

1 VIRGINIA:

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3 IN THE COUNTY OF WASHINGTON

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10 DEPARTMENT OF MINES, MINERALS, AND ENERGY

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15 MAY 18, 1999

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3           MR. WAMPLER: Good morning. My name's Benny  
4 Wampler. I'm Deputy Directory for the Virginia Department of  
5 Mines, Minerals, and Energy and Chairman of the Gas and Oil  
6 Board. I'll ask the members to introduce themselves.

7           MR. BRENT: My name is Mason Brent. I'm from  
8 Richmond, and I represent the gas and oil industry.

9           MR. LEWIS: My name's Max Lewis. I'm from Buchanan  
10 County. I'm a public member.

11           MS. RIGGS: I'm Sandra Riggs with the office of the  
12 Attorney General, here to advise the Board.

13           MR. GILLAM: Richard Gillam, Abingdon, coal industry  
14 representative.

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

17           BENNY WAMPLER: The first item on today's agenda is  
18 that the Board will receive a status report from First  
19 Virginia Bank Mountain Empire. If the escrow agent would  
20 come forward at this time, please. Good morning.

21           MR. DITZ: Morning. I am Dale Ditz from First  
22 Virginia Bank, Vice President, temporarily at any rate,  
23 managing the Virginia Gas and Oil Board account. I guess  
24 this is probably the first time I've actually made a report

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1 like this, so I'm not quite sure exactly what you're looking  
2 for. But, I'll do my best and you tell me if you want  
3 something else. I believe that you should have available,  
4 either through the office or by direct mail, the copy of the  
5 report that should have been through the end of March. Has  
6 that been made available to you, or is it...are we still back  
7 to February.

8           MR. FULMER: We...we have it. We sent the Board  
9 summaries and we do have it.

10           MR. DITZ: The only thing that I would offer as any  
11 significant update on the reports that have been made  
12 available are current as of today. Investment balance in the  
13 account is \$3,372,502.79, was as of yesterday. There has  
14 been a report submitted, dated May 6th that itemizes the  
15 distributions that have been made since...since March 1st.  
16 Those distributions through May 6th total \$1,111,060.39.  
17 Since that time, there have been some additional  
18 distributions made on the 11th and the 12th totaling  
19 \$72,087.22. I have copies of several of those available if  
20 you want the detail on that. I have with me copies of the  
21 individual unit statements through February...or excuse me,  
22 yes, March 1st. The next ones have not yet been printed. If  
23 you have any questions or concerns, I'd be happy to try and  
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1 address them. I guess, basically, we have in the last month  
2 or so been responding to the orders that have come directing  
3 some payouts and I think that, with the exception of some  
4 tail end interest on those, we're all current on those.

5 MR. BRENT: Did we get those payouts done in a  
6 timely manner?

7 MR. DITZ: Yes, sir.

8 MR. BRENT: Good.

9 MR. DITZ: As far as I'm aware, the only concern  
10 that we probably had at all was one of the wire transfer  
11 accounts that we were transferring to had been closed, but I  
12 think they got that all resolved. It was simply a receiving  
13 bank concern, but I think they got that all worked out,  
14 didn't they?

15 MS. RIGGS: Uh-huh.

16 MR. DITZ: I'm not aware of any problems. If there  
17 are any, I need to know about it.

18 MR. WAMPLER: The balance you gave us for  
19 \$3,372,502.79 is the balance...current balance?

20 MR. DITZ: That was as of yesterday.

21 MR. WAMPLER: That was yesterday.

22 MR. DITZ: Now, normally the reports are at the end  
23 of the month, so that is a mid-month type of report.

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1           MR. WAMPLER: Any questions from members of the  
2 Board? You want to see some of the details he has with him?  
3 Do you have any questions for Mr. Ditz? Mr. Fulmer, do you  
4 have any?

5           MS. RIGGS: I would only add that of the appeals  
6 that were filed by Torch to the...to the accounting orders,  
7 there were a total of fifteen appeals filed. The Board was  
8 served with four of them, leaving eleven that we never  
9 received service of process on. Those have now been  
10 addressed. The eleven have been addressed through these  
11 dispersements and I've received in from Penn Stuart copies of  
12 letters to the Court taking dismissals in four of those so  
13 far; and a message from Jill Harrison that she's in the  
14 process of preparing the notices of dismissal on the  
15 remaining nine or so. So, I would guess by this time next  
16 month, we will have received dismissals of all of those  
17 appeals but for the four that we actually got served with and  
18 I think those are on the R25 Northeast Longwall nine,  
19 Northeast Longwall ten, and South Longwall seven units. And  
20 those four still have to be resolved before the Court and  
21 disbursement orders have not been entered yet because the  
22 Board is without jurisdiction once the Court took  
23 jurisdiction over those four cases.

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1           MR. FULMER: Mr. Chairman, the only other question  
2 or clarification for the Board, in the payouts that he  
3 mentioned, and Mr. Ditz, you correct me if I'm wrong, is all  
4 the accounting sheets that were submitted, there is some more  
5 payments to be made as far as the interest from the time of  
6 the accounting sheet to the time of disbursement.

7           MR. WAMPLER: Okay.

8           MR. FULMER: And that would finish it, the  
9 disbursement.

10          MR. DITZ: All right. That should be done within  
11 the next few days.

12          MR. WAMPLER: Any other questions? Thank you very  
13 much.

14          MR. DITZ: You're welcome.

15          MR. WAMPLER: The next item on the agenda is a  
16 petition from Cabot Oil & Gas Corporation for pooling of a  
17 conventional gas drilling unit identified as Berwind number  
18 23R, docket number VGOB99-01/26-0708. We'd ask the parties  
19 that wish to address the Board in this matter to come forward  
20 at this time. Good morning.

21          MR. KISER: Morning. Did we start early this  
22 morning?

23          MR. WAMPLER: Started on time.

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1           MR. KISER: Mr. Chairman, members of the Board, Jim  
2 Kiser on behalf of Cabot Oil & Gas Corporation. Our  
3 witnesses in this matter will be Ms. Carol Holk and Mr. Mark  
4 McCormick, and I ask at this time that they be sworn.

5           (The witnesses are duly sworn.)

6           MR. KISER: This is a petition for force pooling of  
7 a conventional well in Tazewell County that we had originally  
8 filed back in January and we'd continued it in an attempt to  
9 lease the one unleased party involved in this. It has just  
10 under a ten percent interest in the unit and it's a well we  
11 need to get drilled and we've been unsuccessful in those  
12 attempts, so we're here before you today to proceed with the  
13 forced pooling hearing. Our first witness will be Ms. Holk.

14

15

CAROL HOLK

16 having been duly sworn, was examined and testified as  
17 follows:

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DIRECT EXAMINATION

19 QUESTIONS BY MR. KISER:

20           Q.       Carol, if you'd state your name for the  
21 record, who you're employed by, and in what capacity.

22           A.       My name is Carol Holk. I'm employed by  
23 Cabot Oil & Gas Corporation as a land man.

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1           Q.       And can you just quickly go over your  
2 responsibilities at Cabot and your background. I know you  
3 have previously testified before the Board as a witness on  
4 land matters, but it's been a while, so if you'd kind of  
5 refresh their memory.

6           A.       I'm in charge of acquisitions and  
7 disburstures for certain areas of Appalachia, including  
8 Tazewell County and Buchanan County, Virginia; and I would be  
9 in charge and oversee any leasing that's done or any  
10 arrangements we make with other companies for drilling wells  
11 or any kind of debesture we might do, any kind of contract we  
12 might enter into. My primary area of responsibility.

13          Q.       Okay. And you're familiar with the  
14 application that we filed on December 16th, 1998, seeking the  
15 establishment of a drilling unit and a pooling order for  
16 Cabot well number Berwind 23R?

17          A.       Yes.

18          Q.       And does Cabot have the right to drill in  
19 this unit?

20          A.       Yes, we do.

21          Q.       And does the proposed unit seeked in exhibit  
22 A to the application include all acreage within 2500 feet of  
23 proposed well Berwind 23R?

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1 A. Yes, it does.

2 Q. Now, prior to filing the application  
3 efforts, were made to contact each of the unleased  
4 respondents in an attempt made to work out an agreement  
5 regarding the development of the unit?

6 A. Yes.

7 Q. And what is the leased interest of Cabot  
8 within the unit?

9 A. We have 90.03% of the unit under lease.

10 Q. Okay. And then there is one tract that  
11 remains unleased which is, we show on our plat and on our  
12 exhibit B, as tract number five, is that correct?

13 A. That's correct.

14 Q. And what is that percentage of that  
15 interest?

16 A. That is a 9.9%...excuse me 9.9% of the unit  
17 consists of that tract.

18 Q. 9.97%?

19 A. That's correct.

20 Q. Okay. And that would be the unleased  
21 percentage within the unit?

22 A. Yes.

23 Q. All right. And that is the only unleased  
24

1 party, correct?

2 A. Yes.

3 Q. Okay. Were efforts made to determine if the  
4 individual respondents were living or deceased or the  
5 whereabouts, and if deceased, were efforts made to determine  
6 the names and addresses and whereabouts of successors to any  
7 deceased respondents?

8 A. Yes.

9 Q. Okay. We don't have any unknown heirs in  
10 this case. In your professional opinion, was due diligence  
11 exercised to locate each of the respondents named herein?

12 A. Yes.

13 Q. And are the addresses set out in exhibit B  
14 filed with the application the last known addresses for the  
15 respondents?

16 A. Yes.

17 Q. Are you requesting the Board, through this  
18 hearing, to force pool all unleased interest listed in  
19 exhibit B?

20 A. Yes.

21 Q. Are you familiar with the fair market value  
22 of drilling rights in the unit here and in the surrounding  
23 area?

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1           A.       Yes.

2           Q.       Could you advise the Board as to what those  
3 are?

4           A.       Five dollars (\$5) an acre, five year term,  
5 and a one-eighth royalty.

6           Q.       And did you gain this familiarity by  
7 acquiring oil and gas leases and other agreements involving  
8 the transfer of drilling rights in the unit involved here and  
9 in the surrounding area and in supervising area land men?

10          A.       Yes.

11          Q.       In your opinion, do the terms you've  
12 testified to represent the fair market value of and fair and  
13 reasonable compensation to be paid for drilling rights within  
14 this unit?

15          A.       Yes.

16          Q.       As to the one respondent who has not agreed  
17 to a voluntary lease, do you recommend that she be allowed  
18 the following options with respect to her ownership interest  
19 within the unit; one, participation; two, a cash bonus of  
20 five dollars (\$5) per net mineral acre plus a one-eighth of  
21 eight-eighths royalty; three, in lieu of a cash bonus and  
22 one-eighth of eight-eighths royalty share in the operation of  
23 the well on a carried basis, as a carried operator under the

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1 following conditions: Be entitled to the shared production  
2 from the tract pooled accruing to her interest exclusive of  
3 any royalty of overriding royalty reserved in any leases,  
4 assignments thereof, or agreements relating thereto of such  
5 tracts, but only after the proceeds allocable to her interest  
6 or her share equal three hundred percent (300%) of the share  
7 of such cost allocable to the interest of the carried  
8 operator of a leased tract or portion thereof or two hundred  
9 percent (200%) of such cost allocable to the interest of the  
10 carried operator of an unleased tract or portion thereof?

11 A. Yes.

12 Q. Do you recommend that the order provide that  
13 the elections be in writing and sent to the applicant at  
14 Cabot Oil & Gas Corporation, 400 Fairway Drive, Suite 400,  
15 Coropolas, Pennsylvania 15108, Attention Carol Holk?

16 A. Yes.

17 Q. And should this be the address for all  
18 communications with the applicant concerning the forced  
19 pooling order?

20 A. Yes, it should.

21 Q. Do you recommend that the order provide that  
22 if no written election is properly made, then such respondent  
23 shall be deemed to have elected the cash...cash royalty

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1 option in lieu of participation?

2 A. Yes.

3 Q. And should any unleased respondents be given  
4 thirty days from the date of the order to file written  
5 election?

6 A. Yes.

7 Q. If the unleased respondent elects to  
8 participate, should they be given forty-five days to pay the  
9 applicant for the respondents proportionate share of well  
10 costs?

11 A. Yes.

12 Q. Does the applicant expect the party electing  
13 to participate to pay those costs in advance?

14 A. Yes.

15 Q. Should the applicant be allowed a hundred  
16 and twenty days following the recording of the Board order;  
17 and thereafter, annually on that date until production is  
18 achieved to pay or tender any cash bonus becoming due under  
19 the order?

20 A. Yes.

21 Q. Do you recommend that the order provide that  
22 if a respondent elects to participate, but fails to pay the  
23 proportionate share of well costs satisfactory to the  
24

1 applicant for payment of such costs, then their election to  
2 participate should be treated as having been withdrawn and  
3 void?

4 A. Yes.

5 Q. Okay. We don't have any unknown parties.  
6 It's a conventional well, so in this particular case, we do  
7 not need the Board to create an escrow account, is that  
8 correct?

9 A. That's correct.

10 Q. And who should be named the operator under  
11 the forced pooling order?

12 A. Cabot Oil & Gas Corporation.

13 MR. KISER: Nothing further of this witness at this  
14 witness at this time, Mr. Chairman.

15 MR. WAMPLER: Any questions from members of the  
16 Board?

17 Call your next witness.

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19 MARK McCORMICK

20 having been duly sworn, was examined and testified as  
21 follows:

22 DIRECT EXAMINATION

23 QUESTIONS BY MR. KISER:

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1           Q.       Now, Mr. McCormick could you state your name  
2 for the Board, who you're employed by, and what capacity?

3           A.       Yes, my name's Mark McCormick. I work for  
4 Cabot Oil & Gas. I'm a district engineer.

5           Q.       And you've previously testified before the  
6 Board, I think, in the last six months as a expert witness in  
7 the area of production and operations?

8           A.       Yes.

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

11          A.       Yes, that's right.

12          Q.       And are you familiar with the proposed plan  
13 of exploration development for the unit for 23R?

14          A.       Yes, I am.

15          Q.       And what is the total depth of the proposed  
16 well under the plan?

17          A.       Five thousand, four hundred seventy-five  
18 (5475) feet, which includes formations consistent with the  
19 well work permit.

