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VIRGINIA OIL AND GAS BOARD

HEARING OF JUNE 18, 1996

9:00 A.M.

AT THE SOUTHWEST VA. 4-H CENTER

HILLMAN HIGHWAY

ABINGDON, VIRGINIA

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INDEX

	<u>Page</u>
Item I	14
Item II	63
Item III	67
Item IV	77
Item V	87

1 June 18, 1996

2 This matter came on to be heard on this the 18th day of
3 June, 1996 before the Virginia Gas and Oil Board at the
4 Southwest Virginia 4-H Center, Hillman Highway, Abingdon,
5 Virginia pursuant to Section 45.1-361.19.B and 45.1-361.22.B
6 of the Code of Virginia.

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

12 MR. HARRIS: I'm Bill Harris, a public member from Wise
13 County.

14 MR. GARBIS: I'm Dennis Garbis, public member from Fairfax
15 County.

16 MR. KING: I'm Clyde King, a public member from Washington
17 County.

18 MR. LEWIS: I'm Max Lewis, a public member from Buchanan
19 County.

20 MS. RIGGS: I'm Sandra Riggs, Assistant Attorney General.

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

22 MR. FULMER: Tom Fulmer, Department of Mines, Minerals and
23 Energy.

24 MR. CHAIRMAN: Thank you. Before we start today's agenda
25 Steve Walls from our department office is here today with

1 us to talk about -- we have issued a notice of intended
2 regulatory action for the Virginia Gas and Oil Board
3 Regulations. Governor Allen asked all agencies in State
4 Government to review all the rules and regulations and
5 that's part of that process. So, Steve, if you will,
6 talk with us a little bit about how the process would
7 work and the things the Board may need to know at this
8 time.

9 MR. WALLS: Thank you, Benny. I'm Steve Walls, Director of
10 the Office of Program Support and Division of Energy with
11 the Department of Mines, Minerals and Energy. As Benny
12 said, the Governor had asked all agencies to review all
13 of their regulations. So we have pulled together a work
14 committee of interested parties about the gas and oil
15 regulations and went through them, produced a report of
16 their recommendations for possible changes to the
17 regulation. That was reviewed by the administration --
18 our Cabinet Secretary's Office and the Governor's Office
19 and they've asked us to bring to the Board to go ahead
20 and make changes to the regulation based upon those
21 recommendations or bring to them for your consideration.
22 At the March meeting we reported on the results of that
23 study to you and at that time you authorized us to go
24 ahead and publish a notice of intended regulatory action
25 in the Virginia Register of Regulation. That was

1 published on May 27th, setting up a 30 day public comment
2 period about the Board's intent to amend its regulations.
3 That public comment period will go through June 26th.
4 This whole process is governed by both the State's
5 Administrative Process Act and the Agency and Board's
6 Public Participation Guidelines. It sets out the whole
7 regulatory change process. So we have a number of steps
8 to go through from here forward and I'd like to just
9 briefly run through those with you and then get some
10 guidance from you on how you'd like to proceed from here.
11 As I said, the first step was filing the notice of intent
12 for regulatory action and having that published. The
13 next step that the Administrative Process Act and our
14 Public Participation Guidelines call for is to bring
15 potential changes to our regulatory working committee
16 that will then -- that is somewhat duplicative of what we
17 did earlier under the Governor's Executive Order. But we
18 want to also bring the Executive Order report back to
19 this working committee. They will also have a chance to
20 make any other recommendations that they think would need
21 to be made to make the regulation more effective. So one
22 of the things that we'd like to get some direction from
23 to the Board today on is establishing this regulatory
24 working committee. It's typically comprised of represen-
25 tatives of interested parties in your regulations such as

1 gas and oil resource owners, the gas and oil operators,
2 citizens in the area that the operations are taking
3 place. You may wish to have a Department representative
4 convene the meeting or you may wish to use a Board member
5 as the convener or chair to those meetings. That will be
6 up to the Board here. After the regulatory working
7 committee goes over the regulation and makes recommend-
8 ations that then will be brought back to the Board for
9 your consideration. If you decide you want to go ahead
10 with those changes you would then authorize the Depart-
11 ment to go ahead with the process. We would then submit
12 the proposed changes to the Department of Planning and
13 Budget in the State who has 45 days to do an economic
14 impact assessment of the proposed changes. Once that
15 assessment is done the Department is required to draft a
16 reply to that assessment. Usually we work fairly
17 closely with the Department of Planning and Budget on
18 those. So the reply usually is or typically is that,
19 yes, we agree with their assessment. But if they do
20 something that the Board would think was out of line we
21 would have a chance to say, "Well, we disagree with their
22 assessment on grounds A, B and C." After that process is
23 done the regulation is published in the Virginia Register
24 of Regulations as a proposed regulation and there is a 60
25 day minimum time period where public comments are

1 accepted on the proposed regulation language. And there
2 is required to be a public hearing during that time on
3 the proposed language and that can be held at a Board
4 meeting or that can be held independent of a Board
5 meeting, at your choice. After all public comments on
6 the drafted proposed regulation are in the Department
7 then would work up responses to those public comments and
8 any options for changes to the draft language that was
9 published based upon the public comments, bring that to
10 the Board. The Board would then decide on the final
11 language. That then gets published in the Virginia
12 Register and then it's effective after a 30 day waiting
13 period. So it's a long process. It takes upwards to
14 nine to twelve months to get through the whole thing with
15 all of the time periods for the economic impact assess-
16 ment and public comments. And whenever you file the
17 information with the Register of Regulation there's
18 about a two and a half week delay before they publish
19 them. So it will run through quite a while. But that's
20 the basic process. I think the decision points today for
21 the Board are authorizing how you want the regulatory
22 working committee to be set up, whether you want a
23 Department convener or you want one of the Board members
24 to go and run it. Either way you go, of course, we'll
25 let you Board members know about all the meetings and

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everyone on the Board is always welcome to come and participate.

MR. CHAIRMAN: Steve, on the Gas and Oil Regulation -- the Department of Regulations for Gas and Oil, not the Board regs, we had a working committee. The Board could choose to use that same committee. That seemed to have good representation on it. I don't know --

MR. WALLS: Yes.

MR. CHAIRMAN: Of course, this is open if anyone here wants to say anything today about that. But that is an option, to use that same working committee that we have set up if the Board so chooses or the Board can direct the Department on how it wants its regulation work committee.

MR. WALLS: The Department will be bringing the Gas and Oil Regulation on the permitting side and operation side through this same process. So we could use the same working committee and more or less run the two processes in concert with each other if that's the wish of the Board. I guess that's the first question. The second one really, is the makeup of the Board and how you want to convene is the main questions.

MR. LEWIS: Does this just have to be published in the paper one time?

MR. WALLS: When the proposed regulation is published in the Register of Regulation we will send out press releases.

1 And we find that the papers down here do pick those up
2 and publish notices of that. We're not required to
3 publish public advertisements about it. If the Board
4 wishes, that's something we certainly could do also. But
5 the whole text of the proposed regulation is published in
6 the equivalent to the Federal Register the State has, the
7 Virginia Register of Regulations. Then we also send
8 copies out to anybody who requests them. We send copies
9 of the proposed notice out to everybody on our mailing
10 lists so that they know that it's happening and they can
11 request copies of the regulations. So we try and do a
12 good job to get the word out that this is happening so
13 that things aren't done and they don't surprise people.
14 Since we've also had most of the parties involved in the
15 working committee we try to keep them involved through
16 the whole process. The Board will have the ultimate
17 decision as to what is in the regulation or not in the
18 regulation, but all the issues would have been out on the
19 table in front of everybody through the process.

20 MR. CHAIRMAN: We could publish public notice, as he said,
21 like we did on this notice of intended regulatory action
22 that was just published in many of the papers. I know
23 one of the papers carried it front page story.

24 MR. WALLS: I would just ask the Board if you have any
25 direction on how -- if you would like us to use the same

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working committee as the Department's regulation.

MR. LEWIS: I would make that motion to use the same working committee.

MR. CHAIRMAN: We have a motion to use the same regulatory working committee.

MR. GARBIS: Who's presently on that committee?

MR. WALLS: Well, that committee is one that we will have to form. And what we'll do is people who have expressed an interest previously in the regulations, we will call them up and ask the would you like to be interested. Those through the process of making comments on the notice of intended regulatory action now can ask to be on the committee. So we'll try to put together a committee that will have representation of gas and oil operators, gas and oil resource owners, citizens in the area, Board members if you wish. We've used other State agency representatives where they have special expertise in areas that are being considered by the Board regulation such as the Water Control Board or Conservation, Recreation. We've used representatives from the Nature Conservancy as of interested in environmental issues in this area. I think we've used Mr. Bartlett as a geologist knowledgeable about gas and oil issues previously. So we'll look at who's interested and try to get a balanced representation to have all of the varied

1 interests there at the table.

2 MR. GARBIS: So is there a numerical limit on the number of
3 people who can be on this committee?

4 MR. CHAIRMAN: No. You just need to have it manageable so
5 that when you are meeting you know you can have it to
6 where you can get the various views on the table for
7 consideration. We usually target twelve to fifteen
8 people.

9 MR. GARBIS: My only concern would be that there be adequate
10 numbers of people from the public side because if you get
11 too many from the industry it could be overwhelming from
12 both a technological information and experience basis
13 versus somebody on the public side. As long as there was
14 balance there then at least from my standpoint that would
15 be acceptable.

16 MR. HARRIS: I have a question. I think both of them have
17 been asked actually but, Mr. Chairman, you mentioned
18 before using that committee. Were you talking about
19 using the people who are already in place or just the
20 positions that were in place? Just structure it the
21 same?

22 MR. CHAIRMAN: Structure it the same way the committees have
23 worked in the past, where we have had balanced represent-
24 ation.

25 MR. HARRIS: Okay. I thought when you first suggested that

1 that we would just contact those people who were already
2 on it. But that's not what we're going to do and I
3 wouldn't recommend that we do it.

4 MR. CHAIRMAN: Some of them would be the same.

5 MR. HARRIS: Well, they would be, yeah. But I feel also that
6 maybe there may be other people who are interested. But
7 in terms of the make-up of the committee that's what you
8 all are discussing, right?

9 MR. CHAIRMAN: Yes.

10 MR. HARRIS: Instead of people who were on it before --

11 MR. CHAIRMAN: That's right.

12 MR. WALLS: That's one of the reasons we have the public
13 notice -- have this notice of intended regulatory action
14 stage, to try and have people who are interested and give
15 them a chance to come forward and say, yes, I am in-
16 terested so that we will know what types of interest is
17 out there by citizens and others so that then we can
18 make sure that they are involved in the process if they
19 want to be.

20 MR. KING: We will be informed so we can attend those meet-
21 ings?

22 MR. CHAIRMAN: Yes, you will be. And those meetings you would
23 be encouraged to attend where you could. It would be
24 very helpful for the Board to have at least a member or
25 two attend those meetings.

1 MR. WALLS: We also, if you wish, will be taking minutes of
2 them and we can get the minutes to the Board members
3 also.

4 MR. CHAIRMAN: I had a motion. Do we have a second? Max
5 made a motion that we establish and use the same working
6 committee for the Department's regulations and the Board
7 regulations.

8 MR. HARRIS: But again when you say the same, see, this is why
9 I asked the question. When we say the same we're not
10 talking about the same people necessarily.

11 MR. CHAIRMAN: We are talking about the same people and this
12 -- we're starting that process for the Department regs
13 and for the Board regs. Those same people would serve as
14 the work committee for both. That's not the same people
15 that there have been in the past.

16 MR. LEWIS: The same committee will be serving but --

17 MR. HARRIS: Oh, okay.

18 MR. WALLS: We'll just set up one committee for both regula-
19 tions.

20 MR. HARRIS: But those have yet to be selected?

21 MR. WALLS: And those are yet to be selected.

22 MR. HARRIS: Okay. I'm sorry.

23 MR. CHAIRMAN: That's okay.

24 MR. WALLS: The other thing, as people have a greater interest
25 in issues that the Board deals with versus a greater

1 interest in issues that the Department deals with,
2 sometimes they will come to some of the meetings that
3 deal with the issues of their direct concern and not go
4 to the others. So we try and make the committee broad
5 enough that that specialization can happen if people want
6 it. If they're particularly interested in a different
7 area we'll try to include them and involve them.

8 MR. HARRIS: I'll second the motion.

9 MR. CHAIRMAN: All in favor signify by saying yes. (ALL
10 AFFIRM.) Opposed say no. (NONE.) It's unanimous. Now
11 we need to decide whether the Board wants to have an
12 individual member serve as chair of that work committee
13 or if you want the Department to go ahead and chair the
14 work committee.

15 MR. LEWIS: I'd like to make a motion that Chairman of the Gas
16 and Oil Board, Mr. Benny Wampler, chair that.

17 MR. CHAIRMAN: Is there another motion? Ha, ha.

18 MR. HARRIS: Can we do that? I guess we can.

19 MR. CHAIRMAN: It's up to the Board.

20 MR. KING: I second the motion.

21 MR. CHAIRMAN: A motion and a second. Any further discussion?
22 All in favor signify by saying yes. (ALL AFFIRM.)
23 Opposed say no. (NONE.) Thank you.

24 MR. WALLS: Thank you. We don't have to decide this today,
25 but as we bring the proposed regulations back to you for

1 consideration before it gets published you may want to
2 decide whether you want to hold a public hearing at your
3 regularly scheduled Board meeting or set it up separately
4 at some other time and schedule. And when we bring the
5 proposed regulation back we'll lay out the options for
6 you there.

7 MR. CHAIRMAN: And the Board did want to do a public notice
8 when they publish those regulations so that that does get
9 printed in local newspapers.

10 MR. WALLS: We'll make sure to purchase the advertisements
11 then so that there's a public notice out there.

12 MR. KING: Mr. Chairman, I have a question. This is to be
13 completed by January, 1997?

14 MR. CHAIRMAN: The entire process is more than likely going to
15 be completed about mid 1997.

16 MR. WALLS: Yes. It will take a full year just about to get
17 through the process. Once you add all of the required
18 time schedules up and then the time for the regulatory
19 working committee to work it it usually takes about a
20 year.

21 MR. CHAIRMAN: It takes about a year to go through everything.
22 There are a number of time clocks in there after the
23 notice of intended regulatory action.

24 MR. KING: Somewhere I saw January, 1997 in there.

25 MR. CHAIRMAN: Thank you, Steve.

ITEM I

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3 MR. CHAIRMAN: The next item on today's agenda and the first
4 agenda item is that the Virginia Gas and Oil Board on
5 its own motion will receive testimony and evidence in
6 regard to its intent to establish field rules for the
7 Beatrice Mine sealed gob area based upon the existing 80
8 acre grid. The Board will further consider the estab-
9 lishment of allowable production from each well within
10 the sealed gob area in order to allow the development of
11 the sealed gob area on a unit by unit basis. This is
12 docket number VGOB-96/06/18-0545. We'd ask the parties
13 that wish to address the Board in this matter to come
14 forward at this time. Now, in doing that I'd just ask us
15 to be as orderly as we can -- one at a time, I suppose,
16 to come forward and the Board will receive testimony.
17 It's whoever wants to go first.

18 MR. SWARTZ: My name is Mark Swartz. I'm here on behalf of
19 Buchanan Production Company and Consol, Inc. who is
20 Buchanan's operator. Les Arrington and Claude Morgan are
21 with me and we have in response to the notices the last
22 couple of months sat down and come up with a proposal
23 that we would like to share with you with regard to a
24 frame work that we feel might work in the Beatrice Mine.
25 If I could ask Les to go first and sort of describe --

1 he's done some mapping and calculations with regard to
2 acreage and has kind of outlined the geography of the
3 proposal.

4 MR. CHAIRMAN: Okay.

5 MR. SWARTZ: And then Claude has looked at the reservoir or
6 the container that we have, has some recoverage reserve
7 estimates for you all and some proposals in that regard.
8 Lastly, with regard to our presentation, I've looked at
9 the regs and the Code to some extent and would like to
10 share some concerns that I have with regard to issues
11 that I think a field rule for a sealed gob under these
12 circumstances should really take into account -- some
13 additional things for you to consider. So if Les could
14 start that would be great.

15 MR. CHAIRMAN: That would be fine. If you're talking from
16 that map, if you will, take a mike up with you or
17 something so we can maintain the recording.

18 MR. ARRINGTON: What I've done here is I put a border around
19 the Beatrice Mine Works similar to the way we've done our
20 past sealed gob units and I've kind of followed the rules
21 that you all -- the Board had set forth for us and used
22 some of the guidelines that we have used to establish our
23 sealed gob units. What I've done -- the red border
24 that's around it I set out -- starting on the eastern
25 side of it I just started following since on the north

1 there was no existing mine works. I followed the
2 existing 80 acre units around the mine on the north side
3 When I come over to the existing VP-1 Mine then I just
4 followed just like we would have done between any of our
5 sealed gob units. I followed the line immediately
6 between it -- between the Beatrice Mine and the VP-1
7 Mine. As I come further south I stayed the say way as I
8 got to the VP-8 Mine and some of our proposed sealed gob
9 units in our VP-8 Mine, the existing VP-8 Mine, and then
10 again back in the winter, in January sometime, we
11 established the VP-8 Sealed Gob Unit 1 which is down here
12 on the south. I'm continually just following the border
13 in between the mining. As I got over to the Buchanan
14 Mine again I'm following our existing sealed gob units or
15 our existing active gob units until I got all the way
16 back to just north of the Buchanan #1 Mine. We've got an
17 active longwall unit here.

18 MR. CHAIRMAN: Excuse me. If you don't care, would you work
19 from the other side so people can see.

20 MR. ARRINGTON: Okay. This is an existing longwall panel unit
21 we have at the Buchanan operation. And then I picked
22 that back up on the 80 acre units getting over to the
23 VP-2 Mine and then following the boundary in between
24 them. This consists of about 6,180 acres which is
25 somewhere in the neighborhood 77 80 acre units with

1 approximately twelve existing VVHs in it that's not
2 plugged. As far as the boundary goes and the number of
3 units I think that's all I have on that.

