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VIRGINIA OIL AND GAS BOARD

HEARING OF OCTOBER 15, 1996

1:00 P.M.

AT THE BREAKS INTERSTATE PARK

BREAKS, VIRGINIA

Appalachian Court Reporting Services, Inc.

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October 15, 1996

This matter came on to be heard on this the 15th day of October, 1996 before the Virginia Gas and Oil Board at the Rhondodron Restaurant, Breaks Interstate Park, Breaks, Virginia pursuant to Section 45.1-36119.B and 45.1-361.22.B of the Code of Virginia

MR. WAMPLER: Good afternoon. My name is Benny Wampler, Deputy Director for the Virginia Department of Mines, Minerals and Energy and Chairman of the Gas and Oil Board. I'd ask the members to introduce themselves starting to the far end, to my left.

MR. HARRIS: I'm Bill Harris, a public member from Big Stone Gap.

MR. MASON: I'm Mason Brent. I represent the gas and oil industry and I'm from Richmond.

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

MS. RIGGS: Sandra Riggs with the office of the Attorney General.

MR. KING: Clyde King, a public member from Abingdon.

MR. GILLUM: Richard Gillum, coal representative from Abingdon, Virginia.

MR. GARBIS: Dennis Garvis, a public member from Fairfax County.

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

Energy.

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ITEM I

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3 MR. CHAIRMAN: The first item on today's agenda is a
4 petition from Buchanan Production Company for the
5 pooling of a coalbed methane unit identified as N-13 in
6 the Oakwood Coalbed Methane Gas Field 1 and 2. This is
7 docket number VGOB-96/09/17-0555 that was continued
8 from September. We'd ask the parties that wish to
9 address the Board in this matter to come forward at
10 this time.

11 MR. SWARTZ: Mark Swartz and Les Arrington for Buchanan
12 Production Company and Consol, Inc.

13 MR. BRAGG: Michael A. Bragg and Emit F. Yeary for Mac-
14 Construction, Inc. Also we would like to note for the
15 record that there will be co-counsel on Board proceed-
16 ings who was not able to be here today. His name is
17 James R. Gibler, Jr. of (Inaudible.) of Richmond,
18 Virginia. Also present for MacConstruction is Mark
19 McClannahan, an officer of the corporation.

20 MR. CHAIRMAN: The Chair would note that I had a request for
21 a continuance to this hearing and would not grant the
22 request based on the record from last hearing, based on
23 the discussions we had when the Board asked Mr.
24 McClannahan to be here today. So I'll go ahead and if
25 you want to pursue that request -- I don't know if you

1 plan to do that now. We haven't talked as to whether
2 you plan to pursue that request or not, Mr. Yeary.

3 MR. YEARY: Yes, sir, we do. Additionally I'd like to file
4 at this time a motion for the stay of these proceed-
5 ings. If I may, I would like to provide you, Mr.
6 Chairman, and the members of the Board with the
7 motion. We've also prepared for your convenience a
8 summary of the issues that will now be before the
9 Board.

10 MR. CHAIRMAN: let's give everyone had a chance to read
11 this.

12 (AFTER A BRIEF PAUSE OFF THE RECORD, THE PROCEEDINGS
13 CONTINUED AS FOLLOWS:)

14 MR. CHAIRMAN: Stipulate your argument for motion to stay.

15 MR. YEARY: Mr. Chairman, members of the Board, I believe
16 the previous letter of October 4th somewhat outlined
17 our position in this case and also by the motion that
18 we have filed today and with the supplemental exhibits.
19 But basically what we have here -- I think it's an
20 unusual situation, probably one that doesn't normally
21 come before the Board. First of all, MacConstruction
22 is the owner probably of 65 to 70 percent of the actual
23 surface, the property involved in this 80 tract. In
24 addition it is our contention that they are the actual
25 owners of the coalbed methane gas and that is the

1 subject of at least two law suits now pending in
2 Buchanan County that need to be resolved. In addition
3 and most important is the fact that there is already an
4 existing well that was drilled in about 1982 and 1983
5 by MacConstruction and is in production and has been
6 for some time in addition to these other ventilation
7 wells that were drilled by MacConstruction who has the
8 ownership in and can be converted into gas producing
9 wells. And that was certainly the intention of
10 MacConstruction beginning several years ago. As
11 pointed out, if this permit were granted today this
12 would make this all the moot point as Mr. Swartz
13 indicated the transcript of the last meeting in his
14 comments. So if this application is granted today
15 then it would be, in effect, destroying contractual
16 rights of MacConstruction to 1) The first well that it
17 had drilled back in 1982 before some of these regula-
18 tions came into effect. In addition it would take away
19 the contractual rights to these other two vent hole
20 that will be gas producing wells that are on this
21 particular 80 acre tract. These are complicated legal
22 issues that will need to be resolved in the Circuit
23 Court of Buchanan County or some other jurisdiction.
24 But certainly there is very valid substantial claims of
25 ownership in these wells by MacConstruction and I think

1 frankly it would be premature for the Board at this
2 point to grant any application while these matters are
3 pending because otherwise you would be taking property
4 rights away from MacConstruction -- substantial
5 property rights. I think we can see that in just the
6 last three years that they have incurred. About
7 \$240,000 just in the cost of oil will be saved if they
8 are allowed to continue the ownership or the use of the
9 gas which we contend they already own. So we're
10 talking about a substantial economic loss to Mac-
11 Construction and more importantly, a substantial loss
12 to the people in Buchanan County because this is going
13 to be gas produced and used in Buchanan County for
14 industry in Buchanan County. It won't be piped out to
15 some other area. So it's all the evidence -- it's only
16 appropriate I do believe that this matter be stayed in
17 the Circuit until the courts can decide on the legal
18 issues involved. We respectfully request that you take
19 no action on these proceedings until that is resolved.
20 Thank you.

21 MR. CHAIRMAN: Any questions of Mr. Yeary at this time,
22 members of the Board?

23 MR. YEARY: Mr. Bragg also would like to add some comments.

24 MR. BRAGG: If I may, I just want to indicate some of the
25 distinct legal issues that are involved that makes this

1 a unique case before the Board. Not one that perhaps
2 the Board has been presented with in the past where you
3 can go forward with the force pooling, designate a
4 unit operator, escrow funds and go forth and let the
5 parties argue about who owns those escrow funds because
6 there's some very significant legal issues and factual
7 issues that make this different than an ordinary case
8 and impose some significant problems with the Board
9 going forward at all. And that is the reason we have
10 come forward today with a motion asking that the Board
11 stay any action on this force pooling application until
12 the Circuit Court of Buchanan County has had opportu-
13 nity to resolve these legal issues. Now, what we have
14 factually is first of all, as of 1982 or 1983 Mac-
15 Construction drilled and started producing coalbed
16 methane gas from a well on their property with the
17 encouragement and assistance of Island Creek Coal
18 Company which was the predecessor in interest to Consol
19 and Buchanan Production Company. MacConstruction
20 Company in reliance upon the availability of this
21 supply of coalbed methane gas formulated their long
22 term strategic business plan toward having that gas
23 available. It's used on site -- or at least was used
24 on site for the heating of the asphalt in its product-
25 ion facilities. It's not sold. It's not pipe lined

1 out. It's not transported out. It was developed and
2 utilized on site. It was utilized on site until 1992
3 or 1993 when it came to the attention of the Director
4 that there was this well and he issued an order saying
5 that the well had to be either plugged or permitted.
6 MacConstruction started the permitting process out of
7 abundance of caution and out of respect for the Board,
8 but bottom line MacConstruction's position is that that
9 well does not have to be permitted. And we will
10 discuss that a little later in my presentation. It was
11 grandfathered. It existed and was a producing well
12 prior to the extension of the regulatory system to
13 coalbed methane wells and as we will see, neither the
14 statutes nor the regulations require it to be per-
15 mitted. They have an absolute right to use that well.
16 They have a vested right this Board cannot take away
17 from them. And if the Board takes it away from them
18 that will be inverse condemnation for which the
19 Commonwealth of Virginia will be potentially liable to
20 MacConstruction and it could be for a significant
21 amount of money. Then following that well in 1992
22 Island Creek, their predecessor in interest, came to
23 MacConstruction and asked for permission to drill some
24 ventilation holes --some methane ventilation bore holes
25 into their mined works and for surface rights for

1 maintaining that and utilizing it. And in those
2 agreements agreed that when Island Creek no longer
3 needed those bore holes that they would assign them
4 over to MacConstruction. That occurred, Island Creek
5 said we no longer need them and the process was begun
6 to get them signed over. The ownership changed.
7 There's some legal issues involved there, but essent-
8 ially what it comes down to now is Buchanan Production
9 is saying, "We don't want to go forward with those
10 contracts. We do not want to assign those rights and
11 those ventilation holes over to you." And they're
12 asking this Board in a roundabout way to relieve them
13 of their liability under those contracts because
14 frankly if you designate Consol as the unit operator
15 and approve the force pooling application, as Mr.
16 Swartz said at last meeting, the well permit applic-
17 ation will be moot, the claims that are existing in
18 litigation in Buchanan Circuit Court to enforce those
19 contracts saying that they have to assign over those
20 ventilation holes to MacConstruction will be moot
21 because they can't use them. There will only be one
22 well, we would expect, in this unit and it's going to
23 be -- if you go forward and designate someone as the
24 designated operator that's going to be the only well.
25 So it doesn't matter if they get permitted. It doesn't

1 matter if they can enforce their rights to have
2 ownership of those ventilation holes. That was the
3 only consideration that was paid to them by Island
4 Creek in exchange for what they gave to Island Creek
5 for the permission to drill these ventilation holes.
6 So with that background there's three issues that we
7 want to bring to the Board's attention. If you don't
8 mind turning to Tab 1 you can see the first issue
9 involved here. We ask the question, can the Board
10 impair MacConstruction's contractual rights to produce
11 coalbed methane gas by designating Consol the unit
12 operator as per their application. We believe that the
13 answer to that is no. Yet we have three contracts, the
14 contract with Island Creek that allowed them to drill
15 and produce gas from the well which is existing and
16 then those 1992 contracts which included Island Creek's
17 agreement to assign over to MacConstruction those
18 ventilation holes and include it in an agreement that
19 if necessary for permitting Island Creek would, as the
20 lessee of the coal, provide MacConstruction a consent
21 to stimulate. Now, that indicates that in 1992 their
22 predecessor of an interest was contemplating not just
23 with the 1982 well that they had allowed MacCon-
24 struction to develop but was contemplating as part of
25 their transaction that MacConstruction ultimately was

1 going to be allowed to develop the methane gas under-
2 neath their property. And, again, they've invested
3 substantial sums of money as part of the overall long
4 term strategic business plan for MacConstruction and
5 their asphalt business to tie their business to this
6 energy source that was there and available to them.
7 And they had planned for it. Now, in terms of the
8 restraints on the Board to impair or interfere with
9 those existing contracts -- both with the 1982 well and
10 then those 1992 contracts -- we have two provisions.
11 If you'll at Tab 4 you will see Section 45.1-367.11.
12 In the last paragraph -- it's on the second page of
13 that insert -- says specifically that the Board will
14 not be authorized to supersede, impair, abridge or
15 affect any contractual rights or obligations now or
16 hereafter existing between the respective owners of
17 coal and gas or any interest therein. So there's
18 statutory prohibition against this Board taking any
19 action to interfere or impair those contracts. If you
20 go forward with the force pooling application and
21 designate anyone other than MacConstruction as the unit
22 operator you will impair those contracts. You'll
23 essentially render them valueless. The second thing to
24 keep in mind there is that both the United States
25 Constitution and the Virginia Constitution make it

1 illegal for the State to impair a contract. It would
2 be unconstitutional by our position for the Board to do
3 anything to impair the value of those existing con-
4 tracts to MacConstruction prohibited by the Federal
5 Constitution in Section 10 and by the Constitution of
6 Virginia in Article 1, Section 11. There are court
7 proceedings pending in Buchanan County seeking to
8 enforce those 1992 contracts with Island Creek. At Tab
9 11 you will see a copy of the Bill of Complaint that
10 was filed against Buchanan Production Company in the
11 Circuit Court of Buchanan County. The second issue is
12 behind Tab 2 and we raise the question there; might the
13 Board be liable in damages to MacConstruction under
14 inverse condemnation if you went forward and granted
15 Consol's application to be designated the unit oper-
16 ator. And we reference the provisions of the Federal
17 and Commonwealth of Virginia Constitutions which I
18 think, as all of you are aware, prohibit the taking of
19 property without compensation. Now you have some
20 issues involved there. First of all is the ownership
21 of the coalbed methane gas. MacConstruction claims to
22 own the coalbed methane gas. Now, there are some very
23 complicated legal issues involved there and it is going
24 to be a complicated law suit. That law suit is pending
25 in the Circuit Court of Buchanan County. It was filed

1 yesterday. You will find that Bill of Complaint asking
2 for declaratory judgement behind Tab 12. As I said,
3 there's some very complicated legal issues involved
4 there that this Board is neither in power to adjudicate
5 nor frankly, given the resources, to assist you in
6 adjudicating by the State when the Board is set up. If
7 that ownership is taken away from MacConstruction then
8 there will be, in our position, inverse condemnation,
9 that ownership question cannot be protected by going
10 forward and simply escrowing, whether the royalty
11 interest or all of the proceeds to the sale of gas
12 produced for this reason; under their claim to owner-
13 ship of the gas and certainly this gas that is the
14 target of this application, the well indicated here,
15 that ties back to that strategic business planning of
16 MacConstruction, simply even compensating them for that
17 gas, saying here's the value of it is not going to
18 compensate them fully for what they're taking away from
19 them. As you will see by Tab 14, just an estimation
20 from Mr. McClannahan, since 1993 -- since the Director
21 said plug or permit and they have stopped producing
22 from that well subject to that order they have spent
23 almost a quarter of a million dollars in a substitute
24 energy source. And that will continue. So there is no
25 way to compensate MacConstruction for the loss of

1 ownership even escrowing all of the earnings per the
2 sale of any gas produced because they have a use for
3 it, have a use for it on the surface. It is particul-
4 arized. It's specialized. And they are going to
5 suffer a significant long term loss that will be a
6 substantial figure even if you determine the present
7 value, we would estimate millions of dollars, that they
8 would suffer for the value of their property taken if
9 their claim to the ownership is sustained by the
10 Circuit Courts and this Board went ahead and gave the
11 right to operate the well to someone else. We have
12 been the ownership of those ventilation holes. They
13 claim equitable ownership now. They certainly have
14 contractual rights. And other than just the constitut-
15 ional prohibition impairing the value of those con-
16 tracts we also have constitutional prohibition saying
17 you can't take that property right away from them
18 without paying for it. And finally we we have that
19 existing well. As Mr. Swartz indicated at the last
20 meeting, he said there's a permit application for that
21 well pending but that shouldn't even be acted on until
22 you consider this force pooling because if you grant
23 their application for force pooling and designate the
24 unit operator then that permit application would be
25 moot. They couldn't operate that well. In other

1 words, even permit it if it has to be permitted. You
2 would be taking away that right to produce gas from
3 that well which takes us to our third issue we want to
4 point out to you which is behind Tab 3. This is a pre-
5 existing well drilled in 1982 or 1983 while Mac-
6 Construction again out of concern for the system has
7 responded to the Director by filing a permit applic-
8 ation we have a fundamental belief that they do not
9 even have to permit it. We believe that they have a
10 vested right to the well. They have the vested right
11 to produce the gas from the well without interference
12 from the Board or from the Director except perhaps in
13 the very limited area of insuring public safety. As
14 far as any force pooling and conservation issues there
15 is no State interest that can affect their rights.
16 First of all, the Board cannot determine whether that's
17 a vested right or not and we, first of all, quote the
18 Supreme Court in Holland vs Johnson. It says that's a
19 judicial function, that's for judges to do. And in
20 that case you had the Supreme Court reversing a
21 decision of a zoning administrator in a county who had
22 decided that a pre-existing quarry was a pre-existing
23 use grandfathered and didn't have to meet the zoning
24 requirements of the county. The Supreme Court says you
25 can't decide that zoning administrator. That's not for

1 administrative bodies to decide, that;s for courts to
2 decide. So whether this is a vested right or not can't
3 even be brought before the Board. You don't have the
4 power to adjudicate it. To move beyond that, we just
5 set out to try to give you a little comfort some of the
6 statutory provisions which indicates to us that this is
7 a grandfathered well that doesn't have to be permitted
8 and that the Board nor the Director can interfere with
9 it. Your permitting statute is 45.1-361.29. You see
10 that behind Tab 6. It requires a permit to circum-
11 stances. Subsection A requires a permit for ground
12 disturbing activity when it's commenced or continued.
13 This is an existing well. There is no ground stripping
14 activity. Subsection F of that statue requires a
15 permit to drill any coalbed methane gas well or to
16 convert any methane drainage bore hole into a coalbed
17 methane gas well. But that's not the circumstances
18 with this pre-existing well. It's a pre-existing well.
19 It's not been converted. It's not been drilled. There
20 is no ground disturbing activity. So we can say that
21 that permitting statute does not apply. Then we refer
22 you, behind Tab 5, to Section 361.16 which indicates --
23 and we have it highlighted there -- however, no well
24 commenced prior to July 1, 1990 shall be required to be
25 plugged or abandoned solely for purposes of complying

1 with the conservation provisions contained in this
2 article. Pooling is a conservation provision. It's
3 contained there in that article which is Article 2.
4 The reason you pool is to conserve and to try to
5 protect the correlative rights of different parties.
6 If you pool this property and you designate Consol as
7 the unit operator you will be requiring in the further-
8 ence of conservation the abandonment of that pre-
9 existing well drilled prior to July 1, 1990. That
10 will be the effect of it. Whether you say that's what
11 you're doing or not that's what the effect would be.
12 Then we also include the Board's own regulations,
13 Section 105, Subsection C. And it's interesting there.
14 It talks about wells that were in place before Septem-
15 ber 25, 1991, coalbed methane wells. There is says
16 that the owner of that well may seek a permit or he may
17 simply vent and then in Subsection C it says that the
18 Director can only take an enforcement action against an
19 unpermitted or unvented coalbed methane well which was
20 in place prior to September of 1991 only if that well
21 poses a safety or environmental hazard. Now, there's
22 nothing that's been shown by this well that it posed
23 either an environmental hazard or safety hazard. So
24 the Director has no authority to interfere with this
25 well at all. Now, with these issues before you -- and

1 I appreciate the time and the Board's courtesy in
2 allowing us to try to summarize those -- there are some
3 significant legal issues that are involved. There
4 cannot be protection afforded to MacConstruction's
5 rights through any kind of remedial action that the
6 Board could put in place while proceeding. We can't
7 tell you how long the Buchanan County litigation will
8 go on. There's two cases. Both of them could be
9 relatively complicated. One will be more complicated
10 than the other. But those issues, we believe, need to
11 be resolved before this Board takes any action on the
12 force pooling or designating operators in this unit.
13 Again, I appreciate the opportunity to summarize this
14 for you and if you have any questions for me or Mr.
15 Yeard we will be glad to answer them.

16 MR. CHAIRMAN: Thank you, Mr. Bragg. Any questions, members
17 of the Board, of Mr. Yeary or Mr. Bragg at this point
18 in time? Mr. Swartz.

