's not been a supplemental order entered. An
15 account has not been set up in escrow. In the original
16 petition there was no a conflicting claim listed. So
17 there was no reason to set up an escrow account as far
18 as the petitioner of the unit, Mr. Ratcliff, went in
19 this particular instance.

20 MR. MCCALL: As I understand the status of the situation at
21 this point I don't know who the coal owner is beneath
22 Ms. Graham's property but it appears to me that, of
23 course, the coal owner -- if I'm not mistaken -- has an
24 equal claim in and to any royalties that have been
25 produced or could have been produced from this well.

1 That's my understanding of the situation.

2 MR. FULMER: It was the understanding -- and I grant you
3 that is the understanding to my knowledge, and I don't
4 want to testify before the Board, but when the petition
5 came up the representatives of the mineral interests
6 were here and they did not object to the unit and
7 didn't come in as a claimant as far as I know.

8 MS. RIGGS: Could I ask a question? You say that your
9 client has an ownership interest in the existing 80
10 acre unit but you didn't identify what that interest is
11 with respect to -- is it surface, gas and oil?

12 MR. MCCALL: I thought I put it on the petition or mentioned
13 in the petition that the petitioner is the owner of the
14 surface and the oil and gas estate both underlying a
15 tract of land. So her claim then is to both the
16 surface and the oil and gas. The coal was severed some
17 time ago.

18 MR. GARVIS: Another question on leasing, unless I'm
19 perceiving this wrong. I'd like to know how the unit
20 was allowed to progress and be approved. In all the
21 documentation that's presented before us there's always
22 a list of the people that it was sent out to and there
23 was percentages and everything. So somewhere something
24 was faulty to allow us to go -- and I'm very concerned
25 about that procedure. I'd be really upset if the fact

1 that there was some untruthfulness in this whole thing.
2 Something's wrong somewhere. We need to investigate
3 that and find out what happened. Maybe that needs to
4 be the beginning, to see how that -- because something
5 like that is too big just to slip by us.

6 MS. RIGGS: What the Board was presented with -- and you
7 have a copy of the pooling order, the Board's pooling
8 order. The exhibits that are attached to that pooling
9 order were the exhibits presented to the Board when
10 this well or unit was pooled. So that's the represent-
11 ations as to ownership previously made to the Board
12 through prior testimony in the pooling application. And
13 I think if you look at it I think that it says Wyatt
14 Ratcliff and his wife claim 100 percent of the gas and
15 don't list any other gas and oil owners. I think it
16 did list some surface owners and it identified coal
17 owners.

18 MR. RATCLIFF: In the 80 acre unit.

19 MS. RIGGS: Within the 80 acre unit. So the question --
20 when you look at the composite exhibit that Tom put
21 together, Exhibit #11 I think it was, what he did was
22 take adjacent units and make a composite. So when you
23 look at the corner plat that was the late presented by
24 Mr. Wyatt Ratcliff as to what the ownership was within
25 the 80 acre unit and the two adjacent ones came from

1 other applications on file with the Division and you
2 can see where the property lines would cross over and
3 intrude upon. So if you're looking in the adjacent it
4 identified Diana Graham's interest but it wasn't -- and
5 even though it clearly crosses over it was not identif-
6 ied in the U-19 unit.

7 MR. GARVIS: Is U-19 the smaller square?

8 MS. RIGGS: It's the upper right corner. So then the
9 question becomes if Diana Graham was let out was there
10 any other gas and oil owners excluded because the ones
11 that got notice of today were those people, as I
12 understand it, that Mr. Wyatt Ratcliff noticed in his
13 application. So if they were not noticed in the
14 original application they would not have had notice of
15 this one either. So I don't think any subsequent title
16 work has been done with respect to the total unit.

17 MR. McCALL: I simply took the individuals on here and I
18 listed everybody I could think of that might have an
19 interest in it. I think -- in fact, I sent that by
20 certified mail and we got substantially all of these.
21 There are only two that were not signed for.

22 MR. HARRIS: Well, as you can see, we have several problems.
23 If she should have been included on the original order
24 do we need to go back and amend that? That order
25 actually at this point no longer exists technically

1 because we don't have any rule to govern -- we've not
2 established any rules to govern the sealed gob. So
3 that's another problem. There is no escrow account.
4 I'm not sure how we would address that. I'm not saying
5 we can't do anything. I'm just voicing what we're
6 being faced with. Also I know Mr. Ratcliff wanted to
7 speak to this. I think maybe we should ask him to go
8 ahead -- I know he gave us a letter that I asked you
9 not to look at yet, but he did give us a letter. Let's
10 give him an opportunity to speak because it is pertain-
11 ing to the same item.