4 MR. CHAIRMAN: Are those twelve VVHs identified on here?

5 MR. ARRINGTON: Yes, they are.

6 MR. LEWIS: Do you plan on drilling any more?

7 MR. ARRINGTON: Yes, sir, we do.

8 MR. LEWIS: How many?

9 MR. ARRINGTON: I'll leave that up to Claude Morgan. He's
10 going to discuss wells and numbers.

11 MR. McCLANNAHAN: Will the limits of that Beatrice sealed unit
12 fall within K-16 through 28 to V-16 through 28?

13 MR. ARRINGTON: K-16 and V-16 did you say?

14 MR. McCLANNAHAN: Yes.

15 MR. ARRINGTON: Part of it will, yes.

16 MR. CHAIRMAN: Would you identify yourself for the record,
17 please?

18 MR. McCLANNAHAN: Mark McClannahan.

19 MR. CHAIRMAN: Thank you.

20 MR. HARRIS: I have a question, Mr. Chairman. When these
21 sections that are -- were the red is the seals are in
22 place now. This is my understanding.

23 MR. ARRINGTON: This mine is sealed.

24 MR. HARRIS: Well, I think we've talked about this before.
25 When you say this mine is sealed are we --

1 MR. SWARTZ: This is a shaft mine. So there would not be
2 seals in place. In the area of the red outline the
3 shafts would be sealed.

4 MR. HARRIS: Okay. Okay.

5 MR. ARRINGTON: And this existing boundary that I've got
6 around here, again, we just used what we've learnt from
7 the past with the Board and following in between our
8 existing mines. So this boundary that we have, especial-
9 ly on the north and in this area, that's subject to
10 change. It's --

11 MR. HARRIS: That's actually part of my question. Let me go
12 ahead and ask the question anyway. Down at the south,
13 VP-8 Sealed Gob Unit 1 and the one to the west, proposed
14 VP-8 Sealed Gob Unit 2, is there going to be any commun-
15 ication between that and the one that's outlined once
16 they are sealed?

17 MR. ARRINGTON: No, sir.

18 MR. McCLANNAHAN: So the western limit will not go beyond 15
19 and 16 or past 16, west of it?

20 MR. ARRINGTON: You're talking about in this area?

21 MR. McCLANNAHAN: Yes.

22 MR. ARRINGTON: At this point no. No. We're not planning on
23 this area in this --

24 MR. CHAIRMAN: Any other questions, members of the Board, for
25 this witness? Thank you, Les.

1 MR. MORGAN: My name is Claude Morgan, manager of gas projects
2 for Consol Coal Group. The proposal that the Board is
3 considering today in our proposal in the formation of
4 field rules for this we are proposing that this would
5 cover all seams below the Tiller down through and
6 including the Pocahontas #1 in the area as Mr. Arrington
7 has just outlined on the map. We would propose to use
8 the same 80 acre unit descriptions as are in existence
9 now under the Oakwood I and II Field Rules. This is a
10 sealed gob area. It's a little different than normally
11 we would look at a sealed gob area. Ordinarily when
12 we've come to you with a sealed gob area it's been a
13 portion of a mine that has been sealed from the remainder
14 of the mine. In this instance, as it's been discussed
15 here before, you're looking at a complete mine that's
16 been sealed and as such the entire mine becomes the
17 reservoir area. In looking at this area and one thing
18 that was discussed, I think, at the last meeting as a
19 potential for the field rules for this would be to allow
20 for development of this area under an allowable produc-
21 tion scenario when allowable production would be estab-
22 lished for, say, each 80 acre area. My involvement has
23 been with some of the mine areas surrounding this mine,
24 but looking at the coal seams involved and the method of
25 mining it should be very similar to what we have exper-

1 ienced in the Buchanan Mine which is being operated from
2 a gas standpoint by Pocahontas Gas Partnership in the VP-
3 8 and the VP-1 areas. We have studied these areas to
4 determine the recoverable reserve from the areas. The
5 studies that we have conducted have shown that from a
6 time period prior to mining through completion of mining
7 on through production from the gob area after mining is
8 completed that these areas will liberate 20 to 25 million
9 cubic feet per acre mined. Those were studies that were
10 done on some of our existing sealed gob areas. Of that
11 production approximately 75 percent of it comes out
12 during the active mining phase with about 25 percent
13 remaining after the mining has been completed. If you
14 look at that on an 80 acre basis and let's say we use the
15 20 million per acre that's about 1.6 BCF of total gas
16 liberated from an 80 acre area through the mining process
17 and after mining is completed. 25 percent of that number
18 would result in a 400 million cubic feet in that 80 acre
19 The mining has been done for some ten or twelve years
20 here. Although it has not been produced exhaustively it
21 has been venting somewhat for that period. So I would
22 say that the recoverable reserve remaining was somewhat
23 less than the 400 million cubic feet. I would estimate
24 the recoverable remaining reserve for this area in the
25 300 to 350 million cubic feet per 80 acre area. We would

1 propose that a number somewhere in that range be used as
2 the allowable production from an 80 acre area. I would
3 like to encourage the Board and to stress that we don't
4 get hung up looking at this since we're talking 80 acre
5 units that we're necessarily talking one well in one 80
6 acre unit. Because as we've shown you and as you've
7 pointed out to us on occasion, in a sealed gob area you
8 can quite often pool more than one 80 acre unit into a
9 well and for economic considerations it may be expedient
10 to drain more than that 80 acres through one well. I
11 would encourage the Board in developing of this field
12 rules to utilize this 80 acres for establishment of the
13 allowable production from that area and if two 80 acre
14 units can be combined and drained through one well that
15 the production from those two 80 acre units be the
16 allowable production from that well, not just the area
17 contained within that 80 acre units that contains the
18 well. I think from an economic standpoint, from a
19 conservation standpoint, from practices in the past --
20 for instance, I'll give you an example. The last sealed
21 gob hearing we had here, if you will remember, was in the
22 VP-3 Mine and it was about 1,800 acres and I think we
23 showed fifteen wells in that area, which I think that
24 works out to about 120 acres on each well. I believe as
25 was discussed then we were showing the fifteen wells and

1 we intended to move out and hook up that many wells, but
2 from a cost standpoint that was, I think, the limit that
3 you would allow us to hook up on on that area. So I
4 would encourage the Board to leave some latitude in here
5 for combining of the areas to make it more economic for
6 the drainage of the entire area. Another thing that
7 would have to be address in this, if you'll notice on the
8 boundaries around the map as I mentioned before we're
9 suggesting that we utilize the existing 80 acre descrip-
10 tions for the meets and bounds descriptions of these
11 areas that we're talking about. The boundaries as
12 they're on that map because of the mine boundaries,
13 etcetera, does not always follow an 80 acre unit bound-
14 ary. So as a result there's going to be some areas on
15 there that are not complete 80 acre units. I would
16 recommend that the Board allow production from those
17 areas by combining with 80 acre units and that whatever
18 percentage of that 80 acres is within that red boundary
19 -- if there's 60 percent of the 80 acres contained within
20 that red area then 60 percent of that allowable produc-
21 tion would be allowed from that area.

22 MR. HARRIS: Let me ask a question about clarification. I
23 know you said earlier that there may be -- if you just go
24 into an 80 acre unit there will probably be differences
25 among these and you wanted some way to maybe drill one

1 well in a different location or substitute that may be
2 more efficient. Basically if you look at Row P and look
3 at P-18 versus P-20 on those right in the center -- in
4 fact, it's about where the little x is, just above the x.
5 You come to P-18 which I see is heavily mined and P-20
6 where we have this block, I assume that's not mined at
7 all?

8 MR. MORGAN: That's right. A lot of that is not mined. You
9 have some development work in that that has not been
10 gotten.

11 MR. HARRIS: What would you expect the difference in produc-
12 tion to be as is if you were to go in and drill both of
13 those now? What would you expect the difference to be?

14 MR. MORGAN: I think to produce -- if you produced a well in
15 this block I think you'd be looking at a stimulated well
16 probably.

17 MR. CHAIRMAN: You're talking about P-20?

18 MR. MORGAN: P-20. In a stimulated well I think most of the
19 testimony at the hearings that I've attended or that I've
20 participated in and in some of the others that I've
21 attended when OXY was in this area the recoverable
22 reserve on a stimulated well was also in that 350 million
23 cubic feet range.

24 MR. HARRIS: That's kind of interesting.

25 MR. CHAIRMAN: While you're up there would you just for people

1 that may not understand the sealing of the mine talk
2 about how the Beatrice Mine was sealed. Do you mind
3 working from the other side, Claude.

4 MR. MORGAN: The Beatrice Mine had numerous shafts. Many of
5 you may have traveled 460 and probably only saw the three
6 shafts right there adjacent to 460 in the mine area.
7 Obviously those three in this area were sealed. There
8 were also ventilation shafts located and outlining the
9 areas that were sealed and those were sealed completed
10 from the bottom of the shaft to 1,500 feet or 1,700 feet
11 of depth all the way to the surface to completely seal
12 anything from coming out of them. So every shaft in this
13 mine has been sealed from the bottom to the top.

14 MR. KING: Mr. Chairman, I have a question. You say there's
15 350 million cubic feet available. How many years of
16 production do you project? Is there a figure on that?

17 MR. MORGAN: No. I've not tried to tie that to a time frame.

18 MR. KING: Nothing as far as the number of years?

19 MR. MORGAN: I don't think it's in excess of ten years. When
20 you do the decline analysis that we did on the production
21 that we've seen that curve comes down from the active gob
22 stage pretty steep, starts leveling off, and then it gets
23 almost flat -- a slight decline and then goes on for
24 quite a number of years.

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

1 MR. GARBIS: Wouldn't it make sense that since this is
2 basically an open area and you have, I guess, the
3 galleries. I've never been in a mine but obviously
4 there's a lot of allowance for migration of the gas that
5 those that come first who put a well and if one could be
6 genius enough to somehow be able to have -- be able to
7 draw more gas out wouldn't the earlier wells be more
8 able to draw a lot more gas out than those coming back in
9 the success of time?

10 MR. MORGAN: That's where the allowable production comes into
11 play. You're only going to allow that first well to draw
12 out X cubic feet of gas and then he's not going to take
13 any more because then, of course, then he would be
14 robbing from the other 80 acre units.

15 MR. LEWIS: Yeah, but didn't you state before if you had two
16 wells there that would produce you could produce from
17 those wells and not the others?

18 MR. MORGAN: We think you should be able to combine the 80
19 acre units and if that's a good draining area that maybe
20 you drain from 160 acres which would double the produc-
21 tion from that hole, but all the people in that 160
22 acres would get their compensation.

23 MR. LEWIS: Yeah, but if you're going to drill more wells I'm
24 sure that Consol is going to drill where they can get --
25 wouldn't have to pay the mineral rights if they don't

1 have to -- if it's where they own them their self.

2 MR. MORGAN: Obviously we're going to drill -- and we have no

3 plans at this point for a drilling program. We've not

4 gotten into it to that point. Obviously we will drill

5 where we have the mineral rights obviously.

6 MR. SWARTZ: But Consol does not own fee in this mine to any

7 significant extent at all. Correct?

8 MR. MORGAN: Consol doesn't own -- Buchanan Production has --

9 well, there's a considerable area in here that I think is

10 owned in fee by the Big Vein Group.

11 MR. SWARTZ: Yeah, but that's not owned by Buchanan Produc-

12 tion?

13 MR. MORGAN: No.

14 MR. SWARTZ: When you're talking about control here you're

15 talking about leases that we've obtained or Buchanan has

16 obtained as opposed to --

17 MR. MORGAN: Right, right. Consol has no ownership.

18 MR. LEWIS: They have control and that's what counts.

19 MR. MORGAN: Right. But we would be under the same rules

20 because we could only pool the same amount from the area

21 that we control as from any other area. So that remain-

22 ing production would still be available in other areas.

23 MR. CHAIRMAN: From your experience in producing from sealed

24 gob before -- and I know you've recommended 80 acres, but

25 would a 120 acre field fit that purpose from just

1 producing from just a sealed area or is there a better
2 drainage area? Does this indicate there's a larger
3 drainage area we should be considering?

4 MR. MORGAN: If you were going to look at it as one well per
5 unit you might want to increase the area, but I think if
6 you'll leave some latitude for combining of them I don't
7 think it will matter. You will fit the number of wells
8 to the drainage characteristics in that area.

9 MR. CHAIRMAN: When you talked about the life of the well
10 estimate being at least ten years is that a productive
11 life from your experience --

12 MR. MORGAN: Yes.

13 MR. CHAIRMAN: -- that typically they test out to be over ten
14 years productive life?

15 MR. MORGAN: Yes.

16 MR. CHAIRMAN: Any other questions? Do you have anything
17 further?

18 MR. SWARTZ: I'd just like to make a couple of comments more
19 from the standpoint of what a field rules order ought to
20 address, just some problems that I see which I think
21 you've identified in some of your questions. This is a
22 proposal. So in terms of the push-pull that we're
23 advocating this this is our look at a problem that we
24 think the Board has identified that needs to be address-
25 ed. And this is a proposal. I mean, there are various

1 things that can be tinkered with that change this at your
2 option. I mean, we're not wedded to this as the only way
3 to do this. As Les indicated to you, we have tried to
4 follow unit lines where we've got an option. Where the
5 mines essentially are adjacent to one another we've
6 followed the boundaries between the mines and to that
7 extent we haven't been able to follow in some instances
8 the unit boundaries. But we're -- and these lines are
9 pretty much cast in concrete. This is the existing
10 mining and really these lines have to be between the
11 location of these mines or between the units that
12 preexist this proposed field rule area. But over here,
13 at your option, if you see that you would like these
14 lines to look differently there's no reason why they
15 can't. With regard to the number of wells what we are
16 concerned about is that you be aware of the fact that
17 whatever field rule you adopt it should not force 77
18 wells to be drilled here because that would constitute
19 economic waste. If we -- it's kind of a shoe on the
20 other approach. If I was here today representing a
21 client who wanted to create a sealed gob unit and we
22 weren't here on your motion but we were here on a client
23 of mine's motion and I came to you and said, "I'm
24 proposing that we drill 77 wells in this area and we want
25 to allocate that cost to anybody that participates."

1 Your response would be forget it. And what's happened in
2 the past is when we have come to you and said we want 15
3 wells in a sealed gob area you have said we're only going
4 to allow you to allocate the cost of eight of those 15
5 wells. If you're putting in another seven because you
6 need to control methane because there's active mining
7 adjacent to this that's your problem. That's a mining
8 cost. But we're not going to let you drill a maximum
9 number of wells. We're going to limit those because over
10 time -- the theory is, I suppose, that if you put one
11 well in an entry here and you drew on it for 200 years in
12 theory I suppose you could get all of the gas out of
13 here. In theory. It might not be economic over 200
14 years but you could do it. And what you need to be
15 looking at is you don't want to adopt a rule that causes
16 77 wells to be drilled or roughly at \$125,000 a copy --
17 millions of dollars of wells to be drilled when, perhaps,
18 15, 20, 25, or 30 wells will be sufficient. But to allow
19 that to happen -- to not force someone to drill a well in
20 every one of these 80 acre units there has to be some
21 ability to combine acreage. I mean, the two options on
22 the table are what we're proposing and then Benny
23 suggests an alternative. I mean, I don't have a problem
24 with that but something needs to happen to allow acreage
25 to be combined either increase the size of the units --

1 and I think we've got an Oakwood grid and we should stay
2 with it. It's simple and it will work. But if you
3 wanted to increase the size of the units you could do
4 that. Our proposal essentially is if a well is permitted
5 -- let's just pick a unit. M-20. If a new well is
6 drilled in M-20 the person who operates that well would
7 either have to voluntarily pool the unit; in other
8 words, reach an agreement with all of the mineral owners
9 in that unit and voluntarily pool the unit. And if that
10 happens that well could then produce whatever the
11 allowable production is. What Claude is suggesting is it
12 needs to be somewhere between 300 million and 350
13 million. If the owner or operator of this well was able
14 to voluntarily pool a unit here what we are proposing is
15 that his allowable in this well be doubled. It wouldn't
16 have to be contiguous.

17 MR. CHAIRMAN: When you say here --

18 MR. SWARTZ: If he drills a well in M-20 his allowable for
19 that unit would be 300 to 350 million. If he then is
20 able to voluntarily pool N-19 he's now picked up a
21 multiple or doubled his allowable. And that is a way --
22 you know, it's not the only way but it's the way that
23 we're proposing that these wells make more economic sense
24 so that the operators can be encouraged to go lease up
25 additional acreage, force pool additional acreage, to

1 maybe double or quadruple the allowable that can be drawn
2 from any given unit. And then, of course, the royalty
3 gets paid to 320 acres instead of 80 acres if the
4 allowable gets quadrupled. The other issue that you need
5 to consider is a proration issue. Claude talked about
6 this but just to remind you of what we're talking about,
7 if you look at, for example, M-26 you'll see that this
8 corner is not in a complete 80 acre unit. It's just a
9 portion. And what we're proposing is that any field rule
10 order include a provision that would allow an allocation
11 of the 300 or 350 million to this M-26 unit based on the
12 amount of acreage that's actually in this sealed area.
13 So if this is -- it looks like it might be 60 percent.
14 If the allowable that you select is -- production that
15 you select is 300 it would be 180. It could be produced
16 from a well associated with this portion of this unit and
17 it would be paid to the folks in the entire unit and
18 allocated to them. And then the last point I'd like to
19 make just from a legal standpoint -- and I think you're
20 on the right page here, the comments I heard this
21 morning. But the Code and the Regulations talk about an
22 allowable rate production at times and, in fact, there's
23 a regulation which says that the Board will not limit the
24 rate of production from a coalbed methane well. If
25 there's mining adjacent or near that well and you've got

1 to produce it at full bore to vent the mine that regula-
2 tion anticipated that and there ought to be some limit on
3 the rate of production. Obviously ongoing mining is not
4 an issue here but you need to bear in mind that there's a
5 difference between what we're talking about here today,
6 which is the amount of production over some period of
7 time as opposed to a rate of production. So you need to
8 be careful in -- I guess this more to Sandy -- drafting
9 an order to make sure you don't inadvertently refer to
10 the rates of production because that's not the issue
11 here. The issue is the amount of production that it
12 seems reasonable to allocate to any given unit. Thanks.

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

15 MR. McCLANNAHAN: This would be directed to Mr. Morgan. What
16 strata would be affected? Anything below the Tiller, is
17 that what you said?