19 MR. SWARTZ: It never ceases to amaze me the length to which
20 people will go when their hand is caught in the cookie
21 jar to preserve their ability to get a free resource
22 without paying for it. The paperwork which you got
23 today was given to me today. So it was sort of sprung
24 on me, I guess, when the motion for a continuance or
25 the request for a continuance which was by letter of

1 October 4th was denied by Mr. Wampler. I would like to
2 recreate the factual situation here for you all using
3 some documents. I will try to never tell you something
4 that I cannot back up with a written document or a
5 reference to a Code provision or a regulation. Before
6 I get to the documents which kind of, I think, flesh
7 out what's going on here I would like to make a couple
8 of observations with regard to the 1990 Virginia Gas
9 and Oil Act. The 1990 Virginia Gas and Oil Act was not
10 the first law on the books in the Commonwealth govern-
11 ing the permitting of wells. The Code provision that
12 requires a permit -- you have part of it in this
13 booklet they gave you -- is behind their Tab 6. It's
14 45.1-361.29, permit required. If you go to the very
15 end of that Code provision on the next day there's a
16 history and you'll notice that this provision first
17 existed in the Commonwealth in 1982. So my point to
18 you is that the Code provision requiring a permit for a
19 well was in existence before this well was drilled.
20 Now, today the spin on the when the well was drilled
21 ball that's in the air is it was either 1982 or 1983.
22 In the paper work the objection that was filed --
23 somebody swore to is under oath. It was sworn and
24 subscribed. And the objection that was filed with you
25 all by MacConstruction around the 2nd of October states

1 in there that the well was drilled in 1983 -- that's
2 under oath -- and that it started to produce in 1983.
3 I guess my point to you is using their paperwork which
4 is subscribed and sworn, filed with you, this well was
5 drilled in 1983, if that is true -- and we have no
6 reason to believe it isn't. I mean, it's coming from
7 them -- this well was drilled after the first install-
8 ment of the permit requirement in the Commonwealth. So
9 this well needed a permit when it was drilled in 1983.
10 What happened in 1990 was the rather basic oil and gas
11 scenerio that was in place in the Commonwealth was
12 revisited and the pooling requirements were completely
13 revamped, field rules requirements were revamped. In
14 fact, this Board was created and some of the pre-
15 existing agencies were replaced. But the permit
16 requirement predated the drilling of this well. And my
17 position, at least based on what we have in the record
18 coming from MacConstruction, is that this well required
19 a permit when it was drilled and there's no indication
20 that it was ever obtained. This well esstentially was
21 a secret well and it was used to provide fuel for an
22 asphalt plant. As I understand it an OSHA inspection
23 of the asphalt plant was underway and the OSHA Inspec-
24 tor said, "What's this?" He was told it was a gas
25 well, apparently learned that is was not permitted and

1 that's how this well came to the attention of the DGO.
2 The way this well came to the attention of Buchanan
3 Production Company and Consol, Inc. was the filing of a
4 permit application by MacConstruction on or about June
5 17th of this year. And I have made copies of portions
6 of some documents because I think they pertain to just
7 where we're headed here. The permit application that
8 was filed on the 17th of June -- I've selected a few
9 peices from it. Permit applications -- I think just to
10 save coming back to this issue, if they were claiming
11 ownership -- MacConstruction was claiming ownership
12 when they filed for a permit with regard to this well
13 you would think that they would say so in their well
14 permit application because there is a spot that seeks
15 that kind of information -- ownership information. And
16 if MacConstruction contended that it was somehow exempt
17 from the permitting requirements of the Virginia Code
18 you would think in their original permit application
19 you would hear about it, that in June we would be
20 hearing "We own the coalbed methane that's going to
21 come out of this well bore and/or you have no right to
22 regulate us. We're somehow grandfathered." If you
23 look at what Les has just given you, the first page has
24 the date stamped indicating that this is a well work
25 permit application filed July 17th from MacConstruct-

1 ion. And I will tell you subject to correction by Mr.
2 Fulmer when he comes back here, but this is the cover
3 page of the first permit application that Mac filed
4 with regard to the well that we're considering today --
5 or at least indirectly considering today. If you turn
6 to the second page it's a supplemental sheet for
7 persons receiving official notice. The first section
8 is surface, coal and mineral owners of record on the
9 tract. So they're listing MacConstruction -- and you
10 really can't tell if they're claiming they're a surface
11 owner or not. They're just listing themselves as one
12 of those three kinds of owners and then they're listing
13 Yukon Pocahontas Coal Company, et al, Big Vein Limited
14 Partnership. The next section is gas, oil and royalty
15 owners, people who own minerals within the drilling
16 unit. They list Yukon Pocahontas and they list Consol
17 and Jewell Smokeless as coal operators and Mac does not
18 list itself as a gas, oil or royalty owner. You come
19 down to coalbed methane, same as above, same as above.
20 They do not list themselves as royalty owners. And
21 although that page may be somewhat ambiguous, if you
22 will turn to the next page called a well plat legend
23 which is part of the Mac permit application that was
24 filed in June there they list the people that they
25 think own the various components of realty. One, they

1 show the coal, oil and gas as owned by Yukon Pocahon-
2 tas. Oil and gas lessee as Cabot. Coal lessees Island
3 Creek, Jewell. The coalbed methane lessee as Buchanan
4 Production Company. And they show themselves as
5 surface owners. Not mineral owners, not CMB owners, as
6 surface owners. This hearing on this first well permit
7 application got continued and a modified application
8 was filed on or about August 29th by MacConstruction in
9 Mr. Fulmer's office. And by then Consol, Buchanan,
10 Island Creek had filed objections to the first permit
11 application. A hearing had been set up on those
12 objections. That hearing had been continued. They
13 were given an opportunity to modify their permit
14 application. And what you're being handed now is the
15 modified permit application. It doesn't have a date
16 stamped on it. The date in the upper right hand corner
17 on each of the pages, 8/29/96, is approximately the
18 date that I think it was filed. It may be the exact
19 date but my best indication is it was filed the 29th of
20 August. And you'll note on the first page, Item 2,
21 there's an X in new permit and over it is typed the
22 word modified so you can tell the difference between
23 the two. If you go to the second page it's exactly the
24 same as what we just went over. They're listing Yukon
25 Pocahontas as the gas, oil and royalty owner, showing

1 Consol and Jewell as the coal operators, not claiming
2 an interest in the minerals on this page. Go to the
3 well plat legion, the same thing. The 8/29/96 they are
4 not showing themselves as a mineral owner. Then about
5 the same time that they filed their objection with you
6 all to Consol's request to be designated the unit
7 operator they filed with Mr. Fulmer's office a modific-
8 ation. And I only made -- for some reason or other I
9 didn't make enough copies of these for everybody.
10 Maybe you can pass two of these around. And they filed
11 on or about October 2nd an amendment to their permit
12 application. And what it is is the well plat legend
13 that we've been looking at. If you will share that.
14 And all of a sudden now they have added under coalbed
15 methane lessee, which has always been Buchanan Produc-
16 tion Company, in parentheses right under propoerted
17 leased disputed and that's the first we see of that.
18 Now, two other documents and then I'll try to pull this
19 together for you. One of the agreements I'm about to
20 give you was left out of this book and I think when you
21 go through the terms of the agreement you will under-
22 stand why -- but what Les is going to give you is two
23 agreements, one of which is in the book that you gave
24 you today and one of which is not, between MacConstr-
25 uction and Island Creek Coal Company with regard to

1 some vertical ventilation holes on this surface tract
2 that Mac owns. I sort of need you to have this in hand
3 as we go through it. So I will wait for Les to pass it
4 out. (Pause.) If you would first attend to the
5 agreement that's October 30th, 1992 at the top. The
6 first page says it's by and between MacConstruction and
7 Island Creek and you will notice how Mac -- Mac signed
8 this agreement and you will notice how Mac identifies
9 itself "surface owner". The first whereas clause,
10 Island Creek is the lessee of the minerals. Down
11 toward the bottom of the first page, "Now therefore in
12 consideration of these premises a sum of ten dollars
13 paid to surface owner by Island Creek." Then if you
14 would turn to Page 5, paragraph number five. The first
15 paragraph in the numbered paragraph five deals with the
16 circumstances under which MacConstruction could obtain
17 a transfer of certain vertical ventilation holes and it
18 says, in effect, that if Mac obtains the permits
19 necessary to operate the identified vertical ventil-
20 ation holes as gas wells or coalbed methane wells
21 Island Creek will transfer those well bores to Mac. So
22 the first part of paragraph five is if you permit these
23 wells as gas wells or coalbed methane wells under those
24 circumstances we will transfer them to you -- the well
25 bores to you when we are done with them. Now, the next

1 paragraph is pretty interesting in light of the claim
2 that Mac is making today. And at the end of my
3 presentation I'm not going to be asking you to adjudic-
4 ate title. I know you can't do that. But I sat here
5 for 15 minutes and listened to them tell you that they
6 somehow had a title claim. The point of this is to
7 indicate to you that this is posturing. Their title
8 claim arose sometime after August 29th when it was
9 convenient for them to have one when they came before
10 you. And I just want to make that clear to you. At
11 the bottom of Page 5, getting to their title claim,
12 Island Creek does not and cannot transfer the surface
13 owner the right to operate for gas or coalbed methane
14 on the property, which is the same surface we're
15 talking about here. And surface owner shall negotiate
16 with the owners and lessors of such gas or coalbed
17 methane for the right to operate for the same. If you
18 go to the end of this agreement, Page 8, you will
19 notice that MacConstruction's president signed this
20 agreement. The other shorter agreement that I gave you
21 was simply tendered to you for the proposition that
22 when they indicate in their objection that they filed
23 -- MacConstruction's objection -- that they have the
24 sole right to stimulate coalbeds within the unit, that
25 that is wrong. I mean, that's not true. The agreement

1 dated the 4th day of November, 1992 which I have given
2 you is the agreement which addresses stimulation and
3 provides that Island Creek will give them consent to
4 the extent that they need it. The presumption is, of
5 course, that they have permitted the holes and that
6 they have dealt with the appropriate lessors or the
7 appropriate lessors owners of the realty. To get back
8 -- these are the facts. I mean, this is what happened.
9 They had a secret well. It was discovered. The
10 reaction was to avail themselves of the regulatory
11 process and to seek a permit. Objections were filed to
12 that permit application. The application did not claim
13 title to the coalbed methane. It was modified. There
14 was an opportunity to amend. There was no claim. And
15 something happened this fall and it would be interest-
16 ing to hear them explain what happened because it's not
17 that they bought the coalbed methane interest. It's
18 not that they leased the coalbed methane interest.
19 What happened was they needed some argument and so
20 their argument is now, for the first time, we own this
21 gas. Fortunately when -- the basic difference between
22 the 1982 Act which required a permit and the 1990 Act
23 is the 1990 Act allowed for forced pooling in a very
24 significant way. And the argument for force pooling
25 when the 1990 Virginia Gas and Oil Act was in the

1 Legislature and was being considered and ultimately
2 when it was passed was the development of coalbed
3 methane should not await resolution of title issues and
4 should be allowed to proceed in an orderly fashion so
5 that people can yip about their title issues and fight
6 their title issues out in the court and if takes years
7 so be it, but we are not going to hold up the develop-
8 ment of coalbed methane for the resolution of title
9 issues. And what you're hearing basically from these
10 guys today -- and I quarrel -- I mean, one of these law
11 suits that is in this book you got was news to me.
12 They say it was filed yesterday. I don't think my
13 client's been served. But maybe it was filed yester-
14 day. We certainly -- this is our first notice we've
15 been sued again in Buchanan County. But we're prepared
16 to defend those suits. We're not concerned about it.
17 We'll answer and we'll deal with the issues in those
18 law suits. But when the 1990 Act was passed it was
19 passed in recognition of the fact that this is the kind
20 of stuff that happens when people try to develop nature
21 resources. And the Act was intended to head off these
22 kinds of arguments. The first line of Section 45.1-
23 361.22 which is the section called pooling of interests
24 for coalbed methane gas wells conflicting claims to
25 ownership, that provision which is basically what we

1 deal with a lot here, how to pool a unit for coalbed
2 methane well, starts off "When there are conflicting
3 claims to the ownership of coalbed methane gas."
4 That's the predicate. "When you have conflicting
5 claims to ownership, the Board, upon application from
6 any claimant shall enter an order pooling all interests
7 or estates in the coalbed methane gas drilling unit for
8 the development and operation thereof." There is then
9 an escrow provision so that ultimately when ownership
10 is determined the money will be on hand to go to the
11 owner. The whole point of the 1990 Virginia Gas and
12 Oil Act was to address just this kind of a dispute.
13 The sentence doesn't say when there are conflicting
14 claims to the ownership of coalbed methane gas the
15 Board shall stay the formation of a unit, the pooling
16 of a unit, whatever. It says, "The Board shall upon
17 application of any claimant enter a pooling order."
18 And the problem here when you really look at this, we
19 have production from this well since 1983. The law
20 requiring a permit was passed and effective in 1982.
21 How much gas has been produced that Yukon Pocahontas,
22 our lessor who we have an obligation to protect their
23 interest, to develop for them but also protect them
24 when we become aware of the fact that someone may be
25 taking their gas, how much money does Yukon Pocahontas

1 have coming for production of coalbed methane gas which
2 nobody knew about from 1983 till whenever this produc-
3 tion stopped? The point of our application is to make
4 sure that going forward at least the people who own the
5 coalbed methane under this unit get their fair share of
6 the proceeds. And if a pooling order is entered that
7 will happen. What we have had to date is a surface
8 owner -- and I know you can't resolve title, but I've
9 laid the documents out and I think you see what
10 happened. A surface owner taking gas from a non-
11 permitted well, using it in its business without
12 compensating or consulting with people who have record
13 title to the minerals. This is also in light of
14 someone who's before you today who signed an agreement
15 agreeing to negotiate with the owners and lessors of
16 such gas or coalbed methane gas for the right to
17 operate the same. Where's their lease? What are they
18 telling you about contacting Yukon Pocahontas today?
19 So in conclusion -- I can talk about a lot. I guess I
20 could go through their booklet page by page but I'm not
21 sure that's productive. So in conclusion, my client
22 has a coalbed methane lease from Yukon Pocahontas who
23 claims and has record title to the oil, gas and coal
24 under this unit. They have a deed of record. These
25 folks have a surface deed. Nevertheless, they're here

1 this morning saying for some reason we're claimants to
2 the coalbed methane. Well, I may not like to hear that
3 but they now enjoy claimant status and my client is
4 stuck with it and Yukon Pocahontas is stuck with it and
5 they're now a claimant. So going forward if this unit
6 is pooled the royalty is going to have to be escrowed
7 until their status as claimants and Yukon Pocahontas'
8 status as claimants is ironed out. But at least going
9 forward under the 1990 Act the gas will be metered, the
10 prices and revenues associated with the sales of this
11 gas will be known and determined and the royalties will
12 be paid into escrow. And when the litigation that they
13 keep talking about winds its way or grinds its way to
14 some sort of ultimate resolution that money will be
15 held by the bank -- by Premeire who will be subject to
16 the Board's control and will be paid out. So in
17 conclusion, what you have before you is exactly the
18 kind of problem litigation, difficulty, dispute,
19 competing claims that the 1990 Act anticipated and
20 provided for. So you need to do your job, you need to
21 pool this unit, appoint someone the operator of this
22 unit and let the unit produce, the monies be set aside
23 in a custodial account until litigation is resolved and
24 follow the procedure that was inclimented by the
25 Legislature in 1990. Thank you.

1 MR. CHAIRMAN: Any questions of Mr. Swartz, members of the
2 Board.

3 MR. GARBIS: Do we have a map to show these two ventilation
4 holes in relationship to their well? Is there someone
5 that we -- what is the approximate distance basically
6 between these and how many acres of land does Mac-
7 Construction own in relationship to this whole thing?

8 MR. SWARTZ: To the 80?

9 MR. GARBIS: Yeah.

10 MR. SWARTZ: They're claiming 60 in the 80. I can kind of
11 give you an idea. If you turn to the application that
12 we've filed, the pooling application, there's a plat
13 there and the property line is -- if you look at the
14 well plat which is this page, their property as I
15 understand it is below Webb Branch. It's everything
16 below Webb Branch. So their surface tract is every-
17 thing below this sort of line that runs diagonally
18 right across here. So there's would be down here. The
19 closest -- and I'm not sure that the existing VVHs are
20 in or out of this 80 acres, but the closest ones are
21 generally in this area which I'm guessing would be on
22 the order of 1,000 feet or more away from -- Les, is
23 that roughly accurate? Have you got a map that you can
24 give them?

25 MR. ARRINGTON: No.

1 MR. SWARTZ: Just from recollection can you give them --

2 MR. ARRINGTON: They're just down in this area, a couple of
3 them are.

4 MR. YEARY: Mr. McClannahan might clarify that.

5 MR. CHAIRMAN: That's fine for him to show it.

6 MR. SWARTZ: Of course, the problem with the VVHs they're
7 over a mined area and there's a solid band of coal
8 running through the center of the unit. The mine map
9 -- I don't know how well you can see this, but this X
10 here is the approximate location of their well by their
11 asphalt plant. This is in an entry of the mine
12 basically. I mean, hopefully it's above the entry.
13 This is another problem here. I mean, there was
14 ongoing mining -- miners in the ground when this well
15 was drilled without a permit. You talk about potential
16 for disaster. This well between the time -- between
17 the time this well was drilled when there were miners
18 in the mine and today now the mine is closed. It's
19 idle. I don't know what the ultimate status is going
20 to be but it's idle. Their people are not in there
21 mining. But this was drilled over an entry in an
22 active mine without a permit, without notice to the
23 mining company, without notice to the government. In
24 any event, to get back to your question, Dennis, this
25 part here is a solid block of coal and then the VVHs

1 are somewhere in this longwall panel, to king of give
2 you what's underneath in the Pocahontas #3 Seam. So to
3 the north of the unit which is partly in and partly out
4 of their property are entries and blocks of coal left
5 in place, a large block of coal that was not mined in
6 the center of that unit and then a longwall panel to
7 the south of the unit.

8 MR. CHAIRMAN: Did you get your question answered, Mr.
9 Garbis?

10 MR. GARBIS: Yes, I did. Thank you.

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

12 MR. LEWIS: Who was mining under this area at the time you
13 said that the well was drilled?

14 MR. SWARTZ: It was Island Creek.

15 MR. LEWIS: Not under that area there, though, was they?

16 MR. SWARTZ: Yeah.

17 MR. LEWIS: Maybe in that seam of coal but not in that area?

18 MR. SWARTZ: Right. There was an entry under this well.

19 When we plat this well location it's over --

20 MR. YEARY: It's my understanding that Island Creek actually
21 assisted unlike the characterization of it being a
22 secret well. It was far from it. Island Creek
23 assisted in getting the elevations and the depths so it
24 would not interfere with the mining. Everyone knew it
25 and they're predecessor in title who they take from and

1 claim from today they knew it.

2 MR. SWARTZ: Well, that's an argument I've heard but we've
3 seen all of these written agreements with regard to the
4 other holes. I don't have any written agreement with
5 regard to this thing. My clients are telling me they
6 never heard of it. So I'm sure we'll have this
7 argument down the road. It plats over an entry and
8 there seems to be some confusion as to the depth of the
9 well, but my best guess it is not in the mine.

10 MR. CHAIRMAN: Before Mr. Yeary responds are there any other
11 questions?

12 MR. KING: I have one, Mr. Chairman. I guess I'm a little
13 confused. This was a mine drilled, not a vent?

14 MR. SWARTZ: Well, what they are telling the Board in papers
15 they have filed with you is they drilled it. They
16 drilled a coalbed methane gas well -- that's what they
17 said -- in 1983 and have produced gas from said well
18 since that time. That's a paper they have filed with a
19 notarized signature affixed to. So that's what they're
20 saying. They drilled --

21 MR. LEWIS: When was the ventilation holes drilled?

22 MR. SWARTZ: The ventilation holes -- do you know when they
23 were permitted, Les?

24 MR. ARRINGTON: No.

25 MR. KING: That's the ones I'm refering to, I guess, the

1 ones that they had permission from Island Creek.
2 MR. LEWIS: They didn't drill them. Island Creek drilled
3 them.
4 MR. CHAIRMAN: 1992?
5 MR. McCLANNAHAN: Yes. The ventilation holes were 1992.
6 MR. CHAIRMAN: They said 1992, Mr. King.
7 MR. KING: So this was not a vent hole. This was drilled --
8 a drilled well. How deep was it?
9 MR. McCLANNAHAN: 1,16 feet from the surface which I think
10 it's about 102 feet above the Pokey #3 Seamm, whatever
11 the elevation is there. But, see, Island Creek
12 assisted Alvin Richie, I think, was the gentleman from
13 Island Creek who took elevations at the WV1 shaft and
14 then came up and assisted us as far as elevations on
15 our property and also assisted Milhorn Well Drilling to
16 not drill it too deep into their mine works.
17 MR. KING: So you're saying that it was not drilled into the
18 mining works?
19 MR. McCLANNAHAN: That's correct.
20 MR. CHAIRMAN: Would you state your name for the record.
21 MR. McCLANNAHAN: Mark McClannahan.
22 MR. KING: That's all I have.
23 MR. GARBIS: The point that I'm confused about is I see a
24 number of the documents where different things are
25 considered for the fee of just ten dollars. Now, any

1 owner of property that's going to grant somebody else
2 to come on their property -- there's easements of 40
3 feet here, electrical, utilities, what not. Obviously
4 in my mind thinking wouldn't there be some higher --
5 there has to be something more than just -- ten dollars
6 is just a nominal fee just to make the thing -- but
7 obviously in my mind there has to be something more
8 that as the owner of the property, wouldn't you be
9 looking to get something out of the whole thing and
10 more than just ten dollars. I am concluding that there
11 must be something here that -- maybe it might not be
12 specifically written or maybe there's something else,
13 but I think there has to be something more.

14 MR. SWARTZ: Well, if you'd look at the October 30th, 1992
15 agreement I will give you two answers to your question
16 there that I think are pretty clear from the agreement.
17 Paragraph one says, "The surface owner does hereby
18 acknowledge and agree that Island Creek may exercise
19 its mining rights." Island Creek would claim that it
20 had the right to do all this stuff under the severance
21 deeds and the leases. So it's kind of a get out of my
22 way. When coal is severed typically there are mining
23 rights in the deeds severing the coal, allowing the
24 owner of the coal to use the surface for any purposes
25 related to mining the coal. So typically a coal

1 company already has these rights. What happens is
2 there's an issue of surface damages, not whether or not
3 you can do it but how much you're going to have to pay
4 for timber destruction and that sort of thing. So part
5 of the answer to your question is they already had the
6 right to do this. What they were really resolving was
7 -- the severance deed of the coal to Yukon Pocahontas
8 and then the lease from Yukon Pocahontas to Island
9 Creek would convey mining rights.

10 MR. GARBIS: Do we have that here?

11 MR. SWARTZ: We have an abstract here that we might be able
12 to find the mining rights, but I didn't bring the
13 deeds.

14 MR. GARBIS: So, in other words, at some previous time they
15 gave their mineral rights -- they signed over their --

16 MR. SWARTZ: No, no, no. In their chain of title when they
17 bought the surface they bought it subject to the out
18 conveyance or severance of the coal with mining rights.
19 So they took their deed subject presumably to mining
20 rights. The other consideration here -- I'm just
21 guessing. I didn't negotiate these agreements. But
22 when I look at them my reaction on the first hand is
23 there would be mining rights that are acknowledged in
24 this agreement that Island Creek has mining rights.
25 Mining rights is a word of art. It means that when the

1 severance occurs they're granted in the deeds or
2 reserved in the reservation. The other thing that I
3 see of value here is Island Creek is saying if you get
4 your act together and permit these three holes which
5 we've drilled at some significant cost we'll transfer
6 them to you. Paragraph five. I mean, you see wells
7 here ranging between -- just a gob well on the order of
8 \$130,000, \$140,000, \$150,000 each to a fracked well at
9 \$230,000, \$250,000, \$260. So if you're talking about
10 three wells that might be used as gob wells in theory
11 there's an agreement here to transfer 300,000 to
12 400,000 dollars worth of wells bores. So in terms of
13 why would somebody do this, ten dollars is nothing,
14 you're right.