20          Q.       Is the applicant requesting the force  
21 pooling conventional gas reserves not only to include the  
22 designated formation, but any other formations excluding coal  
23 formations which may be between those formations designated

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1 from the surface to the total depth drilled?

2 A. Yes.

3 Q. And what are the estimated reserves for this  
4 unit?

5 A. Five hundred million cubic feet.

6 Q. Are you familiar with the well costs for the  
7 proposed well under the plan of development?

8 A. Yes.

9 Q. And has an AFE been reviewed, signed, and  
10 submitted to the Board along with the application?

11 A. Yes.

12 Q. And was this AFE prepared by an engineering  
13 department knowledgeable in the preparation of AFE's and  
14 knowledgeable in regard to well costs in this particular  
15 area?

16 A. Yes.

17 Q. In your professional opinion, does it  
18 present...represent a reasonable estimate of the well costs  
19 for the proposed well under this plan?

20 A. Yes.

21 Q. Could you at this time state for the Board  
22 both the dry hole costs and the completed well costs?

23 A. The dry hole cost is estimated to be  
24

1 \$141,400 and the completed well cost is estimated to be  
2 \$272,100.

3 Q. Okay. And this is a single completion well?

4 A. Yes.

5 Q. And does AFE include a reasonable charge for  
6 supervision?

7 A. Yes.

8 Q. In your professional opinion, Mr. McCormick,  
9 will the granting of this application be in the best interest  
10 of conservation, the prevention of waste, and the protection  
11 of correlative rights?

12 A. Yes.

13 MR. KISER: Nothing further of this witness, Mr.  
14 Chairman.

15 MR. WAMPLER: Could you name the formations that you  
16 plan to---?

17 MR. McCORMICK: Yes, it's the Brio Seam.

18 MR. WAMPLER: Brio Seam. Okay.

19 MR. KISER: That's in the application.

20 MR. WAMPLER: Sorry?

21 MR. KISER: That should be in the application.

22 MR. WAMPLER: He mentioned, though, when he was  
23 questioning that you may produce other formations.

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1           MR. KISER: No, it's single completion.

2           MR. McCORMICK: That's the primary producer in this  
3 area is just the Brio.

4           MR. WAMPLER: All right. Other questions of this  
5 witness? Do you have anything further?

6           MR. KISER: Mr. Chairman, we'd ask that the  
7 application be approved and submitted.

8           MR. LEWIS: I make a motion we approve the  
9 application.

10          MR. BRENT: I second.

11          MR. WAMPLER: Motion and second. Any further  
12 discussion?

13                   (No audible response.)

14          MR. WAMPLER: All in favor, signify by saying yes.

15                   (All Board members signify yes.)

16          MR. WAMPLER: Opposed, say no. We have approval.

17                   The next item on the agenda is a petition from  
18 Cabot Oil & Gas Corporation for pooling of a conventional gas  
19 well identified as PMC87. Docket number VGOB99-03/16-0716.  
20 We'd ask the parties that wish to address the Board in this  
21 matter to come forward at this time.

22          MR. KISER: Mr. Chairman, members of the Board, Jim  
23 Kiser on behalf of Cabot Oil & Gas Corporation. At this

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1 time, we'd request the Board that we withdraw this  
2 application from further consideration.

3 MR. WAMPLER: All right. Withdrawn.

4 The next item on the agenda is an appeal of the  
5 inspector's decision in regard to permitting of Equitable  
6 Production Company's operations identified as VC3970.  
7 Application number 3702, permit number 4118. Docket number  
8 VGOB99-03/16-0717 and we'd ask the parties that wish to  
9 address the Board in this matter to come forward at this  
10 time, please.

11 MR. KISER: Mr. Chairman, Jim Kiser on behalf of  
12 Equitable Production Company. It's my understanding from  
13 conversations with Don Hall and Wayne Manis of Equitable's  
14 Big Stone office, that this was an appeal filed by Ms. Nina  
15 McFall from the State of Washington, and based on  
16 representations made to me by those two gentleman, and Mr.  
17 Fulmer may have additional information on this, it's my  
18 understanding that the problem with location of well has been  
19 worked out and I assume they filed a modification of the  
20 permit and everything's proceeding forward. Of course, she's  
21 not here.

22 MR. FULMER: Distributed what's equitable  
23 (inaudible). They filed for location exception. In regards  
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1 to the new location, I assume it is acceptable to Nina  
2 McFall. I have no evidence of that.

3 MR. KISER: I've not received any further  
4 correspondence from her.

5 MR. FULMER: In regards to what transpired at the  
6 last Board hearing.

7 MR. BRENT: Did they go out to the site after the  
8 last meeting with her?

9 MR. KISER: Yes.

10 MR. FULMER: They have moved the well.

11 MR. KISER: Last I heard, they moved it to the  
12 location that they picked there at the hearing.

13 MR. WAMPLER: Have you approved that location?

14 MR. FULMER: Yes and no. There's still some  
15 (inaudible). They have to do a modification of it.

16 MR. WAMPLER: Okay. All right. Any questions  
17 members of the Board?

18 MS. RIGGS: What are you going to do with respect to  
19 the appeal?

20 MR. KISER: Well, she's not here. I think you have  
21 to dismiss it.

22 MS. RIGGS: I think you need to take formal action  
23 on the appeal.

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1           MR. KISER: Yeah, you have to take some sort  
2 of...get it off the docket.

3           MR. FULMER: I assume that this location acceptance  
4 is agreeable with both parties.

5           MR. WAMPLER: Do you want to, rather than us make an  
6 assumption, you want to just continue it on the docket till  
7 next meeting, and then if not, we'll dismiss it at that  
8 point.

9           MR. KISER: Well, you want us to get a letter from  
10 her saying she agrees?

11          MR. WAMPLER: Can you get a letter from her that'll  
12 take it off the docket.

13          MR. KISER: Okay.

14          MR. WAMPLER: Is that okay with the Board?

15          MR. LEWIS: I'd like to make a motion we continue it  
16 till the next meeting.

17          MR. WAMPLER: All right. I've got a motion to  
18 continue to next meeting.

19          MR. BRENT: Second.

20          MR. WAMPLER: Second. Further discussion? All in  
21 favor, signify by saying yes.

22                 (All Board members signify yes.)

23          MR. WAMPLER: Opposed, say no. It's continued. If  
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1 you get a letter, in the meantime, to Mr. Fulmer.

2 MR. KISER: For the June hearing. Okay.

3 MR. WAMPLER: The next item on the agenda is an  
4 appeal to the inspector's decision in regard to informal fact  
5 finding conference 11199, concerning an operation by Evan  
6 Energy Company identified as RH1, application number 3632,  
7 permit number 4049, docket number VGOB99-04/20-0718. We'd  
8 ask the parties that wish to address the Board in this matter  
9 to come forward at this time, please.

10 ROBERT HERBISON: Is that mine?

11 MR. WAMPLER: I think so, yes.

12 ROBERT HERBISON: You didn't mention my name. I  
13 didn't know. Robert Herbison?

14 MR. WAMPLER: Yes, sir.

15 ROBERT HERBISON: Okay.

16 MR. SWARTZ: Mark Swartz representing Evan Energy.

17 ROBERT HERBISON: I have a less than fifteen minute  
18 video of the land I have and how they ran it. I have my  
19 dozer operator here. I was supposed to have this logged two  
20 years ago. There's estimated hundred thousand dollars  
21 (\$100,000) worth of timber on the land. I haven't been able  
22 to do that yet. The logging company refuses to enter my land  
23 due to the way this gas line has been put on. Well, let me

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1 start at the first. I guess that's best, isn't it? I bought  
2 this land in 1965. It's a lot of land. It's over a mile  
3 long and over a half mile wide. I bought...it belonged to  
4 Mary Stickley and Willard Long. At first Evan...we  
5 started...I bought this land with the intention to build a  
6 house in the middle of it. My dozer operator started work in  
7 1996?

8 ROBERT LITRELL: '96.

9 ROBERT HERBISON: '96. I bought it in '95. Okay.  
10 This is before Evans Energy even knew they were going to run  
11 a gas line through. I paid him to start putting my entrance  
12 in at a ten percent (10%) incline for almost a half mile up  
13 into the mile. They also put a road over to a barn over,  
14 which is also in conjunction with the park service. They got  
15 a horse trail right beside my land. The park service owns  
16 the other side of the mountain, a lot of it. So, I wanted  
17 access also to this trail because I have horses. I have  
18 roads all through there. This is called Iron Mountain  
19 because these are the old iron mines back during the Civil  
20 War that they mined for Cumberland Gap...in Cumberland Gap.  
21 So, it's a very historical area. They actually call it Iron  
22 Mountain for that purpose, but actually it's where the old  
23 railroad trestle used to be called Faulkerson Gap all the way  
24

1 to White Springs. That's seven knolls going down. I got six  
2 springs on my land. Beautiful place to build a home. Okay.  
3 This is going to be our retirement home. So, this is not  
4 something that I started after they ran their line or what.  
5 My dozer operator...we come to an area, which it was at a  
6 ninety degree angle knoll sixty, seventy foot tall?

7 ROBERT LITRELL: Sixty, at least sixty feet.

8 ROBERT HERBISON: Over sixty foot tall at a ninety  
9 degree angle. He had to go up an old little fence rail road  
10 which was about eight foot wide with a little three fifty  
11 dozer. That's all we could get on top of the knoll at that  
12 time and he had to level it out and push dirt over that hill  
13 and you'll see it in the video. He'll discuss the video with  
14 you and why he cannot put my entrance in anymore. This hill  
15 is now at a forty degree angle. I contracted Silas Glass.  
16 He has a D-9 dozer he rents out with operator. It was going  
17 to cost me eight thousand dollars (\$8,000). He estimated  
18 that it was going to take fifty hours to move that hill  
19 because there's a big ravine on the other side and he needed  
20 to use some of it to get a ten percent (10%) incline all the  
21 way across the next ravine to the second ravine, is where I  
22 was going to build my house. On top of that second ravine,  
23 there is an area that you could level out. What, about four

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1 acres?

2           ROBERT LITRELL: That is a good boundary.

3           ROBERT HERBISON: Four or five acres of level land.  
4 The rest of it, I was going to leave natural in woods, thin  
5 it out to a tree every thirty foot, put ferns underneath it,  
6 make it a pretty place. I was approached by the county,  
7 wanting to put a riding stable there because we lost our Lee  
8 County horse arena and stuff. They wanted to put a riding  
9 arena there and have 4H. This is in the future. Whether  
10 this happens or not...and they wanted to put fifty cabins up  
11 there to start with. I always wanted to put this house  
12 there. That's why I bought this land. They went...at first,  
13 I have papers here and you saw in my deposition from the  
14 hearing, I'm not going to try to rehash that. I'm not a  
15 lawyer. I didn't bring my lawyer here today. I could have,  
16 but I didn't think you wanted to hear from my lawyer. I'm  
17 fully capable of handling it. He will handle the civil court  
18 when we take them to court. I am taking them to court  
19 because they made my land totally useless. What they  
20 did...now Charles...what was his name? John don't work for  
21 him any longer. At the hearing, they turned in a affidavit  
22 of a young man that was with John. John and I stood at the  
23 head of that spring. Now, I'm in a wheelchair most of the  
24

1 time. I've got a bad heart, bad lungs, I'm very disabled. I  
2 walk up there...you can ask my wife, this is my wife Phyllis,  
3 she owns half the land. This is R.V. Litrell, my dozer  
4 operator, and also good friend. And he's been working on my  
5 land since 1966.

6 ROBERT LITRELL: '96.

7 ROBERT HERBISON: '96. Keep me straight on dates,  
8 please. 1996. Okay. This is our dream, to live up in  
9 there. This area's going to become a very big tourist area,  
10 the whole area is. The state, you know, is going to be  
11 putting millions of dollars down there. They've already  
12 bought big mansion, made a big park there. They've got a lot  
13 of big plans, that big horse trail. My land is right a  
14 boarding that horse trail, okay. I'm one of the big land  
15 owners that is willing to work with the state to bring  
16 tourism into the area. A lot of the big land owners are  
17 upset with me because they don't want change down there.  
18 Well, to me, change is progress, sometimes especially in  
19 lower Lee County. Our young...that's wrong. We need jobs  
20 down there. But, this is why I was working. One of the  
21 reason I even let the gas company go through there...I did  
22 not have to let them. Okay. I could have said no. They  
23 didn't have imminent domain rights. I said, sure, long as

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1 it's put in a way I want it. Now, in the video you'll notice  
2 there is an old road that he went up with his dozer that's  
3 about, what, ten foot wide, fifteen?