18 MR. MORGAN: Anything below the Tiller down through and
19 including the Pocahontas #1 which lies somewhere around
20 100 to 150 feet below the (Inaudible.)

21 MR. CHAIRMAN: Down to and including?

22 MR. MORGAN: Yes.

23 MR. RATCLIFF: I'm Wyatt Ratcliff with Ratcliff Gas Company
24 of Oakwood, Virginia. We have a producing well in the
25 Beatrice Mine Field that's being discussed today. We

1 have about 50 homes using gas from this particular well.
2 It is a well that is producing a very small amount of gas
3 at the present time and we want to protect the vested
4 interests that I have, the rights that have been granted
5 to me by this Board. I feel that by passing a rule that
6 would cap production of this small well to where it
7 couldn't serve it's customers would be discriminating
8 against me and the company. Since I have at this time
9 the only producing gas well in this field I have no
10 objections to putting a cap on all the wells that Consol
11 might put in the area, but I think that this particular
12 well that has been there since the early seventies should
13 be granted the right to produce the amount of gas that it
14 takes to supply the small community that we're now
15 serving and the other proposed communities in our area.
16 I don't fully understand how a cap would benefit because
17 all you've got to do is put in extra wells and you will
18 get what ever gas that the market is asking for. I'm
19 sure that it's a hard decision for the Board to make, to
20 set these field rules to where they will be fair to all
21 of the people -- the mineral owners and the drilling
22 companies. You've got a big job ahead of you. I
23 wouldn't want to be in your shoes. But I do ask that you
24 consider this small producing well that is there and
25 about placing restrictions on it.

1 MR. HARRIS: Just a couple of questions, Mr. Ratcliff. You
2 said that you're producing next to -- you said very
3 little gas at the time.

4 MR. RATCLIFF: Very little.

5 MR. HARRIS: Do you know what the production rate is? Do you
6 have any idea of how much has been produced over the
7 years since this well has been in existence?

8 MR. RATCLIFF: From 1973 through 1992 we've had about 80 some
9 homes on it.

10 MR. HARRIS: But it was not metered at that time, though?

11 MR. RATCLIFF: It wasn't metered. No, sir. Since 1992 I've
12 complied with the new laws and regulations to get the
13 well permitted. At that time all these homes had to be
14 severed from the well. Since that time Virginia Gas
15 Company now is distributing from this well into the
16 community. We want to be sure that you take into
17 consideration when you're making these field rules what
18 might happen to this particular well if these rules are
19 carried out to where we couldn't meet the demands of the
20 citizens of that community.

21 MR. HARRIS: Mr. Chairman, could I make just a statement here?

22 MR. CHAIRMAN: Sure.

23 MR. HARRIS: One of the -- of course, you're aware of -- the
24 concerns we're faced with is what do with people who live
25 in various areas and as I understand this this basically

1 could be a big bladder. The whole thing could be a big
2 77 80 acre unit -- I wrote the numbers down in total.
3 But anyway, it's just a bladder full of gas. So where
4 ever you punch this hole you're going to get a certain
5 amount of gas and a certain amount of pressure or
6 whatever. One of the concerns we're faced with now is
7 how to -- if you start drilling in one section is that
8 going to drain gas from other places. And given enough
9 time and whatever conditions there are it probably will.
10 I'm not saying -- that's what we were talking about
11 earlier. It could take 200 years maybe, you know, you
12 could pump on one well for that length of time. But that
13 is decreasing the amount of gas available to other people
14 in the area. Of course, the reason for the cap is that
15 you may hit a particular hot spot and that may be feeding
16 two-thirds of the rest of it. And if there is no cap
17 then that amount of production even though if it's done
18 through regulations and there will be people who benefit
19 -- the royalty owners and the mineral owners would
20 benefit from that, but that does again reduce the ability
21 for other people who are living in this whole area to get
22 there total production. And that's a concern that I
23 would have, I think, with what your proposal is. I
24 realize what you are saying is that we've had this set up
25 and this has worked fine once we've gotten is set up,

1 let's not mess with it. But I think the reality is if we
2 come in -- not we. But if the companies come in and
3 drill all around it's going to reduce your pressure
4 probably but everybody is drilling in the same pool and
5 the whole intent here is to try to spread this around
6 economically as much as possible. And that's the reason
7 for the caps; because of you get a particular area that's
8 very productive then that will tend -- if it's very
9 productive it's probably drawing from some of the other
10 areas which will decrease there. So that's why they're
11 recommending maybe putting a cap on, because it would
12 limit the pressure.

13 MR. RATCLIFF: They didn't break this down to monthly, weekly
14 or daily production. Those are the figures that I need.
15 They based it on a reservoir lasting ten years at 300
16 million. But what's that going to do to daily production
17 from a well? Are we talking about they can only produce
18 one million or --

19 MS. RIGGS: I think what they proposed as I heard it is
20 they're not suggesting that the rate at which you produce
21 it be regulated, only the total cap over the entire life
22 of the well be set -- the outer limit.

23 MR. RATCLIFF: Total cap?

24 MS. RIGGS: Is that not what I heard? I thought that's what I
25 heard.

1 MR. HARRIS: That's why I was asking if you knew what the
2 production was. The rate isn't so much the issue even
3 though you said it was coming in very slowing, I think.
4 That may not have been your exact term. The total amount
5 of production -- but see, it's hard for me to envision
6 when I say 300 million cubic feet -- it's hard to
7 envision 300 million of them and how long it would take
8 with a normal well. Is your bore size typical for what
9 the other folks would be drilling?

10 MR. RATCLIFF: This well is 1,078 foot. The Beatrice Mine is
11 approximately 1,300 foot in the same area.

12 MR. GARBIS: I'm talking about the inside diameter of your
13 pipe.

14 MR. RATCLIFF: It starts off at ten inches and goes down to
15 eight.

16 MR. HARRIS: Is this typical for -- these numbers don't sound
17 typical.

18 MR. GARBIS: Mr. Morgan, what's typical for what you have?

19 MR. MORGAN: The new wells that we drill now for active gob we
20 usually put in a thirteen three-eighths casing and drill
21 a twelve and quarter open hole on down. This is an older
22 hole that Wyatt is hooked up to. So it is a smaller
23 diameter hole. Going into this type of area, though, we
24 put that thirteen and three-eighths casing in to handle an
25 active gob which has much higher volume rates. So the

1 hole that he's got is over sized probably --

2 MR. GARBIS: What are the typical pressures -- if you have a

3 pump on the top side what typical pressure is the gas

4 coming out of the ground?

5 MR. MORGAN: I think the pressure has been monitored out of

6 Mr. Ratcliff's well at about 200 pounds, right?

7 MR. RATCLIFF: This well has been holding about 185 pound for

8 the past six months. It was up to --

9 MR. GARBIS: Mr. Morgan, in your experience what are the other

10 wells pressures? Is that the right range, 200?

11 MR. MORGAN: We haven't monitored in the Beatrice Mine area

12 any with this being sealed. In the active operations we

13 won't let pressure like that build up because it could

14 back gas out into the mined area. So, in fact, on a lot

15 of our holes we would actually pull a vacuum to keep the

16 pressure from backing into the mined area.

17 MR. FULMER: On the pressure, Mr. Ratcliff's well averages

18 around 318 PSI shut in pressure and that's basically what

19 the Beatrice Mine is about doing, 318. What he was

20 talking about, 165 or whatever, is the production

21 pressure through the line. That's what they've drawn it

22 down to in pressure on the production end of it -- on

23 Virginia Gas right now. If that well was shut back in it

24 would probably go up to 318 pounds.

25 MR. LEWIS: Yeah, but that would be the well head pressure.

1 It wouldn't be the line pressure.

2 MR. FULMER: His well head pressure right now is the same as

3 his line pressure which is 165.

4 MR. LEWIS: I know that in production it is.

5 MR. FULMER: Yeah.

6 MR. LEWIS: But when the well was out of production --

7 MR. FULMER: It's 318 pounds.

8 MR. LEWIS: Right.

9 MR. RATCLIFF: It was, Mr. Fulmer. It is now down to 185

10 pounds and was before Virginia Gas tied into it. I think

11 the line pressure leaving out of there is 70 pounds.

12 MR. LEWIS: You've got 70 pounds at the well --

13 MR. RATCLIFF: The well pressure going into Virginia Gas

14 distribution line is 70 pounds?

15 MR. LEWIS: They have a compressor on that?

16 MR. RATCLIFF: No. This is natural pressure from the well.

17 MR. CHAIRMAN: Overall let me understand clearing what you're

18 -- you're objecting to any cap on your well -- on that

19 one well?

20 MR. RATCLIFF: That might limit that well to the needs of the

21 citizens in that community.

22 MR. CHAIRMAN: For that well?

23 MR. RATCLIFF: For that well.

24 MR. CHAIRMAN: You're not objecting to the field rules or for

25 production caps on any of the other wells that might be

1 in the future produced in any of the unit?

2 MR. RATCLIFF: I wouldn't have any objection to that.

3 MR. LEWIS: You don't have any objections if they come in
4 there and want to combine two wells and double their
5 production? You don't have no objection to that?

6 MR. RATCLIFF: Of course I would, yes. Absolutely.

7 MR. LEWIS: I just wondered.

8 MR KING: When was Mr. Ratcliff given permission to drill the
9 well and produce?

10 MR. RATCLIFF: I can give you some history of the well.

11 MR. LEWIS: I don't want to do into a lot of detail.

12 MS. RIGGS: I think that whole package was included in your --
13 the last hearing, that package that was in your agenda on
14 Diane Graham that Tom did the presentation on. It was in
15 a blue folder and it contained all the documents. I
16 don't know if anybody has their's with them but the Board
17 has been given a complete history, I believe, at the last
18 hearing. I don't have mine. It was on the application
19 of Ms. Diane Graham when she came in to modify that
20 drilling unit last month -- or the month before that.

21 MR. RATCLIFF: That's all I have to say.

22 MR. CHAIRMAN: Any question.

23 MS. RATCLIFF: I'm Sherry Ratcliff. How many wells currently
24 serve Buchanan County? Could some one answer that?
25 Actually produce and serve Buchanan County.

1 MR. HARRIS: Excuse me. When you say serve do you mean
2 deliver?

3 MS. RATCLIFF: Yes. How many wells are currently producing
4 gas that serve the citizens of the county?

5 MR. CHAIRMAN: I'd ask Tom Fulmer if he knows that number.

6 MR. FULMER: The question does it actually serve --

7 MS. RATCLIFF: Stay in the county.

8 MR. FULMER: You want to know how much gas is being produced
9 from Virginia wells that are going to supply Virginia
10 citizens?

11 MS. RATCLIFF: In Buchanan County.

12 MR. FULMER: Virginia Gas Company, their wells in both
13 Dickenson and Buchanan County is going into Buchanan
14 County. Mr. Ratcliff's well. That's the only ones
15 currently, I think. There may some Columbia gas that's
16 being exchanged to Virginia Gas.

17 MR. CHAIRMAN: Do you have an estimate on this?

18 MR. FULMER: No. I don't have an estimate on how much gas
19 coming out of Virginia wells is going into Buchanan
20 County.

21 MS. RATCLIFF: How many wells are there in Buchanan County?
22 Maybe I can ask that. Where is the other gas going, I
23 guess?

24 MR. FULMER: Most of the gas is going out of state and back
25 into Virginia and served Tidewater, Richmond, so forth.

1 The number of actual wells producing in Buchanan County,
2 supplying gas, is 660.

3 MS. RATCLIFF: And those are serving what areas? Where are
4 the natural gas lines in the area? Slate Creek is one
5 and Garden Creek is another.

6 MR. FULMER: There's several outlet interstate lines and one
7 of them is Consolidated Production Company. I believe
8 that's what they're called now. Which is up Slate Creek.
9 That goes up into West Virginia. There's the Cardinal
10 States line. Then there's the Columbia gas transmission
11 line out of Conway. And then there's the line that was
12 owned by Virginia Gas Company which takes gas out also.
13 Locally the only gas being used by citizens in the County
14 of Buchanan is through a franchise that was granted to
15 Virginia Gas Company. And that may be varied gases
16 coming from Dickenson County, Buchanan County or other
17 companies who transfer gas to Virginia Gas Company.
18 Those are the only authorized people to distribute gas.

19 MR. LEWIS: I think most of the gas that's used in Buchanan
20 County comes off of the Dismal section and part of Slate
21 Creek.

22 MR. FULMER: Virginia Gas has got some wells up in there, but
23 they've also got a transverse agreement with Columbia
24 Natural Resources from Dickenson County. They transfer
25 gas to Columbia and then up to Buchanan County. So

1 that's the reason I mentioned Dickenson County.

2 MS. RATCLIFF: I have another question, if I may. Will these
3 field rules apply to any other area of the county or just
4 -- why is it just this being addressed, why not for all
5 the gas wells in the county and the state. This is a
6 State Board.

7 MS. RIGGS: Under the Gas and Oil Act there are several ways
8 that this Board is prompted to act on application or on
9 it's own motion. One is for the creation of individual
10 drilling units. When somebody's ready to drill a well
11 they have to create the unit that that well will draw
12 from.

13 MS. RATCLIFF: I understand that.

14 MS. RIGGS: And the other is under 45.1-361.20 of the Virginia
15 Code that gives this Board the duty to establish field
16 rules. And there's a whole list of purposes that field
17 rules serve and ones to protect correlative rights which
18 is the issue we're talking about here. A correlative
19 rights theory is a theory whereby everybody in a pool --
20 a contained pool -- has an equal chance at recovering
21 their share of the mineral contained within that pool.
22 And the Board is given the duty of creating field rules
23 to set up an allocation process to assure that that
24 fairness is reached in accordance with the requirements
25 of the law. So if someone comes in and says, "We're

1 going to produce in this area and we want you, Board, to
2 set up the allocation process through an application" the
3 Board can do that. Or if the Board sees drilling
4 activity occurring in an area and correlative rights are
5 at issue the Board on its own motion can institute that.
6 In this particular case with the Beatrice Mine the Board
7 already had field rules in place. They had 80 acre units
8 established under what was called the Oakwood I Field
9 Rule. And that addressed production of gas in advance of
10 mining. Then they imposed Oakwood II Field Rules and
11 that addressed the production of gas during active
12 mining. Now, what's happened last December is that mine
13 got sealed. So the Oakwood I Field Rules (in advance of
14 mining) the Oakwood II (during mining) are no longer
15 applicable to this area. So now what the Board has to
16 face is the field rules that are already established for
17 this area have now changed because the nature of the
18 container changed when they sealed off those shafts. So
19 they've got to modify the field rules to address a sealed
20 gob area which is what you get when you have a sealed
21 mine. I know that's the long way around an answer, but
22 the Board has put field rules in this area before. In
23 fact, two sets of field rules in the past. They just
24 didn't address sealed gob production. They addressed
25 fracked and active gob.

1 MR. HARRIS: Let me ask -- if I understand your question. You
2 said something about field rules over the state and that
3 may have answered that. But you're saying why don't we
4 have everything in place for everybody --

5 MS. RATCLIFF: Right.

6 MR. HARRIS: What she's talking about the different field
7 rules -- if you go out in just the mountains and drill a
8 hole and just happen to hit a pocket of gas there are
9 some regulations that govern how much you can produce and
10 who you have to pay money to and whatever. If you're in
11 a mining area in particular then a lot of gas is being
12 produced just from the mining activity breaking up the
13 coal and you have a lot more gas produced. But if you're
14 in one little section of the mine then there's -- or
15 doing longwall then that's going to produce gas in a
16 slightly different manner than if you're doing other
17 kinds of mining. And that's why the different field
18 rules are there. The other thing is that the sealed gob
19 -- the way this is, once this is open then this is what
20 we've been saying. This whole area that's in the red, a
21 particle of gas could start over in the upper left corner
22 and then over the years just sort of migrate around.
23 Well, if you own property up there that's your gas that
24 just went to someone else. So what we try to do is
25 establish a rule for how do we get the gas out, how do we

1 pay people when we do get it out, this kind of a situa-
2 tion. And the problem is that we've really never --
3 we've never dealt with this on a large scale in the
4 past. The Board hasn't. So that's one of the problems
5 that we have now. We don't know -- I don't want to say
6 we don't know what to do, but the problem is that there
7 are some dilemmas that we're wrestling with as we speak.
8 But it's different environments. If it's mining that
9 this is taking place, if it's in just an area that we
10 know contains a certain amount of gas, or whatever. But
11 that's why the rules are -- and that's why there's a
12 little bit of confusion here. Someone said the first
13 person who drills a well is going to get all the gas.
14 It's going to take a while to do that, but conceivably
15 you could sit there and pump on the gas or allow it to
16 come out for 100 years and you may drain the whole thing
17 That's not going to happen that way.

18 MR. LEWIS: Usually in a case like you're talking about when
19 ever one company goes in and drills a well and they hit a
20 pretty good well then another company that owns the
21 minerals next to that or owns close to it will come in
22 and they'll offset that well to get their part of the
23 gas. That's the way it works.

24 MR. HARRIS: When you say offset can I ask you --

25 MR. LEWIS: Offset means they drill one as close as they can

1 to it to get their amount of the gas.

2 MR. HARRIS: Within the legal boundary.

3 MR. LEWIS: Within the legal boundary which is governed by the
4 State.

5 MR. HARRIS: That's understandable.

6 MR. GARBIS: Mr. Ratcliff, let me ask a question. Am I to
7 believe that all the gas coming out of your well basical-
8 ly only serves residents of Buchanan County?

9 MR. RATCLIFF: Yes.

10 MR. GARBIS: So, in other words, in its entirety every bit of
11 gas that comes out of your well just serves the local
12 citizens?

13 MR. RATCLIFF: Yes.

14 MR. HARRIS: I'm confused. Did you not say Virginia Gas is
15 distributing --

16 MR. FULMER: Just please clarify that. He sells to a company
17 who has a right under a franchise from the State Corpora-
18 tion Commission to supply gas as a public utility.

19 MR. RATCLIFF: Yes. That's right. Now, at this time it
20 serves the citizens of Buchanan County.

21 MR. HARRIS: Do you produce more than what's used?

22 MR. RATCLIFF: I could produce much more than what's used.
23 Yes.

24 MS. RATCLIFF: How many people do you serve currently?

25 MR. RATCLIFF: Approximately 53 families right now with others

1 going on.