15 MR. YEARY: If I could clarify that. I think normally in
16 those case -- I forget the exact name of it but I'm
17 sure the people in Buchanan County remember it well.
18 It was a question of whether people with mineral rights
19 had the right to disturb the surface. There was a
20 Kentucky decision that came down one way and a West
21 Virginia came down the other. Basically the Virginia
22 Supreme Court held that surface disturbance type
23 activities -- for example, strip mining -- were not
24 contemplated back when some of these severance deeds
25 were made and it was probably, I assume, because of

1 that case and also the probably rightful assumption
2 that Island Creek did not have the right to disturb the
3 surface. Perhaps to mine the coal coming through this
4 shaft and down the mountain, but they did not have the
5 right to come and disturb the surface. In any event,
6 the consideration was and you often times can see in
7 these ten dollar considerations. So you have these
8 other consideration that are there. And the main
9 consideration was before Mac -- and also there had to
10 be roads that would have to brought in for these bore
11 holes. But before MacConstruction would consent to
12 that they wanted (Inaudible.) You can't just do this
13 but if you do then we want to have the benefit -- when
14 you abandon these we want to have the benefit of these
15 bore holes which then you just change over to a gas
16 well with the proper permit application. So it's a
17 substantial consideration that MacConstruction was
18 expecting to get. I guess -- and I don't want to get
19 into personalities. I think that's wrong, that we talk
20 about freebees. These are reputable people here. This
21 is not somebody trying to get into somebody's cookie
22 jar trying to get a freebee. These are very reputable
23 citizens. But if there's a freebee it's actually now
24 the predecessor in title -- the people they rely upon,
25 their grandfather so to speak -- people in their chain

1 that have then taken advantage of getting these bore
2 holes, building the roads on the surface of Mac-
3 Construction back in 1992. MacConstruction was
4 expecting at that time, and rightfully so, to get
5 something in exchange for that. Now, if this applica-
6 tion goes through then that -- if there is a freebee
7 involved it will be through Island Creek and the poeple
8 they subsequently sold it to. So MacConstruction has
9 been used and had their property used for no consider-
10 ation as a practical matter. So I guess when you talk
11 about freebees no one is trying to get a freebee here.
12 We're trying to -- it's that legal right. I think you
13 can just see from today we're talking lawyer talk back
14 and forth and it's a complicated legal issue that needs
15 to be resolved before a court of law.

16 MR. CHAIRMAN: Thank you, Mr. Yeary. Any other questions?
17 Questions, members of the Board? Mr. Bragg, did you
18 want to respond to anything? I'm not trying to bypass
19 you at all.

20 MR. BRAGG: I just want to clarify one thing. Mr. Swartz
21 handed you these copies of two agreements, the October
22 30th agreement and the November 4th agreement. If I
23 understand him correctly he represented to the Board
24 that we had included one agreement in our package but
25 we omitted the other and frankly seemed to imply that

1 we did it on purpose. Just so the record will be
2 clear, you will find this October 30th agreement which
3 he handed to the Board behind Tab 8 of the exhibit book
4 we handed you. You will find the November 4th, 1992
5 agreement which he handed to you behind Tab 9. I just
6 want to make sure that the record was clear on that.

7 MR. CHAIRMAN: Thank you.

8 MR. KING: Mr. Chairman, I'm sorry to belabor the Board but
9 I'm just confused. Is Consol agreeable to the pooling?
10 I think that's basically what you all are saying, that
11 you want it pooled if there's any methane gas pulled
12 out of this area.

13 MR. SWARTZ: We have a pooling application that we have
14 filed seeking to pool this unit, yes.

15 MR. KING: Then in your argument Mr. McClannahan is
16 illegally drawing gas out of that area. If we grant
17 your petition that makes his argument moot, I think,
18 is that correct?

19 MR. SWARTZ: I don't buy that.

20 MS. RIGGS: That's not his argument.

21 MR. SWARTZ: I hate to explain to other people how they need
22 to vindicate their rights, but you've kind of asked the
23 question so I will tell you.

24 MR. KING: Okay.

25 MR. SWARTZ: We have a pooling application on file seeking

1 to pool this unit and we have requested two things.
2 One, that the Board pool the unit which I think needs
3 to happen, and two, that the Board appoint Consol, Inc.
4 as the designated operator of this unit. They have
5 objected but they haven't said we want to be the
6 designated operator. And I think it's important -- I
7 think the reason is they don't want to pay royalty.
8 They don't want to deal with getting a bond, keeping
9 records. So I think what they're asking for today kind
10 of sends a message. I mean, they don't want us to be
11 the operator and all that that means -- and they don't
12 want the unit to be pooled and all that means but they
13 don't want to be the designated operator because all of
14 a sudden they would have escrow responsibilities,
15 accounting responsibilities, marketing responsibili-
16 ties. I mean, I don't hear them saying we will
17 shoulder the regulatory burden to protect correlative
18 rights, to protect royalty owners and to do this right.
19 I don't hear any of that today. All I'm hearing is
20 don't let Consol in here and escrow royalty and keep
21 records. Yeah, that's confusing. You're right and
22 you, I think, put your finger in a way on this doesn't
23 make a lot of sense. It doesn't. They're saying don't
24 do anything other than pool it, let's get it straight-
25 ened out, let's account to everybody if there's an

1 accounting that needs to be made. You're not hearing
2 that. You're clearing not hearing that.

3 MR. HARRIS: I see a couple of issues here. One of the
4 issues that we don't return to that kind of concerns me
5 is the signed contractual agreement between Island
6 Creek and MacConstruction and the fact that they
7 haven't done what they said they were going to do
8 within the contract. Now, am I hearing kind of under
9 this that it wasn't legal for them to do or isn't legal
10 for them to do what they're doing?

11 MR. SWARTZ: No. The reason I'm ignoring that is they've
12 sued -- this is a mess. If you look at the pleadings
13 the first law suit that Mac started in Buchanan County
14 sued Buchanan Production Company as the only defendant
15 seeking to enforce a contract with Island Creek. I
16 don't think you need to go -- I don't think you even
17 need to go to law school at all to realize that maybe
18 you ought to sue Island Creek if you're seeking to
19 enforce the terms of a contract that they signed. So
20 there is a law suit pending. We've talked about it.
21 They're going to amend that. But it's not up to you to
22 determine whether or not those underlying contracts
23 have been violated, have not been violated, or whether
24 they've satisfied a condition perceived to being where
25 they want to be. That's why I'm ignoring that.

1 MR. HARRIS: Let's say that it is determined that those
2 contracts were valid and that should take place. In
3 other words, that the VVHS or the well should be given
4 to -- whatever the language of the contract is to
5 MacConstruction. Now, where does that leave us in
6 terms of the pooling application? Is that then --

7 MR. SWARTZ: That's a permitting issue. I'm not trying to
8 be cute about this. I mean, if you go -- let's do it
9 the other way because I think it's clearer. If we
10 weren't here today and we wanted to deal with the N-13
11 unit appropriately and we knew that there were differ-
12 ent people, Yukon Pocahontas saying we own everything
13 and Mac either saying we own 60 out of the 80 -- we own
14 three-quarters of the methane or perhaps all of it.
15 It's hard to tell but they certainly are making a
16 significant claim. If we knew that up front and we
17 wanted to do this right we would, in my judgement, file
18 for a permit application. But before we could produce
19 the well we would have to pool the unit because we
20 wouldn't have an agreement with all the parties. So
21 essentially what I'm saying is my client has a lease
22 from Yukon Pocahontas for coalbed methane which we
23 believe applied to the entire unit. So we're here
24 because we've obtained a lease. We do not have a lease
25 from MacConstruction. We know that they're now a

1 conflicting claimant, at least since October 2nd, and
2 they need to be pooled. You can get a well permit but
3 you better not produce the well until you either have a
4 contractual agreement, a lease, or a combination of
5 leases in pooling.

6 MR. HARRIS: What was the date of the lease that your client
7 has?

8 MR. SWARTZ: You mean with Yukon? I'm just guessing that it
9 would have been the late eighties, perhaps.

10 MR. HARRIS: I'm just wondering what -- I'm still bothered
11 by these contracts that haven't been fulfilled and I
12 keep thinking that that's going to have a bearing on
13 everything even though it has to permitted.

14 MR. BRAGG: If I may address your concern there, if you
15 looked at Buchanan Production's application, Page 2,
16 paragraph 2E, hidden therein, I think, is something
17 that's very alustrative. The second sentence of that
18 short paragraph says, "Applicant's estimate of the cost
19 for the development contemplated by this application is
20 either the cost of acquiring and equipping an existing
21 well bore or it's as set forth at Exhibit #C which is
22 attached hereto and made a part thereof." Exhibit #C
23 estimates the cost of around \$240,000. Would it
24 surprise you to tell you that there are, I believe,
25 three existing well bores in this unit N-13. Guess

1 which they are; A) the well MacConstruction drilled in
2 1982 which will become worthless to them if the
3 applicaiton is granted. The two others are, guess
4 what, the ventilation holes covered by the 1992 Island
5 Creek contracts which will become moot and worthless if
6 this application is granted. So here's what happens --
7 and again, I agree with Mr. Yeary, this isn't about
8 personalities. Mr. Swartz did say we have MacConstruc-
9 tion coming in here asking for a free resource without
10 paying for it. What Buchanan Production and Consol is
11 doing is asking this Board to validate their contract-
12 ual breech to assist them in getting out of obligations
13 that they or their predecessor in interest -- I want to
14 make clear we didn't draft the pleadings which he
15 indicates should have had Island Creek. I will
16 guranetee to this Board Island Creek will become a
17 party to that litigation. I asked Mr. Swartz whether
18 he would agree to simply signing an order allowing us
19 to so amend. He stated he would like to look at my
20 proposal. It will happen. But what they're trying to
21 do is get out of their contracts. As indicated, you
22 don't give up these rights to Island Creek without
23 expecting payment. They have gone forward with their
24 business, their strategic planning since 1982, again in
25 1992. Now Buchanan Production as a successor of

1 interest to Island Creek is trying to say you sued
2 Island Creek, not us. I don't want to answer the
3 question as to what's going to happen to these ventili-
4 ation holes. It's obvious. They tell you in the
5 application. They're either going to put a lot of
6 money to drill a well or they're going to acquire these
7 ventilation holes that they don't want to convey over
8 to MacConstruction pursuant to that contract. And
9 that's as simple as it is. We want something free.
10 They want something free.

11 MR. SWARTZ: Again the spin doctors are at work. The
12 ventilation holes -- Page 5 of the agreement says
13 Island Creek has an obligation to transfer those when
14 they're through with them "provided that surface has
15 obtained all necessary permits." And what I say to Mr.
16 Bragg is "show the Board your permits." If you don't
17 have permits for CBM wells or gas wells for those three
18 ventilation holes the contract says Island Creek
19 doesn't have to pony up. And whether they're related
20 to Consol or they're related to Buchanan Production
21 Company they're talking as if they have some current
22 right -- well, show me some agreement beyond what I
23 have shared with you today that requires Island Creek
24 to do anything absent permits. And if you have permits
25 throw them on the table and if you don't I don't want

1 to hear about it. And, yeah, my client may spend
2 \$260,000 for a new well in this unit. They may be able
3 -- and another alternative which has been discussed is
4 they may be able to learn more about the well bore that
5 MacConstruction has and they may want to acquire that
6 if they can reach an arrangement. I don't know.
7 There's nothing sinister here. I mean, my client is
8 going to spend some amount of money, either really
9 significant or nevertheless substantial, to develop this
10 unit. And this unit needs to be developed in a way
11 that protects the people who turn out to own the
12 minerals and it's not happening now.

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

14 MR. LEWIS: Why would you want to pool this 80 acres here
15 when there's already a well there? Do you want to
16 drill another well?

17 MR. SWARTZ: I just said that one of the options is to learn
18 more about the MacConstruction well and attempt to
19 acquire it from them.

20 MR. LEWIS: Well, you're talking about a well when they
21 drilled it I say costed maybe \$30,000 or \$40,000 at the
22 most.

23 MR. SWARTZ: It may not meet the current standards either
24 and if it needs to be fracked -- I don't know.

25 MR. LEWIS: Well, at that time it couldn't get fracked.

1 MR. SWARTZ: It has not. I'm saying if it needs to be
2 fracked.

3 MR. LEWIS: It couldn't have been at that time because of
4 the mining of the coal.

5 MR. SWARTZ: This unit needs to be operated in a way going
6 forward that preserves the economic benefit flowing
7 from the coalbed methane for the people who turn up to
8 own it. And that is not currently the situation. It
9 hasn't been the situation since 1983 and it needs to
10 happen.

11 MR. LEWIS: I know it hasn't since 1982 because you drilled
12 so many wells and just blew up in the air. Thousands
13 of them -- hundreds of them.

14 MR. GILLUM: It appears to me that we're getting involved in
15 issues that are going to be resolved by the courts.
16 And the issue before us -- correct me if you think I'm
17 wrong, but the issue before us is this is a contested
18 80 acre tract. You've got one company that says we
19 have clear title on 80 acres and another company saying
20 we have rights to 60. We don't know -- it's not our
21 position right here to determine that, which owner is
22 which or who has been owner of record. That will be
23 determined in the courts. In the meantime what happens
24 to the royalty or what happens to people that may show
25 up in a court action that own other peices and who has

1 filed for pooling. I don't understand why these guys,
2 if they own 60 acres, MacConstruction hasn't filed to
3 pool these themselves. It looks to me like that would
4 be the logical thing to do to protect your position in
5 that well if you truly feel like you own 60 acres.
6 All we have before us a request by this group to pool
7 and I think we have to decide if we're going to pool it
8 or if we're not. If we don't I don't see that we have
9 solved this problem of unaccounted for royalties. I
10 mean, I think that's the issue before the Board. I
11 don't think we can determine who made what deal and
12 what contract. That's going to have to be decided in
13 the court of law. In the meantime, if we do pool this
14 royalty is going to be paid into a trust account for
15 the benefit of the people that are either decided by
16 the court to be here or there or unknown people. So I
17 think that's the issue. I think we need to make some
18 movement to address the pooling request. We either
19 pool it or we don't. If we don't then we haven't made
20 any --

21 MR. CHAIRMAN: The only clarification I would have is that
22 what we have before us is a request to stay any action
23 of the Board and then we would hear the motion -- we
24 would vote on that. Mr. Brent, did you have a quest-
25 ion?

1 MR. BRENT: I was just going to say I think he's really hit
2 on the crux of the issue here, the real question, and
3 since the Board has been advised that we don't have the
4 authority to do this I would feel a lot more comfort-
5 able if we at least took the time to get a legal
6 opinion from our counsel as to where we stand just to
7 be on firm ground.

8 MR. CHAIRMAN: Are you making a motion to go into Executive
9 Session or to consult with legal counsel regarding
10 this?

11 MR. BRENT: Yes. Mr. Chairman, I move that this meeting be
12 recessed and that the Board immediately reconvene in
13 Executive closed meeting for the purpose of consult-
14 ation with legal counsel and briefings by staff
15 members, consultants or attorneys pertaining to actual
16 or probable litigation or other specific legal matters
17 requiring the provision of legal advise by counsel as
18 permitted by Section A, Paragraph 7 of Section 2.1-344
19 of the Code of Virginia. This motion is made with
20 respect to the matters identified as agenda Item I.

21 MR. CHAIRMAN: We have a motion.

22 MR. KING: I second it.

23 MR. CHAIRMAN: A motion and second. Any further discussion?
24 All in favor signify by saying yes. Opposed say no.
25 One no. (Mr. Lewis) We're in Executive Session.

1 Thereupon, the Board went into Executive Session at
2 2:45 P.M. and returned to open session at 3:15 P.M.)

3 MR. CHAIRMAN: We are reconvened in open session. In doing
4 that I need a certification from the Board that to the
5 best of your knowledge do you certify that during
6 Executive Session you discussed only public business
7 matters lawfully exempt from the statutory requirements
8 for open meeting and that during the Executive Session
9 you discussed only business matters identified in the
10 motion to convene the Executive Session. I need you
11 just to start -- just roll call.

12 MR. HARRIS: Yes.

13 MR. BRENT: Yes.

14 MR. LEWIS: Yes.

15 MR. CHAIRMAN: Yes.

16 MR. KING: Yes.

17 MR. GILLUM: Yes.

18 MR. GARBIS: Yes.

19 MR. CHAIRMAN: The record will show all members affirm that.

20 As to the motion for stay of the proceedings do I have
21 a motion?

22 MR. LEWIS: I'd like to make that motion. We have a stay
23 until it be resolved in the Buchanan County Circuit
24 Court.

25 MR. CHAIRMAN: Is there a second?

1 MR. GARBIS: I second it.
2 MR. CHAIRMAN: There's a motion and second that the stay be
3 granted.
4 MR. GARBIS: I'm sorry. I didn't hear the --
5 MR. FULMER: He made the motion that the stay be granted.
6 MR. GARBIS: I'll withdraw it.
7 MR. CHAIRMAN: He withdraws the second. Is there a second
8 to the motion that the stay be granted? The motion
9 fails. Is there a motion to deny the stay?
10 MR. BRENT: I so move.
11 MR. CHAIRMAN: A motion to deny. Is there a second?
12 MR. GARBIS: I second it.
13 MR. CHAIRMAN: Any further discussion? All in favor signify
14 by saying yes. Opposed say no. One no. (Mr. Lewis.)
15 The Board will hear the case that's properly called,
16 docket number VGOB-96/09/17-0555.
17 MR. SWARTZ: My first witness is going to be Mr. Arrington.
18 We would like to have him sworn.
19 COURT REPORTER: (Swears witness.)
20 MR. SWARTZ: This is a pooling application that is basically
21 very similar to the applications that we hear normally
22 when we're here. Just to alert to the fact that this
23 is an application to pool both under Oakwood I and
24 Oakwood II which is stated in the application. But I
25 just wanted to remind you that that is, in fact, the

1 kind of application.
2

3 LESLIE K. ARRINGTON

4 a witness who, after having been duly sworn, was examined
5 and testified as follows:
6

7 DIRECT EXAMINATION
8

9 BY MR. SWARTZ:

10 Q. Les, would you state your full name for us, please?

11 A. Yes. Leslie K. Arrington.

12 Q. And who are you employed by?

13 A. Consol, Inc.

14 Q. What is your title, if you have one, with them?

15 A. Permit specialist.

16 Q. As a permit specialist are you involved in the regul-
17 atory process?

18 A. Yes, I am.

19 Q. Did you, in fact, prepare both the notice of hearing
20 and the application with regard to this pooling
21 application?

22 A. Yes, I did.

23 Q. Did you, in fact, sign both of them?

24 A. Yes, I did.

25 Q. Did you either prepare or have prepared under your

1 direction all of the exhibits that have been tendered
2 to the Board?
3 A. Yes, I did.
4 Q. With regard to the applicant here, who is the appli-
5 cant?
6 A. Consol, Inc. on behalf of Buchanan Production.
7 Q. So the actual applicant, though, is Buchanan Production
8 Company?
9 A. Yes.
10 Q. Is Buchanan Production Company a Virginia general
11 partnership?
12 A. Yes, it is.
13 Q. Who are the partners in that partnership?
14 A. Appalachian Operators and Appalachian Methane, Inc.
15 Q. And those are both corporate partners?
16 A. Yes, they are.
17 Q. Who is it that you understand owns the stock in both of
18 those corporate partners either directly or indirectly?
19 A. MCN.
20 Q. And that's a company out of Detroit?
21 A. Yes, sir, it is.
22 Q. Is Buchanan Production Company authorized to do
23 business in the Commonwealth?
24 A. Yes, it is.
25 Q. Who are you requesting be designated or appointed by

1 the Board as the designated operator for this unit?

2 A. Consol, Inc.

3 Q. Consol, Inc. is a Delaware corporation?

4 A. Yes, it is.

5 Q. Is Consol, Inc. authorized to do business in the

6 Commonwealth?

7 A. Yes, it is.

8 Q. Is Consol, Inc. registered with the Department of

9 Mines, Minerals and Energy with regard to its gas and

10 oil operations?

11 A. Yes, it is.

12 Q. Does Consol, Inc. have a blanket bond as required by

13 law with regard to its gas and oil operations on file

14 with the DMME, DGO?

15 A. Yes, it does.

16 Q. Buchanan Production Company has a management committee?

17 A. Yes, it does.

18 Q. Has that management committee delegated to Consol, Inc.

19 "the authority to explore, develop and maintain" the

20 properties and assets of Buchanan Production Company?

21 A. Yes, it has.

22 Q. So Consol, Inc. essentially is the professional

23 manager of Buchanan Production?

24 A. That's correct.

25 Q. And Consol, Inc. then has designated certain responsi-

1 bilities to its employees, correct?

2 A. That's correct.

3 Q. Who might they be and what are their titles?

4 A. Claude Morgan as general manager, William Gillenwater

5 as land manager, and Randy Albert as regulatory

6 manager.

7 Q. Who is the respondent in this application

8 A. MacConstruction.

9 Q. In preparing these applications does Consol, Inc.

10 undertake title inquiries?

11 A. Yes, we do.

12 Q. And was that done in this instance?

13 A. Yes, it was.

14 Q. Are there certain exhibits anext hereto that deal with

15 title issues?

16 A. Yes, there is.

17 Q. Was there a mailing, certified mail/return reciept

18 requested, with regard to this application as required

19 by statute?

20 A. Yes, it was.

21 Q. Who got mail with regard to this application?

22 A. MacConstruction and the county.

23 Q. Buchanan County?

24 A. Right.

25 Q. Did MacConstruction sign for its mail?

1 A. Yes, they did.

2 Q. Do you wish to add any respondents?

3 A. No, we do not.

4 Q. And obviously I can assume you don't want to dismiss
5 any?

6 A. No.

7 Q. With regard to notice and publication could you tell
8 the Board what you did in terms of publication and what
9 was published?

10 A. Yes. Publication was done in the Bluefield Daily
11 Telegraph. It was done twice, first on August 22nd and
12 on that date the map was not published on that date so
13 we again published it on August 28th.