4 ROBERT LITRELL: The road that I built?

5 ROBERT HERBISON: No, the one that goes---.

6 ROBERT LITRELL: It wasn't that wide.

7 ROBERT HERBISON: Eight foot anyway, isn't it?

8 ROBERT LITRELL: About eight foot. I had a hard  
9 time getting in with a dozer.

10

11 ROBERT HERBISON: Okay. They could have gone down  
12 that hillside, that road and cross a road, and it's in the  
13 agreement. The first agreement I signed in April, that was  
14 the way. It was flagged that way. I signed the agreement  
15 that way. They were going to leave from Margaret Harbor's  
16 land onto my land. Well, Margaret Harbor changed her mind,  
17 would not allow them to cross her land. Since Faulkerson Gap  
18 is one of the only gaps between Rose Hill to come through  
19 that mountain other than Hagen Holler and at Ewing and  
20 Faulkerson Gap. I own half of Faulkerson Gap. The other  
21 side is at a ninety...eighty to ninety percent incline at  
22 Faulkerson Gap. So, they had to cross my land or we would  
23 not have natural gas in Rose Hill. Being like I was, I

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1 wanted progress in our area. I wanted the natural gas. The  
2 way they were going to run the line, my dozer operator said  
3 that would be fine, but any time they go across the road, it  
4 has to be four foot in the ground encased in cement because  
5 I'm going to log that area and very heavy equipment's going  
6 in there for construction. That's in the original agreement.  
7 They were only going to cross one road. Then they  
8 approached me in November. This is after I signed this  
9 waiver saying I was satisfied with the location of the gas  
10 line. At no time...I got records if you want to see them,  
11 phone calls. I called them almost every month asking them  
12 where is that agreement. They wanted to leave my  
13 land...enter my land from Roy Crockett's land, go around a  
14 spring, and down the road. Okay. I said, fine, but any time  
15 you follow my road, you have to widen it. This is what John  
16 agreed upon verbally. I didn't get nothing in writing. I  
17 called, and I can show you phone records. I got hundreds of  
18 calls to Evans Energy. I called Harriet after I found them  
19 on my land. My neighbor had to call me. They were supposed  
20 to notify me before they entered my land. They didn't.  
21 Instead of moving that hill...now, they promised me---. I  
22 haven't got paid a dime for this right of way as of yet.  
23 Everything's supposed to be prepaid prior from laying the  
24

1 line. That's what I was told. They agreed to do dozer work  
2 at the same time they laid that line with a D-9 dozer for  
3 forty-seven hours for that right of way. That was enough  
4 hours to move that hill. I said, fine, as long as you made  
5 it thirty foot wide so you could take fifteen foot of it, I  
6 could take fifteen foot for my road. I had no problem with  
7 you following my road all the way down rather than coming up  
8 to the top of the hill and follow that little tiny road down  
9 my property line from where they were going to enter from  
10 Margaret Harbor's land. I said, fine. But, they didn't do  
11 that. They went right over the top of that hill. I still  
12 have to lower that hill forty foot to get an entrance in  
13 there. Forty more foot, wouldn't you say?

14 ROBERT LITRELL: Yes. Yeah, it'd be thirty to forty  
15 feet.

16 ROBERT HERBISON: Thirty to forty foot. They knew  
17 this because they agreed to move this hill, but they never  
18 did. They went right over the top. I built a road going  
19 around that spring. John agreed to make that thirty foot  
20 wide. They said, well, they're going to have a D-9 dozer in  
21 here when they do this work anyway, to widen that thirty foot  
22 because they could not put their gas line in a filled area  
23 like I could my road. They had to put their gas line...this

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1 is John. John don't work for them anymore. I wish I could  
2 get a hold of him. Okay. Him and I stood there and talked  
3 this over. This is the only time Evans Energy, other than  
4 sitting in my house after dark trying to tell me just let  
5 them run the line the way they want, which my dozer operator  
6 said that hill can't be moved. I can't have an entrance into  
7 all that land. You'll notice at the video I have only one  
8 way into all this land and one way out. There is no other way  
9 I can go in. The four-lane borders me all the way. It's  
10 limited access. It's the bypass around Rose Hill. I don't  
11 own any land bordering the...four-lane anyway. Ronnie  
12 Montgomery owns a piece of land. Margaret Harbor does and  
13 Roy Crockett. Roy Crockett said he would give me an entrance  
14 to my land from his entrance, but I would have to put in a  
15 road, what, two miles before I hit mine?

16 ROBERT LITRELL: It'd be a good long ways.

17 ROBERT HERBISON: Before I even got to my land. You  
18 know the cost of building a road. I already got ten thousand  
19 dollars (\$10,000) invested. I had to put in a low level  
20 bridge. Had a lot of trouble getting the permits to get a  
21 low level bridge put in there because I had to cross a flood  
22 creek. When it rains four inches, that creek will go up ten  
23 foot. Okay. So, that was a big problem. I could not dam

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1 that up because there's a house and a trailer right up above  
2 the spring and I did not want to build it too high so water  
3 would go over it before it would leave the bank. Okay. So,  
4 it would not flooded my neighbor. This was very expensive to  
5 do because I had to make this a solid concrete structure  
6 which would withstand that water pressure. Okay. Which I  
7 did. He built the entrance coming up and he's moved a lot of  
8 dirt. He's built a lot of roads and when we started, he said  
9 he could build this road at a ten percent (10%) angle all the  
10 way up to where I wanted it. Now, I could not get up there  
11 in wet weather in a four-wheel drive vehicle because it's at  
12 a forty degree angle coming down the hill. And I don't know  
13 ...you have what I said at last. I did not want to go over  
14 old ground.

15           MR. WAMPLER: Well, you had the permit application.  
16 Did you...you received it initially. You had notice, you  
17 admit that. You had...you signed the waiver of the  
18 initial---

19           ROBERT HERBISON: Only from the original agreement.

20           MR. WAMPLER: ---I understand, from the original  
21 agreement. Now, after that original agreement is where  
22 you're saying you did not receive notice, as I understand.

23           ROBERT HERBISON: I couldn't even hardly get nobody

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1 on the phone.

2           MR. WAMPLER: Okay. Well, let's hear what they have  
3 to say. Mr. Swartz?

4           MR. SWARTZ: Let's just share some documents with  
5 you. You've got Mr. Fulmer's decision.

6           ROBERT HERBISON: That's the original agreement. I  
7 know that. That's leaving Margaret Harbor's land only. And,  
8 you know, in the video, you notice this red stake with a red  
9 flag on it and Gary of gas and oil remembers that original  
10 agreement and where that line went, and he has the original  
11 map that that was. And you notice this notice of right to  
12 object is dated in April. They didn't approach me until  
13 September with the changes and I told them that this did not  
14 specify the exact location and my lawyer told me that I  
15 needed it spelled out better on the exact location since  
16 they're going around that creek and they're going away from  
17 my property line. Matter of fact, they did not run their  
18 pipeline nowhere in the original agreement area.

19           ROBERT LITRELL: It's run in the road.

20           ROBERT HERBISON: They run down my road and cross  
21 the top of one of my knolls.

22           MR. SWARTZ: Just to sort of summarize the documents  
23 that I've provided, most of which I think are probably in the

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1 record that came up with Mr. Fulmer, but there was a right of  
2 way agreement that was entered into. That agreement was  
3 signed and notarized on December 16th, 1997, and it is a  
4 right of way agreement signed by Mr. Herbison with regard to  
5 the property that we're talking about today. Then, after the  
6 execution of that right of way agreement, a permit packet was  
7 put together and a permit application that located the  
8 pipeline and sought a permit to construct the pipeline, and  
9 that was what I'll refer to as the original location. And  
10 Mr. Herbison apparently acknowledges that he got the original  
11 permit package, this notice of right to object, and waiver  
12 that I've given you, he signed with regard to that. The next  
13 item that I would bring to your attention, which was also in  
14 consideration and went on the table when the hearing was held  
15 before Mr. Fulmer is the affidavit, and this, frankly, is the  
16 nub of the issue. This is the problem. We had a permit  
17 location. We had a permit issued and we built the line  
18 somewhere else, so there needs to be an explanation. Our  
19 explanation is set forth in this affidavit, that between the  
20 time of the waiver and the original permit application, Mr.  
21 Herbison requested that my client put the line in a different  
22 spot.

23                   ROBERT HERBISON: I never did.

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1                   MR. SWARTZ: He denies that. It's strenuous and  
2 it's been going on for quite a while. This is...there's one  
3 side that says this was the arrangement and Mr. Herbison is  
4 very direct and strenuous in his objection that it was not.  
5 I'm simply presenting our side of it and what was presented  
6 in front of Mr. Fulmer, so that you know why at least...what  
7 was available to him to make a decision. The affidavit which  
8 you have, which Mr. Fulmer had essentially, and is consistent  
9 with what happened, at least from Evan Energy standpoint,  
10 that a request for a change was made by the property owner  
11 who executed the right of way and they accommodated him.

12                   ROBERT HERBISON: Can I speak?

13                   MS. RIGGS: When he's finished.

14                   MR. WAMPLER: Let...let him finish.

15

16

17                   MR. SWARTZ: And I'll be done pretty quickly. And  
18 then when they went out, now having changed the location at  
19 his request, having flagged it in his presence, when they  
20 went out to do the work, they were met with yet another  
21 protest in saying that he didn't want it where he had agreed  
22 to put it the last time which resulted in this temporary  
23 restraining order that was issued by the Circuit Court in Lee

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1 County. And that's how the pipeline got built because they  
2 needed an injunction to get on the land at that point. After  
3 this lawsuit was filed in Lee County by Evan Energy, Mr.  
4 Herbison has referred to that this morning in his remarks,  
5 he has commenced his own lawsuit. So, factually, you know,  
6 just to kind of get down to the nub here. The nub of the  
7 issue is whether or not there was a request by Mr. Herbison,  
8 as my client contends, to move the line and whether or not we  
9 built the line where he asked us to put it, which explains  
10 why there was not a second revision, at least from our  
11 standpoint, because we thought we had his agreement. We  
12 thought were putting it where he wanted it and, you know,  
13 hindsight is twenty-twenty and they should have filed some  
14 paperwork at that point in time, but that's the nub. And the  
15 affidavit basically says, you know, I flagged the line, I  
16 went back after it was built, it's built where he asked us to  
17 put it. Those are the stories. Mr. Fulmer's then presented  
18 with this sort of he said no, I said no, he said scenario and  
19 as I read his decision and, you know, I would recommend the  
20 outcome to you as being what needs to happen here. Mr.  
21 Fulmer looks at the objections that a surface owner can make  
22 under the statute and, in fact, he quotes them at page four  
23 of his decision, he refers to A, B, C, and D which are the

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1 three...no, the four objections that we typically see when  
2 we're dealing with surface owners and we have some oil and  
3 gas project in the works. The first three deal with  
4 essentially operational issues, plans for sediment erosion,  
5 soil control, water protection, and then hazard. And the  
6 last one is the newest one that the legislature added in the  
7 last couple of years and basically deals with whether or not  
8 the location of the facility would impact on the surface  
9 owners ability to use his land, and there's a fair amount of  
10 activity in Mr. Fulmer's office these days with those kinds  
11 of objections. But, the second part of D says that if you  
12 are confronted with a written agreement in an argument over  
13 what that agreement reads or the contractual obligations, you  
14 have to take a pass. I mean, in substance that's what this  
15 says. And as I read Mr. Fulmer's decision, he looked at the  
16 situation, satisfied himself that there was a contractual  
17 relationship between these parties and that they were arguing  
18 about whether or not the contract had been orally modified,  
19 that the location was an agreed location or was not an agreed  
20 location; and what he said was, under the circumstances,  
21 there is not an objection before me that I can decide under  
22 the jurisdiction that I've been granted, and I would suggest  
23 that these people resolve their issues in the lawsuits that

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1 are already pending. And I would recommend the same result  
2 to you. I mean, there's going to have to be a determination  
3 here by a court as to who did what in what order and that's  
4 ...that's all I have to offer at this time.

5 MR. WAMPLER: Let me ask you a question. In making  
6 the change in the location of the pipeline after the  
7 subsequent application, do you believe that that required the  
8 modification of the permit and subsequent notice?

9 MR. SWARTZ: I...I don't think there's any way  
10 around that, Mr. Fulmer. I think if you change the location  
11 of something on the surface of the ground vis a vis, you  
12 all, they should have filed a revision, no question about it.

13 ROBERT LITRELL: May I say something?

14 MR. WAMPLER: Yes, sir.

15 ROBERT LITRELL: When...95'---.

16 MR. WAMPLER: If you will just state your name for  
17 the record so we can have it.

18 ROBERT LITRELL: My name's Robert Litrell.

19 MR. WAMPLER: Okay.

20 ROBERT HERBISON: He's my dozer operator.

21 MR. WAMPLER: I understand.

22 ROBERT LITRELL: I traveled up an old fence line  
23 which was where the gas line was supposed to originally come  
24

1 through after---

2 ROBERT HERBISON: It was flagged that way, too.

3 ROBERT LITRELL: ---after about a year and a half  
4 after we started working there. It looked like an old CC dam  
5 had been built across one of the---

6 ROBERT HERBISON: It was all fill dirt.

7 ROBERT LITRELL: Yeah, it was all fill dirt, there  
8 wasn't no rock in it. I pushed...started pushing that off,  
9 so we could get the D-9 in from Silas Glass to do the other  
10 work, which they promised...Evans had promised, he got a  
11 letter stating forty-seven hours of dozer work.

12 ROBERT HERBISON: It's in the original agreement,  
13 for the record.

14 ROBERT LITRELL: When...when I got...he was doing  
15 this as he could afford to pay me. He paid me a good amount  
16 of money to do what I did down there. I cleared some land  
17 where he was going to build his house. I cleaned out the  
18 road to where...where the D-9, when it come in, could do  
19 their job and I would go back and finish up. Instead, when  
20 they was coming from Roy Crockett's line in, they used the  
21 road that I had built and was pushing it off where you can't  
22 use it no more. There's no way I'd get on a gas line with a  
23 dozer.

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1           ROBERT HERBISON: And they went over top that hill  
2 that the D-9 was going to move.

3           ROBERT LITRELL: Yeah.

4           ROBERT HERBISON: But Evan Energy agreed to move  
5 that hill. They can't move it themselves. Their line would  
6 be forty foot in the air.

7           ROBERT LITRELL: There's no way you can cut that  
8 down.

9           ROBERT HERBISON: I've got a video if you want to  
10 see it of my land. It shows the whole video...gas line  
11 before. They got an injunction. Now, I've got to disagree  
12 on something. I went...I called them almost monthly, asking  
13 them for a written contract. You can ask my lawyer about it,  
14 because he said this original contract did not specify the  
15 exact location of that gas line and it was not legal. Okay.  
16 A gas line has to be spelled exactly foot by foot where that  
17 gas line's supposed to be. When I signed that revision, I  
18 was not aware of this. When I talked to my lawyer, which is  
19 George Cridlin, been my lawyer since the '60's on all my land  
20 transactions. He wrote the deed for this. He wrote the deed  
21 for my house twenty years ago, but he told me this first  
22 agreement wasn't valid. It did not specify. I could go to  
23 the gas and oil company and complain because it did not

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1 specify. The only thing I had to show where the gas line is  
2 is little red flags on my land. It went right down that old  
3 road that he went up with the dozer. It went across and also  
4 it went down the road he built to my old barn which I tore  
5 down. These are things that must be took care of. All the  
6 lumber that barn was on, they run their dozer over. A whole  
7 stack of lumber.