2 MR. SWARTZ: Virginia Gas is a public utility and it serves
3 these customers. He sells his gas to Virginia Gas. If
4 his well is capped at 300 or 350 Virginia Gas has a
5 certificate to operate in this area and it's Virginia
6 Gas' obligation to continue to service its customers.
7 And they're going to have to go out and buy more gas. I
8 think we're sort of crossing lines here. I mean,
9 Virginia Gas is a public utility. It's authorized by --
10 I can never remember who regulates them because --

11 MR. FULMER: State Corporation Commission.

12 MR. SWARTZ: They have an obligation to -- Virginia Gas has an
13 obligation to continue to service these customers. And
14 if at some point in time a cap is reached it is Virginia
15 Gas' obligation to see that they continue to supply these
16 customers. You need to keep that in mind.

17 MR. LEWIS: They're obligated to do that.

18 MR. SWARTZ: Right, under their certificate.

19 MR. KING: I have a question. If his well is capped and there
20 are other wells drilled in this area they could sell to
21 Virginia Gas?

22 MR. SWARTZ: Right. And Virginia Gas is related to a produc-
23 tion company -- I mean the utility, I assume, is a free
24 standing company. But it's related to a production
25 company that produces gas. They have a sister company

1 that they buy a lot of their gas from.

2 MR. GARBIS: And turning to the individual 50 customers, they
3 pay for the consumption that they use. So --

4 MR. SWARTZ: They pay a utility bill just like --

5 MR. GARBIS: Right. So really conceivably they could care
6 less whether the gas comes from your well, my well or
7 whoever's well?

8 MR. SWARTZ: Well, they certainly care that they have it and
9 it's important. I guess the point -- the only point I'm
10 making is that Virginia Gas is part of -- it's a franch-
11 ise and has an obligation to continue to supply that
12 service independent of whatever happens with regard to
13 this well. For example, if there was a problem with
14 this well and it collapsed or ceased to produce these
15 customers might not be happy about that but it would be
16 Virginia Gas, the utility's obligation to step forward
17 and solve that problem and continue to supply them. You
18 need to keep that in mind.

19 MR. LEWIS: Another thing we need to keep in mind, too, is
20 like you said, if they get to where they cannot produce
21 enough to give the customers what they need they're going
22 to have to go buy that. I don't know what he's getting
23 for his gas, but they may have to pay double for that.
24 And then you're passing that expense on to the customer.

25 MR. SWARTZ: I would hope that they're paying Mr. Ratcliff

1 market price.

2 MR. LEWIS: I don't know about that, but that's what it
3 amounts to. It's passed on to the consumers.

4 MR. CHAIRMAN: Any other questions, Mr. Ratcliff?

5 MR. RATCLIFF: I don't have any other questions. A lot of
6 this is over my head. I am reliant on this Board to
7 protect my rights and the rights of the people of this
8 community. This well is not going to produce like the
9 other wells around me are that are producing possibly in
10 the millions of cubic feet monthly. I think this well --
11 the cap shouldn't be set so as to force Virginia Gas to
12 have to buy off of another well that's drilled beside of
13 it. I think it's -- I don't know what the cap is going
14 to be, whether you're going to have something out there
15 to where this well will even be affected or not. That's
16 what I'm asking. I'm asking that the cap be placed on
17 this particular well, that it conserve the needs of the
18 community. That's important. I think with the permitt-
19 ing and the rights that this Board has vested in this
20 well and then come up in the middle of the stream and
21 say, "Hey, we're throwing all of these out. We're going
22 to let you start over again new" I think is discriminat-
23 ing. It's not right and I ask the Board to keep this
24 well in mind when they make these rules. That's all I
25 have to say. Thank you.

1 MS. RATCLIFF: I'm Grace Ratcliff. Why should a cap on it? I
2 own part of the well. We should be able to if we want to
3 sell more or if we want to expand we shouldn't be capped
4 and not just limited to our 50 customers around us.
5 Expand if we want to.

6 MR. RATCLIFF: It doesn't meet expense as it is now.

7 MS. RATCLIFF: No, it's not.

8 MR. RATCLIFF: I'd like to see that well produce enough gas or
9 at least break even. It never has.

10 MS. RATCLIFF: I'd like to sell to Garden Creek.

11 MR. HARRIS: I don't know if I need to continue this. This
12 goes back to the other Ms. Ratcliff who was here asking
13 the question about gas going to Buchanan County. When
14 it's pumped it goes into a gathering line. It may go to
15 New Jersey. And then when the folks in Virginia want gas
16 it's piped back down and then sold. So I don't know what
17 the set up is where you all are, Mr. Ratcliff. I may
18 have called you Mr. Wyatt earlier and if I did I apolo-
19 gize. But, Mr. Ratcliff, the neighborhood that you're in
20 does the gas come out of your well and then they take
21 that and distribute it there or does it go into the lines
22 and they supply gas? Do you see what I'm saying? In
23 other words, if you put a yellow die in that gas as it
24 came up out of your well is that the actual gas that
25 people in that community are using or is Virginia Gas

1 taking the gas, pumping it to some other kind of --
2 they're actually using that gas?

3 MR. RATCLIFF: Yes. It isn't near any distribution line
4 that's going out of the county.

5 MR. HARRIS: Because they had all the licenses and stuff and
6 put the connectors in --

7 MR. RATCLIFF: They have some lines in the Dismal area, but
8 nothing near this well.

9 MS. RATCLIFF: But I would like to expand. I'd like to go
10 right on down to Garden Creek. But if we have a cap we
11 can't.

12 MR. MORGAN: Mr. Chairman, if I could, maybe I could address a
13 couple of Mr. Ratcliff's concerns. With the proposal as
14 we have laid it out, as a possibility for the Board to
15 consider, I understand what Wyatt's concern is. To give
16 you a little bit of a feeling for the numbers, at the
17 time I think he says he has 50 -- or Virginia Gas has 50
18 customers hooked up to this well and I understand he
19 wants to expand that. But let's look at those 50
20 customers. I think I read in the API Journal that the
21 average household that's fully gas will use about 100,000
22 cubic feet a year. So those 50 customers are going to
23 use 500 million cubic feet a year. That well with a 350
24 million cap would serve those 50 customers for 70 years.
25 The other thing is that you if want to expand the

1 proposal as I've put it forth, I think, if he has a well
2 there that's capable of doing considerably more than that
3 -- the proposal as I think I outlined would allow him to
4 combine that 80 acre that it's on with another 80 acre
5 unit and expand that cap to 700 million cubic feet out of
6 that well. But it would allocate the production to the
7 proper owners of the oil and the gas or the coalbed
8 methane owners as the situation. So I think the proposal
9 as it's drawn here could -- if structured properly it
10 could take care of Wyatt's concerns. And I understand
11 his concerns.

12 MR. LEWIS: Do you think it would take care of his concerns if
13 he wanted to expand and pick up more customers?

14 MR. MORGAN: By simply increasing the area --

15 MR. LEWIS: But he'd have to buy gas from the other --

16 MR. MORGAN: Or just expand his area. He's set up on 80 acres
17 now which as he sets right now he has no field rules to
18 cover him. But the 80 acres he's on now, if that was
19 expanded to 160 then under this proposal he would have an
20 allowable of 700 million cubic feet out of that well.
21 And that's an enormous flow out of one well. So I think
22 the rules can be made to fit his situation and to take
23 care of his concerns, I believe.

24 MR. GARBIS: To the Ratcliff family, I want to try real hard
25 to be fair and I want to make sure that the citizens are

1 not being overtaken by the power of the government and
2 the larger industry. But I think what you're asking me
3 to do -- and I take this personal -- is to grant you an
4 exception. I'm not sure that I can really have -- I
5 can't rationalize it because basically by providing you
6 an exception really you're potentially putting someone
7 else at the other side of this area at a disadvantage. I
8 mean, we have to try to be fair to everybody, not just
9 say because you were here before -- and I understand the
10 background. But it's very difficult to be fair to
11 everyone and I think that's our charter, to be fair to
12 everyone inside -- that we're representing inside this
13 block. So to grant you an exception -- and I think
14 that's what you're asking -- personally I have a hard
15 time with that. I think some of the things that were
16 brought up as far as -- with Virginia Gas -- you're
17 right. It's not even relevant almost because that's a
18 different situation where people are buying, as we all
19 do. We have to buy gas from a public utility. But I
20 think really as far as I'm concerning that requesting an
21 exception -- I'm having a hard time with that.

22 MR. LEWIS: You're looking at an exception for him or an
23 exception for Consol because they're asking you to put a
24 cap on those wells. You're looking at both -- it could
25 be either way.

1 MR. SWARTZ: Allowable production did not come from us. It
2 came from the Board. I suppose in theory, as unfair as
3 this would be, we've got the resources to put 50 pumps
4 out here and just duck this thing in five years. I mean,
5 we're not talking about that. But the allowable produc-
6 tion -- I don't want to be tagged with that idea. I
7 think it's a good idea but it came from the Board, not
8 from us.

9 MR. GARBIS: The allowable production, I think, is the only
10 way that one could fairly -- as you say, if I were in
11 your position I would be very aggressive. I'd put a pump
12 up there. I'd drain that thing in a heart beat.

13 MR. SWARTZ: Well, there's a reason why Consol is not produc-
14 ing from this area. This is 6,000 acres with a lot of
15 gas and there are two reasons why no one except Mr.
16 Ratcliff has been producing from that area. The first
17 reason is it would probably cost a couple hundred
18 thousand dollars conservatively for us to do title on
19 6,182 acres. And unless under current rules with regard
20 to sealed gobs -- unless someone ponies up the huge
21 dollars that are required -- I mean, it can cost \$50,000
22 an 80 acre unit if you start running into problems to do
23 title. And the biggest reason we're not in there --
24 there are no producing coalbed methane wells in there
25 operated by anybody except Mr. Ratcliff. And the primary

1 reason is the title cost is humongous which is hundreds
2 of thousands of dollars. In addition we're not willing
3 to take the risk of going in, pooling an 80 acre unit and
4 then drawing on that to the maximum technological ability
5 that we have because what do we say to other lessors that
6 we have in there when we're just paying the lessors who
7 happen to be lucky enough to be in an 80 acre unit that
8 we're drawing hundreds of million cubic feet of gas out.
9 What do we say to the rest of our lessors? We have a
10 legal problem visa via our other lessors in terms of
11 that kind of conduct which Mr. Ratcliff doesn't have not
12 have that particular problem. Those are the two reasons
13 why we don't have any wells there, title costs and what
14 do we do about people that we have leases with whose gas,
15 in effect, we're taking but we're not paying them
16 royalty. I mean, these are very real concerns that have
17 prevented us from doing anything in that area. And I
18 think a benefit that Mr. Ratcliff derives that he may not
19 appreciate at this point in time in terms of what Mr.
20 Morgan was saying is the same opportunity potentially to
21 double units. I mean, he has now gone from looking at
22 spending a couple hundred thousand dollars to do title on
23 681 acres to if he wants to double his allocable produc-
24 tion limit doing title on 80 acres and the economic
25 advantages associated with that. So, I mean, hopefully

1 whatever you do can be applied to everybody in a uniform
2 way, royalty owners, operators alike. And rationally
3 applied to them at least you stand back and look at it
4 and it seems fair. That ought to be the goal and I
5 assume it is your goal.

6 MR. LEWIS: You're talking about doing title search on all
7 these but on the other hand you was asking to pool some
8 of these.

9 MR. SWARTZ: Which would require you to do title. You can't
10 pool without doing title.

11 MR. LEWIS: I know.

12 MR. SWARTZ: The only difference between a voluntary -- you do
13 the same amount of title and what causes you to have a
14 voluntary unit as opposed to a pooling is you can't lease
15 100 percent of the folks who you've identified in your
16 title research.

17 MR. LEWIS: It becomes a unit.

18 MR. SWARTZ: Right. So you can't form a voluntary and so
19 you've done the title and you're missing 5 percent of the
20 unit or 10 percent and you've got to pool the balance.
21 But you still have to do that title up front whether you
22 pool or not.

23 MR. CHAIRMAN: Any other testimony for the Board?

24 MS. RATCLIFF: I know they think we're an exception but we're
25 also a minority. Think of the expense a little person

1 like we are has already gone through. We did title
2 search on, I guess, 36 people -- owners in our 80 acres
3 and we can't compare to a big company. We are a minor-
4 ity. We're little. So I don't think we're an exception.

5 MR. SWARTZ: Well, if you assume a gas price of \$2 an MCF
6 we're talking about 300 to 350,000 MCF which is 600 to
7 700,000 dollars. It's a lot of money regardless of
8 whether a person gets it or a company. They're not
9 looking at any of the transportation costs that we're
10 looking at right now. But in terms of -- you need to
11 look at the economics of the well. A well with a cap of
12 300 million or 350 million cubic feet at \$2, which is
13 less than it's been recently. I'm just picking a number.
14 It's going to throw up a lot of money. Unfortunately it
15 goes down, too. In the last year it's been pretty bad
16 and it's been doing good.

17 MR. CHAIRMAN: Any other testimony for the Board regarding
18 this?

19 MR. McCLANNAHAN: I'm Mark McClannahan. I'm here representing
20 Mack Construction. Under the current limits of the
21 Beatrice Mine #1 Mack Construction would not be affected,
22 but as these gentlemen have said, these boundaries could
23 change. And if they do change a little bit Mack Con-
24 struction could very much be affected. What I'm here
25 for is basically to present you some agreements that we

1 have with Island Creek Coal Corporation. We do have
2 interest and title in three VVHs that are in the N-13
3 section which would be -- if the limit changed three
4 units that would encompass us. And I'm here
5 basically --

6 MR. HARRIS: Did you say N-13?

7 MR. McCLANNAHAN: N-13. If I could, I would like to just
8 leave these agreements with you all. That's basically
9 all I'm here for.

10 MR. MORGAN: Would N-13 be on beyond --

11 MR. CHAIRMAN: Outside of this current established area. Of
12 course, you understand if the Board were to establish
13 rules based on that that those -- that would all have to
14 come back before the Board to expand that at some future
15 time.

16 MR. McCLANNAHAN: Yes. I just wanted to bring that up. Since
17 these are apt to chance I did want to bring to your
18 attention that Mack Construction could also be affected
19 and this is the reason why.

20 MR. CHAIRMAN: You are currently protected by the field rules
21 that are in effect for Oakwood I and Oakwood II in that
22 area as well. Thank you.

23 MR. HARRIS: I can understand the Ratcliff family's concern
24 because this is potential income that, I guess, you all
25 look at us as messing with -- or somebody is messing with

1 in terms of earnings potentially in the future. Of
2 course, everyone is concerned and I'm sure I would be
3 concerned if I were in the same situation. But I'm
4 interested in Mr. Morgan's comments about how long the
5 expected life of that well would be with a cap. What
6 you're doing is saying based on the amount of gas that is
7 currently taken out?

8 MR. RATCLIFF: Right.

9 MR. HARRIS: And the number of people that's serving in this
10 particular situation versus the cap and you're saying
11 that that life expectancy would be 30 years, 70 years?
12 What did I hear you say?

13 MR. LEWIS: Ten years.

14 MR. MORGAN: I think what I said is a 350 cap -- the concern
15 was with the cap. A 350 cap at the rate it is being
16 drawn out right now would last 70 years.

17 MR. HARRIS: With a cap. So then -- of course, it would
18 affect generations down the line. But we're talking 70
19 years of production with nothing changing. I mean, if
20 they put the cap on or didn't put the cap on -- if they
21 put the cap on it would still have 70 more years of
22 production as you are now.

23 MR. SWARTZ: You've got to factor in, Mr. Harris, if we get
24 more wells -- if we improvise these rules I think what
25 Mr. Morgan said was that he gathered this was -- correct

1 me if I'm wrong. It's just a shoot in the dark, but that
2 he was looking at least ten years for this reservoir
3 basically. If a number of people availed themselves of
4 the field rules and we started to make some production.

5 MR. HARRIS: So every time someone drills a well that's going
6 to obviously reduce the overall --

7 MR. SWARTZ: It accelerates the removable of the recoverable
8 reserves.

9 MR. CHAIRMAN: Any other testimony for the Board? There being
10 none -- typically I don't do this but for the Board's
11 consideration I would propose that we work with Sandy to
12 draft a set of rules for consideration at next meeting,
13 carry this forward to have time to think about it and
14 have it back on the agenda. People will have an opportu-
15 nity to look at that and we'll take testimony again
16 before we make a decision. This is something that we
17 don't want to make a snap judgement on clearly. We all
18 want to make sure we do what's fair and what's right and
19 what we're mandated by law and regulation to do. That
20 will give us an opportunity to see what it's going to
21 look like and further reflect on the actual impact it
22 may have on people and give those impacted an opportu-
23 nity.

24 MR. KELLY: I'd make a motion to that effect.

25 MR. GARBIS: Second.

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MR. CHAIRMAN: Further discussion? All in favor signify
by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
Unanimous approval. That will be carried forward to the
next meeting, Tom. Let's take a five minute break and
then take up the next item.

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

ITEM II

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3 MR. CHAIRMAN: The next item on the agenda is the Virginia Gas
4 and Oil Board will hear testimony from Ratcliff Gas
5 Company as to it's compliance to the Board's ruling
6 issued April 16th in regard to Unit U-19. This is docket
7 number VGOB-96/04/16-0542. We'd ask the parties that
8 wish to address the Board in this matter to come forward
9 at this time.

10 MR. RATCLIFF: I am Wyatt Ratcliff, president of Ratcliff Gas
11 Company. I have fully complied with the order and am now
12 at this time waiting for the Oil and Gas Board to have it
13 recorded and sent back to me so I can mail the copies out
14 to all of the participants of the unit. That's where
15 we're at now, waiting for the Oil and Gas Board to make
16 the next move.

17 MS. RIGGS: Attached to the modification on Diane Graham at
18 the back is the supplemental order that Mr. Ratcliff
19 filed with the revised plat and a supplemental order.

20 MR. RATCLIFF: As soon as the supplemental order is completed
21 I will at that time file an amended supplemental order
22 including the portion of Diana Graham into this 80 acre
23 unit.