14 Q. Did the newspaper omit publication of the map the first
15 time around?

16 A. That's correct.

17 Q. So you had them do it again?

18 A. That's correct.

19 Q. Have you filed proof of mailing and certificate of
20 publication with Mr. Fulmer's office?

21 A. Yes, we have.

22 Q. When did that happen?

23 A. Approximately August 22nd, I believe.

24 Q. With regard to the standing of the applicant to file
25 this application if you would, turn to Exhibit #A, Page

- 1 #2, the ownership information, in terms of leases from
2 people that you have identified in the course of your
3 title research as coal owners what percentage do you
4 have leases from?
- 5 A. We have 100 percent of the coal, oil and gas leased
6 from Yukon Pocahontas within this unit.
- 7 Q. So record title to the coal, oil and gas in the
8 Buchanan County records shows record title to be Yukon
9 Pocahontas?
- 10 A. That's correct. It does.
- 11 Q. Previously today MacConstruction has indicated that
12 they have title to -- at least surface title to roughly
13 60 acres in this unit. Is that consistent generally
14 with your title examination?
- 15 A. Yes, it is.
- 16 Q. In a general way would it be fair to say that the
17 surface tracts of record are basically south of Webb
18 Branch?
- 19 A. They are. That's correct.
- 20 Q. And there's more than one?
- 21 A. That's correct. There is.
- 22 Q. And then north of Webb Branch someone else owns the
23 surface?
- 24 A. That's correct. They do.
- 25 Q. In leasing acreage in the Oakwood I and II fields does

1 Consol, Inc. have standard terms that it has offered
2 to folks on behalf of Buchanan Production Company to
3 lease their acreage?
4 A. That's correct. We do.
5 Q. Generally what are those basic terms?
6 A. It's a dollar per acre rental, one-eighth royalty with
7 a five year term and the rental is payable on an annual
8 basis until production commences.
9 Q. These are the kinds of terms that you would normally
10 offer to people who have record mineral title?
11 A. That's correct.
12 Q. Either record title to the coal or record title to the
13 oil and gas?
14 A. That's correct. It is.
15 Q. If MacConstruction expressed an interest in entering
16 into a lease would you entertain that request?
17 A. Yes.
18 Q. In terms of the Board's provision in any pooling order
19 that might result from this hearing would you recommend
20 these standard lease terms to the Board, that they be
21 incorporated into the order with regard to persons who
22 might be deemed to be leased?
23 A. That is correct. We would.
24 Q. With regard to this particular drilling unit, the N-13
25 unit, is it over portions of a mine?

1 Yes, it is. The Virginia Pocahontas #1 Mine which was
2 originally an Island Creek operation.
3 Q. What's the status of that mine at the present time?
4 A. Inactive.
5 Q. Is this application seeking to pool under both Oakwood
6 I and Oakwood II?
7 A. Yes, it is.
8 Q. Is the application to pool all coal seams essentially
9 below the Tiller?
10 A. Correct. It is.
11 Q. There are obviously some options with regard to the
12 development of this unit and one of the options would
13 be to drill a new well and frack it, correct?
14 A. That's correct.
15 Q. Have you attached as Exhibit #C an estimate as to the
16 cost of drilling and fracking a new well?
17 A. Yes, we have.
18 Q. Did you prepare that?
19 A. Yes, I did.
20 Q. On what date?
21 A. August 16th, 1996.
22 Q. Are those numbers still an accurate estimate?
23 A. Yes, they would be.
24 Q. What is the total estimate?
25 A. \$230,542.

1 Q. Another alternative, I assume, would be to explore the
2 possibility of utilizing the existing Mac well bore?
3 A. That's correct. It would be.
4 Q. Do you have enough information at this point to
5 determine whether or not that's a viable option?
6 A. No, we do not.
7 Q. But is it, in fact, something that you would be willing
8 to explore?
9 A. Yes.
10 Q. What is the projected depth of the target formation
11 here?
12 A. Approximately 1,700 feet.
13 Q. In Exhibit #B-3 have you listed the respondents?
14 A. Yes, we have.
15 Q. And your calculations are that MacConstruction's
16 surface acreage is 60.30 acres?
17 A. That's correct.
18 Q. And the percent of the unit is reported at B-3 as
19 75.375?
20 A. That's correct.
21 Q. Have you also in these exhibits identified the list of
22 conflicting owners, claimants and respondents?
23 A. Yes, we have.
24 Q. Is that Exhibit #E?
25 A. Yes, it is.

1 Q. Does Buchanan Production Company have access to a
2 gathering system to collect and gather and transport
3 its gas in Buchanan County?

4 A. Yes, it does.

5 Q. Who's the owner of that gathering system?

6 A. Oakwood Gathering.

7 Q. Is Oakwood Gathering's existing system in the area of
8 this unit?

9 A. Approaching.

10 Q. Approaching from what direction?

11 A. The south.

12 Q. So approaching from the bottom of the plat?

13 A. That's correct.

14 Q. Are there currently plans to extend that gathering
15 system to this unit?

16 A. To that vicinity.

17 Q. Roughly how far away is the gathering system at this
18 point in time, if you know?

19 A. I'm not sure.

20 Q. Does that Oakwood Gathering system connect to some
21 other transportation mechanism?

22 A. Yes, it does.

23 Q. What does it connect to?

24 A. Cardinal States.

25 Q. And what is Cardinal States in a general sense?

1 A. Our transmission line going out of the area.
2 Q. Going north?
3 A. Going north.
4 Q. To Grant, West Virginia?
5 A. Yes.
6 Q. Roughly 45 miles?
7 A. Yes, it is.
8 Q. What happens at Grant?
9 A. It connects into a larger system.
10 Q. Which is owned by Interstate Carrier?
11 A. Yes, it is.
12 Q. Columbia?
13 A. Columbia.
14 Q. So, in essence, the gathering system in Buchanan County
15 that Buchanan Production has access to finds its way to
16 West Virginia and then to the Columbia system?
17 A. That's correct. It does.
18 Q. Does that enable you to market gas in New York, for
19 example, New Jersey, places like that or do you know?
20 A. I don't know where it goes from there.
21 MR. SWARTZ: That's all I have.
22 MR. CHAIRMAN: Any questions, members of the Board?
23 MR. HARRIS: Mr. Arrington, when you said inactive mine
24 what's your definition of inactive? Is it not sealed
25 or is it sealed?

1 THE WITNESS: It is not sealed.
2 MR. HARRIS: It is not sealed. So basically -- production
3 was just stopped and they walked away? Is that
4 basically what happened?
5 THE WITNESS: Basically it's just sitting there inactive at
6 this point.
7 MR. HARRIS: But it is in communication to other mines in
8 that production -- I mean, in this overall area?
9 THE WITNESS: I'm not sure of your question.
10 MR. HARRIS: I'm not sure either. I guess what I'm asking
11 is is this a continuation of some other mining opera-
12 tion and we've just left this wing undone --
13 THE WITNESS: No.
14 MR. HARRIS: -- or is it actually a separate self contained?
15 THE WITNESS: It's separate and self contained.
16 MR. HARRIS: Okay.
17 MR. CHAIRMAN: Mr. Arrington, you stated -- in your applica-
18 tion you say on the oil and gas lessees that there are
19 none of record. In the MacConstruction, Incorporated
20 application they list Cabot Oil & Gas Corporation.
21 THE WITNESS: That's correct. They did and what has
22 happened there is the Cabot lease is no longer valid.
23 It has expired.
24 MR. SWARTZ: The conventional oil and gas?
25 THE WITNESS: The conventional oil and gas.

1 MR. CHAIRMAN: Any other questions, members of the Board, of
2 this witness?

3 (Witness stands aside.)

4 MR. LEWIS: How long has Mine #1 been out of production?

5 I'd say probably six or seven years, hasn't it?

6 MR. MORGAN: No. It operated in 1993. Toward the end of
7 1993 it was (Inaudible.)

8 MR. KING: I have a question. Is there a plan to seal gob
9 this mine?

10 MR. SWARTZ: Claude, why don't you come up here.

11 COURT REPORTER: (Swears witness.)
12

13 CLAUDE MORGAN

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

17 DIRECT EXAMINATION
18

19 BY MR. SWARTZ:

20 Q. Could you state your name for us, please?

21 A. Claude Morgan.

22 Q. Who do you work for, Claude?

23 A. Consol, Inc.

24 Q. And what is your title?

25 A. Manager of gas projects.

1 Q. Before that were you
2 MR. CHAIRMAN: Mr. Yeary?
3 MR. YEARY: In terms of the order in which you go would we
4 be allowed to ask questions of the first witness first?
5 MR. CHAIRMAN: Yes, you will. He's doing this to answer the
6 question of one of the Board members right now.
7 MR. YEARY: Okay.
8 Q. (Mr. Swartz continues.) Before getting involved in gas
9 projects were you with a coal company?
10 A. Yes, I was.
11 Q. Did you hear the question, do you have it in mind,
12 that's pending?
13 A. Yes. Two questions. In fact, I think I answered the
14 first time off the record or without being sworn. The
15 first was as to the status of the mine. The mine is
16 inactive. It was operated by Consol after the acquisi-
17 tion of Island Creek in 1993 which was sometime late
18 1993. I think it was. Maybe even into 1994. I'm not
19 certain of the date. But it was idle. There are
20 reserves remaining to be mined in that area. The
21 second question -- now I've forgot the second question.
22 What was the second question.
23 MR. KING: Is there plans to seal gob the unit?
24 THE WITNESS: There is no plans to seal that mine at this
25 time. There are reserves remaining to be mined that

1 are in excessable from those porters, both in that mine
2 and in the northern area of the Beatrice Mine.

3 MR. KING: So the methane gas will be brought out under
4 Oakwood I and II?

5 THE WITNESS: Yes.

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

7 (Witness stands aside.)

8 MR. CHAIRMAN: Mr. Yeary and Mr. Bragg, you may proceed.

9 MR. YEARY: I have just a few questions and then Mr. Bragg
10 may have.

11 MR. SWARTZ: They have one shot at it here. I mean, I can't
12 bring six lawyers and give each one of them opportunity
13 to ask questions. They need to --

14 MR. YEARY: We'll not burden the Board with this too much.
15

16 LESLIE K. ARRINGTON

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

19
20 CROSS-EXAMINATION

21
22 BY MR. YEARY:

23 Q. Mr. Arrington, what is your position? I'm sorry, sir.

24 A. Permit specialist.

25 Q. And when you filed this application were you aware that

1 there was a pending application for a permit for this
2 well that belonged to MacConstruction?
3 A. Yes, we were.
4 Q. When you filed this application were you also aware of
5 the law suit that had been filed in Buchanan County,
6 Virginia requesting that these ventilation hole -- the
7 contracts regarding the ventilation wells be assigned
8 to MacConstruction?
9 MR. SWARTZ: Tell him when it was filed.
10 Q. (Mr. Yeary continues.) Were you aware of the law suit,
11 sir?
12 MR. SWARTZ: You can also say you don't know.
13 MR. YEARY: Sir --
14 MR. CHAIRMAN: Mark, you're going to have to --
15 MR. YEARY: I would ask that he not coach the witness or
16 whatever.
17 MR. CHAIRMAN: Mr. Arrington can answer the questions.
18 A. (The witness continues.) No, I was not aware of any
19 law suit pending?
20 Q. And part of the plan under this application -- you
21 understood that the result if this application were
22 granted would be to make moot -- it would be your
23 position moot the application for the permit for
24 MacConstruction?
25 MR. SWARTZ: I object to this. It's calling for a legal

1 conclusion.

2 MR. YEARY: He has given legal conclusions already, Mr.
3 Chairman.

4 MR. SWARTZ: But it's really not relevant to this proceed-
5 ing.

6 MR. YEARY: He can certainly given legal conclusions as to
7 title and so forth, if he knows.

8 MR. CHAIRMAN: I'm going to overrule the objection and let
9 you go ahead and answer to the best of your knowledge.

10 A. (The witness continues.) Yes, we did.

11 Q. In fact, that was part of the discussion and the talk
12 about why this application should be done at this time,
13 was it not?

14 A. The fact is we control 100 percent of the coalbed
15 methane within this unit.

16 Q. No, sir. The question is isn't it a fact that one of
17 things that was discussed by you and the others of the
18 company was that if you file this application for
19 pooling that that would render moot the application for
20 a permit by MacConstruction?

21 A. That is correct. It would.

22 Q. And part of the ploy or the plan was to file this
23 application so you could go that, isn't that correct?

24 A. That's correct.

25 Q. And that is the primary purpose of asking for this

1 pooling application . . . ?
2 MR. SWARTZ: I object to that. This pooling application
3 pools a unit and allows the production of gas and oil.
4 Q. (Mr. Yeary continues.) My question is was that not the
5 primary purpose, to stop the permitting application or
6 to render it moot so MacConstruction could go forward
7 with their well that they had had since 1982?
8 A. That's correct.
9 Q. Now, you've listed also various entities and pairs of
10 ownership. MCN, that's a foreign corporation, I take
11 it. That's where, in Delaware? Where is it incorpor-
12 ated, do you know? You answered -- I take it you're
13 under oath and you answered it before.
14 MR. SWARTZ: I asked him where there business was and he
15 said Detroit, Michigan. I didn't ask him where it was
16 incorporated.
17 Q. (Mr. Yeary continues.) I'll ask you now. Where is it
18 incorporated?
19 A. I'm not sure.
20 Q. But the primary business is in Detroit?
21 A. Yes.
22 Q. And then you have the Buchanan Production in it. That
23 is a Delaware corporation?
24 A. Yes.
25 MR. SWARTZ: Buchanan Production.

1 THE WITNESS: Buchanan, no. I'm sorry.

2 A. (The witness continues.) Buchanan Production, no.

3 Q. Is it a corporation?

4 A. It's a partnership. Appalachian Methane and Appala-
5 chian Operators.

6 Q. Is it a Virginia partnership?

7 A. It's authorized to do business in Virginia.

8 Q. Well, what state is it a partnership in?

9 A. It's a Virginia general partnership of those two that I
10 mentioned.

11 Q. Do you have on file all the necessary documents to show
12 the general partners and who the partners are in
13 Virginia?

14 MR. SWARTZ: There are no limited partners. It's a general
15 partnership.

16 Q. (Mr. Yeary continues.) Do you know who the stock-
17 holders of Appalachian Operators, Incorporated are?

18 A. I do not.

19 Q. Did you not say that MCN was the owner of Appalachian
20 Operators?

21 MR. SWARTZ: I asked him if MCN was the indirect or
22 direct --

23 MR. YEARY: Excuse me. Sir, I would ask that the witness be
24 allowed to testify.

25 MR. SWARTZ: I mean, let's stop playing games. The question

1 whether MCN direct or indirectly owned the stock in
2 those two corporations. That the question I put to him
3 and that's what he answered.

4 MR. YEARY: I would ask --

5 MR. CHAIRMAN: I'm going to overrule the objection and let
6 you go forward. This witness can answer if he knows.

7 Q. (Mr. Yeary continues.) Who are the stockholders of
8 Appalachian Operators, Incorporated?

9 A. It's wholly owned by MCN.

10 Q. And who are the stockholders of Appalachian Methane,
11 Incorporated?

12 A. I'm sorry?

13 Q. Appalachian Methane, Incorporated?

14 A. I'm not 100 percent sure of the owners.

15 Q. What do you understand it to be?

16 A. Just as I stated before, the two partners. Buchanan
17 Production is Appalachian Operators and Appalachian
18 Methane, Inc. which is partners of Buchanan Production
19 Company wholly owned indirect subsidiaries of MCN.

20 Q. So MCN owns all the stock in all of this. So we trace
21 everything back to Detroit in this various tear. Now,
22 in terms of production costs I take it when you
23 ultimately have to determine the royalty -- the final
24 royalty whether it's MacConstruction as owner or the
25 other owners of the minerals they will ultimately

- 1 recieve I take it that in calculating this royalty
2 payment that you take out your cost of production,
3 correct?
- 4 A. I'll defer that question to Mr. Morgan.
- 5 Q. And if you take out the cost of production the more
6 tiers that you can have in your corporate beaurocracy
7 then the less that there will be left over to pay the
8 royalties to the owners, isn't that correct?
- 9 A. Again, I'm not qualified to answer that question.
- 10 Q. Well, do you know why you have all of these tiers --
11 you have this MCN as one owner and why you go about
12 Buchanan Production and Appalachian Operators, Appala-
13 chian Methane, Incorporated -- do you know why that's
14 done? What the purpose of going through all these
15 steps is?
- 16 A. No, sir.
- 17 Q. Each step along the way if somebody gets paid out of
18 that that would part of the cost that would be attrib-
19 uted to the production of this gas and that would be
20 less money left for the owners of the gas -- the
21 methane gas, correct?
- 22 A. I'm not qualified to answer that question.
- 23 Q. Now, the cost of drilling this new well you say will be
24 \$230,500, is that correct?
- 25 A. That is correct. We did.

1 If someone who already owned the well -- an existing
2 well that would be down within 500 or 600 feet of where
3 you intended to drill or maybe already be there then
4 that would be -- that \$230,000 -- let me ask you this.
5 How much would it take to convert an existing vent
6 hole, roughly speaking, to make it into a gas producing
7 well?
8 MR. SWARTZ: Fracked well or a gob well?
9 MR. YEARY: Let's take both.
10 A. (The witness continues.) Not knowing the status of the
11 well, what you actually have within that hole, it's
12 hard to make a determination of what it would cost.
13 Q. Assuming, I take it, that you've explored the possib-
14 ility of even trying to take or acquire some other
15 method Mac's first well. So I take it you would only
16 do that to save money, correct? Why would you want to
17 get Mac's well? Have you studied whether or not it
18 would be a viable well to be able to use at the unit
19 well -- the number one well for this unit?
20 A. No, we have not.
21 Q. Is there any reason why you have not done that?
22 A. We don't know the particulars about that well. There
23 is a lot of unknowns that have not been made --
24 Q. Have you made any inquiry?
25 A. (No response.)

1 Q. Sir, can you answer a question without looking to see
2 what the answer might be?
3 MR. SWARTZ: You can give him any kind of a blunt answer you
4 want to give him.
5 A. (The witness continues.) Yes, we have. We did make
6 inquiries at the first hearing.
7 Q. And what inquiries have you made?
8 A. We asked where the logs were.
9 Q. Asked who?
10 MR. SWARTZ: Your client.
11 MR. YEARY: I would beg Mr. Chairman again to ask that the
12 witness respond to the question as opposed to his
13 counsel.
14 MR. CHAIRMAN: Mr. Swartz.
15 MR. SWARTZ: I'll do my best, Mr. Chairman.
16 Q. (Mr. Yeary continues.) The gas that you anticipate
17 that will be taken from this unit, it will be taken
18 from -- I take it that you're contemplating it will all
19 be taken from Buchanan County and eventually end up in
20 New York or some other northern state, is that correct?
21 A. Sir, I have no idea. I know once it goes into the
22 pipeline I'm finished with it.
23 Q. There are no plans that you know of to allow it to be
24 used here in Buchanan County for factories or other
25 uses that would help the economy directly here?

1 Again I'm not aware of what happens to the gas.

2 MR. YEARY: We have a couple more questions from Mr. Bragg.

3
4 CROSS-EXAMINATION

5
6 BY MR. BRAGG:

7 Q. Mr. Arrington, you prepared the application?

8 A. Yes, I did.

9 Q. Have you indicated in the application where your
10 proposed well would be located?

11 A. No, we have not.

12 Q. You do include in your application a well location plat
13 showing the existing MacConstruction well?

14 A. That's correct. We do.

15 Q. Have you identified any area within this unit which
16 would be an appropriate place suitable for drilling of
17 a coalbed methane well?

18 A. At this time we have not.

19 Q. Has there been any geological examination done?

20 A. You mean as far as a well location goes?

21 Q. As far as a well location goes.

22 A. No, we haven't.

23 Q. Has there been any engineering evaluation in terms of a
24 proposed well location?

25 A. No, we haven't.

1 Q. You have suggested by your attachment to your pooling
2 application that the total estimated cost of the well
3 would be \$230,642, is that correct?
4 A. Correct.
5 Q. Depending upon the location of a new well drilled
6 within unit N-13 that could be substantially higher, is
7 that correct?
8 A. I don't believe so.
9 Q. How did you determine the cost of drilling a well when
10 you don't know where you're going to drill it?
11 A. I use the maximum depth that I anticipated it would be
12 drilled and used our local costs that we're coming up
13 with.
14 Q. In determining the cost do you look at things like
15 geological formations, different kinds of difficulties
16 that you might run into in attempting to drill a
17 producing well?
18 A. We have quite a bit of experience in drilling in that
19 area and that was taken into account, yes.
20 Q. And how was it taken into account?
21 A. We really don't have that many problems with drilling
22 in this area. So I just used our average cost and put
23 this together from the maximum anticipated depth.
24 Q. Is it your testimony to the Board that if we were to
25 close our eyes and put our finger upon this plat within

1 that unit that it would cost \$230,642 to drill a well
2 at that location?
3 A. You don't generally magically pick the well locations.
4 You will use some engineering.
5 Q. Is it your testimony that you can pick any spot within
6 this unit and that's what the cost of the well would
7 be?
8 A. No. That's a well estimate.
9 Q. Would there be a variable involved in terms of the cost?
10 A. There could be, many variables.
11 Q. Can you give an estimate of what the variable would be?
12 A. No.
13 Q. So the cost estimate that you have provided to the
14 Board is based upon an imaginary well at an undeter-
15 mined location, is that correct?
16 A. That's correct.
17 Q. It has no basis in fact, is that correct?
18 A. Oh, it does have basis from our experience in the field
19 and from the maximum anticipated depths that we would
20 drill a well there.
21 Q. Now, this mine that is underneath this property is, in
22 fact, an abandoned mine?
23 A. Inactive.
24 Q. Have you in the past in writing stated to anyone that
25 mining activities within that mine will never be taken

1 up again?

2 A. No, sir, I have not.

3 Q. And that's your testimony under oath?

4 A. No, sir, I have not made that statement.

5 Q. Is this mine sealed?

6 A. No.

7 Q. Is it, in fact, sealed but not sealed to IMSHA stand-

8 ards?

9 A. It is not sealed.

10 Q. Is it your testimony that Consol or Buchanan Production

11 has taken no cost evaluation as to the cost of convert-

12 ing these ventilation holes that are located within the

13 unit?

14 A. I'm not sure of your question.

15 Q. Is it your testimony that there has been no cost

16 evaluation as to conversion of the existing ventilation

17 holes to a producing methane well?