12 MR. RATCLIFF: I am Wyatt Ratcliff with Ratcliff Gas
13 Company. The property in question, if you all can read
14 this letter, is self explanatory. There in the
15 mountains of Buchanan County the way property lines are
16 done by a chestnut tree down a scur to a given point
17 somewhere some times can be very confusing as to the
18 exact location of a property line. Whenever this was
19 done the property line was established with the best
20 information that I had and later Ms. Graham approached
21 me and said that her father did -- her property did
22 extend beyond the unit boundary into unit U-19. We
23 did a survey on that and found that she was exactly
24 right. There is a very small portion of it that comes
25 over into unit U-19. I've addressed that in the

1 letter. This property to begin with -- the percentage
2 was allotted to Mr. Don Ratcliff and to Anna Pearl
3 Ratcliff. It's a very small amount of the unit. But
4 now that the survey has been made and we have determin-
5 ed the exact amount and she is right. Her land did
6 project into it and I have the exact information there
7 for the Board to make the change from Don Ratcliff to
8 Diana Graham as the percentage in this escrow account
9 and for this to be set up.

10 MR. HARRIS: Let me ask you a question. You indicate a
11 percentage based after the survey in your letter of
12 .05567 percent of the unit U-19?

13 MR. RATCLIFF: Yes.

14 MR. HARRIS: You're not agreeing to that?

15 MR. MCCALL: I don't know. I haven't seen the survey and I
16 think the survey is the best evidence. I mean, we
17 could sit here and talk all day, but unless we have a
18 survey that everybody agrees to -- if there is a
19 dispute. If Mr. Ratcliff will concede that Mr. Don
20 Ratcliff and Ms. Lester apparently got together and if
21 he will agree that this line is as I've presented as an
22 exhibit of the map here then I don't know what propor-
23 tion -- I haven't seen anything else but I'd suggest
24 that a survey would be obviously the way to determine
25 it.

1 MR. HARRIS: Again, your main purpose is to indicate that
2 she does have ownership in that. You're not attesting
3 to the exact amount as indicated by your map but that
4 it is a reasonable approximation or -- I don't mean to
5 put words in your mouth. But what you have now is the
6 survey --

7 MR. McCALL: I think looking at unit U-19 that the line that
8 we understand is substantially more than .055 percent.

9 MR. RATCLIFF: Yes, sir, that was true until the railroad
10 came through and bought all of that property. It
11 belongs to the railroad now except for one little tiny
12 portion.

13 MR. McCALL: The railroad bought the surface. The railroad
14 didn't buy the oil and gas rights.

15 MR. RATCLIFF: They bought it all.

16 MR. HARRIS: We probably need to recess for about ten
17 minutes or so. Let's just do that.

18 MR. KELLY: Mr. Chairman, I'd like to make a motion that
19 will serve as a recess and continue into it, I guess.
20 I'd like to move that pursuant to Section 2.1-344, part
21 7, that the Board convene into Executive Session for
22 consultation with legal counsel and briefings by staff
23 members, consultants or attorneys pertaining the actual
24 or probably litigation or other specific legal matters
25 applying the provision of legal advice by counsel.

1 MR. LEWIS: I second that motion.

2 MR. HARRIS: It's been moved and seconded that we go into
3 Executive Session. All in favor say aye. (ALL
4 AFFIRM.) Opposed say no. (NONE.) Thank you. We will
5 go into Executive Session.

6 (Thereupon, the Board convened in Executive Session at
7 10:20 A.M. and returned to open hearing at 11:35 A.M.)

8 MR. HARRIS: We'd like to thank you for your patience. I
9 will entertain a motion to come out of Executive
10 Session.

11 MR. GARVIS: I'd like to make a motion that we come out of
12 Executive Session.

13 MR. HARRIS: Is there a second?

14 MR. LEWIS: I second it.

15 MR. HARRIS: Any discussion about this? All in favor say
16 yes. (ALL AFFIRM.) Opposed like sign. (NONE.) The
17 ayes have it. I do have a question for Board members.
18 There are two. Let me just read both and then ask you
19 individually if this is, in deed, your affirmation. Do
20 you affirm that during the Executive Session you
21 discussed only public business matters lawfully
22 exempted from the statutory requirements for open
23 meetings and B) do you further affirm that during the
24 Executive Session you discussed only business matters
25 identified in the motion to convene the Executive

1 Session. Mr. Garvis?

2 MR. GARVIS: I affirm.

3 MR. HARRIS: Mr. King?

4 MR. KING: I affirm.

5 MR. HARRIS: Mr. Lewis?

6 MR. LEWIS: I affirm.

7 MR. HARRIS: The Chair affirms. Mr. Kelly?

8 MR. KELLY: Yes.

9 MR. HARRIS: Thank you. I believe there are some other
10 motions concerning the issues.

11 MR. KELLY: Mr. Chairman, first of all, I'd like to make a
12 motion that the Board Diana Graham's application and
13 amend the pooling order to name her as a potential
14 claimant of the coalbed methane gas by virtue of her
15 claim of ownership, a portion of the gas and oil estate
16 underneath the subject unit.