24 MR. CHAIRMAN: Tom, has that been recorded?

25 MR. FULMER: I was looking to see if I had a record date on

1 it. She took it yesterday. So I assume it was recorded
2 yesterday. I assume there's a recordation still on this
3 one.

4 MS. RIGGS: It will be on the very last page, Tom.

5 MR. FULMER: Yes. It was recorded yesterday.

6 MR. CHAIRMAN: Okay. Are there any others that wish to
7 address the Board in this matter here today? The record
8 will show there are none.

9 MR. SWARTZ: Does anybody have an extra copy of that?

10 MS. RIGGS: This is what got recorded as it went out of our
11 office in Big Stone. It's not fully executed but the
12 text is the same.

13 MR. CHAIRMAN: Tom, you gave all the Board members a copy of
14 this?

15 MR. FULMER: Yes. I do have a recorded if they'd like to
16 have it. It's got the seal on the back.

17 MR. CHAIRMAN: That's fine. (Pause.) Mr. Ratcliff, since I
18 wasn't here at that meeting I'm trying to look through
19 the notes. Here are the three things that I had notes
20 on, that the Board approved Diane Graham's application
21 amended the pooling order to name her as a potential
22 claimant, that Ratcliff Gas file a supplemental order
23 naming her. You've done that -- or you plan to do that
24 after this --

25 MR. RATCLIFF: That will be done after the --

1 MR. CHAIRMAN: -- after this order?
2 MR. RATCLIFF: The supplemental order, yes.
3 MR. CHAIRMAN: And you're verifying to the Board that you've
4 complied with 45.1-361.19 which is in regard to notice of
5 standing?
6 MR. RATCLIFF: Yes.
7 MR. CHAIRMAN: Noticing her specifically.
8 MR. RATCLIFF: Right.
9 MR. CHAIRMAN: And you're going to amend your -- you have or
10 plan to amend your application to make sure that all oil,
11 gas, mineral and coal owners in the unit have been named?
12 MR. RATCLIFF: That will be done immediately. The amended
13 will be carried out with the next few days.
14 MR. CHAIRMAN: Okay. Any questions, members of the Board?
15 Hearing none, any further action? I'll ask again if
16 anyone present here today wishes to address the Board in
17 this matter? The record shows there are none. I don't
18 think that there's any action we need to take. He's
19 complied with what the Board asked him to do and he's
20 certifying to us he plans to follow through with an
21 amended supplemental order following receipt of the
22 recorded copy.
23 MR. RATCLIFF: That's right.
24 MR. CHAIRMAN: Any questions, members of the Board? Thank
25 you, Mr. Ratcliff.

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MR. RATCLIFF: Thank you, Mr. Chairman.

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ITEM III

MR. CHAIRMAN: The next item on the agenda is a petition from Equitable Resources Energy Company for a well location exception under 45.1-361.17 for well V-3576. This is docket number VGOB-96/06/18-0543. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MR. KAISER: Mr. Chairman, members of the Board, my name is Jim Kaiser. I'm appearing on behalf of Equitable Resources Energy Company. Also sitting with us as counsel is Mr. George Mason, vice president and general counsel at EREX. Our witnesses in this matter will be Mr. Don Hall and Mr. Bob Dahlin.

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

MR. KAISER: Mr. Chairman, while the witnesses are being sworn, if I may, I'd like to pass out an exhibit prepared by Mr. Hall in conjunction with this hearing.

COURT REPORTER: (Swears witnesses.)

DON C. HALL

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

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3 DIRECT EXAMINATION

4 BY MR. KAISER:

5 Q. Mr. Hall, could you please state your name for the
6 record, who you're employed by and in what capacity?

7 A. My name is Don C. Hall. I'm employed by Equitable
8 Resources Energy Company as district landman.

9 Q. Have you testified previously before the Virginia Gas and
10 Oil Board as an expert witness?

11 A. Yes, I have.

12 Q. Have your qualifications as an expert been accepted by
13 the Board?

14 A. They have.

15 Q. Do your responsibilities include the lands involved here
16 and in the surrounding area?

17 A. Yes, sir, they do.

18 Q. Has Equitable Resources Energy Company applied for a
19 permit for well V-3576?

20 A. Yes, on the application dated June 12th, 1996.

21 Q. Are you familiar with the application for a location
22 exception for well V-3576 and the relief requested?

23 A. Yes, I am.

24 Q. Have you personally visited this location and are you
25 familiar with this location as it may relate to mining
operations, topography and effective land management?

1 A. Yes, I am.

2 Q. Have all interested parties been notified as required by

3 Section 4.B of the Virginia Gas and Oil Board Regula-

4 tions?

5 A. They have.

6 Q. At this time would you indicate for the Board the

7 ownership of the oil and gas underlying well V-3576?

8 A. Pine Mountain Oil and Gas is 100 percent owner.

9 Q. Does Equitable Resources Energy Company have an oil and

10 gas lease covering all the tracts within this unit?

11 A. Yes, we do.

12 Q. Does Equitable have the right to operate reciprocal

13 wells?

14 A. Yes.

15 Q. Mr. Hall, in conjunction with the exhibit that you've

16 prepared for the Board which they now have in front of

17 them would you please explain the various reasons why a

18 location exception is required in order to address

19 environmental and erosion concerns and prevent loss of

20 reserves?

21 A. Looking at the exhibit I have a legend in the upper right

22 hand corner of the proposed well location. The access

23 road is highlighted in yellow. The legal location area

24 is to the north of the area that's highlighted in red.

25 The area highlighted in blue is a large lake and marshy,

1 swampy area. The adjacent wells are highlighted in
2 green. The legal location area in this area, as I said,
3 would be in the area north of the area highlighted in red
4 and it would be adjacent to this lake and marsh area
5 which it's real swampy in that area. The access to that
6 location would have to come in -- if you look at the
7 exhibit -- at the bottom of the exhibit you see the
8 yellow line coming up. You also see another road going
9 to the northeast into the blue area there. That would be
10 the access over to the lake at the present time.
11 Recently this area has been reclaimed. The high wall has
12 been put back and there's an access road around through
13 there but it's sloping off. But once we did get by that
14 part of that we would have to parallel this lake and
15 swamp area for about one-half mile to get up into the
16 legal location area. There's quite a bit of potential
17 for problems with the erosion and sediment control and
18 possible environmental concerns with parallelling this up
19 through there. We would prefer to stay away from that
20 area. The location that we're applying for, the road
21 highlighted in yellow, is an existing road up to VAC-2627
22 which is an existing coal well which is on a different
23 spacing pattern. And from that point on it follows a
24 strip bench around 2576 and the location of 3576 is on a
25 strip bench. So there would be a great deal less area to

1 be disturbed if we drill the well at the proposed spot.
2 To get out of the swampy area and maintain a legal
3 location we would have to move to the north of the red
4 area onto the point north of the area that's highlighted
5 in blue there. And if we did that it would put about
6 3,500 feet from 2567 which would be a great deal farther
7 than we'd want to space it and we'd potentially loose
8 some reserves by doing that.

9 Q. So, in essence, because of the topography, the lake,
10 potential erosion and environmental problems and the
11 current state spacing and existing wells and proposed
12 wells we're looking at essentially -- if we were to drill
13 the well above what I'll call the left hand arm of the
14 lake where you're talking about a legal location we're
15 looking at essentially loosing half a well based upon an
16 additional 1,000 foot of spacing?

17 A. Correct.

18 MR. KAISER: I don't have any further questions of this
19 witness at this time, Mr. Chairman.

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

21 MR. HARRIS: Mr. Hall, I'm a little confused. Right at the
22 2,400 elevation line there, the red, that's kind of in a
23 V. You described that as the boundary?

24 THE WITNESS: We'd have to be north of that area to have a
25 legal location from V-2764 which is the reciprocal well.

1 And the red line going basically north --
2 MR. HARRIS: These are circles.
3 THE WITNESS: Yeah.
4 MR. HARRIS: Okay. I understand. These are just where two
5 circles are meeting. I'm sorry. I understand.
6 THE WITNESS: I just took a compass and marked those.
7 MR. HARRIS: Thank you.
8 MR. CHAIRMAN: Other questions? The proposed well site, VAC-
9 2627, what's identified there, tell me again what that
10 is?
11 THE WITNESS: That's a coalbed methane well.
12 MR. KAISER: That's an existing well.
13 MR. CHAIRMAN: That's what I thought.
14 MR. HARRIS: I think I heard you say when you were talking
15 about the yellow road that there was a lot of destruction
16 -- I don't know the word you use. I know there's a lot
17 of construction, but what I'm saying is that did you
18 all say the other -- that we're going to have -- I kind
19 of have the feeling that you're going to have to do a lot
20 of road work.
21 THE WITNESS: If we come in this way and parallel this lake
22 we'll have to build a road all the way in there. There
23 will be over one-half mile of disturbance. The other
24 road that's highlighted in yellow is existing up to 2627
25 and from that point on there's an existing strip bench

DIRECT EXAMINATION

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3 BY MR. KAISER:

4 Q. Mr. Dahlin, could you please state your full name for the
5 record, who you're employed by and in what capacity?

6 A. My name is Robert A. Dahlin, II. I'm employed by EREX as
7 a production specialist.

8 Q. Have you previously testified before the Virginia Gas and
9 Oil Board and have your qualifications as an expert
10 witness previously been accepted?

11 A. Yes.

12 Q. Are you familiar with the application for a location
13 exception filed by EREX for well V-3576?

14 A. Yes, I am.

15 Q. In the event this location exception is not granted would
16 you project the estimated loss of reserves that would
17 result in waste?

18 A. We anticipate a minimum of 650 million cubic feet of gas
19 to be lost. This is furthest north well we've drilled
20 on the (Inaudible.) anticline and there is a potential of
21 encountering additional reserves from the Big Lime.
22 That's yet untested. But right now we're estimating 650
23 million cubic feet.

24 Q. So, in other words, that's an average of some wells in
25 the area and the 650 could be a conservative estimate?

1 A. That's accurate.

2 Q. What's the total depth of the proposed initial well under
3 the applicant's plan of development?

4 A. 5,395 feet.

5 Q. Would this be sufficient to include the formations
6 consistent with the well work permit that's now before
7 the DMME?

8 A. Yes.

9 Q. Is the applicant requesting a location exception for
10 conventional gas reserves not only to include the
11 designated formations but any other formations excluding
12 coal formations which may be between those formations
13 designated from the surface to the total depth drilled?

14 A. Yes, we are.

15 Q. In your opinion, Mr. Dahlin, will the granting of this
16 location exception be in the best interest of preventing
17 waste and maximizing the recovery of gas reserves
18 underlying V-3576?

19 A. Yes, it will.

20 MR. KAISER: I have nothing further of this witness at this
21 time, Mr. Chairman.

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

24 (Witness stands aside.)

25 MR. CHAIRMAN: Do you have anything further?

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MR. KAISER: No, sir.

MR. CHAIRMAN: Do I have a motion?

MR. LEWIS: I make a motion that we grant the application.

MR. CHAIRMAN: A motion to grant the application.

MR. KELLY: Second.

MR. CHAIRMAN: A motion and second. Any further discussion?

All in favor signify by saying yes. (ALL AFFIRM.)

Opposed say no. (NONE.) It's a unanimous approval.

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ITEM IV

MR. CHAIRMAN: The next item on the agenda is a petition from Equitable Resources Energy Company for modification of a pooling order for VC-3561 under Section 45.1-361.21. This is docket number VGOB-96/02/20-0534. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MR. KAISER: Mr. Chairman, members of the Board, Jim Kaiser on behalf of Equitable Resources Energy Company. We do have one different witness to testify in this matter, Mr. Dennis Baker. We'd ask that he be sworn in at this time.

COURT REPORTER: (Swears witness.)

MR. KAISER: Mr. Chairman, this is an application to modify a prior order issued by the Board on April 15th, 1996. In a nut shell we're before you to do this because we've got additional information concerning the make-up of the ownership in tract #3 within the unit. Therefore, we have unknown and unlocateable parties that we did not have included in our original pooling application.

DENNIS BAKER

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

DIRECT EXAMINATION

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BY MR. KAISER:

Q. Mr. Baker, could you please state your name for the Board, who you're employed by and in what capacity?

A. My name is Dennis Baker. I'm employed by Equitable Resources Energy Company as senior landman.

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

A. Yes, they do.

Q. Are you familiar with Equitable's application dated May 15th, 1996 for the modification of the pooling order entered April 15th, 1996 for EREX well VC-3561?

A. Yes.

Q. Is Equitable seeking to force pool the drilling rights underlying the drilling unit as depicted at Exhibit #A to the application?

A. Yes, we are.

Q. Does Equitable own drilling rights in the unit involved here?

A. Yes, we do.

Q. Does the location proposed for VC-3561 fall within the Board's order for the Nora Coalbed Field Rules dated March 20th, 1989?

A. Yes.

- 1 Q. Would you please state the interest of Equitable in the
2 gas estate in the unit?
- 3 A. The leased interest in the gas estate at the time of
4 application as well as modification is 92 percent.
- 5 Q. Are you familiar with the ownership of drilling rights of
6 parties other than Equitable underlying this unit?
- 7 A. Yes, I am.
- 8 Q. Could you state those for the Board?
- 9 A. The unleased interest at time of hearing and modification
10 is eight percent.
- 11 Q. Are all unleased parties set out at Exhibit #B attached
12 to the modification application?
- 13 A. Yes, they are.
- 14 Q. Mr. Baker, in your own words and in greater detail than I
15 did in my introduction would you explain to the Board the
16 reason why we are before them today seeking a modifi-
17 cation of prior order?
- 18 A. As indicated in the previous application, we had listed
19 Viola Wright and Terry Ball. The field agents who
20 continued to work in this particular area in this unit
21 for access and surface identification were given some
22 information that Viola's husband, Mr. Tom Wright, was
23 previously married and had children. This was unbeknown
24 to us at the time. So in effort we tried to locate as
25 many of the Tom Wright heirs as possible of which we were

1 unable to do so. There was a -- the individual that gave
2 us the information told us that he had lived in West
3 Liberty, Kentucky. By using the telephone directories
4 for West Liberty we came up with approximately 29 names
5 of individuals with the last name of Wright. 16 of those
6 individuals were contacted. They had no knowledge of a
7 Tom Wright that lived or died in the State of Virginia.
8 So we assumed that maybe this was a different Tom Wright
9 that we had tried to locate in West Liberty, Kentucky.
10 Therefore, the interest as shown on Tract #3 for Tom
11 Wright we do not have any interest shown for Viola Wright
12 and Terry Ball simply because we do not know how many
13 children Tom Wright had or who they were and basically
14 the interest is not where we can break it down and give
15 each one of them a particular interest.

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

21 A. Yes, we did.

22 Q. And I think you just explained for the Board what
23 continuing due diligence we were exercising and based
24 upon that information and based upon the assumption that
25 Mr. Wright died in testate and based upon the information

1 we got that he did have additional children or heirs then
2 we've had to come before the Board to seek a modification
3 to include all those interests within his estate, is that
4 correct?

5 A. That's correct.

6 MR. KAISER: At this time, Mr. Chairman, we would like to
7 incorporate the election testimony that was elicited in
8 the previous hearing which, I think, is VGOB-96/02/20-
9 0534 be incorporated into the record for this hearing.

10 MR. CHAIRMAN: Without objection that is incorporated.

11 Q. (Mr. Kaiser continues.) Mr. Baker, are you requesting
12 that this Board force pool all unleased interests as it's
13 listed at Exhibit #B to the application for modification?

14 A. Yes.

15 Q. Do you recommend that the force pooling order provide
16 that if a respondent refuses to accept any payment due,
17 including any payment due under the order, or any payment
18 of royalty or cash bonus or said payment cannot be paid
19 to a party for any reason or there is title defect in a
20 respondent's interest or in the event of a conflicting
21 claim that the operator pay into an escrow account
22 created by this Board into which all costs or proceeds
23 attributable shall be held for the respondent's benefit
24 until such funds can be paid to the party by order of
25 this Board or until the title defect is resolved to the

1 operator's satisfaction?
2 A. That's correct.
3 Q. Who should be named the operator under the order?
4 A. Equitable Resources Energy Company.
5 MR. KAISER: I have nothing further of this witness at this
6 time, Mr. Chairman.
7 MR. CHAIRMAN: Did you create a new schedule breaking out the
8 percentages?
9 THE WITNESS: A new Exhibit #B.
10 MR. KAISER: Yeah. There is a new Exhibit #B that was
11 attached to the original application that was filed and
12 we depicted Tract #3 as the estate of Tom Wright and
13 assigned the seven percent interest within the unit to
14 his estate. You didn't get that?
15 MR. FULMER: Right here it is.
16 MR. CHAIRMAN: We'll just pass this around for you to look at
17 and then we need to get it back because we don't have
18 copies.
19 MR. KAISER: We apologize for that. Nothing further of this
20 witness, Mr. Chairman.
21 MR. CHAIRMAN: Any questions, members of the Board?
22 (Witness stands aside.)
23 MR. CHAIRMAN: Call your next witness.
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1 ROBERT A. DAHLIN, II

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

5 DIRECT EXAMINATION

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7 BY MR. KAISER:

8 Q. Mr. Dahlin, could you please state your name for the
9 record, who you're employed by and in what capacity?

10 A. My name is Robert A. Dahlin, II. I'm employed by EREX as
11 a production specialist.

12 Q. And your qualifications as an expert witness in this
13 matters have previously been accepted?

14 A. Yes, sir.

15 Q. Are you familiar with the proposed exploration and plan
16 of development for the unit involved here?

17 A. Yes, I am.

18 Q. What is the total depth of the proposed well under the
19 applicant's plan?

20 A. 1,880 feet.

21 Q. Will this be sufficient to penetrate and test the common
22 sources of supply in the subject formations?

23 A. Yes, it will.

24 Q. What are the estimated reserves of the unit?

25 A. 450 million cubic feet of gas.

- 1 Q. Are you familiar with the well costs for the proposed
2 well under your plan of development?
- 3 A. Yes, I am.
- 4 Q. Has an AFE been reviewed and submitted to the Board?
- 5 A. Yes, it has.
- 6 Q. Was this AFE prepared by an engineering department
7 knowledgeable in the preparation of AFEs and knowledge-
8 able in regard to well costs in this area?
- 9 A. Yes.
- 10 Q. Does this AFE in your opinion represent a reasonable
11 estimate of the well costs for proposed well in the
12 applicant's plan of development?
- 13 A. Yes, it does.
- 14 Q. Would you once again state both the dry hole costs and
15 completed well costs for this well?
- 16 A. The dry hole costs are \$70,003 and the completed well
17 costs are \$173,000.
- 18 Q. Is any of your testimony as to costs or depth or estimat-
19 ed reserves any different from the testimony that you
20 gave at the original hearing for this pooling?
- 21 A. No. It's all the same.
- 22 Q. Do these costs anticipate a multiple completion?
- 23 A. Yes.
- 24 Q. Does the AFE include a reasonable charge for supervision?
- 25 A. Yes, sir.