18 A. I'll defer that question to Claude.

19 Q. Do you have -- is your answer that you don't know or

20 you prefer to have someone else answer the question?

21 A. I really don't know on the conversion.

22 Q. Have you been told that there's been some examination

23 of those issues?

24 A. No, I haven't.

25 Q. Have you been told that the company was going to

1 undertake such an evaluation?

2 A. We -- no, I haven't really been told that.

3 Q. Haven't really been told that?

4 A. I haven't.

5 Q. Have you been told something close to that?

6 A. (No response.)

7 Q. Mr. Arrington, were you aware that MacConstruction was

8 asking that Buchanan Production assign over those

9 ventilation holes pursuant to those 1992 Island Creek

10 contracts prior to the preparation and filing of this

11 pooling application?

12 A. Yes.

13 Q. Were you aware that the pooling application could

14 resolve how your companies would respond to those

15 demands by MacConstruction to assign over those units?

16 A. Yes, we were.

17 Q. Mr. Arrington, were you just written a note by your

18 counsel?

19 A. I'm not paying any attention to what he's writing, sir.

20 MR. SWARTZ: Why don't you read the last entry on my pad.

21 THE WITNESS: I'm not paying any attention to what he's

22 writing.

23 MR. SWARTZ: Read it to them.

24 THE WITNESS: Do you have a permit?

25 MR. YEARY: Could we have the Chairman direct the

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witness --

MR. SWARTZ: I guess I don't need to sit here and be told I'm writing a note to my client when I wrote it to myself and the note reads "Does Mac have permits for the VVHs" because I'm writing myself a note to ask some follow-up questions of my witness. I think we're sort of sinking into a trough here and I don't like it and I don't need to take this.

MR. CHAIRMAN: Whow, let me tell you both, we're not going to sit here and listen to inflammatory remarks on either side. It gets us nowhere. Let's get on with the case, get on with the evidence. If you have questions we're going to try and help you get them resolved. But we're not going to have those kinds of remarks.

MR. YEARY: That's why we're addressing our remarks to the Chairman of the Board.

MR. BRAGG: That's all we have for this witness at this time, Mr. Chairman and members of the Board.

CLAUDE MORGAN

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

DIRECT EXAMINATION

BY MR. SWARTZ:

Q. Mr. Morgan, are you familiar with how royalty is calculated?

A. Yes.

Q. Can you tell me whether or not the costs of production are ever utilized for any purpose in calculating royalty?

A. It is not.

Q. Are you familiar with the orders that this Board issues with regard to how royalty is to be calculated in force pooled units?

A. Yes.

Q. Does the Board order allow the costs of production to be deducted in calculating royalty?

A. No orders we've recieved to date have.

Q. And the lease with Yukon Pocahontas here, does that allow -- the particular lease allow the deduction of costs in calculating royalty?

A. Not the cost of production.

Q. So if your cost of production exceed what you're selling it for you still owe a one-eighth royalty, would that be a fair summary of how it works?

A. Yes.

1 Q. Do you know whether or not MacConstruction has obtained
2 permits for the VVHs they keep talking about? And by
3 permits I mean coalbed methane well permits.

4 A. If they've recieved permits I've not recieved notice.

5 Q. Have you recieved a copy of the drilling logs for this
6 well if those logs exist?

7 A. For the existing Mac well?

8 Q. Right.

9 A. No, we have not.

10 MR. SWARTZ: Mr. Arrington, did you have an opportunity to
11 speak with Mr. McClannahan at either of the two
12 hearings that were at least set at Mr. Fulmer's office
13 this summer?

14 MR. ARRINGTON: Speak with him?

15 MR. SWARTZ: Off the record were you able to talk to him?

16 MR. ARRINGTON: We just talked.

17 MR. SWARTZ: During your discussions did you make inquiry
18 with regard to the logs for the well?

19 MR. ARRINGTON: I did not at that point.

20 MR. SWARTZ: Have you since made inquiry?

21 MR. ARRINGTON: No, we haven't.

22 MR. SWARTZ: Would you need the logs to evaluate the well?

23 MR. ARRINGTON: Yes, we would.

24 MR. SWARTZ: What are the kinds of things you would want to
25 know about the well?

1 ARRINGTON: True casing depth, the total depth of the
2 well.

3 MR. SWARTZ: Do you have any indication of thoat kind of
4 data right now?

5 MR. ARRINGTON: Other than what was provided in their
6 permit, no, we do not.

7 MR. SWARTZ: So the extent of your knowledge is disclosed in
8 the permit application?

9 MR. ARRINGTON: That's correct.

10 MR. SWARTZ: And the logs were not submitted with the permit
11 application?

12 MR. ARRINGTON: They were not.

13 MR. SWARTZ: That's all I have.

14 MR. CHAIRMAN: Any further cross?

15 MR. BRAGG: Just a few questions, Mr. Chairman.

16
17 CROSS-EXAMINATION

18
19 BY MR. BRAGG:

20 Q. Mr. Morgan, I believe your answer was that the cost of
21 production wasn't used in calculating royalty. Is the
22 cost of drilling this well used in determining what
23 royalty owners will recieve?

24 A. No.

25 Q. Is it recovered in any way?

1 / Only if someone chooses to participate.

2 Q. So if someone chooses to participate then they recieve

3 a portion -- they assume a portion of the cost but if

4 they choose not to participate they recieve a lower

5 amount, is that correct?

6 A. They recieve whatever royalty is set by the Board.

7 Q. Which generally is a lower amount?

8 A. It's what's set by the Board.

9 Q. Mr. Morgan, in regard to this mine, is this mine, in

10 fact, a sealed mine but not sealed to IMSHA standards?

11 A. I don't know your definition of sealed. When I speak

12 of sealed I'm talking the shafts are sealed and it is

13 not a sealed mine.

14 Q. Is it completely open?

15 A. It is not completely open to prevent people from

16 falling on or preventing injury to people. There are

17 vents located.

18 Q. Are you aware of whether there has been any evalution

19 of the cost of converting these ventilation holes to

20 methane producing wells?

21 A. Which holes are you referring to?

22 Q. We're talking about the ventilation holes that exist

23 within this unit.

24 A. As to the specific cost of an individual hole, no, it

25 has not been looked at. We are actively working this

1 entire area looking at conversion of existing ventil-
2 ation holes to production holes.

3 Q. Is it your testimony that you have not specifically
4 looked at the cost of converting the ventilation holes
5 which are the subject of those 1992 Island Creek and
6 MacConstruction contracts?

7 A. We've not looked at specific costs.

8 Q. Have you looked at any costs in regard to those?

9 A. We know what our costs are for a ventilation hole and
10 hook-up for production.

11 Q. Have you evaluated the technical aspects of those
12 ventilation holes in terms of it's depth, the reserves,
13 the flow in regard to those ventilation holes which are
14 the subject of that litigation?

15 A. I have not looked at any flow numbers from those holes
16 that I can recall, no.

17 Q. What about depth?

18 A. I can't recall looking at it specifically. I know that
19 the ventilation holes in that area were drilled to just
20 above the Pocahontas #3 Seam.

21 Q. Any other technical information that you have looked
22 at or that anybody in your company has looked at?

23 MR. SWARTZ: Limited to those three holes?

24 MR. BRAGG: In regard to those three holes.

25 A. (The witness continues.) No.

1 Q. You have access to the drilling logs and all that
2 information in regard to those ventilation holes, is
3 that correct?

4 A. I have not looked in the file to see if the logs are
5 there. If the logs are there we would have access to
6 them.

7 Q. But they are information that would be within the
8 custody of your company?

9 A. For those vent holes.

10 Q. Is that correct?

11 A. If we had the information it would be in our custody.

12 Q. What would be the normal cost of converting a ventil-
13 ation hole to a well?

14 A. The cost of converting the hole is mostly setting up a
15 meter, some well head equipment, and depending on what
16 you have to do to produce it -- some holes you may have
17 to install a blower on it, some you don't. So depend-
18 ing on what you have to do that cost could range
19 anywhere from -- just the conversion, not for the hole
20 itself, anywhere from \$10,000 to \$60,000.

21 Q. Are you aware of the identification of any location for
22 a proposed well that Consol on behalf of Buchanan
23 Production would develop and operate within this unit?

24 A. We have not selected the site. We've looked at all of
25 the existing wells there as a potential.

1 Have you looked at any sites other than what you refer
2 to as existing wells within that unit?

3 A. We've looked at every -- looked at the location of
4 other vent holes on that same panel. If you're
5 familiar with Oakwood II, you don't necessarily have to
6 be within the unit to produce gas out of that unit
7 under Oakwood II.

8 MR. BRAGG: I believe that's all.

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

10 (Witness stands aside.)

11 MR. CHAIRMAN: Wht's your pleasure?

12 MR. YEARY: Are we through with the evidence?

13 MR. CHAIRMAN: Through with the evidence.

14 MR. YEARY: It's my understanding subject to the proceedings
15 in Buchanan County and the outcome of those are
16 certainly without prejudicing those cases in any way,
17 certainly would be the intent -- I think that question
18 was risen here at some point earlier today. But it
19 would be the intention of MacConstruction also to be
20 filing an application. Probably they've done it
21 already. They would ask that upon filing the applic-
22 ation before it for it to be designated unit operator
23 of this unit.

24 MR. LEWIS: Are you asking this Board to give you permission
25 to file an application?

1 MR. YEARY: Yes, sir, we are.

2 MR. SWARTZ: I'd like to respond to that. It seems like
3 another opportunity to get a continuance, just one
4 after another. If they wanted to be the operator and
5 if they wanted to file an application they had thirteen
6 years to do it. You've denied their motion for stay.
7 It seems a pretty transparent attempt to get another
8 continuance. So I object to it. We've offered
9 testimony. If they've got some witnesses let's go. But
10 I'm done. I've concluded -- I've offered my testi-
11 mony. The exhibits are in. We're ready for a deci-
12 sion. It looks to me just like another continuance.

13 MR. YEARY: Certainly we do not intend this to be a basis
14 for a continuance. I think it's just one other reason
15 that this matter should be stayed at this time. I
16 think it's apparent in this case that this application
17 for the force pooling for this particular unit -- and
18 the reason it's being done now -- it's not for conserv-
19 ation. It's not for any other purpose. But the whole
20 consideration is undisputed, was it only arose after
21 MacConstruction had asked to try to do what it was now
22 told it needed to, whether it needed to do it or not.
23 It was trying to be above board with the Board to file
24 an application for a permit for this number one well
25 that they drilled and have been using with the consent

1 and the full knowledge of their predecessors in title
2 and probably them as well. But it was only after that
3 -- it was only after then that they realized that
4 there also was this contractual dispute because their
5 predecessor in title had a legal obligation -- that's
6 our contention. We've seen the contracts -- to assign
7 these two other wells to MacConstruction. MacConstruc-
8 tion was asking for this assignment, asking for what it
9 was entitled to based upon consideration given four or
10 five years before back in 1992. But it was only after
11 it was asserting -- MacConstruction was asserting its
12 rights that it was entitled under the contract -- only
13 after it was asking to permit this well that then it
14 was a plan and design by these entities -- and who was
15 in charge and who they are I don't know, but it is
16 undisputed that the purpose of that for this pooling at
17 this time was to insert that intention in the applic-
18 ations of MacConstruction and the contractual rights of
19 MacConstruction. Now, these are units -- if we're
20 talking about conservation, you know, the purpose of
21 this pooling at this time was just to interfere with
22 contractual rights. That's our contention. It was to
23 prevent MacConstruction from continuing the production
24 and the use of this well in Southwest Virginia, of the
25 use of MacConstruction to allow this well -- if there

1 are units to be pooled other than MacConstruction part
2 of the unit this would be less cost involved and it
3 would be -- we would submit that there would be more
4 profit and that one-eighth royalty would be of a
5 greater amount if it were done by one unit operator,
6 not this tier because we all know as a practical matter
7 every time in beurocracy you add one more layer to it
8 the guy on the bottom gets less. The farmer -- after
9 you through the steps the poor farmer still gets paid a
10 small amount for his apple. The less units and tiers
11 of a corporate beauracracy or partnership you go
12 through there's more left for the people in Buchanan
13 County. In this case there's more left for people in
14 Buchanan County and of all the time in the history of
15 this state we have had -- we have seen absentee
16 ownership time after time and what it has done espec-
17 ially to this area of the state. We have now an
18 opportunity here to at least make right on this
19 occasion and not allow the misuse of the assets of this
20 fine land and these people that started Buchanan a
21 hundred years ago. And this would be a continuation of
22 this state, especially this place that so vitally needs
23 an economic boost. So for all those reasons -- and we
24 are willing and ready to be the unit operator. We need
25 time to prepare it -- a reasonable period of time to

1 are the application. Certainly you can see this
2 gentleman's background and credentials. He's educated
3 as a miner and was born and raised here in Buchanan
4 County. They will be able to do it, but we will need
5 the opportunity -- a reasonable period of time to allow
6 that to be the case.

7 MR. LEWIS: How much time are you talking about being a
8 reasonable time?

9 MR. YEARY: I would think 60 days, something like that to
10 get together an application. I think there has to be
11 30 days notice. So we would need the time to give 30
12 days notice and make sure that Mr. Swartz and whomever
13 could be properly notified.

14 MR. SWARTZ: My response is the victim here is not here,
15 Yukon Pocahontas. They own all these minerals. We
16 have a lease with them. We have a contractual obliga-
17 tion to protect their acreage against drainage by
18 other people. We have a contractual obligation to make
19 sure that if gas is produced from their acreage they
20 get a royalty. They're interested in the outcome of
21 this. I mean, they have record title. They're not
22 here. We have a lease from them. It's our job to deal
23 with these issues for them going forward. But if
24 there's a victim here potentially it's Yukon Pocahon-
25 tas. We have a lease from them. They may be due

1 royalty going back to 1982. The courts will sort that
2 out. But the testimony is undisputed. We have a
3 lease from them. They claim and have record title to
4 the oil, gas and coal under 100 percent of this unit.
5 We have a conflicting claim for 60 acres, but Yukon
6 Pocahontas have given a lease and they have record
7 title. So they're in the picture here with regard to
8 royalty. The issue here is to make sure that whoever
9 is producing gas from this unit does what is required
10 by the Code. And the Code -- there's a laundry list of
11 the things that are important. 45.1-361.3 says these
12 provisions in this chapter are going to be construed
13 with the following principals in mind. And one of
14 those principals is to recognize and protect the rights
15 of persons owning interest in gas or oil resources
16 contained within a pool. And we are here saying we
17 have a lease from people who claim to own 100 percent
18 of this and we are here trying to vindicate their
19 rights and/or at a minimum protect their rights and
20 make sure that any monies associated with production
21 from this unit at least going forward are measured,
22 reduced to liquidated numbers and are escrowed. I
23 mean, that's why we're here. Now, the net effect of
24 this -- and I don't dispute that, it's reality. But
25 the net effect of pooling this unit and appointing

1 ' operator, a company who has a bond who has an
2 accounting mechanism in place, has a gathering system
3 that's on route, has a method to get the gas to market
4 and keeps track of this stuff and pays royalty -- the
5 end result here is to make sure that at the end of all
6 this litigation -- we can argue whether that's complex
7 or not, but there is litigation and I assume it will
8 continue to drag on for some significant period of
9 time. At the end of this litigation the money will be
10 there. So if it turns out that Yukon Pocahontas rights
11 are avendicated and they're entitled to royalty it will
12 be there. If it turns out that Mac has 75 percent of
13 the unit so be it. The thing -- sometimes we lose
14 sight of this. They don't care who they pay royalty
15 to. It's twelve and a half percent. It's always going
16 to be paid. It is a cost of doing business. I mean,
17 ultimately in a title litigation between Yukon Pocahon-
18 tas and MacConstruction -- if we're just talking abotu
19 royalty who cares. It's going to be twelve and a half
20 percent to somebody. It's a cost of doing business.
21 There's nothing personal here. We have a lease from
22 some people, though, that gives us certain respons-
23 ibilities of their interests and we are trying to
24 avendicate them here today. Yeah, there are some very
25 negative effects of approving a pooling application on

1 MacConstruction. Well, there can't be more than one
2 designated operator. That's the way it works. They
3 had a lot of time to get their ducks in a row here.
4 They had a lot of time to negotiate with Yukon Pocahon-
5 tas. All kinds of things could have happened. Well,
6 they didn't. They didn't file an application. Our's
7 is here today and the goal is to insure that the rights
8 of people owning interests in oil and gas resources in
9 this unit are protected. And there's an effort, I
10 think, to attribute some sinister motives but that's
11 where we're headed. We owe somebody twelve and a half
12 percent and we're willing to pay it and we want to make
13 sure it gets paid. That's why we're here. Thank you.

14 MR. HARRIS: There's so many things floating around. What
15 is the current status of the well? Is it plugged, shut
16 off, still in operation?

17 MR. SWARTZ: I don't know. I don't know.

18 MR. McCLANNAHAN: The well that we're speaking of, the one
19 that we had tried to get a permit application for, it I
20 guess is in operation but what it's used for is to heat
21 a couple of buildings.

22 MR. HARRIS: Gas is still being drawn from it?

23 MR. McCLANNAHAN: Well, we use it to heat -- there's two
24 shops that we use it to heat for in the winter. It did
25 not produce enough gas to run the asphalt plant. It

1 "I fire the burner. There's a flame about two and a
2 half inches in diameter and it will come about that
3 high when the well head is totally open and you light a
4 match to it. That's all the gas that there is. We use
5 it to heat a couple of buildings. He keeps stating
6 that we have not tried to deal with Yukon Pocahontas.
7 We have spoke with Harris Hart probably for the last
8 three years. We have contacted him and I think our
9 lawyer, Mr. Bragg, has contacted Mr. Hart here within
10 the last week or so. We have tried to sit down and
11 negotiate. And as far as the first IFFH -- Informal
12 Fact Finding Hearing -- when Mr. Fulmer left the room
13 and we were off the record we tried to sit down and
14 negotiate. Mr. Swartz was suppose to contact his
15 clients who were MCN, Consol and Yukon Pocahontas so we
16 could sit down and try to reach an agreement as far as
17 concerning this. Friday before the IFFH I contacted
18 Mr. Morgan. I specifically asked Mr. Swartz if I
19 should call and make those calls. He said, "No. I
20 will contact my clients." I contacted Mr. Morgan the
21 Friday before the IFFH and said, "Are negotiations
22 out?" He said, "What do you mean?" I said, "Mr.
23 Swartz at the first IFFH -- we had got together prior
24 to it and he was suppose to have contacted you all so
25 we could get together and negotiate." The only thing

1 that happened was I called him on Friday prior to the
2 Informal Fact Finding Hearing -- the second scheduled
3 one. We have tried to negotiate with Consol, MCN,
4 Yukon Pocahontas and we've recieved nothing in return
5 from them. They have basically just shut the door,
6 have not answered phone calls. They have not answered
7 letters sent and it's basically we are not there.

8 MR. BRAGG: I might point out to you that we did notify
9 Yukon, their counsel Mr. Hart. They certainly had an
10 opportunity to be here. They are represented by
11 separate counsel, Mr. Hart, as we understand. The same
12 for our objection; they were aware of that today. So
13 I'm sure if they had any problems with our objection
14 they would be here voicing it.

15 MR. SWARTZ: I'm not going to get drawn into responding to
16 everything that happens. I'm still finished.

17 MR. HARRIS: Again, this is clarification. It's probably
18 been stated. But the contracts that we've talked about
19 earlier, those were to give you ownership of the VVHs
20 and whatever as long as you filed for a permit to
21 operator those within the laws of the State. You filed
22 for that permit as such time when they told you they
23 were no longer using those, is that correct? According
24 to this I think you were to be notified that they were
25 no longer being used. You were notified of that?

1 McCLANNAHAN: When they were shutting down VP-1 --
2 Consol had not come into the picture at this point
3 time. When they were shutting down VP-1 I worked with
4 OXY's permit specialist. His name was Larry Conrad.
5 Also Marty Wirth. I was in their offices in the
6 Mullin's Building in Richlands filling out applic-
7 ations, which we have copies of those, for the two
8 vertical vents. So, yes, we were notified but they
9 have not been submitted to the Board. They were
10 prepared in probably July of 1993.

11 MR. HARRIS: Why did you not submit them to the Board?

12 MR. McCLAMMAHAN: We just -- I don't know.

13 MR. BRAGG: If I may at this point, as I understand the
14 quandary -- now, these were agreements that were
15 drafted by Island Creek or their counsel. Let's just
16 say that there is some debate as to whether there is a
17 condition present -- a permitting. We believe that the
18 language is ambiguous. What you have is a situation to
19 where as we understand it, as we've tried to get up to
20 speed the last couple of weeks, it is that the Director
21 said you can't apply for a permit unless you've got the
22 assignments and Buchanan Production is saying you can't
23 have the assignments if you don't permit them and we're
24 playing gotcha. And if that doesn't work then we'll
25 file an application for pooling.

1 MR. CHAIRMAN: Does that answer your question?

2 MR. HARRIS: Yeah.

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

4 MR. GILLUM: I'd like to ask Mr. Fulmer, is 60 days adequate
5 to prepare and submit an application for a permit under
6 this scenerio?

7 MR. FULMER: We're dealing with two different things here.
8 I mean, you're talking about vertical ventilation holes
9 that are out there. We're talking about this Mac-
10 Construction well which he has submitted a permit for.
11 That's the one I'm considering. This vertical ventil-
12 ation hole is something new to me. I'm not dealing
13 with that. I'm dealing with the MacConstruction well.

14 MR. CHAIRMAN: But the question Mr. Gillum is asking you,
15 though, is if they file an appliacation to be design-
16 ated as an operator for force pooling that well is 60
17 days adequate?

18 MR. FULMER: More than adequate. It should be.

19 MS. RIGGS: It's a 20 day notice period. You've got to file
20 at least 20 days -- what's your deadline?

21 MR. FULMER: Well, it lengthens out whenever the deadline is
22 for the filing for the Board hearing. Now, you've got
23 to work in when you present that to the Board or when
24 it's filed because if it's filed and not within the
25 deadline then it's extended another 30 days. So it

1 he up to 60 days and it could be within 20 days.
2 It depends on how it comes in as being filed with the
3 Board for the docket. But it has to be in within 30
4 days --

5 MR. GILLUM: So if the Board's goal is to give this party 60
6 days to make a like application they would extend this
7 or continue this for 60 days and that should be
8 adequate time for MacConstruction to file that applic-
9 ation and be on the docket.