17 MR. HARRIS: There is a motion. Is there a second?

18 MR. KING: Second.

19 MR. HARRIS: Further discussion? All in favor say aye.

20 (ALL AFFIRM.) Opposed like sign. The motion passes.
21 I believe there are others.

22 MR. KELLY: Mr. Chairman, I have another motion. I'd like
23 to move that the Board require that Ratcliff Gas file a
24 supplemental order naming Diana Graham and proceed to
25 establish its escrow account no later than the May

1 hearing date.

2 MR. FULMER: The 21st.

3 MR. HARRIS: There's a motion that Ratcliff Gas Company do
4 two things. One is file a supplemental order -- let me
5 just ask you to repeat the motion again.

6 MR. KELLY: That Ratcliff Gas file a supplemental order to
7 Diana Graham and to establish an escrow account by the
8 May hearing date.

9 MR. HARRIS: Do we have a second?

10 MR. LEWIS: Second.

11 MR. HARRIS: Any further discussion? All in favor say aye.
12 (ALL AFFIRM.) Opposed like sign. (NONE.) The motion
13 passes. Is that it or are there others?

14 MR. KELLY: An additional motion, Mr. Chairman. I'd like to
15 further move that Ratcliff Gas reverify to the Board
16 that it has complied to Section 45.1-361.19 and if not,
17 amend it's application accordingly to make sure that
18 all oil and gas, mineral and coal owners in the unit
19 have been named.

20 MR. HARRIS: Is there a second for that motion?

21 MR. GARVIS: I second the motion.

22 MR. HARRIS: It's been seconded. Further discussion or any
23 discussion on the motion? All in favor say aye. (ALL
24 AFFIRM.) Opposed like sign. (NONE.) The motion
25 passes.

1 MR. KELLY: I have a final motion. I would move that the
2 Board give notice of its intention to establish field
3 rules for the Beatrice Mine sealed gob area based upon
4 the existing 80 acre grid and establish allowable
5 production for each well within the sealed gob area in
6 order to allow the development of the sealed gob area
7 on a unit by unit basis.

8 MR. KING: Second.

9 MR. HARRIS: Any discussion on this motion? All in favor of
10 the motion say aye. (ALL AFFIRM.) Opposed like sign.
11 (MR. LEWIS OBTAINS.) One abstention. The motion has
12 passed. Thank you. Let me first ask Mr. McCall, I
13 know that your's actually was the item that was before
14 the Board. Do you have any further comments or
15 questions or anything? Are there any questions about
16 the motions and how they pertain to you?

17 MR. MCCALL: I would like to ask, please, if Mr. Ratcliff
18 will voluntarily do so -- I understood he had a survey
19 that shows that the property lines which are in the
20 vicinity. It might be helpful if he would give the
21 Board a copy of that.

22 MR. HARRIS: Oh, yeah. And, in fact, it's required to have
23 a plat that's certified by an engineer. You'll notice
24 that the motions did not specify percentage. All we
25 did was recognize that she has an interest here. So

1 we've included her or asked to include her and, of
2 course, as to the research Mr. Ratcliff or the company
3 has been asked to do research to determine other
4 claimants also as part of the amended application. So,
5 yes, she's being included but the percentage is not set
6 because we need some type of conformation.

7 MR. MCCALL: And that will be shown in the amended applica-
8 tion?

9 MS. RIGGS: This Board cannot make title determinations.

10 MR. MCCALL: I understand.

11 MS. RIGGS: The applicant is suppose to do due diligence and
12 name all of the parties required by the notice provi-
13 sions and provide a plat that reflects those interests.
14 So if his research determines that his current plat is
15 incorrect he will need to modify that accordingly.

16 MR. MCCALL: And that will be taken up at the next meeting?

17 MR. HARRIS: We'll begin that, I guess, at the next meeting.
18 Another thing is that, I guess, we're leaving the 80
19 acre plat as it is until field rules are established.
20 In other words, if we have an amended application the
21 timing of this is relative to the creation of field
22 rules.