1 Q. In your professional opinion, Mr. Dahlin, will the
2 granting of this application be in the best interest of
3 conservation, prevention of waste and protection of
4 correlative rights?
5 A. Yes, it will.
6 MR. KAISER: I have nothing further of this witness at this
7 time, Mr. Chairman.
8 MR. CHAIRMAN: Questions, members of the Board? Do you wish
9 to incorporate that prior testimony?
10 MR. KAISER: Yes, Your Honor. That would be fine. Your Honor
11 -- Mr. Chairman. You can tell I've been in court.
12 (Witness stands aside.)
13 MR. CHAIRMAN: Do you have anything further?
14 MR. KAISER: Nothing further.
15 MR. CHAIRMAN: I didn't spend a lot of time looking at with
16 the interest of passing it on to the Board members. It
17 appeared that it was penciled in, the percentages on the
18 copy we have.
19 MR. KAISER: I've got plenty of copies of this. I don't know
20 what happened.
21 MR. CHAIRMAN: That's okay. I just want to make sure we have
22 a final copy of what we're looking at.
23 MR. KAISER: We've got them all typed. What you've got on
24 June 7th is a copy of Exhibit #B with the affidavit of
25 mailing showing the certified mailing and receipt. You

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should have had Exhibit #A and Exhibit #B with the original application.

MS. RIGGS: The plat hasn't changed.

MR. KAISER: No. Let me correct that, Ms. Riggs. The plat has changed to the extent that we've identified Tract #3 as the Tom Wright estate.

(PAUSE.)

MR. LEWIS: I make a motion we grant the application.

MR. CHAIRMAN: A motion to grant the application.

MR. KELLY: Second.

MR. CHAIRMAN: Second. Any further discussion? All in favor signify by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.) Unanimous approval. Thank you.

ITEM V

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3 MR. CHAIRMAN: The next item on today's agenda and the last
4 item today is a petition from Equitable Resources
5 Exploration -- Equitable Resources Energy Company
6 appealing the Inspector's Decision issued as a result of
7 an Informal Fact Finding Hearing. Permit 3101 was issued
8 May 9th, 1996 for well VC-3043 with the condition that
9 the petitioner may not produce the well until a pooling
10 order is obtained from the Virginia Gas and Oil Board.
11 This is docket number VGOB-96/06/18-0544. We'd ask the
12 parties that wish to address the Board in this matter to
13 come forward at this time.

14 MR. KAISER: Mr. Chairman, if I could have a minute to move
15 this easel in here.

16 MR. CHAIRMAN: Sure. That's fine.

17 MR. KAISER: Mr. Chairman and members of the Board, my name is
18 Jim Kaiser. I'm here on behalf of Equitable Resources
19 Energy Company. Mr. Mason is here as counsel with me.
20 We have several witnesses. I'll start from this end.
21 This is Mr. Larry Cline with the Pittston companies. Don
22 Hall, of course, has testified earlier today. And this
23 is attorney Ben Sutherland. The nature and form of this
24 hearing is a little different at least from anything I've
25 done in my three years of practice before the Board.

1 With the Board's approval what I would like to do -- or
2 the procedure I'd like to present the hearing in is to
3 first briefly present an oral synopsis or summary of the
4 brief that we filed in conjunction with the hearing and
5 then present evidence and testimony from these various
6 witnesses for the purposes of support of the points we
7 make in the brief and for the purpose of building a
8 record should we have to take an appeal on this issue to
9 the Circuit Court.

10 MR. CHAIRMAN: That's fine.

11 MR. KAISER: Does that sound okay?

12 MR. CHAIRMAN: That's fine.

13 MR. KAISER: To give you a little factual background of this
14 matter on March 18th, 1996 Equitable Resources Energy
15 Company filed an application for a well work permit for
16 well VC-3043 with the VGOB. As you probably are aware of
17 this is a coalbed methane well. Pursuant to the notific-
18 ation to surface owners of record on the drill site tract
19 they -- which I think there were 53 -- 52 or 53 undivided
20 interest owners they filed letters of objection with Mr.
21 Fulmer's office. In addition to the statutory objections
22 that they made under Section 35 of the statute they also
23 in some of the letters made a claim to ownership of more
24 than just the surface estate. They made a claim to
25 ownership of both the coal and the oil and gas estates.

1 A hearing was scheduled by Mr. Fulmer on the statutory
2 objections on April 25th of this year. I was not able to
3 attend that hearing, but a settlement was worked out in
4 conference between the parties as to the statutory
5 objections. And because a voluntary settlement was
6 reached an order was not issued by the Director -- or an
7 opinion was not issued by the Director in regards to the
8 Informal Hearing. A permit was issued by the Director on
9 May 9th, 1996 with a condition attached to it as condi-
10 tion five to the permit; that Equitable as the operator
11 obtain an order force pooling these surface owners before
12 the well could be put into production. We are appealing
13 that condition, condition five, to the permit before you
14 today. Briefly we'll walk you through the brief that
15 we've filed and then, as I stated, at that point we will
16 take some testimony and evidence from our various
17 witnesses. It is our position that based upon, I think,
18 the clearly stated law in Virginia and based upon the
19 Board's stated recognition of this on numerous prior
20 occasions that neither the Board nor the Director have
21 the jurisdiction or authority to adjudicate title or
22 property ownership issues. Further evidence of that, I
23 think, has been provided as Exhibits #A and #B in that
24 even if the statute were broadly construed -- say even if
25 you wanted to broadly construe Section 22 of the statute

1 and find some authority somehow in there the doctrine of
2 estoppel would bar the Director from issuing the condi-
3 tion that he did. We also feel that we have fulfilled
4 our affirmative duty to prove the title to the minerals
5 on this drill site tract. We fell we have a clear
6 unchallenged possessory title to the minerals under the
7 J.F.E Counts surface tract. We will present evidence in
8 a few short minutes of this title. We have some exhibits
9 that show that the Clinchfield Coal Company drilled a
10 well on this surface and laid pipelines on the surface in
11 1951. They have paid royalties over a number of years
12 and conducted surface operations on that property.
13 There's never been any claim in relation to that well
14 filed by any of the present surface owners or any of
15 their predecessors in interest. They base primarily
16 their claim according to their letters of objection on
17 the fact that the 1902 severance deed from J.B.F. Counts
18 to Patrick Hagen was somehow forged because it was signed
19 with a X rather than with a signature. We will present
20 evidence in a few moments that every recorded conveyance
21 made in Dickenson County by either J.B.F. Counts or Mary
22 Counts, his wife, were signed with a mark -- signed with
23 a X. But I think probably that the Director in making
24 this decision was primarily hanging his hat on a broad
25 construction or a broad interpretation of 361.22 in

1 claiming a conflicting claimant. Addressing that issue;
2 Section 22 of the statute was set up different from 21
3 because of -- really for two reasons I think. Number
4 one, you have in Southwest Virginia a very common
5 situation where you have separate ownership of the two
6 mineral estates. Separate ownership of the coal and
7 separate ownership of the oil and gas. Number two,
8 there's never been any -- to this point any adjudication
9 of the ownership issue concerning coalbed methane. Based
10 upon those two factors I think the statute was set up to
11 allow the development of coalbed methane to continue to
12 go forward absent the adjudication. I don't think it was
13 ever the intent or the purpose or nor should it be
14 construed for Section 22 of the statute to allow a
15 completely unsubstantiated claim to mineral ownership by
16 a surface owner to qualify or have them be deemed a
17 conflicting claimant. As you noted in -- the last
18 section of the brief would go through -- we did spend the
19 time and effort to investigate both statutory and case
20 law in other coalbed methane jurisdictions. They do not
21 use the term "conflicting claim" or "claimant" in their
22 statute nor is there any case law construing that term
23 that we could find. But what they do do is limit who can
24 apply or who can exercise compulsory pooling rights under
25 their statute to owners of minerals, be in owners of

1 minerals in place, working interest owners, etcetera.
2 What we feel -- the reason we're before you today and
3 what we feel that this condition has effectively done is
4 it has shifted the burden from these objecting claimants
5 who should be made to affirmatively prove their title to
6 us and to our lessors in an unfair way. It's going to
7 delay -- it's going to cost us additional money. We have
8 duties to defend our lessor's title and it's really
9 shifted the burden in an unfair way. To go back to
10 Section 22, for instance, in regards to the burdenship in
11 argument the statute reads -- this is 22.A. "When there
12 are conflicting claims to the ownership of coalbed
13 methane gas the Board upon application from any claimant
14 shall enter an order pooling all interests or estates in
15 the coalbed methane gas drilling unit for the development
16 and operation thereof." Well, if these 53 surface owners
17 really are claimants or conflicting claimants either one
18 then the burden is on them to file an application for
19 force pooling to protect their own interests. It's not
20 on us. I mean, we have full confidence in the ownership
21 of both the coal and the oil and gas estates underlying
22 this surface unit. And to cause us to have to file a
23 quite title action to prove that and to bear that cost
24 and expense is unreasonable and it's a precedent we don't
25 want to set. I mean, it's a unsubstantiated spurious

1 claim to a supposed title defect that supposedly occurred
2 95 years ago. Not to mention if this ever did go to
3 litigation there's all kinds of defenses in the form of
4 statute limitations, adverse possession, latches and
5 stuff. So that is our position. We'd entertain ques-
6 tions or we can go ahead and present the testimony of
7 our witnesses to further substantiate our position at
8 this time.

9 MR. CHAIRMAN: We'll go ahead and hear the testimony.

10 MR. KAISER: At this time I'd like to call Mr. Don Hall as our
11 first witness. I would remind him that he's been
12 previously sworn this morning. What I'd like to do is
13 use Mr. Hall to identify the various exhibits to the
14 brief so that we can get them entered into evidence and
15 get them on the record.

16
17 DON C. HALL

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

20
21 DIRECT EXAMINATION

22
23 BY MR. KAISER:

24 Q. Mr. Hall, could you once again state your name, who
25 you're employed by and in what capacity?

1 A. My name is Don C. Hall. I'm employed by Equitable
2 Resources Energy Company as district landman.

3 Q. You can take a minute to look at this, but are you
4 familiar with these letters of objection from various
5 surface owners under the J.B.F. Counts to well VC-3043
6 that I'm handing to you?

7 A. Yes.

8 MR. KAISER: At this time, Mr. Chairman, I'd ask that these be
9 entered into evidence as Exhibit #A.

10 MR. FULMER: Mr. Chairman, that's already in evidence within
11 the IFFH that was forwarded to you.

12 MR. CHAIRMAN: We already have it.

13 MS. RIGGS: It's already in the record.

14 MR. KAISER: So we don't need to enter any of this into the
15 record?

16 MR. CHAIRMAN: None of that. The Informal Hearing and the
17 letters and all the -- anything attached to the Informal
18 Hearing is part of the record before us.

19 Q. (Mr. Kaiser continues.) Mr. Hall, I'm going to hand you
20 at this time a letter of objection to EREX well VC-3313
21 dated July 20th, 1995 from Mr. Terry Ball and then the
22 response letter -- excuse me -- Mr. Ball's letter dated
23 July 11th, 1995 and Mr. Fulmer's response letter to Mr.
24 Ball dated July 20th, 1995 and ask you if you are
25 familiar with those and can identify those?

1 MR. CHAIRMAN: They're also a part of the record.

2 MR. KAISER: You're saying everything we submitted with the
3 brief is part of the record without us getting it in.
4 It's automatically in?

5 MR. FULMER: Mr. Chairman, as far as the letter to Mr. Ball
6 it has no part of this appeal process because we're
7 appealing that particular permit application. Now this
8 comes from a different situation.

9 MR. KAISER: Well, we'd like to get into the record as an
10 offer of proof on the estoppel issue, Mr. Chairman.

11 MS. RIGGS: There's been no foundation laid with regard to
12 it's relevance. Does it go to your estoppel argument, I
13 assume? I think before you can rule on whether it's
14 relevant or not you need to know why they --

15 MR. CHAIRMAN: Yeah. You just in summary said that --

16 MR. KAISER: Okay. I'll be glad to lay the foundation.
17 That's fine.

18 Q. (Mr. Kaiser continues.) Mr. Hall, in regards to these
19 letters that you have in front of you, were you employed
20 by EREX and working on the well for VC-3313?

21 A. Yes.

22 Q. Do you recall the objection made by Mr. Ball to the
23 permit application?

24 A. Yes.

25 Q. Did those objections include an objection stating that he

1 owned more than just the surface estate, that he owned
2 the minerals?

3 A. He says there is an issue concerning the mineral owner-
4 ship.

5 Q. And in response to that letter and assertion by Mr. Ball
6 did Mr. Fulmer send him a letter stating that that was
7 not an objection that was under his jurisdiction or
8 authority?

9 A. Yes.

10 MR. KAISER: Mr. Chairman, I now move that these two letters
11 marked Exhibit #B to the brief be entered into evidence.

12 MR. CHAIRMAN: Did Mr. Ball ever say that he was the owner of
13 the mineral?

14 MR. KAISER: He stated, "There is an issue concerning the
15 mineral ownership that needs to be discussed and resolved
16 between EREX and myself."

17 MS. RIGGS: He didn't assert a claim to it.

18 MR. KAISER: I think that's asserting a claim.

19 MR. CHAIRMAN: We'll receive that into evidence. Pass that
20 around. Do you have the letter that Mr. Ball wrote to
21 EREX on July 11th that's referred to in this letter?

22 THE WITNESS: I think that letter you have there is the only
23 thing that was sent to Tom. I may have a copy of the
24 other letter. Give me a moment to look. (Pause.)

25 MR. KAISER: We don't have it, Mr. Chairman. I'd ask that we

1 be able to file that as late filed exhibit. I know I've
2 got it. I just don't think I have it with me.

3 MR. CHAIRMAN: That's fine.

4 Q. (Mr. Kaiser continues.) Mr. Hall, at this time I'd ask
5 you to take a look at the two letters that are marked as
6 Exhibit #F to the brief that we filed in support of our
7 appeal. One is a letter dated April 21st, 1994 from
8 Earnest Bolling. This is concerning well V-3140. And
9 then a letter of April 29th, 1994 to Mr. Fulmer. Were
10 you employed with EREX and working on this unit in this
11 area at the time of these letters?

12 A. Yes, I was.

13 Q. Are you familiar with this well?

14 A. Yes.

15 Q. In Mr. Bolling's letter of objection does he make a claim
16 to mineral ownership?

17 A. Yes.

18 Q. In Mr. Fulmer's response letter does he state that that
19 claim is not within the purview or jurisdiction of his
20 office?

21 A. Yes.

22 MR. KAISER: At this time, Mr. Chairman, I'd ask that Exhibit
23 #F be entered into evidence.

24 MR. CHAIRMAN: We'll receive it. We'll probably have some
25 questions of the witness on the letter if you want to

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retain it.

MR. KAISER: Sure.

MR. CHAIRMAN: He also says in there that he's filing his objection to 361.29.B specifically as he states his reason for objections.

MR. KAISER: Mr. Chairman, I do have the July 11th letter of Mr. Ball to Equitable.

MR. CHAIRMAN: Did he ever withdraw his objection?

THE WITNESS: Mr. Ball? He wasn't allowed an objection.

MR. CHAIRMAN: In discussing with the company -- any discussions with you?

THE WITNESS: Yeah, we had discussions but he was not granted a hearing.

MR. KAISER: He never took any further legal action to try to substantiate his claim.

(PAUSE.)

MR. CHAIRMAN: What relevance do you lay with these letters and ask in it being granted to introduce as evidence?

MR. KAISER: Well, it's our position that the condition that the Director imposed on this application because of the objection made by the surface owner -- it's an objection that has been made previously. The result of which the condition was not imposed upon the permit. So it's our position that his prior course of conduct and action in those cases estops him from applying the condition on

1 this permit -- to this permit.

2 MR. CHAIRMAN: Would you hold that position even if the

3 Director was wrong in deciding that?

4 MR. KAISER: Wrong in deciding?

5 MR. CHAIRMAN: In deciding that there was no objection there?

6 If he handled it improperly -- if he made a wrong

7 decision? Do you believe that he's estopped because he

8 made a wrong decision?

9 MR. KAISER: I mean, he's entitled to --

10 MR. CHAIRMAN: Even in the first and second decision. Do you

11 think he's not entitled to have erred in his decision?

12 MR. KAISER: I don't think that's what is at issue here. I

13 think --

14 MR. CHAIRMAN: That's what I'm trying to discover. What is at

15 issue?

16 MR. KAISER: It's just one of the arguments that we have to

17 try to get this condition removed. It's not our best and

18 we're not trying to do anything against Mr. Fulmer. I

19 think everybody would agree he does a good job and has

20 done a good job and continues to do a good job. It's

21 just a legal argument that we're making should we have to

22 go to Circuit Court. That's all.

23 MS. RIGGS: Well, I know of at least one instance before us

24 today in the Ratcliff situation where that condition was

25 imposed. So I would say that you've picked some where it

1 Mr. Sutherland who needs to be sworn in at this time.

2 COURT REPORTER: (Swears witness.)

3 MR. MASON: Mr. Chairman, since Mr. Sutherland -- since this
4 is the first time he's testified before the Virginia Gas
5 and Oil Board that you grant us a little latitude in our
6 questions of him and also the importance of receiving the
7 appeal of the Director's Decision.

8
9 BENJAMIN FULTON SUTHERLAND

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

12
13 DIRECT EXAMINATION

14
15 BY MR. MASON:

16 Q. Would you state your complete name, your vocation and
17 where you're employed?

18 A. My name is Benjamin Fulton Sutherland. I live in
19 Clintwood, Virginia. And I'm engaged in full-time
20 practice of law as a sole practitioner, have been for 47
21 years. I'm 78 years old.