10 MR. FULMER: They only have two windows to work with.
11 They'll have it for next month and they'll have it for
12 the following month.

13 MR. KING: Mr. Chairman, I have a question, please. Mr.
14 Swartz, you alluded -- I don't know if it was you or
15 one of your witnesses -- that the expense of being an
16 operator -- can someone tell us what the expense of --
17 if I made an application to be an operator, for
18 instance, how much money am I talking about that I'm
19 going to allocate?

20 MR. SWARTZ: It depends on what you want to do. I'm sure
21 Claude can give you some more concrete --

22 MR. KING: Say I was Mr. McClannahan and I had this well
23 that's been producing illegally or whatever.

24 MR. SWARTZ: The problem with the well is from the way the
25 production from the existing well has just been

1 described to us, we don't drill and produce those kinds
2 of wells because you can't make money. We need to have
3 a well -- and we can get into that. If that's true --
4 and I'm not saying it's not. But if the description of
5 what I've just heard on the production of this well is
6 accurate it's not producing and paying quantities.
7 It's not covering the costs that you would anticipate
8 of operation. Maybe I need to let Claude deal with
9 that, but there are significant costs associated with
10 producing a well. But the production that we obtain
11 from the wells in terms of what the royalty owners get
12 is --

13 MR. KING: But to be a viable operator -- I think we've all
14 heard that this well does not go down into the --

15 MR. SWARTZ: That's what they're telling us and I don't
16 know.

17 MR. KING: The question, I guess, is to be an operator of a
18 producing well profitably, what would that cost? Have
19 you got any idea?

20 MR. SWARTZ: Why don't you give him some indication of the
21 kinds of things you do, Claude.

22 MR. MORGAN: I'm afraid I don't understand the question.
23 But if what you're trying to get at is what kind of
24 costs are going to be coming against the royalty owner
25 before the payment of the one-eighth royalty--

1 MR. KING: I'm talking about just the start-up cost. The
2 estimate here is \$230,542. That's to start -- drill a
3 new well?

4 MR. MORGAN: That's to drill a complete, new well and
5 stimulate it, complete it, put it on production.

6 MR. KING: Then I guess my question, Mr. Yeary, to your
7 client is is he willing to spend that kind of money to
8 make that a producing well?

9 MR. YEARY: Mr. King, that would be part of the application,
10 appropriate assurance and that would be subject to
11 whatever bond requirements and so forth. This is a
12 long standing corporation here in Buchanan County.
13 We're not talking about just someone that just came up
14 with some names to set up some tiers. We're talking
15 about these people.

16 MR. BRAGG: Mr. King, if I may, I believe Mr. Morgan
17 testified earlier as to what his estimate of cost of
18 converting the ventilation holes would be. And I
19 believe the maximum if I remember correctly was \$60,000
20 which is significantly less than the \$240,000.

21 MR. KING: But we've already had testimony that this is not
22 producing profitably.

23 MR. BRAGG: That's the existing well. This existing well
24 can be deepened to get into the formation that they are
25 proposing in their application. We are told for around

1 \$10,000. So we're looking at anywhere from making this
2 well more efficeint to converting the ventilation holes
3 at a significantly lower cost than what it would cost
4 to --

5 MR. KING: Then actually what we're really looking at is Mr.
6 Fulmer making that decision, when he gives someone a
7 permit when they make an application.

8 MR. CHAIRMAN: Right.

9 MR. KING: It's can they make it.

10 MR. CHAIRMAN: No.

11 MR. KING: You just get an operating permit. You don't --

12 MR. FULMER: I don't go into their financial background. If
13 they can -- what I do is if they decide to do this
14 operation then I guarentee or grant -- make sure that
15 they do it under the standards required by the Act and
16 the law.

17 MR. HARRIS: One of the things, I think, that might be
18 confusing here is I think it was alluded to earlier
19 about the larger company being able to -- already had
20 lines in place, the connections that the larger
21 company would have. To me that sort of implies that
22 someone who has a smaller company or a smaller oper-
23 ation may not be able to compete or whatever and I
24 don't think that's what we're trying to decide, whether
25 or not they're able to do that. I think that the

1 application, if we weigh it on its own merits, if they
2 say we're going to spend \$60,000 -- the MacConstruction
3 folks, if they were to apply and spend \$60,000 to
4 lengthen or deepen the hole to standard that's at the
5 construction site now, I don't know if we at this point
6 can talk about their ability to pay that. I think if
7 they're putting an application in or if someone puts an
8 application in that this is going to cost X amount of
9 dollars -- do we ever check financial records? Do we
10 look at that?

11 MS. RIGGS: The pooling application is good for a one year
12 period and if they fail to do it and get into product-
13 ion within that period of time then the pooling
14 application expires by its own term.

15 MR. HARRIS: Regardless of the reason. So if they can't get
16 enough money -- if they decide we're going to have to
17 raise money and can't get it then --

18 MS. RIGGS: And they have a year's period of time within
19 which to do that from the time of the pooling applic-
20 ation.

21 MR. HARRIS: But that's not a deciding factor on our part in
22 terms of if there were an application in front of us we
23 don't say oh, gee, these are --

24 MS. RIGGS: I think what you're looking at when you're
25 appointed unit operator is the ability of that operator

1 to do those things the statute requires them to do --
2 the qualifications to function as unit operator.

3 MR. SWARTZ: Mr. King, you raise an interesting issue that I
4 just want to make sure that the Board understands. One
5 of the alternatives that is offered to people with
6 election rights in the orders that you all issue when
7 we pool the unit is to participate. And about five or
8 six years ago OXY, USA got crosswise with Ashland
9 Exploration over roughly 20 pooling applications, all
10 of which got appealed. And I just last week happen to
11 know they settle all of those appeals and the money
12 changed hands and we'll be dealing with it. But what
13 Ashland did, they took the position -- which is not all
14 that dissimilar here but I'm not suggesting it's
15 exactly the same either -- Ashland took the position
16 that OXY did not have the rights. Their leases were
17 inferior in quality, let's say, to Ashland's contrac-
18 tual title instruments. When OXY pooled the units and
19 was designated operator on at least one of the units
20 Ashland tendered 100 percent of the drilling costs and
21 participated to the tune of 100 percent pending the
22 outcome of the title litigation. So essentially the
23 development of that unit could proceed. The participa-
24 tion money was escrowed pending resolution of either
25 the cases or the title. And I don't think this solves

1 problem and this is open to all kinds of further
2 talking here, but if you pooled this unit MacConstruct-
3 ion would have an election option in the standard form
4 order that Sandy gets out in these poolings to partici-
5 pate. And if they wanted to participate to set the
6 tune at 75 percent of their acreage in this unit they
7 could pony up that money. It would be escrowed. If
8 they were successful in their court litigation with
9 regard to title they would acquire a 75 percent working
10 interest in this unit plus a 75 percent royalty
11 interest in the unit. These are rights that you give
12 people when you issue these orders. They might not
13 find that an attractive way to proceed but in just the
14 normal garden variety order you all issue that is an
15 option that people are afforded. Most of the members
16 of this Board weren't there when Ashland and OXY were
17 in that dispute. And those kinds of things were
18 happening, but it has actually happened on occasion and
19 you just need to know that's one of the options.

20 MR. CHAIRMAN: And it's an option in the statute.

21 MR. SWARTZ: Correct. It's not something we all made up.

22 It's like a real option.

23 MR. BRAGG: If we can point out one thing, though, with that
24 probably in those situations -- I'm not familiar with
25 them but I doubt that there were an existing well or

1 existing ventilation holes which could be converted for
2 substantially less money. So I guess the suggestion
3 here is that MacConstruction can anny up the \$240,000
4 it would cost to drill another well when they've got
5 one.

6 MS. RIGGS: Well, the Board looks at those costs and has to
7 establish a reasonable cost of participation.

8 MR. SWARTZ: The other thing is -- I mean, I think there
9 needs to be an assumption that Consol generally in it's
10 affairs and those of Buchanan Production Company takes
11 the most cost effective route and if a VVH is a cost
12 effective route I mean that's the way they're headed.
13 And if somebody has ponied up to drill a well and it
14 turns out you convert a VVH that money comes out of
15 escrow to the extent that there's a difference. I mea,
16 this is not some kind of shell game here. The escrowed
17 funds are escrowed based on an estimate and one of the
18 reasons that very few people participate -- the risk is
19 that if you pony up your percentage of the estimated
20 drilling costs you become a partner. And ultimately
21 the cost may exceed the estimate and a lot of people
22 don't want to be writing checks down the road. I
23 mean, they might be less but they could also be more.
24 There is an accounting. You have to account for those
25 funds as an operator in and out of escrow and if the

1 effective remedy is less it's going to be less and
2 money is going to come back.

3 MR. KING: We've had testimony to say the cost of start-up
4 is not assessed against the pooling.

5 MR. SWARTZ: Not against the royalty owners, correct.
6 Drilling costs do not --

7 MR. KING: Only if you participate.

8 MR. SWARTZ: Right.

9 MR. GARBIS: I think I've heard enough. I'd like to propose
10 a motion that we continue this for a couple of reasons.
11 Number one, I think there's a lot of material here that
12 really we need to look at a little more in depth before
13 I would feel comfortable in rendering a decision yea or
14 nea. This I think would be in the best interest of
15 both parties, to get your heads together and try to
16 work this thing out rather than litigate this thing
17 fifteen years down the line. So again I would propose
18 that we continue this to give opportunities for
19 everybody to -- because we could be talking on this
20 thing for another five hours and we'd still be right
21 over here.

22 MR. CHAIRMAN: Any time frame on the continuance?

23 MR. GARBIS: 30 days.

24 MR. YEARY: Can we have 60 days so we can have the other
25 option, Mr. Garbis?

1 MR. GARBIS: 60 days will be fine.

2 MR. CHAIRMAN: Motion.

3 MR. HARRIS: Second.

4 MR. CHAIRMAN: To continue it for 60 days. Any further
5 discussion? All in favor signify by saying yes. (ALL
6 AFFIRM.) Opposed say no. (NONE.) Unanimous approval.

7 (AFTER A BRIEF RECESS, THE PROCEEDINGS CONTINUED AS
8 FOLLOWS:
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ITEM II

MR. CHAIRMAN: The next item on the agenda is the Virginia Gas and Oil Board will consider a petition from Buchanan Production Company for the pooling of a coalbed methane unit identified as V-18. This is docket number VGOB-96/10/15-0556. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MR. SWARTZ: Mark Swartz appearing on behalf of Buchanan Production Company and its agent Consol, Inc. Les Arrington is also here. This is an application to force pool the respondents that are listed in the notice of hearing under both field rules I and II. So we're talking frack wells and active gob. Les, I would remind you that you're under oath still.

LESLIE K. ARRINGTON

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

DIRECT EXAMINATION

BY MR. SWARTZ:

Q. Can you state your name for us?

1 A. Leslie K. Arrington.
2 Q. Who do you work for?
3 A. Consol, Inc. as permit specialist.
4 Q. Did you prepare the notice of hearing, the application
5 and the exhibits attached to those documents with
6 regard to the V-18 unit?
7 A. Yes, I did.
8 Q. Have you, in fact, signed those documents?
9 A. Yes, I have.
10 Q. And is that part of your normal job duties?
11 A. Yes, it is.
12 Q. Did you cause the notice of hearing and the application
13 and the related exhibits to be mailed to the respond-
14 ents named in the notice?
15 A. Yes, I did.
16 Q. When did you do that?
17 A. It was mailed by certified mail on September 13th.
18 Q. 1996?
19 A. 1996. Yes.
20 Q. Have you submitted proof of mailing and status of
21 mailing information to the Board today?
22 A. Yes, we have.
23 Q. It's behind what tab?
24 A. Behind Tab 2.
25 Q. Did you cause the notice of hearing and the little map

1 It's always attached to be published?

2 A. Yes, we did. That was published in the Bluefield Daily

3 Telegraph on September 23rd.

4 Q. And have you filed a certificate of publication?

5 A. Yes, we did.

6 Q. Is that in the notebook?

7 A. Yes, it is.

8 Q. Where is it?

9 A. The publication is behind Tab 3.

10 Q. With regard to the respondents are their names and

11 addresses to the extent that you have them listed in

12 Exhibit B-3?

13 A. Yes, they are.

14 Q. Do you wish to add any respondents at the hearing?

15 A. No, we do not.

16 Q. Do you wish to dismiss any?

17 A. No.

18 Q. Has Consol, Inc. on behalf of Buchanan Production

19 exercised due diligence to identify and locate people

20 having record title within this unit and then to

21 identify them and find their addresses?

22 A. Yes, we have.

23 Q. And have you submitted an affidavit of due diligence?

24 A. Yes, we have.

25 Q. That's submitted, I think, with the application?

1 A. Yes, it is.

2 Q. With regard to the standing issue and Buchanan Produc-

3 tion's interest in this unit if you would go to

4 Exhibit #A, Page 2, sort of toward the middle of the

5 application could you tell the Board what the leasehold

6 interest that Buchanan Production has obtained in this

7 unit or ownership interests are?

8 A. We control 100 percent of the coal and we're seeking to

9 pool approximately 84.24579 percent of the oil and gas

10 interest.

11 Q. And you have obtained previous to today or control

12 15.75421 percent of the oil and gas?

13 A. That's correct.

14 Q. With regard to standard rental or lease terms that your

15 company would routinely offer for coalbed methane

16 leases what would those terms be?

17 A. It's a dollar per acre rental, a one-eighth royalty, a

18 five year term, and the rental is payable on an annual

19 basis until production commences.

20 Q. In the event that the Board should choose to pool this

21 unit would you recommend those terms be incorporated in

22 the pooling order?

23 A. Yes, we do.

24 Q. Now, this V-18 unit, is that an 80 acre Oakwood unit?

25 A. Yes, it is.

1 Q. It would start out as a frack well unit?

2 A. It could.

3 Q. And it would certainly in any event wind up as an

4 active gob unit?

5 A. That's correct.

6 Q. Does it lie over portions of two longwall panels in the

7 VP-8 Mine?

8 A. That's correct. The 3-East and 4-East longwall panels.

9 Q. And there is, in fact, an Exhibit #G which kind of

10 shows the mine and the mine plan in relation to these

11 units?

12 A. That is correct. It does. Exhibit #G.

13 Q. The mine plan to be implimented, is that in the

14 Pocahontas #3 seam?

15 A. Yes, it is.

16 Q. Are you seeking to pool the reservoir or seeking to

17 produce from all seams below the Tiller down to and

18 including the Pokey 3 seam down to the Red Shells?

19 A. Yes, we are.

20 Q. Have you prepared a well estimate with regard to the

21 development of this unit?

22 A. Yes, we have.

23 Q. Is that Exhibit #C?

24 A. Yes, it is.

25 Q. What is the estimate of the per well costs?

1 A. Per frack well cost is \$264,981.90.

2 Q. Further with regard to costs how many frack wells per

3 panel are you estimating here?

4 A. Six.

5 Q. And is there a recap that is Page 2 essentially of

6 Exhibit #G that allocates the cost of six frack wells

7 to the 3-East longwall panel and the 4-East longwall

8 panel?

9 A. That's correct. We do have.

10 Q. Are those costs then further allocated to each drilling

11 unit affected by those panels?

12 A. Yes, it is.

13 Q. With regard specifically to the V-18 unit could you

14 tell me the allocation of costs with regard to both

15 panels?

16 A. With regard to both panels allocated to V-18 would be

17 \$157,390.86.

18 Q. And that includes both panels?

19 A. That's correct. It does.

20 Q. So that's the total of both panels?

21 A. Yes.

22 Q. On Exhibit #B-3 which pertains to the people that

23 you're seeking to pool, correct?

24 A. Right.

25 Q. Is there stated the division of interest in each of the

1 panels at the point when active gob is entailed?

2 A. That's correct. There is.

3 Q. And if a frack production is obtained would the

4 percentage be the first -- the percentage listed under

5 percent of unit?

6 A. That's correct.

7 Q. And this is consistent with the allocation procedures

8 established by the Oakwood I and Oakwood II field

9 rules, correct.

10 A. That is correct.

11 Q. The projected depth of the Pocahontas #3 seam under

12 this unit or the projected depth of this well is?

13 A. Approximately 2,000 feet.

14 Q. Do you feel that the plan of development which is

15 depicted on the mine map, Exhibit #G, is a reasonable

16 plan for development of the coalbed methane resource

17 within and under this unit for the benefit of the

18 owners of the resource?

19 A. Yes, it is.

20 Q. And will this proposed plan -- it obviously involved

21 drilling more than one well -- contribute to the

22 protection of correlative rights of the owners of the

23 methane within and under this unit and lessen the

24 likelihood of both physical waste and economic waste?

25 A. Yes, it will.

1 MR. SWARTZ: That's all I have.
2 MR. CHAIRMAN: Questions, members of the Board?
3 (Witness stands aside.)
4 MR. CHAIRMAN: Any other witnesses?
5 MR. SWARTZ: No.
6 MR. LEWIS: I make a motion that we grant the application.
7 MR. HARRIS: Second.
8 MR. CHAIRMAN: Any further discussion? All in favor signify
9 by saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
10 Unanimous approval.
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ITEM III

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3 MR. CHAIRMAN: The next item on the agenda is a petition
4 from Pocahontas Gas Partnership for the pooling of a
5 coalbed methane unit identified as W-32. This is
6 docket number VGOB-96/10/15-0557. We'd ask the parties
7 that wish to address the Board in this matter to come
8 forward at this time.

9 MR. SWARTZ: Mark Swartz appearing for Pocahontas Gas
10 Partnership and Les Arrington is also here on this
11 unit. While Les is passing this information out, these
12 are my favorite poolings. The State highway people in
13 Virginia occasionally acquire minerals under roads and
14 this is a mineral interest under 460 as it runs through
15 this unit. The Highway Department could not get out of
16 the way of a truck and we never have any success
17 leasing from them. So every time we have a unit
18 involving a state road we wind up force pooling the
19 State. But the money gets escrowed and we take good
20 care of them. That's it. This is all this pertains
21 to. When the roadway was acquired either on purpose or
22 by accident -- sometimes it's by accident -- the
23 Commonwealth acquired the minerals under 460 within
24 this area and they're the only respondent. It happens
25 periodically. We've got some new members who may not

1 have seen this, but we're here periodically pooling the
2 Commonwealth.

3 MS. RIGGS: I think at one time the VDOT use to be re-
4 presented by counsel at those hearings and they made a
5 determination to lay back in this hearings and just
6 allow themselves to be pooled as opposed to sending
7 counsel. So that's their standard response to these
8 poolings.

9 MR. SWARTZ: That's right. I forgot. But one of the -- the
10 Attorney General use to come represent them. As soon
11 as I get Les back we can get started.

12
13 LESLIE K. ARRINGTON

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

16
17 DIRECT EXAMINATION

18
19 BY MR. SWARTZ:

20 Q. Since this is a new hearing you need to state your name
21 again.

22 A. Leslie K. Arrington.

23 Q. Now, this does not involve Buchanan Production. Who's
24 the applicant here?

25 A. Pocahontas Gas Partnership, a Virginia general partner-

1 sh-

2 Q. Who are the partners in Pocahontas Gas Partnership?

3 A. Consolidation Coal Company and Conoco, Inc.

4 Q. And who is that has requested be the designated

5 operator? Is it actually Pocahontas Gas Partnership?

6 A. Yes, it is.

7 Q. Is Pocahontas Gas Partnership authorized to do business

8 in the Commonwealth?

9 A. Yes, it is.

10 Q. Is it registered with the DMME and the DGO?

11 A. Yes, it is.

12 Q. Does it have a blanket bond on file?

13 A. Yes, it does.

14 Q. Who are the respondents that you're seeking to pool

15 here?

16 A. The Commonwealth of Virginia.

17 Q. And how is it that they have an interest in this unit?

18 A. Through condemnation underneath US Route 460.

19 Q. And if you look at the plat have you tried to draw the

20 road 460, the four lane, on the map?

21 A. Yes, we have.

22 Q. And it sort of runs through the center of the unit from

23 left to right?

24 A. That's correct. Tract 8.

25 Q. In Exhibit #B-3 have you sought to quantify the

1 interest of the Commonwealth in the unit?

2 A. Yes, we did.

3 Q. And what is the Commonwealth's interest?

4 A. 3.0625 percent of the unit.

5 Q. Is this an application under both Oakwood I and II?

6 A. Yes, it is.

7 Q. Did you send certified mail as required to the Common-

8 wealth?

9 A. Yes, I did.

10 Q. Did they sign for it?

11 A. Yes, they did.

12 Q. Have you given the Board proof of mailing of notice

13 today?

14 A. Yes, we did.

15 Q. Did you also publish?

16 A. Yes, we did in the Bluefield Daily Telegraph on

17 September 24th, 1996.

18 Q. Did you publish a copy of the notice and the little

19 map?

20 A. Yes, we did.

21 Q. Have you filed the certificate of publication with the

22 Board?

23 A. Yes, we did.

24 Q. Do you wish to amend to add any respondents today?

25 A. No, we do not.

- 1 Q And obviously you don't want to dismiss the Common-
2 wealth either?
- 3 A. That is correct.
- 4 Q. Does Pocahontas Gas Partnership own, lease or otherwise
5 control 96.9375 percent of this unit?
- 6 A. Yes, they do.
- 7 Q. So the only outstanding interest is this little
8 interest of the Commonwealth's?
- 9 A. That's correct.
- 10 Q. With regard to lease terms could you tell us what your
11 standard lease terms would be for a coalbed methane
12 only lease?
- 13 A. It's a dollar per acre rental, one-eighth royalty, five
14 year term. Rental is only payable on an annual basis
15 until production commences.
- 16 Q. Would you recommend that these terms be incorporated in
17 any Board order with regard to people who might be
18 deemed to have leased?
- 19 A. That's correct.
- 20 Q. Would you be willing to sign a lease with the Common-
21 wealth on those terms?
- 22 A. Yes, we would.
- 23 Q. This is an 80 acre unit under both Oakwood I and II, is
24 that correct?
- 25 A. That's correct.