8 MR. WAMPLER: Well, let me---.

9 ROBERT HERBISON: They destroyed it.

10 MR. WAMPLER: Let me stop you and let me tell  
11 you---.

12 ROBERT HERBISON: Okay.

13 MR. WAMPLER: ---that what the Board has to decide,  
14 we can't decide things that deal with personal property  
15 issues.

16 ROBERT HERBISON: I know that. I'm just saying  
17 they're saying I'm unreasonable. I would have never allowed  
18 them to put their gas line over top of that hill. I admit I  
19 said you can go down the road long as it's thirty foot wide  
20 and a ten percent (10%) incline after they build...remove  
21 that hill. I have no objection if they want to do it today.  
22 Okay. I have a letter here stating they refused to do the  
23 dozer work. Okay. That's how they were going to pay for my  
24

1 agreement. Do you want to see the letter? I can show it to  
2 you.

3 MR. WAMPLER: Well, I don't think we want to get  
4 into that.

5 ROBERT HERBISON: I know that's not part of your...  
6 that's why I didn't bring it up. I'm trying to bring up what  
7 you are in. This is a civil matter. This we will deal with.

8 MR. GILLAM: Mr. Chairman?

9 MR. WAMPLER: Mr. Gillam.

10 MR. GILLAM: I would like to make a observation. It  
11 appears to me this is a legal issue with exception of the  
12 fact that, correct me if I'm off track, exception of the fact  
13 that an amendment wasn't filed, or amended permit to indicate  
14 a change. I guess the question I have is, if you agree with  
15 that, what---?

16 MR. FULMER: Mr. Chairman, there was one submitted.  
17 It was in frac, too.

18 ROBERT HERBISON: Oh, yes. They submitted one, but  
19 I was never notified.

20 MR. WAMPLER: His notice issue.

21 MR. SWARTZ: It's a notice issue.

22 MR. FULMER: It's a notice issue.

23 MR. GILLAM: I was just questioning---.

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1           MR. WAMPLER: Right.

2           MR. SWARTZ: Notice of the second one to him is an  
3 argument.

4           MR. GILLAM: So, he was not notified of the second  
5 one?

6           MR. SWARTZ: Well, he's arguing that.

7           ROBERT HERBISON: The first time I saw a map showing  
8 where that was when Gary came over to my house, which was the  
9 inspector, I requested Evan Gas & Oil send somebody by to  
10 look at where they run the gas line because it's totally out  
11 of the area. He came by, he had two maps. Okay. The  
12 original map showed it leaving Margaret Harbor's land. You  
13 can talk to Margaret Harbor. She refused to let them cross  
14 their land.

15           MR. GILLAM: How is that notice supposed to be  
16 given? Is that a certified mail?

17           ROBERT HERBISON: Certified mail.

18           MR. FULMER: He had received notice. he had  
19 received notice of the original permit. He signed the  
20 waiver.

21           ROBERT HERBISON: From leaving Margaret Harbor's  
22 land, not leaving from Roy Crockett's.

23           MR. FULMER: And if you look at the waiver, he  
24

1       waivers his right to object.

2               MR. GILLAM: To object.

3               MR. FULMER: Right.

4               ROBERT HERBISON: That means they can run it  
5 anywhere on my land they want and destroy it? You look at  
6 the video tape, you can see how they destroyed my land.

7               MR. GILLAM: That's...becomes a property...or we  
8 don't have any jurisdiction over that.

9               MS. RIGGS: Well, if you say he should have gotten  
10 notice, now he has notice because the pipe line's in place.  
11 Then you look at the statute, at the jurisdiction that this  
12 Board has to listen to his problems and say, is there any  
13 grounds within 45.1-361.35B that this Board can grant any  
14 relief on. There is...I think the essence of Tom's decision  
15 is even if he had gotten notice, and even if he had filed  
16 these objections in a timely manner, there is still nothing  
17 within what he is arguing here today that's within the  
18 jurisdiction of this Board.

19               ROBERT HERBISON: I was told it's within this Board  
20 to...they cannot put a pipe line across my land, leaving my  
21 land totally useless. Okay.

22               MR. GILLAM: What is he referring to?

23               MS. RIGGS: Well, I'm not sure what he's referring  
24

1 to.

2 ROBERT HERBISON: That's what my lawyer said.

3 MS. RIGGS: Well, he's not here to tell us what  
4 you're referring to.

5 MR. WAMPLER: Well, it'd have to be on the  
6 unreasonably infringement on the surface owner's use of the  
7 land---.

8 ROBERT HERBISON: That's right.

9 MR. WAMPLER: ---under D.

10 ROBERT HERBISON: And that's what they did. That's  
11 why I'm bringing that point out. They have made my land  
12 totally useless. I have no entrance into all my land. They  
13 have stopped...I have a hundred thousand dollars (\$100,000)  
14 worth of timber on my land. I can't log a log of it. My  
15 logger will not go on that land.

16 MR. WAMPLER: For the Board's information, what we  
17 have here is, we had an application. That's...that's  
18 admitted. We had...we had a notice. That's admitted. We  
19 had a waiver of a right to object. That's admitted. We had a  
20 subsequent amendment to the plan, which identifies the  
21 location of where the pipe line is currently located. What  
22 we have is the question of whether or not the applicant ever  
23 received notice of that subsequent modification. The

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1 modification was in the inspector's...submitted to the  
2 inspector's office and approved, as I understand it. Mr.  
3 Fulmer, you correct me if I'm stating any of the facts wrong,  
4 but I believe that to be the fact. It was approved, it was  
5 installed according to the approved plans. Mr. Herbison's  
6 issue is he did not receive notice and that the location of  
7 the pipe line has subsequently rendered his land useless.

8           MR. FULMER: I would add one more caveat onto that.  
9 The testimony given at the IFF hearing to the fact that  
10 there was some conversations going on as to where the  
11 placement of that pipe line would be.

12           MR. WAMPLER: Well, our notes---.

13           MR. FULMER: (Inaudible).

14           MR. WAMPLER: ---you have an affidavit to that  
15 effect?

16           MR. FULMER: The affidavit was submitted---.

17           ROBERT HERBISON: Only to go around that spring.  
18 (Board confers among themselves.)

19           ROBERT HERBISON: I'm trying not to get mad. I'm  
20 sorry.

21           MR. WAMPLER: We don't want you to get mad. We're  
22 trying to sort out our jurisdiction.

23           ROBERT HERBISON: I know that. My lawyer talked to  
24

1 me very much what your jurisdiction...I'm trying to stay  
2 within that frame. That's why I brought the video to show how  
3 my land is...this is before they buried the land...the pipe  
4 line.

5 MR. WAMPLER: I don't...we don't have any dispute  
6 over what you're saying as to your land, how it's configured  
7 and the hill and things that you're talking about. That's  
8 not an issue that we're faced with. We're faced with that  
9 issue of...of having to make a decision whether or not---

10 ROBERT HERBISON: You have jurisdiction whether they  
11 made my land useless because of their pipes.

12 MR. WAMPLER: ---whether or not, in fact, you've  
13 received notice is what our issue gets down to, as required  
14 by law and regulation.

15 ROBERT HERBISON: Why would I give them permission  
16 to make my land useless?

17 MR. WAMPLER: Well, I understand what you're saying.

18 ROBERT HERBISON: And my dozer operator advised me  
19 where this line could go and where it wouldn't. He's the one  
20 that said if they made that thirty foot wide road, that they  
21 could use fifteen foot of it for the road, I could use  
22 fifteen foot for my driveway, you know.

23 MR. WAMPLER: Did you appear in court for this  
24  
25

1 restraining order?

2           ROBERT HERBISON: Oh, yes. I appeared. They  
3 didn't.

4           MR. WAMPLER: Okay.

5           ROBERT HERBISON: Now, this restraining order was  
6 upsetting to me. For one, he watched them...they gave me a  
7 restraining order. By the time I appeared in Court, they had  
8 that line ran and buried between the time...none of it was  
9 run, even welded together. It was on the other side of the  
10 spring. None of it was welded together. None of it came  
11 down over that hill. All this was done between the time I  
12 was given that restraining order when I had a chance to go  
13 before the Judge and they dropped the restraining order  
14 stating that the job was done. Okay. And I thought that was  
15 very unprofessional. If the Judge would have said, no work  
16 is done till this was clarified, they would had to have move  
17 that hill. Okay. Like they originally agreed upon before  
18 they run the line.

19           MR. WAMPLER: Well, see, I'm trying...you know,  
20 we're trying to keep you in the---

21           ROBERT HERBISON: Framework.

22           MR. WAMPLER: ---You're...you're appealing the  
23 inspector's decision, okay?

24

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1           ROBERT HERBISON: Yeah.

2           MR. WAMPLER: ---and I was just trying---.

3           ROBERT HERBISON: You ask Gary where the original  
4 line was to be run. Everything verbally isn't worth nothing  
5 unless it's on paper. Okay. Where can they show me a  
6 certified letter sent to me about the...like they did on the  
7 original notification, on the new revision. They can't show  
8 me one. I did not receive one. I did not get a contract on  
9 the new revision which was a totally different location than  
10 the original one. They didn't go within twenty foot of it.  
11 There is not one bit of pipe work in the original agreement  
12 except where they exited my land. They exited the land at  
13 the same place they originally said they would. That's the  
14 only place...what is it, ten foot of it, maybe?

15           ROBERT LITRELL: Maybe.

16           ROBERT HERBISON: Is in the original agreement.

17           MR. WAMPLER: All right. Let me ask the Board  
18 members, do any of you have any questions at this point?

19           ROBERT HERBISON: You want to see the video?

20           MR. WAMPLER: I'll ask the Board if they choose to?  
21 Mr. Fulmer?

22           MR. FULMER: I'd just like to point out one thing.  
23 Since this is an appeal of my decision, I have to explain my  
24

1 decision. If you would look in the decision of the director  
2 and if you look in the third paragraph, that is where the  
3 question of notice is addressed.

4 ROBERT HERBISON: Show me a certified letter.  
5 That's what the law...they said is required.

6 MR. FULMER: In other words, even though that Mr.  
7 Herbison did not receive notice, he was granted an informal  
8 hearing anyway.

9 ROBERT HERBISON: After the line was run and  
10 underground.

11 MR. FULMER: Then at that point in time, then we go  
12 to criteria in 35B in regards to the ma...the objections that  
13 have to be raised by a certain (inaudible) and that was the  
14 basis of the decision. This is a point of clarification for  
15 the Board.

16 MR. WAMPLER: Any questions from members of the  
17 Board?

18 MS. RIGGS: Is this a coalbed methane well or a  
19 coalbed methane well pipe line?

20 MR. FULMER: No.

21 MS. RIGGS: So, the provisions of 45.1-361.35B4---.

22 MR. FULMER: Does not apply.

23 MS. RIGGS: ---are not applicable to this appeal?

24

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1           MR. WAMPLER: Right. That's what I was pointing  
2 out...trying to point out to Mr. Herbison.

3           ROBERT HERBISON: You gave them a permit to run a  
4 line across my land, without my permission, totally out of  
5 the area agreed upon. I did not know about this, other than  
6 they were going to go around that spring. They were supposed  
7 to have had a D-9 dozer up there and move that hill and I was  
8 supposed to be there at all times to make sure it is done in  
9 a way not to interfere with my entrance in there. They were  
10 quite aware I had one entrance in, one entrance out.

11           MR. WAMPLER: But understand that there's three  
12 areas that we can look at under law.

13           ROBERT HERBISON: You are the...you gave them the  
14 permit.

15           MR. WAMPLER: That's right. That's right. That's  
16 exactly right. And the three areas that we can look at are  
17 that the---

18           ROBERT HERBISON: And I can't take you to court.

19           MR. WAMPLER: ---Here are the three areas that the  
20 Board can look at. The only objections to the permits  
21 modifications that may be raised by surface owners are these  
22 objections: The operations plan for soil and erosion and  
23 sediment control is not adequate or not effective; measures

24

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1 in addition to the requirement for well's water protection  
2 streams are necessary to protect fresh water bearing strata;  
3 and the permitted work will constitute a hazard to the safety  
4 of any person.

5 ROBERT HERBISON: Yeah, but it still gets down. You  
6 issued them a permit that made three hundred and fifty acres  
7 totally useless.

8 MS. RIGGS: The permit did not grant a right to  
9 enter upon your property. That's pursuant to private  
10 agreement that has to be construed by the courts, not by the  
11 Board. Right of way agreements are within the juris-  
12 diction---

13 ROBERT HERBISON: The Judge says that you made the  
14 decision, I could not take you to court.

15 MR. WAMPLER: Mr. Herbison, you're going to need to  
16 quit interrupting. She's explaining.

17 ROBERT HERBISON: Okay.

18 MR. WAMPLER: Go ahead.

19 MS. RIGGS: Nothing in the Gas and Oil Act  
20 permitting provisions grants to an operator the right to  
21 enter upon property for the purpose of conducting operations.  
22 The operator has to certify in their application that they  
23 have already acquired that right. Those rights are acquired

24

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1 through either severance deeds or private agreements with the  
2 parties. When a dispute arises with respect to those  
3 agreements, nothing in the act grants to this Board the  
4 ability to construe those agreements and to make  
5 determinations with respect to whether or not that right of  
6 way exists. That's within the jurisdiction of a court of  
7 competent jurisdiction that has the jurisdiction to determine  
8 property rights, and that would be the circuit court in the  
9 county where the property is located.

10 ROBERT HERBISON: You mean you don't have to get  
11 proof that the landowner even is aware that this...where this  
12 gas line has got to go.

13 MS. RIGGS: The operator has to certify in its  
14 permit application that it has the right of entry upon the  
15 property to conduct the operations proposed by the permit  
16 application.

17 ROBERT HERBISON: They did not do that.

18 MS. RIGGS: Well, then your action is against the  
19 operator in an action in the circuit court where the court  
20 has the jurisdiction to construe your property rights. This  
21 Board doesn't have that jurisdiction.

22 ROBERT HERBISON: Then you shouldn't issue a permit  
23 then. You shouldn't have the right to issue a permit.

24

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1           MS. RIGGS: Well, this is a chicken and the egg  
2 situation.