22 Q. Mr. Sutherland, would you give the Board your educational
23 qualifications, please?

24 A. Well, sir, I graduated in 1934 from Dickenson Memorial
25 High School in Clintwood. I hold an AB degree from Bureau

1 College in 1938, a master's degree from the University of
2 Kentucky in 1940, a law degree from the University of
3 Virginia in 1949.

4 Q. And you're licensed to practice law within the Common-
5 wealth of Virginia?

6 A. Yes, sir.

7 Q. Would you give the Board your employment experience,
8 please?

9 A. From September, 1949 until September, 1954 I was engaged
10 in the general practice of law with the firm of S.H. and
11 George C. Sutherland in Clintwood and Grundy, Virginia.
12 From September, 1954 until mid June, 1956 I was Assistant
13 United States Attorney for the Western District of
14 Virginia, stationed in Roanoke with the primary respons-
15 ibility as land condonation. In mid June, 1956 I joined
16 the land and legal department of Clinchfield Coal
17 Corporation in Clintwood and Dante and worked until
18 February, 1971 with Clinchfield Coal Corporation and its
19 successor, the Pittston Company. Then from February,
20 1971 to date I've been engaged in the full-time general
21 practice of law as a sole practitioner in Clintwood
22 except for one year as the Commonwealth Attorney of
23 Dickenson County and after one year I resigned that
24 position.

25 Q. So your testimony is that most of your 46 years have been

1 involved in mineral title examination?

2 A. Yes. My first assignment with Clinchfield was to
3 reabstract titles to every tract of land that would be
4 entered in connection with the development of its Moss #3
5 Mine at Duty. And then I was assigned after a year or so
6 the duty of reabstracting titles to every tract that
7 would be entered in connection with the development of
8 the Moss #2 Mine. Then during my service with Clinch-
9 field and Pittston I did all the abstracting for all land
10 acquisitions made by those companies in Dickenson,
11 Buchanan, Wise and Russell Counties.

12 Q. Mr. Sutherland, would you briefly tell the Board what is
13 involved in a mineral title examination?

14 A. The examiner searches the public record in the Clerk's
15 office to determine the identity of every person who has
16 ever owned any interest in a particular tract of land
17 under consideration. He starts in mineral titles from
18 the time when the land was owned by the Commonwealth of
19 Virginia and then he takes it in order; all transfers by
20 deed, will, inheritance, court order or any other manner
21 down to the present date. In abstracting a mineral title
22 it's essential that the examiner go back to the Common-
23 wealth unless there is a situation where you have what's
24 called a "common owner". If the person whose potential
25 adverse claim is derived from the same owner that the

1 person claims under for whom you're examining title you
2 don't have to go back any further than the common owner.
3 Q. Mr. Sutherland, does your examination also include a
4 review of wills -- probaton of wills and also any
5 litigation that may impact that particular tract of land?
6 A. Yes. The land records that affect titles consist of the
7 record of all deeds, wills, contracts to convey land,
8 mortgages, deeds of trust, judgement liens, court decrees
9 in litigation that involves the property, mechanic liens,
10 tax liens. And any transfer, any interest, any act that
11 affects title if involved in the search of the particular
12 tract of land you're involved in must be examined.
13 Q. Mr. Sutherland, how many mineral title examinations have
14 you performed in Southwest Virginia during your career?
15 A. I will have to give you an estimate. I would say in the
16 range of 1,000 to 1,200 and that's, I believe, a fairly
17 conservative estimate.
18 Q. I assume that there's no one living that has performed
19 more title examinations in Dickenson County than your-
20 self?
21 A. I would doubt it.
22 MR. MASON: Mr. Chairman, at this time I would like to offer
23 Mr. Sutherland as an expert witness as to mineral title
24 examinations in this matter. I also have, though this
25 will not be a piece of evidence, just his resume to give

1 to the Board also as to his background since this is the
2 first time he has been used as an expert witness before
3 the Board.

4 MR. CHAIRMAN: Could you just state for the record the
5 relevance that you believe this would hold in this case?

6 MR. MASON: Yes. The relevance -- what I'm trying to lay as
7 foundation is that this tract has been over -- or almost
8 100 years it has been the oil, the gas, the coal, the
9 minerals -- everything but the surface has been owned by
10 Pittston, Clinchfield Coal Company or one of its subsid-
11 iaries and that during that time period there has never
12 been a successful claim adverse to their interest as to
13 this tract. The whole thing that we're pointing to is
14 the condition five on the permit, that we have to have a
15 forced pooling. And our contention is that there is no
16 conflicting claimant because all interests applicable to
17 coalbed methane development on the J.B.F. Counts 58.14
18 acre tract is held by one entity and that is the Pittston
19 Coal Corporation, it's predecessors or successors.

20 MR. CHAIRMAN: Do you believe that when the statute says any
21 claimant -- I'm not trying to decide this or weight the
22 evidence. I'm just trying to build the record. Do you
23 believe that when the statute says any claimant that it
24 lays a burden on the Department and/or the Board to
25 search out this kind of information before deciding or

1 does it say any claimant must pool?

2 MR. MASON: I think that the mandate of the statute to the
3 Board is that it must protect the correlative rights of
4 the claimants to the minerals. Have a valid claim to it
5 by some type of deed, lease, contract, conveyance or what
6 have you. I do not think that anyone can come in to the
7 Board and say that there's a defect in the title or what
8 have you and say that they need to be pooled. I think
9 that the burden -- then you're shifting the burden
10 already -- a large burden on the operator -- prudent
11 operator and it would have to come forward and pool
12 surface owner claimants. Part of what we're trying to
13 show here today is there is no conflicting claimant
14 because the whole mineral ownership is held by on entity.

15 MR. KAISER: We think the burden should be on these people
16 that have objected and say that they have a claim to
17 something more than the surface. Let them file a quiet
18 title action and prove it. Damages are readily ascertainable.
19 We have to do production reports on a one-
20 eighth that would have to be escrowed. We have a
21 coalbed methane situation with this particular well where
22 we don't have a conflicting claimant because the coal
23 estate and the oil and gas estate are owned by wholly
24 owned subsidiaries of Pittston. So let's put the burden
25 where the burden lie. It's on them. Let them prove

1 their title and if they end up being right the damages --
2 the court can order our lessor to pay the one-eighth in
3 interest if it wants to back to those people. I mean, to
4 set a president or require us to force -- does that mean
5 every time somebody -- now every time that a permit is
6 filed and some surface owner says in a letter regarding a
7 permit, "Hey, I think I own more than just the surface"
8 that we're going to have to force pool the surface owner?
9 I don't think that was the intent of the statute or the
10 regulations.

11 MS. RIGGS: To put this in context in respect to the estoppel
12 argument as well, we have had operators come before this
13 Board in the past where they had title defects -- title
14 disputes and ask that the pooling process be used to
15 avoid, perhaps, their requirement to go into court and
16 resolve that before they can produce the well. And there
17 have been situations where this Board has determined in
18 the past that conflicting claims mean just that. If you
19 claim it that this Board is without jurisdiction to
20 adjudicate that claim and therefore the solution to that
21 problem is to pool everybody until that adjudication is
22 made. Now, that's the way the Board has ruled in the
23 past. I think the reason that Tom has referred this to
24 the Board is because of that. The Board has made that
25 decision in the past. Now what you're saying is that was

1 an improper decision. I guess we should forever held to
2 it, though, under the theory of estoppel --

3 MR. KAISER: Well, let's scratch estoppel.

4 MS. RIGGS: But what I'm saying is that this -- this is an
5 issue to the Board to construe the language within 45.1-
6 361.22, what does conflicting claim mean. And there is
7 no case law in the State of Virginia. There's no
8 interpretation as to what it means. The only thing this
9 Board has ever had before it are situations where
10 operators have asked the Board to rule in that manner and
11 the Board has, in fact, ruled in that manner in other
12 situations. So I think what they're asking is that the
13 Board articulate its policy with respect to its interpre-
14 tation of conflicting claimants. And that's really the
15 issue that's currently here. We would stipulate that the
16 Board is without jurisdiction to make the title determin-
17 ation.

18 MR. KAISER: I understand. So based upon what you're saying
19 is that in the cases where you have done that it has been
20 upon a specific request of somebody -- in that case an
21 operator. We didn't request that.

22 MR. FULMER: Not exactly. There's other cases where that was
23 involved. In fact, the first case which started it
24 involved an oil and gas owner who made a claim to the
25 coal gas.

1 MR. MASON: Oh, I can understand that if you have a -- a
2 mineral owner would have a -- they haven't decided -- the
3 courts of Virginia have not decided whether the oil and
4 gas owner or the gas or the coal owner owns the coalbed
5 methane. And here you have a mineral estate owner that's
6 asserting an ownership claim. All we're saying is you
7 can have that conflicting -- that is the whole way it was
8 set up. There are many in this room that had a hand in
9 drafting that statute and none of us contemplated that
10 the statute would be interpreted where a conflicting
11 claimant would be someone that has a mere ownership to
12 the surface with no color of title, nothing in their hand
13 to show that they have a claim to the coalbed methane by
14 virtue of ownership of the gas estate or the coal estate.
15 And that's why we're today, is to say that the Board has
16 within its jurisdiction to compel a compulsory pooling
17 and that helps all operators without having to go for a
18 determination of who owns the coalbed methane gas,
19 whether it's the gas owner or the coal owner.

20 MR. KAISER: See, I think what the distinction is is in all
21 these cases you're talking about someone specifically
22 requested a forced pooling to protect their interest.
23 Here the operator didn't, the oil and gas owner didn't,
24 the coal owner didn't, the surface owners didn't.

25 MR. FULMER: The other case is the Ratcliff case. That is the

1 surface owner. He came forward and he had to force pool
2 the unit because he was making a claim and that claim was
3 on --

4 MS. RIGGS: We've had every variation on this theme addressed
5 at one point or another I would say by now.

6 MR. FULMER: I'm not picking any particular case. I'm just
7 saying there's a gambit of it across the Board.

8 MR. LEWIS: If you go in and take all the coal out -- the seam
9 of coal out who owns the gas then? Does the landowner?
10 Does the mineral owner? Or the one that owns the mineral
11 right?

12 MR. MASON: Probably -- I don't think --

13 MR. LEWIS: It's not been decided yet.

14 MR. MASON: That has not been decided but yet there is
15 statutory language where the voids or the chambers or
16 what have you are still owned by the owner of the coal.

17 MR. LEWIS: Why would it be --

18 MR. MASON: That is in the statute -- the Virginia Code right
19 now, I think, or -- excuse me -- the interpretation by
20 Virginia Supreme Court, that if the coal is taken out of
21 the chamber or what have you is owned by the owner of the
22 coal.

23 MR. LEWIS: I don't know why it would be when the -- what
24 would you do with the land owner?

25 MR. MASON: Well, if I was a gas owner then I would make a

1 claim that any interest that he has has been -- that he
2 has no interest. But I couldn't make that claim as a
3 surface owner. I would have to own other seams or other
4 strata to make a claim to the ownership of the coalbed
5 methane gas.

6 MR. KAISER: I mean, why is the burden not upon the surface
7 owner if they think they've got an interest in either the
8 coal or the oil and estate to apply for this forced
9 pooling application? Why would the burden be on the
10 operator? I mean, we've done our job. We've proven the
11 title.

12 MR. GARBIS: Are basically saying that this is a previllous
13 claim that some people are presenting?

14 MR. KAISER: Absolutely.

15 MR. MASON: Yes. Our testimony will show that it is a
16 previllous claim.

17 MR. KAISER: There's a 1902 severance deed from J.B.F. Counts
18 -- well, I'll let Mr. Sutherland address it. He's the
19 one that performed the title examination, if you're
20 interested in that and we can continue to try to make a
21 record on that point.

22 MR. MASON: By his testimony we would like to show, just like
23 I said, that there is no conflicting claimant as to the
24 coalbed methane.

25 MR. KAISER: We'd like to show that the successors and

1 interests in the surface of the J.B.F. Counts don't have
2 nor have they had since 1902 any interest in the coal
3 estate or the oil and gas estate. Therefore, no claim to
4 the minerals. Therefore, no status as a conflicting
5 claimant.

6 MS. RIGGS: Well, that revolves around the issue of how this
7 Board chooses to construe the term conflicting claimants
8 since it's not defined in the statute.

9 MR. MASON: Let me make an argument on that, too. If you a
10 coalbed methane operator that comes in and is unsure of
11 the ownership and the person may own the surface too, by
12 reservation or what have you, then if he comes in as an
13 applicant and says I have a conflicting interest I think
14 that's within the purview of the Board if that operator
15 has a good faith doubt as to who owns the coalbed methane
16 gas. But what we're saying is just to automatically put
17 a condition on the permit that says that we have to have
18 a compulsory pooling for every person that comes in and
19 makes a claim either verbally or by letter or what have
20 you in the context of an Informal Hearing or at any time
21 does that then you're going to, in effect, force us --
22 our lessor to go into court each time to have to prove
23 our title when we have already done that as a prudent
24 operator. The last thing I want as the general counsel
25 of our company is to have a trespass claim against us.

1 So we as a prudent operator -- we have the title examina-
2 tion. We had that performed. We have filed a permit.
3 We have the bond. We have the -- where it's notarized
4 that we have all these entities together or we come
5 before you for a compulsory pooling.

6 MR. KAISER: This position is an unfair shifting of the
7 burden. They have a legal remedy. The surface owners
8 have a legal remedy. They can file a trespass action or
9 they can file a pooling application -- and neither of
10 which they've done. To require -- we have a duty to
11 defend our lessor's title. To require us to file a quite
12 title action which is what we'd have to do to prove
13 something that's already proven -- to shift that burden
14 to us and to require us to spend the time and effort to
15 do that is unfair.

16 MS. RIGGS: Is it your position that they could qualify to
17 file a pooling application when they couldn't qualify as
18 a conflicting claimant? I thought I heard you say that
19 was their remedy earlier. That if --

20 MR. KAISER: Well, that is an option that is available to
21 them, I think, under the way the statute's written. I
22 mean, that's for you to decide, not for me.

23 MR. MASON: That's right.

24 MS. RIGGS: I'm saying if this Board rules the way you want
25 and that is that once you certify as prudent operator as

1 to title the Board is bound by your determination and
2 that third parties cannot come in and challenge that as
3 before this Board or make a claim as before this Board
4 how would they get their standing to file for a pooling
5 application if the Board's bound by your determination of
6 title?

7 MR. KAISER: I don't think there's anything -- because there
8 is no definition of conflicting claimant or a claimant I
9 don't know what -- I mean, obviously we'd object to their
10 application but that goes once again to the burden
11 argument. There's nothing in the statute or regulations
12 that would place the burden upon the operator to have to
13 go to the time and the expense of force pooling the
14 surface owners. If they want to protect their interests
15 let them protect it themselves. Not to mention the fact
16 that our lessor and the royalty interest owner here has a
17 clear unchallenged possessory and record title to the
18 minerals since 1902 and the expense and time and effort
19 that they'd have to go to along with us as our lessee to
20 defend that title based upon somebody saying that my
21 grandmother could write in 1902 and it's marked with an
22 X. When ever deed -- that's more a part of the record,
23 but every deed recorded from those two people in Dicken-
24 son County is signed with an X. I mean, it's a ridicul-
25 ous unsubstantiated spurious claim.

1 MS. RIGGS: But the Board can't get to the quality of the
2 claim. It's prohibited from -- I mean, in your brief I
3 think the Board stipulated to the first point made in
4 your brief. It has no jurisdiction to make title
5 determinations. The process --

6 MR. KAISER: Okay. Then let's go under the statute. I don't
7 think the Board statutorily can require the operator to
8 file for a forced pooling. That burden is upon whoever
9 that claimant who thinks they have an interest might be.
10 It's not on the operator.

11 MS. RIGGS: The protection of correlative rights is the duty
12 of the Board, not of the Director. Would you agree with
13 that position, that the Director cannot as part of the
14 permitting process protect correlative rights?

15 MR. KAISER: That's not an issue.

16 MS. RIGGS: That is an issue reserved exclusively to the
17 Board's jurisdiction, not the Director's jurisdiction.
18 So that if there is a claim which would give rise to a
19 correlative rights issue the form in which it must be
20 addressed is before this Board, not before the Director
21 which is why the Director referred it over here and
22 couldn't decide it within the permitting process. Now,
23 is that --

24 MR. KAISER: That's a fair assessment.

25 MS. RIGGS: Okay. So we are in the right forum now if we're

1 talking about correlative rights.

2 MR. KAISER: We're in the right place.

3 MS. RIGGS: Can we all agree on that?

4 MR. CHAIRMAN: Right.

5 MS. RIGGS: So now what it comes down to is whether -- what is
6 a conflicting claimant, what gives rise to this protec-
7 tion -- correlative rights protection. What does the
8 quality of the claim have to be in order for the Board's
9 duty to protect those correlative rights to kick in. And
10 what you're basically arguing is that we first have to
11 decide title before we can decide there is a quality and
12 that that is their burden to prove.

13 MR. KAISER: It's sort of a bifurcated issue. I'm saying if
14 you just throw out the title. You've got no jurisdiction
15 of a title. We throw out the estoppel and we just look
16 at 22.A.

17 MS. RIGGS: Right. How do you construe conflicting claims.

18 MR. KAISER: I construe conflicting claims -- if you look
19 behind the statute -- if you looked at the intent of the
20 statute it was set up that way. It was set up because of
21 the ownership situation in Southwest Virginia between the
22 various mineral estates. Between the coal estate and the
23 oil and gas. It is often the case -- not in this case,
24 but it's often the case when those separate estates are
25 owned by separate entities. It was set up that way

1 because -- number one. Number two, it was set up that
2 way because there's never been an adjudication of the
3 ownership of the coalbed methane. And in order to allow
4 operators to go forward and produce the Commonwealth's
5 mineral resources they set the statute up that way. I
6 cannot believe that anybody ever pictured this scenario
7 or meant to include a spurious claim by a surface owner
8 to allow them to qualify as a conflicting claimant. And
9 if they want to protect their rights under 22.A let them
10 file a forced pooling application. The burden is on
11 them. It's not on us.