1 ultimately it is anticipated it would produce from the
2 active gob?
3 A. That's correct.
4 Q. Is there a mine map of a part of the Buchanan #1 Mine
5 identified as the first part of Exhibit #G included in
6 the application?
7 A. That's correct. It is.
8 Q. And does it show that a portion of one longwall panel
9 falls within the W-32 unit?
10 A. That's correct. The 9-East longwall panel.
11 Q. And, in fact, you've written 9-East sort of in the
12 center of the map, correct?
13 A. Yes, we have.
14 Q. Does this application seek to pool and develop all coal
15 seams below the Tiller under both the Oakwood I and
16 Oakwood II?
17 A. Yes, it does.
18 Q. Have you submitted a well cost estimate with this
19 application?
20 A. Yes, we have.
21 Q. It's at Exhibit #H, I think?
22 A. Yes, it is.
23 Q. Who prepared that?
24 A. I did.
25 Q. When?

1 A. September 12th. 1968.

2 Q. Is it for a frack well?

3 A. That's correct.

4 Q. And what is your estimate?

5 A. The estimated cost is \$229,134.60.

6 Q. Somewhat less than the last one we looked at?

7 A. That's correct. It is.

8 Q. Could that be accounted for by the fact that this well

9 is on the order of 2,000 feet shallower -- at least in

10 part?

11 A. 200 feet.

12 Q. Or 200 feet?

13 A. Yes.

14 Q. At least that's part?

15 A. That's part of it. Yes.

16 Q. Is there also a second page of Exhibit #G that alloc-

17 ates the cost of six wells for that 9-East panel to the

18 collection of units affected by the panel and then

19 allocates a specific cost figure to the W-32 unit?

20 A. That's correct. It does.

21 Q. What is that cost that's allocated to the W-32 unit?

22 A. \$33,756.59.

23 Q. Exhibit #B-3, does it set forth both the Commonwealth's

24 interest in the unit and the Commonwealth's interest in

25 9-East?

1 A. That is correct. It does.

2 Q. So for purposes of royalty or participation or carried
3 interest those are the relevant numbers?

4 A. That is correct. It is.

5 Q. Is the plan as disclosed by the first page of Exhibit
6 #G that overlaid on the mine the plan of development in
7 your judgement a reasonable plan to develop the coalbed
8 methane under this unit?

9 A. Yes, it is.

10 Q. Will this plan of development of these multiple wells
11 over this longwall panel contribute to the protection
12 of correlative rights of all of the people who own
13 interest in these several units?

14 A. Yes, it will.

15 MR. SWARTZ: That's all I have.

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

17 (Witness stands aside.)

18 MR. CHAIRMAN: Is there a motion?

19 MR. KING: I move that we accept this application.

20 MR. LEWIS: Second.

21 MR. CHAIRMAN: Motion and second. Any further discussion?

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

23 Opposed say no. (NONE.) Unanimous approval.

1
2
3 MR. CHAIRMAN: The next item on the agenda is a petition
4 from Equitable Resources Energy Company for the pooling
5 of a conventional gas well. This is docket number
6 VGOB-96/10/15-00558. We'd ask the parties that wish to
7 address the Board in this matter to come forward at
8 this time.

9 MR. WILHOIT: Mr. Chairman and members of the Board, my name
10 is Tony Wilhoit and with me today is Jeff Luethke.
11 It's spelled L-U-E-T-H-K-E. We are here on application
12 filed by Equitable Resources Energy Company for a
13 pooling order on well V-3609. The application is
14 authorized by Virginia Code annotated 45.1-361.21 and
15 Section 7 of the Virginia Gas and Oil Board Regula-
16 tions. I would submit to the Board that a certificate
17 of notice has been tendered to the Board, the orginial
18 affidavit of publication and proof of notice have all
19 been tendered to the Board. I have two witnesses who
20 need to be sworn in at this time.

21 COURT REPORTER: (Swears witnesses.)

22 MR. WILHOIT: May we proceed?

23 MR. CHAIRMAN: Yes, you may.

24 MR. WILHOIT: I call at this time Mr. Dennis Baker.
25

1 DENNIS BAKER

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

5 DIRECT EXAMINATION

6
7 BY MR. WILHOIT:

8 Q. Mr. Baker, would you state your full name, please, for
9 the record?

10 A. Dennis Baker.

11 Q. Where are you employed, Mr. Baker?

12 A. Equitable Resources Energy Company.

13 Q. In what capacity are you employed by Equitable Resourc-
14 es Energy Company?

15 A. Senior landman.

16 Q. Can you describe for the Board what some of your
17 responsibilities entail?

18 A. The acquisition of oil and gas leases for nature gas as
19 well as coalbed methane rights.

20 Q. In connection with your employment at Equitable are you
21 familiar with Equitable's application for the estab-
22 lishment of a drilling unit and pooling order for
23 Equitable well V-3609?

24 A. Yes, I am.

25 Q. Have you testified before this Board on occasion before

1 as an expert?

2 A. Yes, I have.

3 MR. WILHOIT: I'd submit him an expert to the Board?

4 MR. CHAIRMAN: You may proceed.

5 Q. (Mr. Wilhoit continues.) In connection with the
6 application are you familiar with the area that's been
7 included on Exhibit #A?

8 A. Yes, I am.

9 Q. Does Equitable own drilling rights in that unit?

10 A. Yes, we do.

11 Q. Does the proposed unit as depicted on Exhibit #A to the
12 application include all acreage within 2,500 feet and
13 1,250 foot radius of the proposed well?

14 A. Yes. That's correct.

15 Q. What interest does Equitable own in that unit?

16 A. At the time of application 87.56 percent of the
17 interest was leased.

18 Q. At the time of this hearing what is the interest owned
19 by Equitable?

20 A. Currently at the time of the hearing the same interest,
21 87.56 percent.

22 Q. Are you familiar with the ownership of the drilling
23 rights of other parties other than Equitable underlying
24 this unit?

25 A. Yes, I am.

1 Q. What are those interests?
2 A. At the time of application 12.44 percent was unleashed.
3 At the time of the hearing the same interest remains
4 unleashed, 12.44 percent.
5 Q. So at this time all unleashed parties are set out on
6 Exhibit #B?
7 A. That's correct.
8 Q. Prior to the filing of the application did you make any
9 effort to contact any of the respondents in an attempt
10 to work out an agreement regarding the development of
11 the unit?
12 A. Yes, sir.
13 Q. Subsequent to the filing of the application have you
14 continued to attempt to reach an agreement with any of
15 the people listed on Exhibit #B?
16 A. Yes, we have.
17 Q. As a result of these efforts have you acquired any
18 other leases from any respondents listed on Exhibit #B?
19 A. No, we have not.
20 Q. Have you made any efforts to determine if the individ-
21 ual respondents were living or deceased or their
22 whereabouts, and if they are deceased were efforts made
23 to determine the names and addresses or whereabouts of
24 any successors to any deceased owners?
25 A. Yes, we did.

1 C Have you made a diligent effort to verify, check,
2 identify and locate the unknown heirs?
3 A. Yes, we have.
4 Q. What sources have you used in your efforts?
5 A. We have did preliminary research in the County records
6 which includes the deed records, all probate records,
7 assessor's office records, treasurer's office, second-
8 ary sources such as we've checked telephone directies,
9 checked with family and friends and city directories.
10 Q. In your professional opinion then are you satisfied
11 that you've exercised due diligence in trying to locate
12 each of the respondents named in Exhibit #B?
13 A. Yes.
14 Q. Are the addresses set out in Exhibit #B the last known
15 addresses for each of the respondents?
16 A. Yes.
17 Q. Are you requesting that the Board enter an order
18 pooling all the unleased interests listed on Exhibit
19 #B?
20 A. Yes, we are.
21 Q. Are you seeking to pool the drilling rights of each
22 individual respondent if living and if deceased, the
23 unknown successor or successors to the deceased
24 individual?
25 A. Yes, we are.

1 Q. Are you seeking to force pool the drilling rights of
2 anybody designated as a trustee on Exhibit #B?
3 A. Yes, we are.
4 Q. Anybody that's named as a successor to trustee would
5 also be included, is that correct?
6 A. That is correct.
7 Q. Are you familiar with the fair market value of the
8 drilling rights in the unit here and in the surrounding
9 area?
10 A. Yes, I am.
11 Q. What would the terms of that fair market value be?
12 A. The consideration would be five dollars per acre, a
13 five year term, one-eighth royalty.
14 Q. How did you acquire this information?
15 A. These are terms that we have negotiated successfully
16 with probably 98 percent of the individuals that we
17 lease in Southwest Virginia.
18 Q. In your opinion then are you satisfied that these terms
19 represent the fair market value of and the fair and
20 reasonable compensation for drilling rights in this
21 area?
22 A. Yes.
23 Q. Now, based on testimony as to the respondents who have
24 not voluntarily agreed to pool would you recommend that
25 the respondents listed on Exhibit #B who remain

1 be allowed to exercise the options as provided
2 by the Legislature and applicable statutes regarding
3 their ownership interest in the unit?

4 A. Yes.

5 Q. And that would be either to participate, to accept a
6 cash bonus and a royalty, or in lieu of that to share
7 in the operation of the well on a carried basis?

8 A. That's correct.

9 Q. Are you recommending that the elections to be made in a
10 proposed order or an order from this Board be -- that
11 the responses be sent to Equitable Resources?

12 A. Yes. Equitable Resources Energy Company.

13 Q. That being your office in Kingsport, Tennessee?

14 A. That is correct.

15 Q. And to your attention?

16 A. Yes.

17 Q. Should this be the address for all communications with
18 Equitable concerning the order?

19 A. Yes. That's correct.

20 Q. Do you also recommend to the Board that the force
21 pooling order provide that if no written election is
22 properly made by a respondent then they be deemed to
23 have elected to accept the cash royalty option in lieu
24 of participation?

25 A. Yes.

1 Q. Should the unleased respondents be given 30 days from
2 the date the order is filed to file their written
3 elections?

4 A. Yes.

5 Q. If the unleased respondent elects to participate should
6 he be given 35 days to pay Equitable for their proportionate
7 share of well costs?

8 A. That's correct.

9 Q. Do you expect the parties electing to participate to
10 pay in advance their share of the completed well costs?

11 A. Yes, we do.

12 Q. Are you asking the Board to include that in an order?

13 A. Yes.

14 Q. Should Equitable be allowed 60 days following the
15 recordation date of the order and thereafter annually
16 on that date until production is achieved to pay and
17 tender any cash bonus becoming due under this order?

18 A. Yes.

19 Q. Do you further recommend that the order provide that if
20 a respondent elects to participate but fails to pay
21 their proportionate share of well costs then their
22 election to participate should be treated as having
23 been withdrawn and void and they should be treated as
24 if no initial election had been filed?

25 A. That's correct.

1 Are you recommending to the Board that the order
2 provide that where they do elect to participate but
3 default in regard to payment of costs any cash sum
4 becoming payable to them be paid within 60 days after
5 the last date on which they could have paid or made
6 satisfactory arrangements for payment of the well
7 costs?

8 A. That's correct.

9 Q. Are you further recommending that the order provide
10 that if the respondent refuses to accept any payment
11 due including any payment due under said order or any
12 payment of royalty or cash bonus or said payment cannot
13 be paid to a party for any reason or there is a title
14 defect in their interest that the operator create an
15 escrow account for their benefit until the money can be
16 paid to the party or until the time the defect is
17 cured?

18 A. That is correct.

19 Q. Who would you suggest to the Board be named the
20 operator under the force pooling order?

21 A. Equitable Resources Energy Company.

22 MR. WILHOIT: That's all I have of this witness.

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

24 (Witness stands aside.)

25 MR. CHAIRMAN: Call your next witness.

1 MR. WILHOIT: I'd call Mr. Bob Dahlin.

2
3 ROBERT A. DAHLIN, II

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

6
7 DIRECT EXAMINATION

8
9 BY MR. WILHOIT:

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

11 A. Robert A. Dahlin, II.

12 Q. And where are you employed?

13 A. I'm employed by EREX as a production specialist.

14 Q. How long have you been in that position?

15 A. About eight years.

16 Q. Have you testified before this Board before as an
17 expert?

18 A. Yes, I have.

19 MR. WILHOIT: Mr. Chairman, I'd submit this witness as an
20 expert.

21 MR. CHAIRMAN: You may proceed.

22 Q. (Mr. Wilhoit continues.) Would you explain what your
23 responsibilities are as a production specialist?

24 A. I'm responsible for the oil and gas production from our
25 wells in Virginia.

1 In connection with your responsibilities for the wells
2 in Virginia are you familiar with the lands involved in
3 this application and in the surrounding area?
4 A. Yes, I am.
5 Q. Are you familiar with the proposed exploration and
6 development of the unit involved in this application?
7 A. I am.
8 Q. What is the total depth proposed for the initial well
9 under this plan of development?
10 A. 4,800 feet approximately.
11 Q. Will that be sufficient to penetrate and test the
12 common sources of supply in that formation?
13 A. Yes, it will.
14 Q. Are you requesting that the force pooling of convent-
15 ional gas reserves not only to include the designated
16 formations but any formation excluding coal formations
17 which may be between those formations designated?
18 A. Correct.
19 Q. Is this initial well located at a legal location?
20 A. Yes. It is a legal location.
21 Q. Have you had an opportunity to determine what the
22 estimated reserves of the unit may be?
23 A. As of right now there are no wells on line in this
24 area but from overflow testing we anticipate 750
25 million cubic feet of gas.

1 Q. Are you familiar then with the well costs for this
2 proposed initial well under your plan of development?
3 A. Yes.
4 Q. Have you prepared an AFE?
5 A. Yes.
6 Q. Has it been reviewed, signed and submitted to the
7 Board?
8 A. Yes, it has.
9 Q. Was it prepared by an engineering department knowledg-
10 able in the preparation of AFEs and knowledgeable with
11 regard to this well and the well costs in this area?
12 A. Yes.
13 Q. Does this AFE represent a reasonable estimate of the
14 well costs for the proposed well?
15 A. It does.
16 Q. What are the dry hole costs?
17 A. The dry hole costs are \$149,800.
18 Q. And what would be a completed well cost estimate?
19 A. \$274,100.
20 Q. Do you anticipate a multiple completion in this well?
21 A. Yes.
22 Q. Does the AFE include a reasonable charge for super-
23 vision?
24 A. Yes.
25 Q. In your opinion as a production specialist would the

1 Granting of this application be in the best interest of
2 conservation, prevention of waste and the protection of
3 correlative rights?

4 A. Yes.

5 MR. WILHOIT: That's all I have at this time, Mr. Chairman.

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

7 MS. RIGGS: Is there a permit on this well yet?

8 THE WITNESS: I believe a permit has been applied for.

9 MR. WILHOIT: It probably was submitted and recieved in Mr.

10 Fulmer's office on or about the 11th of this month.

11 MR. FULMER: It should be. I don't know whether or not I

12 recieved it at the time I did the summary.

13 MR. CHAIRMAN: Anything further?

14 MR. HARRIS: Mr. Chairman, I just have a question about the

15 location. I was trying to look at the map coordinates

16 and it just so happened we had the map that the Gas and

17 Oil Board Office sent us, but what is this near? Is

18 this near Wise, Virginia -- the Town of Wise?

19 THE WITNESS: No. It's approximately southwest of Pound. I

20 believe it's -- let's see. Dennis, do you have a

21 better map.

22 MR. HARRIS: Well, it's not that critical. But it is

23 southwest of Pound?

24 THE WITNESS: It's in Wise County. It's about the further-

25 est north development we've got right now. If you're

1 familiar with any of the other force poolings we've had
2 recented in what we call the (Inaudible.) Knob area.
3 This has become an exploratory area to the northwest of
4 that. That's why these wells aren't on line yet. It's
5 another anticlinal feature that we're exploring up
6 there.

7 MR. HARRIS: What type of feature?

8 THE WITNESS: Anticlinal.

9 MR. HARRIS: Okay. All right.

10 MR. CHAIRMAN: Anything further?

11 (Witness stands aside.)

12 MR. CHAIRMAN: Do we have a motion?

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

14 MR. CHAIRMAN: A motion to approve.

15 MR. HARRIS: Second.

16 MR. CHAIRMAN: Further discussion? All in favor signify by
17 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.)
18 It's a unanimous approval.

1
2
3 MR. CHAIRMAN: The final item on today's agenda is the Board
4 will consider proposed amendments to the Virginia Gas
5 and Oil Board Regulations that have been recommended by
6 the Regulatory Review Working Group. I've ask Steve
7 Walls who is our director of policy of director of the
8 division of energy out of Richmond to come in and talk
9 to the Board about these. I've chaired the regulatory
10 work group. Many of the folks sitting around here
11 participated and assisted us in the drafts. So, Steve,
12 if you would provide the Board some information.

13 MR. WALLS: Thank you, Mr. Chairman. My name is Steven
14 Walls, and as Benny said, I'm the manager of the office
15 of program support and also the division of energy with
16 Department of Mines, Minerals and Energy. I guess the
17 first question I have is for the new members of the
18 Board. This is a process that has been going for a
19 while. Would it be helpful for you to have a little
20 bit of context to how we got to where we are today? I
21 see one head shaking yes. I'll try to be quick. What
22 you have in front of you today are proposed amendments
23 to the regulation that governs business in front of the
24 Board. This process started when the Governor issued
25 an injected order shortly after he came into the office

1 asking all agencies to review their regulations and
2 determine whether or not they're essential for the
3 efficient and effective operation of what they're
4 required to do. So under that each of the agency that
5 have jurisdiction over regulations or are staff to
6 boards with jurisdiction over the regulations like this
7 were asked to do this review. So we solicited public
8 comments starting back in November of 1994 for a month.
9 Then we brought those comments and the regulations
10 before a regulatory working committee that went through
11 both the Board regulation and the Department's gas and
12 oil regulation and made recommendation for changes to
13 that. We took those recommendations and drafted a
14 report that was submitted to the Secretary of Commerce
15 and Trade that were under a Governor's office for their
16 review. They approved that report and upon that we
17 came back to the Board to let them know that the
18 process of -- review process was. We handed out copies
19 of the report that included draft proposed changes to
20 the regulation and asked the Board if they wanted to
21 proceed with making any amendments to the regulations.
22 The Board said yes. So then we started the process
23 under some different executive orders and the ad-
24 ministrative process act to formally make amendments
25 to the regulation. That involved some internal

1 approvals within the administration of State Government
2 and then the issuance of a notice of intended regul-
3 ation action, a 30 day public comment period. I
4 believe there was one form of comments submitted during
5 that 30 day public comment period from the Virginia Oil
6 and Gas Association asking to be involved in the later
7 stages of the process. Then we brought that to the
8 Board. Well, I guess at the time they -- they also
9 told us to go ahead and set up a regulatory working
10 committee to go back and take a look at the regulation
11 as it required under the Administrative Process Act.
12 That working committee met twice, on August 22nd and
13 September 16th, reviewed the recommendations from the
14 earlier executive order review of the regulation, made
15 a few other recommended changes. The Department then
16 took -- our staff took the work that came out of that
17 committee and turned it into the proposed regulation
18 that was sent to you in the packet. If any of you
19 don't have that I have some extra copies here if you
20 need to see that all. We also -- what you got in your
21 packet was -- we completed all of the paperwork that
22 has to go with the proposed regulation into the
23 Secretary of Commerce and Trade and the Governor's
24 Office and the Department of Planning and Budget for
25 their review and approval and sign off. And then after

1 their approval to the Virginia Register of Regulations
2 for it to be published as a proposed regulation. That
3 would all be contingent upon the Board deciding that
4 it does want to go ahead with making this an amendment
5 to the regulation. If you do want to go ahead the
6 steps that would follow are we would turn this in, as I
7 said, to the Secretary of Commerce and Trade, Department
8 of Planning and Budget and then that goes to the
9 Governor's office, too. The Department of Planning
10 and Budget has up to 45 days to do an economic impact
11 assessment of the proposed regulation. We gave some
12 basic information to help them do that. I think that
13 assessment is in the packet. After is finished and
14 after the gubernatorial and secretarial sign off it would
15 be submitted to the register of regulations. It would
16 then be published as a proposed regulation and there
17 would be a 60 day public comment period during which
18 the Board would be asked to have a public hearing on
19 the regulation. After that then the staff at the
20 Department would prepare the final regulatory package
21 to bring before the Board and on your approval it would
22 be published in the register again as a final regulation.
23 And after a 30 day waiting period it would
24 become effective. That all will take -- well, I think
25 that the regulatory working committee Benny Wampler

1 estimated that that would May of 1997 for that process
2 to go through. If everything goes well we can probably
3 get it done by that time, although I can't promise any
4 type of review time periods of the people outside the
5 department at the gubernatorial and the secretarial
6 level. But we think that that's a reasonable estimate
7 of when the whole process would get done. I hope that
8 was quick enough and didn't bore you. You have the
9 package itself in front of you and I don't know that we
10 need to -- if you want to go through the whole package
11 we can or if you want to go through just the proposed
12 changes to the regulation itself. We can do that.
13 That might more efficient.

14 MR. CHAIRMAN: Let's go through just the proposed changes.

15 Let me ask, are there any people here that wish to
16 address the Board in this matter? Just so we have that
17 identified up front.

18 MR. SWARTZ: I don't think we know until we hear what
19 happens.

20 MR. MASON: I'm George Mason and I'd like to get a copy of
21 whatever the handout is on behalf of Equitable Resourc-
22 es Energy Company, also the Virginia Oil and Gas
23 Associations.