3           ROBERT HERBISON: I know that.

4           MS. RIGGS: The courts have jurisdiction over  
5 certain issues. This Board...the issues addressed by a  
6 permit are operational issues, not property rights issues.  
7 Whether or not it meets the criteria for construction and so  
8 forth to ensure safety and those...protect the environment  
9 and those types of issues. Permitting does not address  
10 property ownership issues. That's done by private  
11 negotiations between the companies and the parties and to the  
12 extent those agreements are breached, then your course of  
13 action is through the court to get those agreements construed  
14 and enforced.

15           ROBERT HERBISON: Then why did the Judge say I had  
16 to follow these procedures before he could hear it.

17           MS. RIGGS: I don't know what was argued to the  
18 court, so, you know, I can't address that.

19           ROBERT HERBISON: Well, now other words, there's  
20 nothing you can do to help.

21           MS. RIGGS: Well, I don't know what the Board's  
22 decision's going to be, I'm just citing what the statute  
23 says.

24

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1           ROBERT HERBISON: Uh-huh.

2           MS. RIGGS: The Board hasn't made a decision yet as  
3 far as I know.

4           ROBERT HERBISON: Do you want to see the video?  
5 It's just fifteen minutes.

6           MR. WAMPLER: I don't think that any of us feel that  
7 that's going to lend anything to our jurisdiction, Mr.  
8 Herbison. It's not a matter of trying to believe you or you  
9 having to validate that to us even. It's a matter of our  
10 jurisdictional authority.

11           ROBERT HERBISON: The thing is, you issued a permit  
12 to go across my land without my permission. Totally and  
13 completely where that gas line is at this time, I did not  
14 give the permission for.

15           MR. WAMPLER: Okay. Well, we, you know, we've tried  
16 to, you know, we've explained our position and we'll give you  
17 a decision. Do I have a motion? We have to make a decision  
18 on the inspector...the appeal of the inspector's decision.

19           MR. GILLAM: What is the decision on, jurisdiction?

20           MR. WAMPLER: Well, the decision is whether or not  
21 to uphold the inspector's decision that has been made, or to  
22 overturn it, which is what Mr. Herbison is requesting that we  
23 do.

24

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1           ROBERT HERBISON: Right.

2           MR. BRENT: Based on my understanding of this  
3 Board's jurisdiction, I would move that we uphold the  
4 inspector's decision.

5           MR. WAMPLER: Have a motion to uphold.

6           MR. GILLAM: Excuse me, what are we doing exactly?

7           MR. WAMPLER: He's made a...Mr. Brent's made a  
8 motion to uphold the inspector's decision.

9           MR. GILLAM: Based on your understanding of our  
10 jurisdiction?

11          MR. WAMPLER: Right.

12          MR. GILLAM: I'd second that.

13          MR. WAMPLER: Motion and second. Any further  
14 discussion? All in favor, signify by saying yes.

15                   (All Board members signify yes.)

16          MR. WAMPLER: Opposed, say no. Okay. The  
17 inspector's decision is upheld. Thank you.

18                   The next item on the agenda is a petition from  
19 Equitable Production Company for pooling of coalbed methane  
20 gas well identified as VC3047, docket number VGOB99-04/20-  
21 0719. We'd ask the parties that wish to address the Board in  
22 this matter to come forward at this time. Good morning.

23          MR. KISER: Mr. Chairman, members of the Board, Jim  
24

1 Kiser on behalf of Equitable Production Company. Our  
2 witnesses in this matter will be Mr. Dennis Baker as to land  
3 management and Mr. Bob Dahlin as to operations and  
4 production. We've got a revised exhibit A and B on this  
5 first well and we'll swear the witnesses after he passes that  
6 out.

7                   MR. WAMPLER: Is Laura Jean Cole here? Okay. Let  
8 the record show there are no others. You may proceed.

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DENNIS R. BAKER

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. KISER:

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

A. My name is Dennis R. Baker, employed by Equitable Production Company as senior landman.

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

A. Yes, it does.

Q. Are you familiar with Equitable's application seeking a pooling order for EPC well number VC3047, which was dated March 19th, 1999?

A. Yes.

Q. Is Equitable seeking to force pool the drilling rights underlying the unit as depicted in exhibit A which you've just passed out, the revised exhibit A?

A. Yes.

Q. And does the location proposed for well number VC3047 fall within the Board's order for the Nora coalbed gas field?

1 A. Yes, it does.

2 Q. Now, prior to filing the application, were  
3 efforts made to contact each of the unleased respondents and  
4 an attempt made to work out an agreement regarding  
5 development of the unit?

6 A. Yes.

7 Q. And at this point in time...wait a second.  
8 At the time of filing the application, could you state for  
9 the Board the interest that was leased to Equitable within  
10 the gas estate?

11 A. The interest leased at time of application  
12 is 69.76%.

13 Q. And the interest within the coal estate?

14 A. One hundred percent (100%).

15 Q. Okay. And there is only one unleased party  
16 and that's in the gas estate, obviously, within this unit and  
17 that's the Coles from California?

18 A. Yes, that's correct.

19 Q. And what percentage of the unit does their  
20 interest represent?

21 A. The unleased portion is 30.24%.

22 Q. Now, in your professional opinion, was due  
23 diligence exercised to locate each of the respondent's named  
24

1 in the revised exhibit B?

2 A. Yes.

3 Q. And are the addresses set out to the revised  
4 exhibit B the last known addresses for the respondents?

5 A. Yes, it is.

6 Q. And are you requesting this Board to force  
7 pool all unleased interest listed in revised exhibit B?

8 A. Yes.

9 Q. Now, are you familiar with the fair market  
10 value of drilling rights in the unit here and in the  
11 surrounding area?

12 A. Yes, I am.

13 Q. Could you advise the Board as to what those  
14 are?

15 A. Five dollar (\$5) per acre consideration,  
16 five year term, one-eighth royalty.

17 Q. Did you gain your familiarity by acquiring  
18 oil and gas leases, coalbed methane leases, and other  
19 agreements involving the transfer of drilling rights in the  
20 unit involved here and in the surrounding area?

21 A. Yes.

22 Q. In your professional opinion, do the terms  
23 you've testified to represent the fair market value of and  
24

1 fair and reasonable compensation to be paid for drilling  
2 rights within this unit?

3 A. Yes.

4 Q. And based on your testimony and as to our  
5 one unleased party, that being the gas estate on tract four,  
6 the Coles, do you recommend that they be allowed the  
7 following options with respect to their ownership interest.  
8 One, participation; two, cash bonus of five dollars (\$5) per  
9 net mineral acre plus one-eighth of eight-eighths royalty;  
10 three, in lieu of that cash bonus and one-eight of eight-  
11 eighths royalty share in the operation of the well on a  
12 carried basis as a carried operator under the following  
13 conditions: such carried operator should be entitled to the  
14 share of production from the tracts pooled accruing to his  
15 interest, exclusive of any royalty or overriding royalty,  
16 reserved any leases assignments thereof or agreements  
17 relating thereto at such tracts, but only after the proceeds  
18 allocable to the share equal 300 percent of the share of such  
19 cost allocable to the interest of the carried operator of a  
20 leased tract or portion thereof or 200 percent of the share  
21 of costs allocable to the interest of the carried operator of  
22 an unleased tract or portion thereof?

23 A. That's correct.

24

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1 Q. Do you recommend the order provide that  
2 elections by respondents be in writing and sent to the  
3 applicant at Equitable Production Company, P. O. Box 1983,  
4 Kingsport, Tennessee 37662; Attention Dennis R. Baker?

5 A. Yes.

6 Q. And should this be the address for all  
7 communications with the applicant concerning any force  
8 pooling order?

9 A. Yes, it should.

10 Q. Do you recommend the order provide that if  
11 no written election is properly made, then...then such  
12 respondent shall be deemed to have elected the cash royalty  
13 option in lieu of participation?

14 A. Yes.

15 Q. Should any unleased respondent be given  
16 thirty days from the day of the Board order to file written  
17 elections?

18 A. Yes.

19 Q. If unleased respondent elects to  
20 participate, should they be given forty-five days to pay the  
21 applicant for the respondents proportionate share of well  
22 costs?

23 A. Yes.

24

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1           Q.       Does the applicant expect the party electing  
2 to participate to pay in advance that share of well cost?

3           A.       Yes.

4           Q.       Should the applicant be allowed 120 days  
5 following the recording of the Board order, and thereafter  
6 and on that date till production is achieved to pay or tender  
7 any cash bonus becoming due under the order?

8           A.       Yes.

9           Q.       Do you recommend the order provide that if a  
10 respondent elects to participate but fails to pay the  
11 proportionate share of well costs satisfactory to the  
12 applicant, then respondents election to participate should be  
13 treated as having been withdrawn and void. Such respondent  
14 should be treated just as if no initial election had been  
15 filed under the Board order?

16          A.       Yes.

17          Q.       Do you recommend that where a respondent  
18 elects to participate, but defaults in regard to the payment  
19 of well costs, any cash sum becoming payable to such  
20 respondent be paid within sixty days after the last date on  
21 which such respondent could have made arrangements for the  
22 payment of those well costs?

23          A.       Yes.

24

--

1 Q. Okay. In this particular case we have  
2 conflicting claimants to the gas and coal estate, is that  
3 correct?

4 A. Yes, it is.

5 Q. So, do you recommend that the Board, through  
6 the order, create an escrow account into which all costs or  
7 proceeds attributable to these conflicting interests be held  
8 for the respondents benefit until such funds can be paid to  
9 the party by the order of the Board until the conflicting  
10 claim is resolved?

11 A. Yes.

12 Q. And who should be named operator under the  
13 forced pooling order?

14 A. Equitable Production Company.

15 Q. Nothing further of this witness at this  
16 time, Mr. Chairman.

17 MR. WAMPLER: Questions from members of the Board?

18 (No response.)

19 MR. WAMPLER: Call your next witness.

20

21 ROBERT A. DAHLIN II.

22 having been duly sworn, was examined and testified as  
23 follows:

24

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1 DIRECT EXAMINATION

2 QUESTIONS BY MR. KISER:

3 Q. Now, Mr. Dahlin would you state your name  
4 for the Board, who you're employed by, and in what capacity?

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

8 Q. And you have on many occasions previously  
9 testified before the gas and oil board as an expert witness  
10 regarding production and operations?

11 A. That's correct.

12 Q. And you're responsibilities include the land  
13 involved here and in the surrounding area for this well?

14 A. Yes.

15 Q. Are you familiar with the initial plan of  
16 development?

17 A. Yes, I am.

18 Q. What's the total depth of the proposed well?

19 A. Two thousand seven hundred and fifteen feet.

20 Q. And the estimated reserves of the unit?

21 A. We anticipate a 400 million cubic foot  
22 reserve.

23 Q. And you're familiar with the well cost for  
24

1 this well?

2 A. Yes, I am.

3 Q. Has an AFE been reviewed, signed, and  
4 submitted to the Board?

5 A. Yes, it has.

6 Q. Was the AFE prepared by an engineering  
7 department knowledgeable in the preparation of AFE's and, in  
8 particular, with the well costs in this particular area?

9 A. Yes.

10 Q. In your professional opinion, does the AFE  
11 represent a reasonable estimate of the well costs for the  
12 proposed well?

13 A. Yes, it does.

14 Q. Could you state for the Board at this time  
15 what the dry hole costs and completed well costs for 3047  
16 are?

17 A. The dry hole costs are \$82,598 and the  
18 completed well cost is \$170,500.

19 Q. Do these costs anticipate a multiple  
20 completion?

21 A. Yes.

22 Q. Does your AFE include a reasonable charge  
23 for supervision?

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1 A. Yes.

2 Q. In your professional opinion, will the  
3 granting of this application be in the best interest of  
4 conservation, the prevention of waste, and the protection of  
5 correlative rights?

6 A. Yes, it would.

7 Q. Nothing further of this witness at this  
8 time, Mr. Chairman.

9 MR. WAMPLER: Any questions from members of the  
10 Board?

11 (No response.)

12 MR. WAMPLER: Do you have anything further?

13 MR. KISER: Mr. Chairman, we'd ask that the  
14 application be approved and submitted.

15 MR. WAMPLER: Have a motion.

16 MR. BRENT: How...how are you accessing this well,  
17 which direction?

18 MR. BAKER: I'm not real certain on how the access  
19 road will be going to the well. I believe it may be coming  
20 from the north, but that's...I believe the permit application  
21 would probably have the operations plan and have the access  
22 road in it.

23 MR. BRENT: Mr. Baker, can you sum up for me Ms.  
24  
25

1 Cole's objection here, as you understand it?

2           MR. BAKER: Well, from what I understand, she's  
3 objecting to our drilling the well. She was approached with,  
4 I believe, some...maybe some pipe line considerations or  
5 operations owner property as cost \$5,000. At a later date  
6 regarding the unleased oil and gas portion, we had approached  
7 her with purchasing oil and gas lease at quite a bit less  
8 sum. She was concerned why the difference in price. The  
9 location, I don't believe has any...would encroach on her  
10 property at all, so naturally she hasn't signed an oil and  
11 gas lease. She has...I spoke with her on a couple of  
12 occasions. She wanted me to speak with her attorney. I had  
13 tried to reach him, unable to. Kept getting a fax machine.  
14 That's the last correspondence I've had with her. Her  
15 objection, I guess, she's wanting to live up there. The fact  
16 that I don't believe this well location is on her property or  
17 going to be on her property is somewhat eliminate...should  
18 eliminate that concern. Wouldn't prevent her from living on  
19 her property.

20           MR. WAMPLER: The well or pipe line location you  
21 don't believe would be on her property?

22           MR. BAKER: I don't think it would.

23           MR. WAMPLER: Because I read her objection  
24  
25

1 primarily goes to forced pooling. Of course, that's in the  
2 statute. We couldn't correct that.

3 MR. LEWIS: Did she say she had any objection to the  
4 location of the well?

5 MR. BAKER: I think she---.

6 MR. KISER: She wouldn't have any standing to  
7 object, it's not on her property.

8 MR. BAKER: I believe she...she didn't.

9 MR. LEWIS: Well, he said he didn't think it was.  
10 He didn't say for sure.

11 MR. BAKER: Well, the location itself is not on her  
12 property. The well plat indicates that. It's close to the  
13 property line and dependent upon how the location is actually  
14 built whether there's going to be any disturbance on the  
15 property line itself.