23 MS. RIGGS: Well, we're just going to hear testimony at this
24 point with regard to creation of those field rules, set
25 it down for -- is it the next Board meeting?

1 MR. HARRIS: The only reason I was asking was for Mr.
2 Ratcliff's benefit. If he's going to do the amended
3 application including other owners we need to decide if
4 it's the current 80 acre area that he would do that in.

5 MS. RIGGS: That is all he has until such time as the Board
6 considers field rules and acts on it.

7 MR. HARRIS: So it would be the 80 acre plat that's current-
8 ly in existence. This may change in the future
9 depending on how the field rules work out, but at the
10 current time it will be the 80 acre unit that's
11 currently there.

12 MR. MCCALL: Is this known as V-19?

13 MR. RATCLIFF: U-19.

14 MR. HARRIS: Yes, U-19. Other questions about the motions?

15 MR. MCCALL: To be sure I understand, if I can. I'm sorry
16 to --

17 MR. HARRIS: That's why we're here.

18 MR. MCCALL: If that's all right, I have a copy of a map
19 that was taken out of -- it appears to be the well
20 location relative to Exhibit #1 in the previous hearing
21 which shows a 500 foot radius being drawn around the
22 Ratcliff well. As I understand what will be determined
23 at the next hearing or at the appropriate hearing in
24 discussing the field rules will be whether or not this
25 well will draw from basically a circle or continue to

1 draw from the present unit because I understand that
2 the U-19 unit is simply a square that is one of the
3 corners of this well.

4 MR. HARRIS: Yes.

5 MR. McCALL: If we're talking about a sealed gob mine then
6 are we not talking about drawing from a substantially
7 greater area or is that something that's going to be
8 discussed?

9 MR. HARRIS: That will be discussed. That's one of the
10 issues for --

11 MR. McCALL: It may be fine if it's a square around the well
12 with the well in the center, but --

13 MR. KELLY: Well, the key to it is the allowable production
14 limit will be established for each unit and that will
15 essentially limit the drainage.

16 MS. RIGGS: Allocated out of the whole field.

17 MR. McCALL: And that will be discussed at the next hearing?

18 MR. HARRIS: Yes. We don't know how much gas is there. We
19 don't know how the units will be sized and if there
20 ended up being 100 units and X amount of gas we'll just
21 divide -- I don't know if it's that simple but that's
22 creating the allowable per unit. In order to fulfill
23 those motions we do need to stay with the 80 acre unit
24 that's currently listed in the application that we have
25 -- the Board order. So that's what we're going to do.

1 So that's where we are now. Now after hearing testi-
2 mony concerning the field rules if a different unit
3 size is established we'll need to go at that point and
4 look at how the -- how to resize the unit and, of
5 course, that would change a number of people included
6 also. But we expect that that's going to take some
7 time to do and we thought rather than have everyone
8 wait that we would correct some problems that are here
9 now. And one is the escrow account set up. We do need
10 that. The other one is including the person that you
11 asked to have included. Did you have other questions?

12 MR. McCALL: No. The escrow account is to be set up
13 forthwith, is that correct?

14 MR. HARRIS: Yes.

15 MR. KELLY: By the May hearing.

16 MR. HARRIS: Yes.

17 MR. McCALL: Is some evidence of the escrow account to be
18 furnished to the Oil and Gas Inspector?

19 MS. RIGGS: The way the Board currently handles that is as
20 part of the original pooling application -- it's right
21 towards the of the order there -- the operator is to
22 file what is called a supplemental order that outlines
23 -- there's a 30 day election period for parties to
24 elect one way or the other. What the supplemental
25 order does is tie down the elections that have been

1 made so that you know which ones are royalty interests
2 versus working interests and carried, participating,
3 whatever. That order then goes to the escrow agent
4 which is Tazewell National Bank that's named in the
5 order and they use that order to set up the escrow
6 account. The supplemental order is what they actually
7 open the account with. So when he files his supple-
8 mental order with the Division of Gas and Oil it gets
9 recorded in the property records to establish those
10 claims and a copy of it goes to the escrow agent which
11 he then uses to open the account.

12 MR. MCCALL: That would be an interest bearing account?

13 MS. RIGGS: It is an interest bearing account managed by
14 Tazewell National Bank and the fees that they charge
15 related to their handling of the account comes off of
16 the account. And the escrow agent report quarterly
17 here to the Board on the progress, the investments of
18 that account, and what the interest accruals are and
19 those reports are on file with the Division of Gas and
20 Oil if you want to go back and review the performance
21 of that escrow portfolio.