24 MR. CHAIRMAN: There you go.

25 MR. WALLS: Anybody else?

1 MR. SWARTZ: I'd like a copy, too, if you've got one.

2 MR. WALLS: The members of the working committee were suppose
3 to have been sent a copy of the proposed regulation
4 that was in here. We have that in front of us and I
5 know that the staff in Richmond talked to Diane Davis
6 and I thought that was suppose to have gone out last
7 week. I'm not sure if you have recieved it.

8 MR. CHAIRMAN: It's in the mail.

9 MR. MASON: I'd just like to know the end date when this
10 should be effective. I talked with him off record and
11 it was a minimum of six months. We'd like to know a
12 point in time when this whole regulatory review process
13 should be final so we can go forward with the Gas and
14 Oil Board Regulations as modified. That's one thing
15 I'd like to know at the completion of this hearing.

16 MR. WALLS: Again, I can't promise -- the process has those
17 steps in it that we talked about and I can't promise
18 what the review periods will be for the Secretary and
19 the Governor's Office. At the time the regulatory
20 working committee met -- at the end of that meeting Mr.
21 Wampler estimated that it would probably be around May
22 of 1997. Looking at the schedule and based upon our
23 experience with the review times that still could work
24 and we expect it to be around May of 1997.

25 MR. MASON: I understand. That's a target date though?

1 CHAIRMAN: That's a target date. We can't give you
2 exact dates because these other parties -- no guaren-
3 tees. But we think that it will move through at that
4 rate.

5 MR. MASON: Thank you.

6 MR. WALLS: We'd certainly like to get it done. Again, this
7 is all contingent on the Board deciding it wants to go
8 ahead with this in the first place. So I don't want to
9 be speaking for the Board. In your packet starting --
10 it says on the top Department of Mines, Minerals and
11 Energy Virginia Gas and Oil Board Regulations, Page 1
12 of 23. It's just a few pages. This format differs a
13 little bit from what the Board saw at the end of the
14 initial regulatory review. In the interim time period
15 the registrar of regulations in Virginia has published the
16 Virginia Administrative Code and set up a whole new
17 numbering system for all regulations. So this now
18 reflects the new numbering system for regulations and
19 we've got it in the forms that we need to turn it in to
20 the registrar's office also. So before the number of
21 the regulation was VR48-05-22.2 and now it's 4VAC160
22 and then the numbers of the regulations. So the old
23 section one is now 4VAC25-160-10, etcetera. So the
24 format will differ just a little because of that.
25 What you also have is eight changes that are proposed

1 to be deleted and are over struck and the new one is
2 underlined. What I'd do is just run through it really
3 quick, I guess, and then make note where the -- for the
4 people who were involved in this last time, where some
5 of the language is difference from what was presented
6 to the Board originally by the executive review. In
7 the definitions, the first section, there are two
8 definitions that are proposed. One to repeal meets and
9 bounds and one under the mine development plan. Under
10 meets and bounds, this works with other amendments
11 later on in the regulation, that moves us to use of the
12 state plane coordinate system in regulations instead of
13 in the applications before the Board and the order sets
14 up a meets and bounds description. The second, mine
15 development plan clarifies what is considered to be a
16 mine development plan that applicants for orders in
17 front of the Board have to account for. And there was
18 some question as to what exactly that was based upon
19 the experience before the Board over the years and this
20 was intended to clarify that. I'll just keep going
21 through if there are no questions. Going to Page 3,
22 under new Section 30, provisions, there was some
23 question in the past and in one case in particular the
24 deadline for filing fell on a holiday and this is just
25 suppose to expressly state what happens when the

1 deadline for filing something before the Board falls
2 on a holiday because that's not otherwise covered by
3 law or regulation. It says that people have to apply
4 at the date before the holiday so that the full 30
5 calender day period for notice is met. Under B-2 it's
6 requiring that two copies of the materials be filed
7 with the Division, and that is something for admini-
8 strative effeciency. I think we try to keep one as an
9 official copy and then one used to make copies to send
10 out to the Board. Under D of this section it would no
11 longer require that at the time of filing that the
12 Division of Gas and Oil notify the applicant of the
13 docket number. This would allow filings to be mailed
14 and otherwise would help in the effeciency of the
15 operation. The sections about notice of the hearing
16 has been changed to simplify they have to -- this is
17 really many of the changes in this section through Page
18 5. It is to not require that the whole application
19 before the Board be sent to everyone who is provided
20 notice. That can be very -- as you can see, the
21 paperwork that you get, it is a lot of material. And
22 more to specify what information needs to be sent to
23 the parties who are recieving notice by the Board. The
24 intent here was to make the notice more understandable
25 to the people who are getting it so that it will

1 directly relate to the interests that they have that
2 will be in hearings before the Board. In particular on
3 Page 5 it sets out the information that is to be sent.
4 This is changed a little bit from what was originally
5 presented to the Board at the end of the first executive
6 order review process. And it's based upon the
7 discussions at the second working committee's meetings
8 in the last month or so. This is some language that
9 the people on the committee authorized the Department
10 to draft that they have not seen yet. Particularly in
11 6-A, B and C in the middle of the page it sets out the
12 unique information that would need to be included in
13 the notice for a pooling order or a pooled field rule
14 or for a location exception. Three types of applications
15 before the Board. It's trying to make it very
16 clear that this -- you don't have to send all of the
17 irrelevant information for other types of applications
18 that will be in front of the Board.

19 MR. CHAIRMAN: Steve, on 6-A for a pooling order --

20 MR. WALLS: Yes. Thank you. I guess my spell checker
21 didn't catch that. And then in not sending the
22 complete application it's recognizing that some people
23 may want to see them. So over on Page 6 under Item C-5
24 it does state they we are to include information about
25 how the people can obtain a complete copy if they do

1 wish to see all of it. So it isn't taking away
2 anything that they would otherwise be able to see.
3 Then under F on Page 6 it's stating that when an
4 application is filing a petition to modify a force
5 pooling order they don't have to send notice to
6 everybody who is subject of that order which is what it
7 is under current regulation but only would have to send
8 notice to those persons named in the order to be
9 modified whose interests may be affected by that order.
10 So if a person's interest are not being affected then
11 they would not recieve notice of that. But if their
12 interests were to be affected by that proposed action
13 they would recieve notice. On Page 7, in the middle,
14 it's kind of completing our move over to the state
15 plane coordinate system as the basis of describing
16 pools or fields. In this case pools. In the earlier
17 language there were some transition provisions in this
18 which are no longer needed and this just completes that
19 process that the Board started earlier. And that's the
20 same down in 6-C at the bottom of the page. It also is
21 part of that move to the state plane coordinates. On
22 Page 8 at the bottom of this, the number twelve that is
23 over struck, this is under applications for a field
24 rule. It would no longer request or require that
25 copies of proposed exhibits be submitted with the

1 application for the Board. The reasoning behind this
2 was that many times exhibits have not been completed
3 yet. So the applicants aren't able to submit all of
4 the proposed exhibits and this does not limit to
5 submitting additional exhibits at the time of the
6 hearing. So the committee thought that it really
7 wasn't needed. Moving to the next section, Section
8 4VAC-25-160 seeks the applications for exceptions to
9 minimum well spacing. A-3, this changes when an
10 application for an exception to a well location is
11 submitted what has to be submitted about other wells in
12 the area. They have to look at those wells both
13 permitted and where there is an application on file
14 with the Department for a well location in the area so
15 as a Board you know both where the actual wells are and
16 where permitted wells are whether they're drilled or
17 not and if there's any applications filed before the
18 Board. You've got your complete set up information.
19 Since you're going to be getting both actual permitted
20 well locations and applied for locations you won't be
21 getting in their application a description of spacing
22 of other wells producing from the formation or forma-
23 tions producing the well. If you would need that
24 information that would be available from the Department
25 from the Division of Gas and Oil. So you'd know all of

1 the wells inside the spacing unit to be considered and
2 and then the other information would come from the.
3 Board. Moving over to Page 9, again it would strike
4 that they would submit copies of proposed exhibits.
5 Moving down Page 9 under applications for conventional
6 gas or coalbed methane units where there are no
7 conflicting claims, it changes the language to move it
8 to the state plane coordinate system consistent with
9 earlier changes. On Page 10 the changes in twelve
10 which is now twelve which was thirteen and the over
11 struck language in fourteen clarifies that it's asking
12 for an estimate of production over the life of the well
13 or wells. And only is needed to show the estimated
14 recoverable reserves of the unit if it differs from the
15 actual production estimate for that well itself.
16 That's really just a clarifying amendment. Then the
17 eighteen that is over struck is similar to the above
18 ones, saying no longer copies of proposed exhibits have
19 to be submitted. Under C that's just some english
20 language changes to try and make it more clear reading
21 and moving some of the sentences around. And then as
22 it goes over in the same section and onto the top of
23 Page 11 it will extend the length of time that after
24 elections are made under a force pooling order where
25 the operator has to submit the supplemental order to

1 the Board. Currently they are suppose to submit the
2 supplemental order 20 days after the end of the
3 election time period. And, of course, in a pooling
4 order that's where the people would decide they're
5 going to be participating or not or if they want to
6 lease under the terms of the Board order or don't
7 respond. It would extend the time for the preparation
8 of the supplemental order to 20 to 45 days after that
9 to give more time to get the work done and have all of
10 the Ts crossed and Is dotted to get an accurate
11 supplemental order before the Board. Moving over to
12 Page 12, this section has to do with allowable costs
13 which may be shared in pooled gas oil operations and
14 there's a new subsection E to be added that states if
15 no one elects to be a participating or a non-partici-
16 pating operator on a carried basis -- in other words,
17 they're not putting up their costs of the proceeds --
18 that everybody then would be either leased or deemed to
19 have leased then the operator shall have no obligation
20 for court costs to the Board since that operator would
21 be carrying those costs 100 percent itself. Under
22 record keeping in the next section toward the bottom of
23 Page 12 it adds to the record keeping requirements,
24 that the unit operators maintain information on
25 payments made to lessors and escrow agents and suspend-

able.) I think this is clarifying that when the regulations was done we didn't fully envision all of the escrowing that goes on under a lot of the orders. This just brings it up to date with the records that they should be keeping. Moving to Page 13 under application to change the unit operator of a unit where it's been under a Board order. Under A -- well, all of this really is just working to change the whole process where an operator would come in and propose to have the unit operator changed. This often happens if a company or a series of operations are sold from one operator to another and they have to come back before the Board for the new operator. It would also cover if the Board has designated an operator and someone else wishes to petition it then they have that operator replaced with another operator. So it can be done both on a voluntary basis brought to the Board or if someone were to petition it. A would no longer require Board approval to transfer when -- going to the operator to begin with in every case. B, the language about voluntary transfer where -- it's really setting up a little different approach. Instead of dealing with voluntary transfer and involuntary transfer fully separate it's setting up some subsections and sort of clarifying the language in that stating an applicant

1 should request that the Board amend the order. A lot
2 of these changes have to do with the amount of notice
3 and who has to give notice in front of these petitions
4 before the Board. If the applicant makes the petition
5 then the applicant is required to give actual notice to
6 everyone who could be affected by that. And if it's in
7 a large field area, like the Oakwood fields which was
8 brought before the Board -- many, many, I guess
9 thousands of people that may be required to be given --
10 certainly hundreds that could be required to be given
11 notice under this. If the Board makes the motion to
12 change the unit operator then the Board publishes
13 notice in the newspaper of the proposed actions and
14 individual notice is not made to every single party who
15 has an interest in the area covered by that field rule.
16 So that's, I think, one of the driving forces behind
17 all of these. So it simplifies how this process would
18 work on doing a transfer. It also states that the
19 request for the transfer shall include a detailed
20 statement of the facts supporting the removal of the
21 existing operator and identification that the orders
22 cover. It gives a general statement about that instead
23 of including a longer list of specific information that
24 need to be put into the application. This would allow
25 more flexibility to cover the varied types of applica-

1 to transfer an operator that can come before the
2 Board. Finally, on Page 15 it sets up that the Board
3 provides notice under these situations and that would
4 change it from the operator having to file individual
5 notice by referring through to the notice under Section
6 45.1-361.19.B of the Code which is where the Board does
7 notice of hearings. The next section has to do with
8 appeals of the Director's decisions. It is similiar to
9 some of the other changes made. There's two, just
10 clarifying a change in number five just to make it
11 plural and number eight is deleted to say that they can
12 bring any other relevent information which the petit-
13 ioner which is to provide. I think that was felt to be
14 redundant because they can always bring any information
15 before the Board. So there's really no need to state
16 that. It just clarifies it. The next section address-
17 es miscellaneous petitions before the Board, moving from
18 Page 15 over to 16, and it's the same change toward the
19 top of the page. It's just saying that we're not
20 listing out any other information relevent to the
21 petition as the people always have the opportunity to
22 do that. The next section, starting in the middle of
23 Page 16, 150, effective dates of Board orders. This
24 change was not part of the executive order. 15 review
25 originally but this change is being done to match up

1 the link of Board orders with changes made to links of
2 permits by the Legislature in 1996 under the Gas and
3 Oil Act. There they lengthen the life of a permit from
4 one year to two years with the option of applying for a
5 two year extension. So the thought process here is
6 that the pooling orders ought to be effective for the
7 length of time that the permits are effective. So
8 these changes here where they have the initial period
9 for two years and then if a permit has been issued it
10 would stay in effect until that permit is no longer
11 valid. Finally if an appeal was taken in front of the
12 Board the time during that appeal would be (Inaudible.)
13 in that two years during the time of the appeals. So
14 the two year period would then be counted before and
15 after. The next change, starting on Page 17 going
16 through 18 and almost all of 19, deletes all of the
17 specific enforcement processes that were originally set
18 out by the Board regulation. These directly matched
19 the enforcement processes of the department that are
20 used under the department regulation and really under
21 the act -- the Gas and Oil Act. Originally both the
22 Board and the Department promulgated the exact same
23 enforcement processes. So it was felt during the
24 reviews that it would just be -- since we're using the
25 same we don't need to spell it all out here and then

1 to change it in both places. And also at the last
2 this committee met to look at the recommendations early
3 last month. They also felt that we should add refere-
4 nce to the Code Section about enforcement. So that has
5 been added in here, too. The next changes, going to
6 Page 20 and 23, under the section survey tests and
7 deviation tests, first it was a long paragraph under A-
8 1 and it's breaking it up into some small paragraphs.
9 There are some just clarity changes under four,
10 directional survey and undirectional survey, fixing
11 some other typos that were in there and just renumber-
12 ing the sections on Page 21. The final sets of changes
13 are on Pages 22 and 23 where it is proposing to delete
14 four sections of the regulation. Allowable production,
15 proration of gas wells, enhance recovery and under-
16 ground storage of natural gas. These provisions have
17 never been used -- well, the first three have never
18 been used by the Board if I'm correct, I think, yet. I
19 think there is an allowable production case in front of
20 the Board now.

21 MS. RIGGS: I think they've acted on that already.

22 MR. WALLS: Oh, they have. Okay. And I believe that as the
23 committee went through this they felt that the Board
24 has the authority under the Code already to set
25 allowable productions. And we don't need to spell that

1 out in regulation. That is just duplicative of what is
2 already provided for in the Code. So they are propos-
3 ing that a lot of this language in the regulation
4 addressing allowable production be deleted. Proration
5 and enhance recovery I don't believe has ever happened
6 in Virginia and it was not part of the (Inaudible.) So
7 they felt like they needed to take it out of the
8 regulation. Finally underground storag of natural gas.
9 In the Gas and Oil Act it referred to storage wells and
10 so the Board at the time the regulation was done back
11 in 1990/1991 put this section in here saying nobody can
12 dock operations without getting an order from the
13 Board. Subsequent to that time the Legislature
14 established that the State Corporation Commission can
15 issue a certificate of public convenience and necessity
16 under the utility facilities act for underground
17 storage of natural gas. So it really creates these
18 storage fields. There's one in Virginia right now that
19 has been issued a petition by the State Corporation
20 Commission. The Board use to have jurisdiction over
21 the Early Grove Field. So it really turns them into a
22 utility facility. It allows the operator to get the
23 certificate as a utility facility and be able to
24 operate it under there. So the committee felt like it
25 no longer needed to be addressed in the Board regula-

1 tion. Any question?

2 MR. CHAIRMAN: Questions of Steve?

3 MR. HARRIS: Steve, I hate to go back several pages but I
4 just want to make sure what I heard was correct. It
5 concerned wells that were already drilled, Page 8 of
6 23, I believe, existing wells. There was a comment
7 about existing wells and we would not have that on the
8 box now or we would have access to that --

9 MR. WALLS: In an application for an exception to the well
10 spacing requirements in the application they will need
11 to show the relevant location -- this is under A-3.
12 The wells permitted or for which a permit application
13 is pending before the Division of Gas and Oil within
14 the distance provided in 316.17 of the Code. Now, that
15 is the statewide spacing provision of the Code. So
16 that provision I think for gas wells reads that no well
17 shall be located closer than 2,000 feet to another
18 well. That distance was recently changed. So you
19 would have information about all wells permitted and/or
20 there's an application for that are within that
21 distance. If the Board wishes to see information about
22 other wells beyond that distance then the Department
23 would be able to bring that information to them. I
24 think the thought process with the committee was that
25 those other wells may belong to -- how far to do you go

1 first and second, those other wells may belong to other
2 operators then they're not going to have the same type
3 of information. The department will have that, though,
4 and can bring information about other wells in the area
5 that have been permitted, drilled or identified.

6 MR. HARRIS: Yeah. Okay. I misunderstood what you were
7 saying.

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

9 MR. GARBIS: On Page 22 of 23 on the allowable production,
10 you say that is spoken to in another part of the
11 regulation?

12 MR. WALLS: It's spoken to in the Code. I see Sandy
13 digging. I did 361.B.6 and I didn't --

14 MS. RIGGS: It's under the statutory provision for field
15 rules and what it says is that when the Board creates,
16 establishes or modifies the drilling units the Board
17 shall make the following determinations. And then it
18 lists a series of things that the Board determines, one
19 of which is the allowable production of each well.

20 MR. CHAIRMAN: Other questions, members of the Board.

21 MR. BRENT: Just one. You indicated that the Virginia Gas
22 and Oil Association had requested the opportunity to
23 imput on this?

24 MR. WALLS: Yes. We have representatives of Virginia Gas and
25 Oil Association on the working committee, some of whom

1 are here today.

2 MR: Talking about the regulatory work group committee, both
3 industry, coal and citizen representatives participat-
4 ing in the review of this regulation plus the Gas and
5 Oil --

6 MR. WALLS: We have the names and the numbers of the Code
7 here.

8 MR. CHAIRMAN: Other questions, members of the Board? Any
9 comments from those in attendance here today? Do you
10 have anything further?

11 MR. WALLS: Yes. I guess that it's now your choice to
12 decide if you want to go ahead with this as a proposed
13 regulation. So if you do then we will submit it to the
14 planning budget and take it through the next steps that
15 cross us. If you do decide to go ahead and publish
16 this proposed regulation it would be at your choice.
17 You could hold a separate public hearing or you could
18 have a public hearing as part of one of your regular
19 meetings that would fall within the 60 day public
20 comment period. Likely the later of your scheduled
21 meetings, that would be within that 60 day public
22 comment period to get people time to look it over and
23 have it published before they come with comments. We
24 would bring all comments back to the Board and then
25 propose changes that would come about from those

1 comments for the Board's consideration before we
2 published it as the final regulations. So you'll have
3 another bite of the apple as a final regulation also.

4 MR. KING: When do you expect the Governor's Office to
5 return their comments?

6 MR. WALLS: The Department of Budget Planning has 45 days
7 after we submit it to complete the economic impact
8 assessment. Then the Department has to reply to that
9 economic impact assessment which we've been able to in
10 just a few days. I think we've only got two of them so
11 far. Shortly after that the Secretary's Office usually
12 acts. Now, if it's during the General Assembly session
13 and they're real busy with other things going on --
14 that's why I say I can't really promise it. I can tell
15 you that they've given us pretty good turn around in
16 the past and we're fortunate enough be located one
17 floor about the Secretary's Office. So we have close
18 communication with them. They've been good. But I
19 can't really promise.

20 MR. CHAIRMAN: Gene Dishner, our director, I assure you will
21 make every effort to keep things from our standpoint
22 moving. He always has done that with these rules and
23 regulations and keep that process moving forward. And
24 obviously we'll be bumping into a lot of other stuff.

25 MR. WALLS: I think we'd also just like to express our

1 association for everybody who worked on the working
2 committees. It's been a long process. A lot of steps
3 were involved. They've worked hard on this and the
4 Department's regulation.

5 MR. CHAIRMAN: One thing the Board may want to consider as
6 part of -- if you do grant us moving forward today is
7 to authorize Tom Fulmer to go ahead and hold the
8 hearing on behalf of the Board so that we don't get
9 caught in extending it any longer at all by waiting for
10 another Board meeting. That way we could bring the
11 information to the Board that was brought up at a
12 public hearing to keep this process moving forward.

13 MR. WALLS: Of course, Board members are welcome to come.

14 MR. KING: Mr. Chairman, I so move to include your comments
15 about Tom Fulmer.

16 MR. LEWIS: I second it.

17 MR. CHAIRMAN: A motion and second. Further discussion?
18 All in favor signify by saying yes. (ALL AFFIRM.)
19 Opposed say no. (NONE.) Unanimous approval. Thank
20 you very much.

21
22 (End of Proceedings for
23 October 15, 1996.)
24
25

1
2 CERTIFICATE
3

4 COMMONWEALTH OF VIRGINIA

5 COUNTY OF WASHINGTON
6

7 I, Deborah J. Bise, Notary Public in and for the
8 Commonwealth of Virginia, at Large, do hereby certify that the
9 foregoing proceedings of the Virginia Gas and Oil Board
10 meeting held on October 15, 1996 at the Breaks Interstate
11 Park, Breaks, Virginia, were taken by me and that the fore-
12 going is a true and correct transcript of the proceedings had
13 as aforesaid to the best of my ability.

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

18 GIVEN under my hand this 12th day of November, 1996.
19

20 Deborah J. Bise
21 DEBORAH J. BISE
22 NOTARY PUBLIC
23

24 My commission expires September 30, 2000.
25