12 MS. RIGGS: Well, let's look at the language of 22.A Maybe
13 that will help. What it says is, "When there are
14 conflicting claims to the ownership of coalbed methane
15 gas the Board upon application from any claimant shall
16 enter an order pooling all interests or estates in the
17 coalbed methane gas drilling unit for the development and
18 operation thereof." Then there are --

19 MR. KAISER: Let's focus on "upon application".

20 MS. RIGGS: Well, that's --

21 MR. KAISER: We don't have that here.

22 MR. GARBIS: It says by the claimant. Read that again,
23 please.

24 MS. RIGGS: It says, "When there are conflicting claims to the
25 ownership of coalbed methane gas the Board upon applica-

1 tion from any claimant shall enter an order pooling all
2 interests or estates in the coalbed methane gas drilling
3 unit for the development and operation thereof."
4 MR. GARBIS: Did it say from any claimant?
5 MS. RIGGS: From any claimant.
6 MR. GARBIS: So who's the claimant?
7 MR. KAISER: There's no application before us. So there's no
8 claimant. I would assert that if there was a claimant it
9 would be -- it's the various claim of these surface
10 owners saying, "Hey, that severance deed was forged in
11 1902. We own this."
12 MS. RIGGS: I would say that it could be anybody having a
13 claim within the drilling unit could bring the applica-
14 tion.
15 MR. KAISER: Sure.
16 MS. RIGGS: Any claimant to the gas.
17 MR. KELLY: Would that application not have to be supported by
18 substantive evidence for consideration by the Board?
19 MR. CLINE: But wouldn't that mean that I could object to
20 every one of them and be recognized?
21 MR. LEWIS: Yeah, you could.
22 MS. RIGGS: And file an application over here for pooling to
23 protect your interest until you got an adjudication. I
24 think it would.
25 MR. FULMER: One of the things that I do want to correct,

1 though, is there was a mention of a mineral owner, the
2 surface owner and the gas and oil owner. There's also
3 the surface owner. That was the intent of that law and
4 I've got to tell that because what happened was that was
5 included -- the migratory gas act was repealed which
6 specifically said that the surface owned the gas. So I
7 don't want to leave that out. There are three estates
8 here. It's not just the surface owner -- non-entity
9 here in any of these things.

10 MR. LEWIS: That's what I was saying a while ago whenever they
11 brought that up. Once you remove that coal from that
12 seam you've got your royalty off of the coal and your
13 mineral as far as that goes if you just own the coal. A
14 lot of times it don't state what gas. Do you mean that
15 you're telling me that that land owner don't own that
16 gas? After they remove the coal they don't have no claim
17 on that?

18 MR. MASON: I would submit to you that whoever owns the other
19 strata would have a claim.

20 MR. LEWIS: I don't think so.

21 MR. KAISER: They've got a legal remedy. They've got trespass
22 statutes. I don't think was the intent of the statute or
23 the reason --

24 MS. RIGGS: We don't have published legislative intents. The
25 statute is whatever this Board construes it to be. In

1 the absence of an interpretation it's up to this Board to
2 interpret what that means. And I think the reason Tom
3 put it over here is because the Board has in the past
4 interpreted it that and the Board needs to articulate
5 its position with respect to conflicting claimants.

6 MR. CHAIRMAN: I think the issue clearly of this case is by
7 this being referred to us does the statute accommodate
8 that referral and shift that burden which they're
9 objecting to or do, in fact, claimants have to initiate
10 the application to the Board.

11 MR. GARBIS: I think it's quite clear. It says by the
12 claimants. That's the way I interpret it.

13 MS. RIGGS: Upon application from any claimant, not just the
14 one contesting title. The operator conceivably could
15 come in and protect themselves by availing themselves of
16 that same protection.

17 MR. CHAIRMAN: Right. That's any of the surface, the mineral,
18 the coal, the gas estate.

19 MR. KING: I'm sorry. Can I ask our attorney a question? Is
20 there a definition of claimant?

21 MS. RIGGS: That's our problem. There is no definition.

22 MR. KAISER: There's no definition of claimant or conflicting
23 claimant.

24 MS. RIGGS: So in the absence of a definition under the rules
25 of statutory construction you go to the commonly known

1 dictionary definition if that will assist you and then
2 you put it in the context of the statute.

3 MR. KAISER: Unfortunately the other coalbed methane jurisdic-
4 tions that we've researched, being New Mexico, Utah,
5 Alabama, Colorado, none of them had a definition in their
6 statutory section of either claimant or conflicting
7 claimant nor did they have any case law that we could
8 find construing that.

9 MR. CHAIRMAN: They have a case very similar to this that's
10 currently before the Circuit Court in Buchanan County
11 over who owns the gas.

12 MR. KAISER: Between Ashland and OXY.

13 MR. CHAIRMAN: Yes.

14 MS. RIGGS: And there is a Circuit Court challenge to a permit
15 condition requiring forced pooling.

16 MR. CHAIRMAN: Right.

17 MR. GARBIS: I think we need to consider this hard and long
18 before -- the last thing we need to do is to give -- to
19 render a decision that would allow previllous claims to
20 come out in the future. I mean, we don't want to sow
21 seeds here that we're going to be inedited. As you say,
22 I don't want to put an unfair burden. So I think we need
23 to consider this and maybe postpone our decision to allow
24 some research or some other information to be made
25 available to us. But I'm concerned about ultimately if

1 we make the wrong decision --

2 MR. KAISER: Open the proverbial Pandora's Box.

3 MR. LEWIS: I think that you'd have to change the statute if

4 you made --

5 MR. KAISER: You just need a definition.

6 MR. GARBIS: Maybe the Supreme Court needs to tell us -- or

7 some court needs to tell us --

8 MS. RIGGS: That will be a long time getting here.

9 MR. CHAIRMAN: Well, it's 12:30. We can either go ahead with

10 the testimony now -- to accommodate the witnesses I think

11 the Board should go ahead and get in the testimony. Do

12 we want to take a lunch break and come back and do that

13 or do you want to go ahead and hear it now?

14 MR. KAISER: In all fairness, Mr. Chairman, as far as testi-

15 mony goes we've probably only got about another ten

16 minutes.

17 MR. CHAIRMAN: All right. Let's go. Let's get it on record.

18 MR. MASON: The last request I had was that Mr. Sutherland be

19 offered as an expert witness. Have you made that

20 ruling, Mr. Chairman?

21 MR. CHAIRMAN: Without objection we'll accept him as an expert

22 witness for this testimony he's about to present.

23 MR. MASON: Thank you, Mr. Chairman.

24 MR. CHAIRMAN: We've not ruled on relevance of the testimony.

25 MR. MASON: That's fine. Thank you.

- 1 Q. (Mr. Mason continues.) Mr. Sutherland, are you generally
2 familiar with the title history of the Pyxes Pittston
3 properties?
- 4 A. Yes.
- 5 Q. Were you asked to perform a title examination on the
6 tract in question in 1979?
- 7 A. Yes.
- 8 Q. Have you since been requested to do an update?
- 9 A. Yes.
- 10 Q. Mr. Sutherland, in your own words could you briefly
11 describe the title history or the chain of title as to
12 the tract in question?
- 13 A. The title to the J.B.F. Counts tract is possessive. It
14 is in an area of Dickenson County in which practically
15 all titles rest upon adverse possession. J.B.F. Counts
16 acquired title in 1888 to a 64 acre tract by deed from
17 Alexis Smith. Now, J.B.F. Counts is the predecessor of
18 Pittston and its subsidiaries and it is also the pre-
19 decessor of all the people who have filed objections
20 they claim as heirs or successors in some fashion of
21 J.B.F. Counts. So since their title originates from the
22 same source that the title of the EREX lessor originates
23 that's as far, in my opinion, as we need to go in
24 examining or in searching this particular title.
- 25 Q. Mr. Sutherland, let me just interrupt you at this time.

1 Did you obtain certified copies of the instruments in the
2 chain of title from J.B.F. Counts and Patrick Hagen?

3 A. Yes.

4 MR. MASON: At this time I would like to introduce this
5 subject to his testimony and your objection as to
6 relevancy as -- I think the next exhibit should be
7 Exhibit #G and submit this to the Board.

8 MR. CHAIRMAN: I'll let you proffer that as far as building a
9 record but the Board is not going to make a title
10 determination.

11 MR. MASON: I understand that.

12 MR. CHAIRMAN: We don't need to -- you can just file it and
13 we'll record as far as your ability to go forward on
14 appeal.

15 Q. (Mr. Mason continues.) Do you have the original certifi-
16 ed copies?

17 A. I have the original copies certified by the Circuit Court
18 Clerk of Dickenson County. Five deeds. The deeds from
19 J.B.F. Counts 1902 conveying coal, oil and gas to Patrick
20 Hagen and the deed of March 1, 1905 from Patrick Hagen to
21 Bond and Bruce conveying coal only. The deed from Bond
22 and Bruce made about two weeks later, March 11th, 1905,
23 to Clinchfield Coal Company by which the deed from Hagen
24 to Bond and Bruce conveys various estates in 75 different
25 tracts of land. Tract 19 was the coal in the J.B.F.

1 Counts tract. Now, Bond and Bruce conveyed their estate
2 in these 75 tracts to Clinchfield Coal Company including
3 tract 19, the J.B.F. Counts tract. It conveyed coal
4 only. Clinchfield Coal Company in 1906 conveyed 208
5 tracts of land to Clinchfield Coal Corporation including
6 tract 4 which consisted of all the lands acquired by
7 Clinchfield Coal Company from Bond and Bruce. So as a
8 result of that deed Clinchfield Coal Corporation acquired
9 title to the coal. Now, Clinchfield Coal Corporation
10 acquired title to the oil and gas in the J.B.F. Counts
11 tract by a release deed dated May 6th, 1915 from Charles
12 F. Hagen, trustee, and from Bond and Bruce by which they
13 released to Clinchfield Coal Corporation the purchase
14 price having been paid and the liens having become ready
15 for discharge. This deed releases to Clinchfield Coal
16 Corporation all interests in this land including the
17 J.B.F Counts tract resulting from those liens or other-
18 wise. And that language is the language by which
19 Clinchfield Coal Corporation acquired from the Hagens
20 title to the oil and gas in these 75 tracts of land,
21 including the J.B.F. Counts tract. Those deeds have been
22 certified by the Circuit Court Clerk.

23 MR. MASON: At this time I have a copy, Mr. Chairman. Let me
24 give you -- I think those are the originals. Let me give
25 you a copy and I'll give the originals to Mr. Fulmer.

1 MR. CHAIRMAN: All right.

2 Q. (Mr. Mason continues.) Mr. Sutherland, would you just
3 briefly also -- do you have a chart that shows the
4 transfers by Pittston or any of its successors of said
5 tract since the preparation of you abstract of May 10th,
6 1979?

7 A. Yes, sir.

8 Q. Could you just briefly describe that? Does that show the
9 chain in title of the Pittston Coal Company within its
10 organization as to the coal, the oil and gas?

11 A. Yes. That summary shows the transfers of any interests
12 affecting the J.B.F. Counts 58.14 acre mineral tract that
13 are shown by deeds recorded in the Dickenson County
14 Clerk's Office since the date of my abstract title which
15 was May 10, 1979. Briefly it shows that Pine Mountain
16 Oil and Gas, Incorporated owns the oil and gas in this
17 Counts tract. Pyxes Resources Company owns the coal.
18 Both of those entities are wholly owned subsidiaries
19 according to the records in the Clerk's Office in
20 Dickenson County of the Pittston Company.

21 Q. Does your title opinion, Mr. Sutherland, and your update
22 also indicate that the oil and gas lease is now leased to
23 Equitable Resources Energy Company?

24 A. Yes.

25 MR. MASON: At this time I would like to, Mr. Chairman, submit

1 to you as the next exhibit just to show the transfers
2 within --

3 MR. CHAIRMAN: I'll just clarify for the record we're receiv-
4 ing this not as exhibits but just proffer for the record.

5 MR. MASON: Yes, sir.

6 MR. CHAIRMAN: We're not making any decision as to title at
7 all or the relevance of this material.

8 MR. MASON: I understand.

9 Q. (Mr. Mason continues.) Mr. Sutherland, you've also
10 prepared a document for today's hearing concerning
11 conveyances in Dickenson County Court Clerk's Office made
12 by J.B.F. Counts and his wife, Mary E. Would you briefly
13 also explain this document?

14 A. Yes. I examined the records in the Clerk's Office to see
15 whether J.B.F. Counts and his wife -- either he or his
16 wife executed any deed except by mark. I found thirteen
17 deeds from J.B.F. Counts and seven deeds from his wife,
18 Mary E. Counts. All of them were signed by mark. No
19 deed on record in Dickenson County was signed by either
20 of these persons in which the names was written out.

21 MR. MASON: At this time, Mr. Chairman, I'd like to also
22 submit this for the members of the Board to review, also
23 as a part of our proffer.

24 MR. CHAIRMAN: We're really receiving it only as a part of the
25 proffer. I'll have the Board have a chance to decide

1 that. But right now I'm only receiving that as a
2 proffer.

3 MR. MASON: Yes, sir.

4 Q. (Mr. Mason continues.) Mr. Sutherland, what is your
5 opinion as to the ownership of the coal, the oil and gas
6 underlying the J.B.F. Counts tract, 58.14 acres, as
7 identified on Equitable's plat?

8 A. In my opinion the coal in the J.B.F. Counts tract is
9 owned by Pyxes Resources Company. The oil and gas in
10 this J.B.F. Counts tract are owned by Pine Mountain Oil
11 and Gas, Incorporated. Both of which are said in the
12 various conveyances on record in Dickenson County to be
13 wholly owned subsidiaries of the Pittston Company.

14 Q. And the oil and gas is under lease to Equitable Resources?
15

16 A. It is under lease to Equitable Resources. The J.B.F.
17 Counts tract is under lease -- the oil and gas in the
18 shallow strata and the deep strata.

19 Q. Mr. Sutherland, you have previously indicated to the
20 Board what's involved in a mineral title examination, to
21 include checking probated wills and also litigation. To
22 the best of your knowledge have any adverse claims to the
23 coal, oil, gas underlying this tract ever been success-
24 fully asserted?

25 A. No. None has ever been asserted according to my examin-

1 I was going to put Mr. Cline, a representative of our
2 lessor, on to testify as to his review of their records
3 and adverse claims to the minerals on the property. We
4 won't do that. All I will do is ask the Board -- I agree
5 with Ms. Riggs, that we need a definition of claimant and
6 of conflicting claimant and that this issue probably has
7 to be and should be resolved under Section 22 of the
8 statute. Having said that I would ask the Board to focus
9 on the language in the first paragraph of A, particularly
10 the clause separated by comments "upon application from
11 any claimant". That is not the situation here. We have
12 had a condition imposed upon us that doesn't fall within
13 the construction of that language and we would respect-
14 fully ask that it be removed from the permit.

15 MR. CHAIRMAN: Just to frame -- and you help me frame for the
16 Board -- your appeal to this Board was of the Inspector's
17 Decision to refer that decision to the Board. Is that
18 correct?

19 MR. MASON; We're appealing condition five.

20 MR. CHAIRMAN: Oh, the permit application.

21 MR. MASON: Which is a part of the brief -- exhibit to the
22 briefs that we have previously submitted to you.

23 MR. CHAIRMAN: Right.

24 MR. KAISER: And the Director -- I think that you have the
25 authority to remove that condition. I guess that was the

1 question.

2 MR. CHAIRMAN: That was what I was trying to get at. Is that

3 what you're asking us to do, remove the condition --

4 MR. KAISER: That's what we're asking you to do. We're asking

5 you to remove that condition so that we do not have to

6 force pool these 53 surface owners and we can go ahead

7 and produce the well and pay the rightful lessor their

8 one-eighth royalty.

9 MS. RIGGS: As a bigger issue it seems to me that what they're

10 saying is that the Inspector should not be able to

11 condition a permit upon pooling since Section 22 requires

12 that that pooling be upon application of the claimant, so

13 that the burden isn't shifted to the operator by virtue

14 of the vehicle being used, and that is a permit condition

15 as opposed to an application by the claimant directly to

16 this Board for forced pooling.

17 MR. KAISER: Very well stated.

18 MR. FULMER: To add something else in here. I'm an officer of

19 the Board. It is my obligation to see that the Board --

20 or to inform the Board that it is a correlative rights

21 issue involved.

22 MS. RIGGS: Right.

23 MR. FULMER: That's the other flip of the coin.

24 MR. CHAIRMAN: Well, that's invited in this whole issue,

25 though, of this claim.

1 MR. FULMER: Yeah. I'm not trying to get at anybody or
2 anything.

3 MS. RIGGS: And I think everybody has stipulated the Board not
4 the Director have the ability to make the title determin-
5 ations.

6 MR. KAISER: Which goes back to the claimant has to file the
7 application. Otherwise, how is there a correlative
8 rights issues if they haven't offered any proof that
9 there is any.

10 MS. RIGGS: So the only issue before the Board right now is
11 whether or not to eliminate condition five to the permit.

12 MR. CHAIRMAN: That's right.

13 MS. RIGGS: That's the relief being sought.

14 MR. CHAIRMAN: For the record, are any of the parties that
15 were subject to the Informal Hearing present here today
16 other than those at the table now? The record will show
17 there are none. Mr. Fulmer, would you confirm whether or
18 not they received notice?

19 MR. FULMER: On this particular issue of the appeal I doubt
20 it.

21 MR. MASON: We would stipulate that they did not.

22 MR. CHAIRMAN: I was just clarifying a few things.

23 MR. KING: Mr. Chairman, as a junior member of this Board
24 I move that we remove that stipulation.

25 MR. GARBIS: I second it.

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MR. CHAIRMAN: A motion to remove the stipulation and a second. Any further discussion? All in favor signify by saying yes. (MAJORITY AFFIRM.)

MR. KAISER: I think he meant the condition.

MR. CHAIRMAN: The number five condition, right?

MR. KING: The condition, yes.

MR. CHAIRMAN: Opposed say no. (MR. LEWIS: "NO.") There's one no recorded. The condition is removed.

(End of Proceedings for
June 18, 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 June 18, 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 10th day of July, 1996.

Deborah J. Bise
DEBORAH J. BISE
NOTARY PUBLIC

My commission expires September 30, 1996.