16 MR. LEWIS: What about the pipe line?

17 MR. BAKER: I don't believe there's going to be...I  
18 think it's probably going to run the road. I'm really not  
19 sure about that. The permit application would have that in  
20 there. I really don't know for sure that there's going to be  
21 any disturbance on it at all.

22 MR. BRENT: She seems to be upset about being  
23 charged close to half the cost of drilling the well.

24

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1           MS. RIGGS: Well, that would only be if she elected  
2 to participate in which event she would pay thirty...she has  
3 30 percent of the unit.

4           MR. KISER: Thirty percent or something, yeah.

5           MS. RIGGS: So, it would be 30 percent of the cost.

6           MR. BRENT: That seems to be, as I read her letter,  
7 that seems to be the crux of her concerns. Her impression  
8 that she's going to have to pay roughly half the cost of the  
9 well, which is not the case.

10          MR. KISER: And that's in keeping with the statute.

11          MR. GILLAM: I'd like to ask you, why would you move  
12 the location of this well from where it's projected on this?

13          MR. BAKER: We're not planning on moving the  
14 location. It's on the property adjoining.

15          MR. GILLAM: So, this is where you're going to drill  
16 the well?

17          MR. KISER: Right.

18          MR. BAKER: If it's proposed, yes.

19          MR. GILLAM: So, it's not going to be on her  
20 property, is that what you're saying?

21          MR. BAKER: Right.

22          MR. BRENT: I apologize if you already stated this,  
23 but what is the change on revised exhibit B?

24

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1           MR. BAKER: The only change on the exhibit A and B  
2 is for tract number two. At the time of application, the  
3 title reported not being received and we had listed a lady by  
4 the name of May Smith Rowlett as being the oil and gas owner.  
5 Exhibit A, supplemental sheet, and exhibit B is just change  
6 the name.

7           MR. BRENT: Mr. Chairman, I move that we grant the  
8 application.

9           MR. WAMPLER: Motion to grant. Is there a second?

10          MR. GILLAM: I'll second.

11          MR. WAMPLER: Motion and seconded. Any further  
12 discussion? All in favor, signify by saying yes.

13                   (All Board members signify yes.)

14          MR. WAMPLER: Opposed, say no. We have approval.  
15 The next item is a petition from Pocahontas Gas Partnership  
16 for pooling of coalbed methane unit identified as unit W34,  
17 docket number VGOB97-03/18-0571-01. We'd ask the parties  
18 that wish to address the Board in this matter to come forward  
19 at this time.

20          MR. KISER: Mr. Chairman, member of the Board, we've  
21 ask Mr. Swartz and received his permission, now if we can get  
22 your permission, since the only other item we have on the  
23 docket is number twelve and he has all the items in between  
24

1 if we could go ahead and do our item twelve at this time. We  
2 have one unknown party and one unleased party and those  
3 parties are from Huntington, West Virginia, and Mr. Baker  
4 spoke with them yesterday and they stated that they would not  
5 be at the hearing. In fact, the wife stated that she was  
6 going to sign a voluntary agreement, though she didn't know  
7 whether or not her husband would be willing to. But, so, we  
8 know that they're not going to be here, so it's not like we'd  
9 be in a situation where they thought they were going to be  
10 after lunch or something and we wait for them.

11 MR. WAMPLER: We'll do that if Mr. Swartz will  
12 agree. We'll go to number nine immediately after that. Some  
13 folks that are here and we won't be holding them up.

14 MR. KISER: Okay.

15 MR. WAMPLER: All right.

16 MR. KISER: Thank you.

17 MR. WAMPLER: The next item on the agenda, then,  
18 will be a petition from Equitable Production Company for  
19 pooling of a coalbed methane unit identified as VC4068,  
20 docket number VGOB99-05/18-0723. We'd ask the parties that  
21 wish to address the Board in this matter to come forward at  
22 this time.

23 MR. KISER: Mr. Chairman, members of the Board, Jim  
24

1 Kiser on behalf of Equitable Production Company. Our  
2 witnesses again in this matter will be Mr. Baker and Mr.  
3 Dahlin who have been previously sworn.

4

5

6

DENNIS R. BAKER

7 having been duly sworn, was examined and testified as  
8 follows:

9

DIRECT EXAMINATION

10 QUESTIONS BY MR. KISER:

11 Q. Mr. Baker, if you'd state your name for the  
12 Board, who you're employed by and in what capacity.

13 A. My name is Dennis R. Baker, employed by  
14 Equitable Production Company as senior landman.

15 Q. And you're familiar with Equitable's  
16 application seeking a pooling order for EPC well number  
17 VC4068 which was dated April 15th, 1999?

18 A. Yes, that's correct.

19 Q. Is Equitable seeking to force pool the  
20 drilling rights underlying the unit as depicted in exhibit A  
21 to the application?

22 A. Yes.

23 Q. And does the location proposed for well  
24

--

1 number VC4068 fall within the Board's order for the Nora  
2 coalbed gas field?

3 A. Yes, it does.

4 Q. Now, prior to filing the application, were  
5 efforts made to contact each of the unleased respondents in  
6 an attempt made to work out an agreement regarding the  
7 development of the unit?

8 A. Yes.

9 Q. What at this time, or at the time of the  
10 application, was the interest of Equitable in the gas estate  
11 within the unit?

12 A. The interest leased at time of application  
13 was 98.68%.

14 Q. And the interest of Equitable in the coal  
15 estate?

16 A. The interest leased to Equitable in the coal  
17 estate is 98.68%.

18 Q. Okay. Which leaves an unleased interest in  
19 both the gas and coal estate of 1.32%?

20 A. That's correct.

21 Q. Which is represented by an undivided  
22 interest in tract three in Huntington, West Virginia and then  
23 some unknown Faye Cassidy heirs, is that correct?

24

--

1 A. That's correct.

2 Q. Now, in your professional opinion was due  
3 diligence exercised to locate each of the respondents named  
4 in exhibit B?

5 A. Yes.

6 Q. And are all the addresses set out in exhibit  
7 B the last known addresses for the respondents?

8 A. Yes.

9 Q. Are you requesting the Board to force pool  
10 all unleased interest listed in exhibit B?

11 A. Yes, we are.

12 Q. Are you familiar with the fair market value  
13 of drilling rights in this unit here and in the surrounding  
14 area?

15 A. Yes, I am.

16 Q. Could you advise the Board as to what those  
17 are?

18 A. Five dollar (\$5) per acre consideration,  
19 five year term, one-eighth royalty.

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

24

--

1 A. Yes.

2 Q. At this time, Mr. Chairman, I'd like to ask  
3 that the testimony that we just took from our previous  
4 hearing, that being VGOB9904-20-0719 regarding the election  
5 options afforded any force pooled parties and their time  
6 periods in which to make these elections be incorporated.

7 MR. WAMPLER: They'll be incorporated.

8 Q. Now, Mr. Baker, we don't have any  
9 conflicting claimants in this coalbed methane unit, but we do  
10 have some unknown heirs, so do you request that the Board  
11 create a escrow account and all the interest attributable to  
12 that unknown interest be paid into that account?

13 A. Yes, we do.

14 Q. Who should be named the operator under the  
15 forced pooling order?

16 A. Equitable Production Company.

17 Q. All I have of this witness at this time, Mr.  
18 Chairman.

19 MR. WAMPLER: Questions from members of the Board?

20 (No response.)

21 MR. WAMPLER: Do you show Barbara Ellens Levins and  
22 Carl Levins as unleased?

23 MR. BAKER: Yes.

24

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1                   MR. WAMPLER: All right. Any other questions? Call  
2 your next witness.

3

4                   ROBERT A. DAHLIN II.

5 having been duly sworn, was examined and testified as  
6 follows:

7                   DIRECT EXAMINATION

8 QUESTIONS BY MR. KISER:

9                   Q.       Mr. Dahlin, could you again state your name  
10 for the Board, who you're employed by, and in what capacity?

11                  A.       My name is Robert A. Dahlin, II. I'm  
12 employed by Equitable Production Company as a production  
13 specialist.

14                  Q.       And you're familiar with the proposed plan  
15 of exploration for VC4068?

16                  A.       That's correct.

17                  Q.       What is the total depth of that proposed  
18 well?

19                  A.       One thousand seven hundred and twenty-three  
20 feet.

21                  Q.       And what are the estimated reserves for the  
22 unit?

23                  A.       Three hundred and fifty million cubic feet.

24

--

1 Q. And are you familiar with the proposed well  
2 costs?  
3 A. Yes.  
4 Q. Has an AFE been reviewed, signed, and  
5 submitted to the Board?  
6 A. Yes, it has.  
7 Q. Was the AFE prepared by an engineering  
8 department knowledgeable in the preparation of AFE's and  
9 knowledgeable in regard to well costs in this particular  
10 area?  
11 A. Yes, it was.  
12 Q. In your professional opinion, does the AFE  
13 represent a reasonable estimate of the well costs for the  
14 proposed well under the plan of development?  
15 A. It does.  
16 Q. Could you state for the Board what the dry  
17 hole and completed well costs for VC4068 are?  
18 A. The dry hole costs are \$72,425 with the  
19 completed well cost of \$171,200.  
20 Q. Do these costs anticipate a multiple  
21 completion?  
22 A. Yes.  
23 Q. Does your AFE include a reasonable charge  
24

1 for supervision?

2 A. Yes, it does.

3 Q. In your professional opinion, will the  
4 granting of this application be in the best interest of  
5 conservation, the prevention of waste, and the protection of  
6 correlative rights?

7 A. Yes.

8 Q. Nothing further of this witness at this  
9 time, Mr. Chairman.

10 MR. WAMPLER: Questions from members of the Board?

11 MR. BRENT: Mr. Dahlin, would you explain to me  
12 again why the estimated production is always 350 million  
13 cubic feet? I know I've asked you that before.

14 MR. DAHLIN: We had...my answer in this case is  
15 different. Reserves on the prior well today were 400  
16 million. This one is 350. This is a development well.  
17 We've got wells completely surrounding. This is a very  
18 accurate number of what we think we'll derive from this one.

19

20 MR. BRENT: Thank you.

21 MR. DAHLIN: Uh-huh.

22 MR. WAMPLER: Other questions of witness? Do you  
23 have anything further?

24

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1           MR. KISER: Mr. Chairman, we'd ask that the  
2 application be approved and submitted.

3           MR. LEWIS: I make a motion we approve the  
4 application.

5           MR. WAMPLER: Motion to approve.

6           MR. BRENT: Second.

7           MR. WAMPLER: Second. Any further discussion? All  
8 in favor, signify by saying yes.

9           (All Board members signify yes.)

10          MR. WAMPLER: Opposed say no. We have approval.  
11 Thank you.

12          MR. KISER: Thank you.

13          MR. WAMPLER: I'm going to go...let's take about a  
14 five minute break.

15          (Off record.)

16          MR. WAMPLER: Next on the agenda is a petition for  
17 Pocahontas Gas Partnership for pooling of coalbed methane  
18 unit identified as unit W34, docket number VGOB97-03/18-0571-  
19 01. We'd ask the parties that wish to address the Board in  
20 this matter to come forward at this time. It's number seven  
21 on the agenda.

22          MR. SWARTZ: Mark Swartz on behalf of Pocahontas Gas  
23 Partnership and Les Arrington. Les is on the phone and will  
24

1 be here momentarily. There are three units that people were  
2 supposed to sign leases last night and we're just checking  
3 the mail one more time because if they did, they'll go away.

4 MR. WAMPLER: Okay.

5 MR. SWARTZ: And that's the P46, M46, and O45 units.  
6 If you'll just give him one minute to get us that answer and  
7 we can proceed on W34.

8 MR. WAMPLER: We'll do that.

9 MR. SWARTZ: Thanks. We'll start...Les, we're  
10 starting with W34. W34 is...was pooled on a previous  
11 occasion by the Board back in March of '97 and the reason  
12 that this notice of hearing ratification has gone out today,  
13 or is being heard today, is, if you'll look at the plat map,  
14 there's a tract two which is sort of in the upper center of  
15 the eighty acre unit. For some unknown reason, when this  
16 unit was originally pooled, that tract was not platted on the  
17 plat and so we completely missed a tract and as they were  
18 continuing to update their property records, they discovered  
19 the Davis tract. It's been...the Carl Davis tract, it's been  
20 platted now, but, of course, it changes all the percentages  
21 in the unit. So, we had to notify the only party that we had  
22 pooled before which was VDOT and...of this hearing, because  
23 it has a potential for affecting their infenitestimal

24

--

1 interest and so this...this hearing today is simply to repool  
2 this unit because of the problem that was identified with  
3 regard to the Carl Davis tract. Is that right?

4 MS. RIGGS: Which tract number?

5 MR. SWARTZ: It's number two.

6 MR. WAMPLER: Number two.

7 MR. SWARTZ: And...and VDOT was the only party  
8 pooled in the beginning?

9 MR. ARRINGTON: That's correct, it was.

10 MR. SWARTZ: Okay. And just to also put VDOT's  
11 interest in perspective. They're tract seven and they have  
12 just a tiny little part of their tract comes in what would be  
13 the Southwest corner of the eighty acre unit. Les, you want  
14 to be sworn here?

15

16 LESLIE K. ARRINGTON

17 having been duly sworn, was examined and testified as  
18 follows:

19 DIRECT EXAMINATION

20 QUESTIONS BY MR. SWARTZ:

21 Q. State your name for us.

22 A. Leslie K. Arrington.

23 Q. Who do you work for?

24

--

1 A. Pocahontas Gas.

2 Q. And do you have a title with them?

3 A. Permit specialist.

4 Q. Did you prepare the notice of hearing and

5 the exhibits and the application for today with regard to

6 W34?

7 A. I did.

8 Q. And the applicant is Pocahontas Gas

9 Partnership?

10 A. Yes, it is.

11 Q. Essentially, they're seeking to repool this

12 unit?

13 A. Yes, we are.

14 Q. The only party that was pooled previously

15 was VDOT?