22 MR. MCCALL: It this a high interest bearing account or --

23 MS. RIGGS: Well, it's under the rules related to investment
24 of funds by the Commonwealth. So they're in pretty
25 conservative investments.

1 MR. HARRIS: Mr. Ratcliff, there were a couple of motions
2 that pertained to you or to Ratcliff Gas Company in
3 particular. Did you have any questions about the
4 motions that we might be able to answer? You might
5 want to talk to --

6 MR. RATCLIFF: Yes. I would like to talk to my lawyer.
7 This was something I didn't know was coming before the
8 Board. I would have liked to have had him here to
9 address these things that have come up. I will be
10 contacting him. How much time do I have to get this
11 back to the Board? Will that be required by the next
12 meeting or as quick as I can get it? Sometimes these
13 things happen pretty fast. The survey that I have is
14 not a certified survey. It is a survey that we did as
15 accurate as we could. It has not been certified and
16 now I'll have to go back to a certified surveyor and
17 get one for the --

18 MS. RIGGS: In your original pooling order --

19 MR. RATCLIFF: That one was, yes.

20 MS. RIGGS: -- you filed a certified plat which is now
21 incorrect, is that right?

22 MR. RATCLIFF: No. I'm not saying that one is incorrect.
23 I'm saying that we have discovered that there is
24 another party that owns a portion of the property over
25 in unit U-19 and we want to get that portion certified

1 by an engineering firm as to how much they have in this
2 unit and bring that information back to the Board. Do
3 I have to do this in four weeks or have I got enough
4 time to get things done. If it takes six weeks --

5 MR. HARRIS: Well, first of all, let me make a comment. The
6 concern of the Board is that not only this young lady
7 may have been left out but there may be others. And it
8 is your responsibility as the operator and the appli-
9 cant here to determine if there are others who bear an
10 interest and what their interest is and if there are
11 property lines.

12 MR. RATCLIFF: I know of no other ones. We published this
13 in the paper in case there would be some property
14 owners that I didn't know about. We put an ad in the
15 paper. We've notified by public means that in case
16 there is someone and this small tract here is the only
17 one that has said -- we need to make the records right
18 and we will do it right to the best of my knowledge.

19 MR. HARRIS: Well, there probably needs to be a title search
20 done, though, for the property in question -- the tract
21 in question. This is what the other operators have
22 done. There's actually been a title search done in
23 which they have determined who has ownership and
24 determined who is a claimant. And that's about the
25 only way that that can be done.

1 MR. RATCLIFF: Most of that work has already been concluded.

2 MR. FULMER: I think what we're struggling with here is the
3 fact if he determines that this is the only party left
4 out then what the Board would like to see is a plat
5 being resubmitted showing her interest that is certifi-
6 ed. Now, the only change be the fact of that one
7 change. If that's what you so want to certify to the
8 fact that all the interests have been notified and all
9 the title work's been done and you make an affidavit of
10 due diligence that's basically what we're looking for.

11 MR. RATCLIFF: Yes.

12 MR. FULMER: That you've done all of that and that you've
13 included Diana Graham. Now, to help you a little bit
14 further along, the supplemental order has got to
15 include these people and that's why the plat may be in
16 one motion but the supplemental order is the most
17 important order, that those interests be listed so it
18 can be put into escrow.

19 MR. RATCLIFF: Yes. Thank you.

20 MR. HARRIS: Are there other items that we need to -- I
21 believe those are the only two items that are here. Do
22 we have any other discussion?

23 MR. FULMER: That's all I have, Mr. Chairman.

24 MR. HARRIS: I guess we stand adjourned then. Thank you.
25 Well, I can't declare that. Do I have a motion for

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adjournment?

MR. LEWIS: I make a motion we adjourn.

MR. GARVIS: Second.

MR. HARRIS: Any questions? All in favor. (ALL AFFIRM.)
Opposed. (NONE.) Thank you. We stand adjourned.

(End of Proceedings for
April 16, 1996.)

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CERTIFICATE

COMMONWEALTH OF VIRGINIA
COUNTY OF WASHINGTON

I, Deborah J. Bise, Notary Public in and for the Commonwealth of Virginia, at Large, do hereby certify that the foregoing proceedings of the Virginia Gas and Oil Board meeting held on April 16, 1996 at the Southwest Virginia 4-H Center, Hillman Highway, Abingdon, Virginia, were taken by me and that the foregoing is a true and correct transcript of the proceedings had as aforesaid to the best of my ability.

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

GIVEN under my hand this 30th day of April, 1996.

Deborah J. Bise
DEBORAH J. BISE
NOTARY PUBLIC

My commission expires September 30, 1996.