16 A. It was.

17 Q. And then subsequently the Carl Davis tract

18 was discovered?

19 A. It was.

20 Q. And you've incorporated that now into all

21 the percentages?

22 A. We have.

23 Q. Okay. Pocahontas Gas Partnership is a

24

1 Virginia partnership composed of Consolidation Coal and  
2 Conoco Inc. and you're seeking that PGP be the designated  
3 operator, correct?

4 A. Yes, we are.

5 Q. Is PGP authorized to do business in the  
6 Commonwealth, has it registered with the Department of  
7 Mines, Minerals, and Energy, and does it have a blanket bond  
8 on file as required by law?

9 A. Yes, it does.

10 Q. Are the people that you want to pool  
11 identified in the notice of hearing?

12 A. Yes, they are.

13 Q. And are their addresses set forth in exhibit  
14 B3?

15 A. Yes.

16 Q. Do you wish to add anybody or dismiss  
17 anybody today?

18 A. No, we do not.

19 Q. Okay. Did you mail notice to the parties  
20 respondent?

21 A. Yes, we did on April 16th, 1999.

22 Q. And did you publish?

23 A. Yes, we did, in the Bluefield Daily  
24

1 Telegraph on April 21st, 1999.

2 Q. Okay. And did you publish the notice of  
3 hearing and the related maps?

4 A. Yes, we did.

5 Q. If you'll turn to exhibit A, page two.  
6 Would you describe to the Board the interest that you've  
7 acquired and the interest that you have not and are seeking  
8 to pool?

9 A. Yes. We have 100% of the CBM leased from  
10 the coal owner and 90...yeah, 93.3375% of the oil and gas  
11 interest.

12 Q. And we're seeking to pool .6625% of the oil  
13 and gas interest only?

14 A. Six point six six two five percent  
15 (6.6625%), yes.

16 Q. I'm sorry. Okay. And the bulk of that is  
17 the Davis'

18 A. Yes, it is.

19 Q. And a little bit of it is VDOT?

20 A. Yes.

21 Q. The...this...this unit is being pooled under  
22 both the Oakwood one and Oakwood two, is it not?

23 A. Yes, it is.

24

--

1 Q. Okay. And what mine is it...is it over?  
2 A. The Buchanan number one mine.  
3 Q. Okay. And it's over portions of three  
4 longwall panels, correct?  
5 A. Yes, eleven, twelve, and thirteen east  
6 longwall panels.  
7 Q. And exhibit G, page one allocates the  
8 longwall panels to the various units...the percentage of the  
9 panels...acreage in the panels to the various units that are  
10 affected by those panels, correct?  
11 A. Yes, it does.  
12 Q. And then it captures cost...total cost for  
13 each panel and then allocates them on that percentage base?  
14 A. Yes, it does.  
15 Q. And then there's a grand total with regard  
16 to the allocated cost pertaining to the three panels  
17 affecting W34, is that correct?  
18 A. Yes, it does.  
19 Q. And what's the grand total?  
20 A. One hundred and seventy-five thousand eight  
21 hundred and fifty-seven dollars and fifty-seven cents  
22 (\$175,857.57).  
23 Q. And what...what number of wells have you  
24

1 allocated to the...to each of the panels and at what cost?

2 A. Six frac wells per panel at a \$245,000 per  
3 well.

4 Q. And how many wells, normally, would be  
5 drilled in the panel?

6 A. Six frac wells.

7 Q. And some additional gob wells?

8 A. Numerous gob holes.

9 Q. So, all you're seeking to allocate are the  
10 frac wells?

11 A. Yes, it is.

12 Q. And there's a exhibit H which is a detailed  
13 well estimate?

14 A. Yes.

15 Q. Tell the Board what that is, when you  
16 prepared it.

17 A. Yes, that was an average cost for our frac  
18 wells within those longwall panels. It was actually prepared  
19 originally back for the original hearing. I just pulled it  
20 out and updated for today's...for this hearing.

21 Q. Okay. And it shows a total depth of the  
22 Pocahontas three seam, which I assume is the target here?

23 A. It was, of 1,032 feet.

24

--

1 Q. And initially, these produce as frac gas and  
2 then ultimately would produce some of the Oakwood two roles?

3 A. They would.

4 Q. In addition to exhibit B3, have you filed an  
5 exhibit E?

6 A. Yes, I have.

7 Q. And is that revised from what was originally  
8 filed?

9 A. Yes, it is.

10 Q. And exhibit E is our current view of what  
11 needs to be escrowed because of conflicts?

12 A. That's correct, it is.

13 Q. What lease terms would you offer to...would  
14 you recommend to the Board in terms of coalbed methane lease  
15 provisions?

16 A. It's a dollar per acre for coalbed methane  
17 lease with a one-eighth royalty of a five year term.

18 Q. And the rental is payable during what period  
19 of time?

20 A. Only until production begins.

21 Q. Okay. Now, in terms of payment of royalty,  
22 or allocation of cost, if you look at exhibit B3 during frac  
23 well production, what would be the percentage that you would  
24

1 use to calculate royalty?

2 A. It...during frac production, it would be the  
3 percent of the unit.

4 Q. So, in Mr. Davis's instance, what would that  
5 percentage be?

6 A. Six point six six five (6.665).

7 Q. And when it converts to longwall production,  
8 is there actually a division of interest for each panel?

9 A. Yes, there is.

10 Q. And so, with regard to each panel, the  
11 production would be separately metered and accumulated and  
12 then these percentages would apply?

13 A. It would.

14 Q. For the contribution of costs on a  
15 participation basis or a carried basis, would the percentage  
16 that would be relevant to that be the percent of unit  
17 calculation?

18 A. Yes, it would.

19 Q. Is it your recommendation to the Board that  
20 they allow this petition...this pooling to modify the prior  
21 order for the reasons stated?

22 A. Yes, it is.

23 Q. That's all I have.

24

--

1           MS. RIGGS: Would you summarize briefly how this  
2 application differs from the prior one? I know we've got  
3 revised plat exhibit B3 and exhibit E in terms of exhibits.  
4 Are there any other modifications to the exhibits?

5           MR. SWARTZ: Well, it changes the percentages.

6           MS. RIGGS: That's the B3?

7           MR. SWARTZ: Well, and it changes...it changes all  
8 the percentages.

9           MS. RIGGS: The tract ID sheets. Yeah, okay.

10          MR. SWARTZ: Because we've added a tract which  
11 then...everybody else's percentage went down. So, wherever  
12 there's a percentage in here, it's going to be different.

13          MS. RIGGS: Okay. On...on process for allocating  
14 production, was the original one an Oakwood one and two?

15          MR. SWARTZ: Yes.

16          MS. RIGGS: So, that's already taken care of in the  
17 original pool?

18          MR. SWARTZ: Right. So, basically---.

19          MS. RIGGS: The number of wells being charged is the  
20 same?

21          MR. SWARTZ: ---Yes, it's a recycled exhibit. So,  
22 the dollars, the election option is the same. I would think,  
23 though, that we need to offer VDOT the election option again.

24

--

1 I mean, when we repool stuff because we changed somebody's  
2 percentages, I think historically, we've always given them an  
3 election option. So, I would expect to see that with regard  
4 to VDOT.

5 MR. WAMPLER: Questions from members of the Board.

6 Do you have anything further?

7 MR. SWARTZ: No.

8 MR. FULMER: Mr. Chairman, can I ask one question?

9 This is an exception under that tract, is that what has  
10 occurred?

11 MR. ARRINGTON: We didn't originally know that that  
12 tract was in there. As you can see on the plat, it's kind of  
13 dashed on there. We just...as we kept working on through  
14 mapping, we did discover that there was a tract missing out  
15 of there.

16 MR. FULMER: But, I mean, is this part of the old  
17 Curtis...is this part of the Curtis Davis?

18 MR. ARRINGTON: No, this is a different Davis.

19 MR. FULMER: It's just a exception.

20 MR. ARRINGTON: It's just a different...it's a  
21 different Davis.

22 MR. LEWIS: They're not related in any way?

23 MR. ARRINGTON: I can't answer that, you know, I can  
24

1 tell you it's Carl Davis's.

2 MR. LEWIS: I wondered about that when I saw that.

3 MR. WAMPLER: Other questions? Have a motion?

4 MR. LEWIS: I make a motion we approve as presented.

5 MR. BRENT: Second.

6 MR. WAMPLER: Further discussion? All in favor,  
7 signify by saying yes.

8 (All Board members signify yes.)

9 MR. WAMPLER: Opposed, say no. We have approval.

10 The next item is a petition from Pocahontas Gas Partnership  
11 for pooling of coalbed methane unit identified as unit N46,  
12 docket number VGOB9812/15-0701-01. We'd ask the parties that  
13 wish to address the Board in this matter to come forward at  
14 this time.

15 MR. SWARTZ: It'd be Mark Swartz and Les Arrington  
16 again for Pocahontas Gas Partnership; and if I could, I would  
17 ask the Board to consider consolidating items ten and eleven  
18 which would be unit O45 and P46. These three involve the  
19 same respondents and this is the leases that we were trying  
20 to obtain and they're pretty similar units.

21 MR. WAMPLER: All right. I'll go ahead and call the  
22 other two then. A petition from Pocahontas Gas Partnership  
23 for pooling of coalbed methane unit identified as unit

24

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1 zero...or 045, docket number VGOB99-05/18-0721. And the  
2 other one is petition from Pocahontas Gas Partnership for  
3 pooling of coalbed methane unit identified as unit P46,  
4 docket number VGOB99-05/18-0722. We'd ask the parties that  
5 wish to address the Board in this matter to come forward at  
6 this time.

7 MR. SWARTZ: It would be us again.

8 MR. WAMPLER: Record will show there are no others.  
9 You may proceed.

10 MR. SWARTZ: These three units are all frac units  
11 under Oakwood one. They involve two of the folks that we  
12 refer to as the Mary McNeil heirs. We've leased almost  
13 everybody and thought we would have leases from these two  
14 folks signed and in the mail this morning, but we do not, so  
15 we need to proceed to pool. Les is passing out exhibits with  
16 regard to mailing publication on these three and we can try  
17 and take them in some organized way together. Les, you're  
18 still under oath.

19 MR. ARRINGTON: Yes.

20

21 LESLIE K. ARRINGTON

22 having been duly sworn, was examined and testified as  
23 follows:

24

--

1 DIRECT EXAMINATION

2 QUESTIONS BY MR. SWARTZ:

3 Q. Please state your name again.

4 A. Leslie K. Arrington.

5 Q. Who do you work for?

6 A. Pocahontas Gas and Consol.

7 Q. Do you have a title?

8 A. Permit specialist.

9 Q. Were you the person that put together the  
10 notices of hearing, the applications, and either did or  
11 caused to be prepared the exhibits?

12 A. Yes, I am.

13 Q. Okay. And you've actually signed the  
14 notices and the applications?

15 A. Yes, I have.

16 Q. The applicant in all three cases is  
17 Pocahontas Gas Partnership?

18 A. Yes, it is.

19 Q. And Pocahontas Gas Partnership is, in fact,  
20 a Virginia general partnership that has two partners,  
21 Consolidation Coal Company and Conoco?

22 A. Yes, it is.

23 Q. PGP is asking that it be designated as the  
24

1 Board's operator?

2 A. Yes, it is.

3 Q. And Pocahontas Gas Partnership, has it...is  
4 it authorized to do business in the Commonwealth, has it  
5 registered with the Department of Mines, Minerals, and  
6 Energy, and does it have a blanket bond on file?

7 A. Yes, it does.

8 Q. The people that you're seeking to pool in  
9 all three of these are the same folks, correct?

10 A. Yes, it is.

11 Q. And they're both listed on...in the notice  
12 of hearing?

13 A. Yes, they are.

14 Q. Did you mail to these people?

15 A. Yes, we did.

16 Q. Have you filed proof of publication with the  
17 Board?

18 A. Yes, the exhibits that I have passed out is  
19 exhibit two.

20 Q. Okay. And when did you mail to these  
21 people...to the respondents?

22 A. On April 19th, 1999.

23 Q. And were notices published as well?

24

--

1           A.       April 21st, 1999, in the Bluefield Daily  
2 Telegraph.

3           Q.       And...and let's take these one at a time.  
4 Let's start with the first that's listed in the Board's  
5 docket. N46---.

6           A.       Yes.

7           Q.       ---Go to...if you go to the plat.  
8 Just...just work through it with me. There's one frac well  
9 proposed?

10          A.       It is.

11          Q.       And it's within the drilling window, so  
12 there's not going to be a location exception required,  
13 correct?

14          A.       That's correct. Correct.

15          Q.       Okay. And then if we continue on in that  
16 application, we get to exhibits A, page two---.

17          A.       Yes.

18          Q.       ---which is the ownership information?

19          A.       That's correct.

20          Q.       And...and what have you required by lease or  
21 ownership and what are you seeking to pool in this unit N46?

22          A.       In the N46 unit we have leased both coal,  
23 oil, and gas CBM 99.06458%.

24

--

1 Q. Okay. And we're seeking to pool by this  
2 application, what?

3 A. Point nine three five four two percent  
4 (.93542%) of the coal, oil, and gas coalbed methane.

5 Q. And if we continue through here, there's a  
6 detailed well estimate, exhibit C. Did you prepare that?

7 A. Yes, I did.

8 Q. Do you recall when?

9 A. April 15th, 1999.

10 Q. Okay. And what is the...is this an actual  
11 or an estimate?

12 A. Both.

13 Q. Okay.

14 A. For the parts, it's not complete at this  
15 time,. or at the time I finished.

16 Q. Okay. What was it...in general, what were  
17 the actual figures and what were the portion of the work?

18 A. The portion that would have been actual  
19 would have been casing and drilling.

20 Q. Okay.

21 A. The frac.

22 Q. The completion---

23 A. The completion work was still an estimate at  
24

1 that point.

2 Q. ---Okay. So, you're...your combined actual  
3 and estimated figure to complete the drill and complete this  
4 well is in what amount?

5 A. Two hundred forty-six thousand three hundred  
6 fifty-six dollars and forty-two cents (\$246,356.42) at a  
7 total depth of 2,678 feet.

8 Q. Okay. Now, with regard to exhibit E, is  
9 that your statement to the Board as of today as to what would  
10 require to be escrowed?

11 A. That is correct, it would.

12 Q. Okay. And turning backwards to...let's see  
13 if we can find exhibit B3. That has a percent and unit  
14 column, correct?

15 A. It does.

16 Q. And that, because this is a frac unit, would  
17 serve for royalty allocation, participation allocation, and  
18 carried interest allocation just that one number, correct?

19 A. It would.

20 Q. Now, let's turn to the next unit, which on  
21 the Board's docket would be O45. This is also a frac unit in  
22 the Oakwood one field?

23 A. Yes, it is.

24

--

1 Q. And directing your attention to the plat.  
2 Is the one frac well located inside the drilling window?

3 A. Yes, it is.

4 Q. Directing your attention now to exhibit A,  
5 page two with regard to ownership information, what is the  
6 interest that's leased or owned by the applicant?

7 A. Leased or owned both coal, oil, and gas  
8 coalbed methane was 96.8875%.

9 Q. And what are we seeking to pool?

10 A. Three point one one two five percent  
11 (3.1125%) of both coal, oil, and gas coalbed methane.

12 Q. And there's an exhibit B3 that follows?

13 A. Yes, there is.

14 Q. And, again, there's a percent of unit  
15 column, and is that the percentage that would pertain to a  
16 calculation of royalty and a calculation of working interest,  
17 participation, or carried interest?

18 A. Yes, it would be.

19 Q. Exhibit C appears to be signed by you on  
20 April 15th, '99, is that correct?

21 A. Yes, it is.

22 Q. Is this estimate drilled or...or an  
23 estimate?

24

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1           A.       Again, it's the same situation as the N46  
2 well. The wells were drilled, but not completed at the time  
3 I had done my well cost.

4           Q.       And what have you projected for the well  
5 within unit O45?

6           A.       Two hundred and thirty-eight thousand eight  
7 hundred and forty-four dollars and fifty-seven cents  
8 (\$238,844.57) at a total depth of 2,527

9           Q.       Turning your attention now to P, as in Paul,  
10 forty-six. This is an eighty acre frac unit?

11          A.       Yes, it is.

12          Q.       Under Oakwood one?

13          A.       Yes, it is.

14          Q.       The well plat shows one coalbed methane  
15 well, is that correct?

16          A.       Yes, it does.

17          Q.       And is it within the drilling window?

18          A.       Yes, it is.

19          Q.       Turning to exhibit A, page 2, what interests  
20 have been acquired?

21          A.       Ninety-nine point seven eight nine five  
22 eight percent (99.78958%) of the coal, oil, and gas coalbed  
23 methane.

24

1 Q. And what is it that we're seeking to pool?  
2 A. Zero point two one zero four two percent  
3 (0.21042%) of the coal, oil, and gas coalbed methane.  
4 Q. Again, we have an exhibit B3 with a percent  
5 of unit?  
6 A. Yes, that's correct.  
7 Q. And is the percent of unit...the numbers in  
8 the percent of unit column what we would resort to to  
9 calculate royalty, participation contribution, carried  
10 interest, those sorts of calculations?  
11 A. Yes, it is.  
12 Q. Now, we have an exhibit C for a well, looks  
13 like is was signed by you on April 15th, '99, is that  
14 correct?  
15 A. That's correct.  
16 Q. Again, is this...how did you arrive at that  
17 figure?  
18 A. Again, this is partially partial AFE  
19 it's...it was drilled, but not fraced at this point and the  
20 cost for it was \$228,208.18 for a total depth of 2,114 feet.  
21 Q. Okay. And then we've got an exhibit E here  
22 as well?  
23 A. Yes.

24

1 Q. And what...what are you telling the Board  
2 with regard to that?

3 A. That exhibit E is the person's royalty  
4 interest that must be escrowed due to a conflicting claim.

5 Q. Okay. With regard to these three units,  
6 would you recommend to the Board a pool hole of the plans  
7 that are disclosed by the plats and the financial information  
8 to develop the coalbed methane under these three units as a  
9 reasonable development plan?

10 A. Yes, we do.

11 Q. With regard to any terms that might be  
12 inserted by the Board in a pooling order concerning options  
13 or the failure to elect and in a lease...deemed to have  
14 leased situation, generally what...what terms have you  
15 negotiated with other lessors in the area?

16 A. It's one-eighth royalty, a dollar (\$1) per  
17 acre rental, five year term.

18 Q. And would you recommend that the Board  
19 employ those in any order?

20 A. Yes. Yes, we do.

21 Q. That's all I have.

22 MR. WAMPLER: Questions, members of the Board? Mr.  
23 Arrington, on the N46, my copy did not have a signed AFE. Do

24

--

1 you have a signed AFE, and if not, will you submit that to  
2 the inspector?

3 MR. SWARTZ: He has one in his file, but he didn't  
4 give any of us signed.

5 MR. ARRINGTON: I missed that.

6 MR. WAMPLER: Okay.

7 MR. ARRINGTON: I will supply that.

8 MR. WAMPLER: Supplement the record.

9 MR. ARRINGTON: Okay.

10 MR. WAMPLER: Questions members of the Board. Do  
11 you have anything further Mr. Swartz?

12 MR. SWARTZ: No.

13 MR. WAMPLER: Do we have a motion?

14 MR. LEWIS: I make a motion we approve as presented.

15 MR. WAMPLER: Motion to approve.

16 MR. BRENT: Second.

17 MR. WAMPLER: Second. Any further discussion? All  
18 in favor, signify by saying yes.

19 (All Board members signify yes.)

20 MR. WAMPLER: Opposed, say no. We have approval.

21 Next item is a petition from Pocahontas Gas  
22 Partnership for pooling of a coalbed methane unit identified  
23 as unit V, it says thirty-seven here, it's actually forty-

24

--

1 seven, docket number VGOB99-05/18-0720. We'd ask the parties  
2 that wish to address the Board in this matter to come forward  
3 at this time.

4 MR. SWARTZ: Mark Swartz and Les Arrington on behalf  
5 of the applicant Pocahontas Gas Partnership.

6 MR. WAMPLER: Record show there are no others. You  
7 may proceed.

8 MR. SWARTZ: This is, if I'm not mistaken, this is a  
9 pooling application. Again, this is under Oakwood...Oakwood  
10 one. So, it would be a frac unit. Mr. Arrington, let me  
11 remind you that you're still under oath, okay?

12 MR. ARRINGTON: Yes.

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LESLIE K. ARRINGTON

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. You need to state your name for us.

A. Leslie K. Arrington.

Q. Did you prepare the notice of hearing, the application, and sign them for this matter?

A. Yes, I did.

Q. And did you either prepare, or cause to be prepared, the exhibits?

A. Yes, I did.

Q. Okay. Is this a frac unit under Oakwood one?

A. Yes, it is.

Q. And if you look at the plat, although the drilling window doesn't look like it was reproduced, can you tell from the plat whether or not the proposed well is, in fact, inside the drilling window?

A. Yes, it is.

Q. So, you won't require a location exception?

A. No.

1           Q.       Have you...have you identified all of the  
2 folks that you're going to be pooling or seeking to pool by  
3 this application in the notice?

4           A.       Yes, we have in the notice.

5           Q.       Okay. Are there any changes that have  
6 occurred since the notice went out?

7           A.       As you will notice in the notice, there's a  
8 lot of people identified as heirs, devestees, successors and  
9 assigns. We have continued to work on due diligence on this  
10 to update the...whomever they may be and as you notice, there  
11 was some of the Smith heirs here. I have...I acquired their  
12 phone number, we will give them a call and continue to update  
13 our list here. And we did update it with our exhibits from  
14 the original filing to add to exhibit B3. You'll notice---

15          Q.       Is this an exhibit B3 that was filed today?

16          A.       ---I'm sorry, I haven't passed out my  
17 exhibits.

18          Q.       Let's do that.

19          A.       Yeah. Sorry.

20          MS. RIGGS: Was it the Joe Smith heirs that were  
21 here earlier---

22          A.       I got their phone number and I just told---

23          MS. RIGGS: Is that who it is?

24

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1           A.       ---I couldn't tell you. I think it's Frank.  
2 I think it's Frank, and I've got their phone number and  
3 we'll start contact and she had a long list of heirs there.  
4 As a matter of fact, what she was working on was a family  
5 tree.

6           Q.       Okay. So, we've filed some amended or  
7 revised exhibits A2, B3, and E, correct?

8           A.       I have.

9           Q.       Okay. And is it because you've been  
10 successful in leasing some of the interests that you were  
11 originally seeking to pool?

12          A.       We haven't exactly leased any more.

13          Q.       Okay.

14          A.       But, we have discovered some changes and  
15 that's the reason for the revised B3 and E. The biggest  
16 change, if you'll notice, on page one of the revised B3,  
17 William Livered Smith heirs, we have identified several of  
18 those people now. Again, some of the interests, you'll  
19 notice that there's blanks on it. We haven't identified what  
20 interest they'll have. And you will notice that there's  
21 addresses now on page...should be page three of the new B3  
22 for Kenneth Hicks and Linda Sue Hicks Tomlin. B and C on  
23 page three, you'll notice there's addresses. We're

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1 continuing to update this. There was a lot of groups in  
2 there that we did not...were not able to identify.

3 Q. Initially, when you filed exhibit A page 2,  
4 you were seeking to pool 2.10351% of the oil and gas  
5 interest.

6 A. Uh-huh.

7 Q. None of the coalbed...none of the coal  
8 interest, correct?

9 A. That's correct.

10 Q. And now having on your revised exhibit B3  
11 and other exhibits, what interest in the acquired and what  
12 interest are you seeking to pool?

13 A. We have as far as coalbed methane leased we  
14 have 100% of the coal...coal owners leased, 98.08398% of the  
15 oil and gas owners. We're seeking to pool 1.91602% of the  
16 oil and gas owners.

17 Q. Okay. Why has the percentage decreased  
18 slightly then, Les?

19 A. Well, when I added up the percentages, I  
20 inadvertently added a heir...a group of heirs and I should  
21 have been adding...just the actual heirs added up.

22 Q. Okay. So, there was, in fact, a  
23 miscalculation in the initial exhibit?

24

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1 A. That's correct.

2 Q. Which you caught in the revised exhibits?

3 A. Yes.

4 Q. Okay.

5 MS. RIGGS: Could you repeat the percentages one  
6 more time?

7 A. Yes, ma'am. For the V47 unit, coalbed  
8 methane leased, as far as coal goes, we have 100% of that.  
9 Oil and gas owners 98.08398% and we're seeking to pool  
10 1.91602% of the oil and gas owners.

11 Q. And those percentages are actually in the  
12 pack of exhibits you've given the Board today as part of  
13 revised exhibit A2?

14 A. They are.

15 Q. And then revised exhibit B3 has the changes  
16 that we've already discussed?

17 A. They are.

18 Q. And then E is your recommendation to the  
19 Board with regard to what needs to be escrowed and who needs  
20 to be...whose interests or claims need to be escrowed at this  
21 point?

22 A. It does.

23 Q. Okay. And to the extent there have been  
24

1 updated addresses and additional names, those repeat  
2 themselves in E as well?

3 A. Yes.

4 Q. Did you do an exhibit C or estimate with  
5 regard to cost on this one?

6 A. Yes, we did.

7 Q. Okay. And you came up with \$237,553.84, is  
8 that correct?

9 A. That's correct.

10 Q. And what was the depth?

11 A. Twenty-three hundred and seventy-five feet.

12 Q. And the well's drilled?

13 A. Yes, it was.

14 Q. Was it completed at that point?

15 A. No, it wasn't.

16 Q. So, part of the drilling costs are actuals,  
17 and you're making an estimate with regard to the fracture and  
18 completion?

19 A. I am.

20 Q. Now, with regard to this unit, again, the  
21 applicant is PGP?

22 A. It is.

23 Q. And that's a partnership of Consolidation  
24

1 Coal Company and Conoco, Inc.?  
2 A. Yes, it is.  
3 Q. PGP is requesting that it be the designated  
4 operator?  
5 A. Yes, we are.  
6 Q. That it...and PGP is representing that it is  
7 authorized to do business in the Commonwealth, that it's  
8 registered with the DMME, and that it has a blanket bond on  
9 file?  
10 A. Yes, it does.  
11 Q. You mailed these to these folks on what  
12 date?  
13 A. April 16th, 1999.  
14 Q. And did you publish?  
15 A. Yes, we did, in the Bluefield Daily  
16 Telegraph on April 21st, 1999.  
17 Q. Would you recommend that the Board  
18 incorporate the lease...the usual and customary CBM lease  
19 terms that you offer?  
20 A. Yes, we would.  
21 Q. And what are those terms?  
22 A. It's a dollar per acre for coalbed methane  
23 lease and a one-eighth royalty.

24

1 Q. Lastly, would you recommend the plan to  
2 develop coalbed methane within and under the V47 unit via the  
3 frac well that's described in the application as a reasonable  
4 means to develop their resource?

5 A. Yes, we would.

6 Q. That's all I have.

7 MR. WAMPLER: Questions from members of the Board?  
8 Motion?

9 MR. LEWIS: I make a motion.

10 MR. WAMPLER: Motion to approve as presented.  
11 Second?

12 MR. BRENT: Second.

13 MR. WAMPLER: Further discussion? All in favor,  
14 signify by saying yes.

15 (All Board members signify yes.)

16 MR. WAMPLER: Opposed, say no. We have approval.  
17 Thank you.

18 MR. SWARTZ: Thank you all very much.

19 (The Board discusses the next meeting place.)

20 MR. WAMPLER: Very good. Thank you very much. That  
21 concludes.

22

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1 STATE OF VIRGINIA,

2 COUNTY OF WASHINGTON, to-wit:

3 I, SHELLIE DENISE BROWN, Court Reporter and Notary  
4 Public for the State of Virginia, do hereby certify that the  
5 foregoing hearing was recorded by me on a tape recording  
6 machine and later transcribed by me personally.

7 Given under my hand and seal on this the 9th day  
8 of June, 1999.

9 NOTARY PUBLIC

10 My commission expires February 28, 2003.  
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