

1 VIRGINIA:

2 IN THE COUNTY OF WASHINGTON

3 VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY

4 VIRGINIA GAS AND OIL BOARD

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8
9 MARCH 21, 2000

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12 BOARD MEMBERS:

13 MASON BRENT

14 KEN MITCHELL

15 BENNY WAMPLER, CHAIRMAN

16 SANDRA RIGGS, ASSISTANT ATTORNEY GENERAL

17 MAX LEWIS

18 CLYDE KING

19 DENNIS GARBIS

20 BOB WILSON, DIRECTOR OF THE DIVISION OF GAS & OIL

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*****ATTACHED IS A COPY OF THE AGENDA

1 BENNY WAMPLER: Okay. We'll get started. Good
2 morning. My name is Benny Wampler. I'm Deputy Director for
3 the Department of Mines, Minerals and Energy, and Chairman of
4 the Gas and Oil Board; and I'll ask the Board members to
5 introduce themselves, starting with Mr. Brent.

6 MASON BRENT: My name is Mason Brent. I'm from
7 Richmond and I represent the Gas and Oil Industry.

8 KEN MITCHELL: My name is Ken Mitchell. I'm from
9 Stafford County and I'm a citizen member on this Board.

10 SANDY RIGGS: My name Sandy Riggs. I'm not a member
11 of the Board. I'm with the Office of the Attorney General
12 and I'm here to advise the Board.

13 MAX LEWIS: Max Lewis, from Buchanan County, a
14 public member.

15 CLYDE KING: Clyde King from Abingdon, a public
16 member.

17 BOB WILSON: I'm Bob Wilson. I'm the Director of
18 the Division of Gas and Oil, and Principal Executive to the
19 staff of the Board.

20 BENNY WAMPLER: Thank you. The first item on the
21 today's agenda is a petition from Pocahontas Gas Partnership
22 for pooling of a coalbed methane unit identified as L-45,
23 docket number VGOB-00-03/21-0772; and we'd ask the parties
24

1 that wish to address the Board to come forward at this time.

2 MARK SWARTZ: Mark Swartz and Les Arrington on
3 behalf of Pocahontas Gas Partnership.

4 BENNY WAMPLER: Just to test to acoustics in the
5 audience, can you hear...can you hear when we're talking?

6 (No audible response.)

7 BENNY WAMPLER: If you can't, you may want to try to
8 move down closer and situate yourself where you can hear a
9 little better.

10 (Dennis Garbis enters the room, a Board member.)

11 BENNY WAMPLER: The record will show there are no
12 others. You may proceed.

13 MARK SWARTZ: Well, since Les is my star witness I
14 need to wait a minute here.

15 BENNY WAMPLER: That's fine.

16 (Leslie K. Arrington distributes exhibits.)

17 MARK SWARTZ: Okay, Les, could you state your name
18 for the record?

19 LESLIE K. ARRINGTON: Leslie K. Arrington.

20 (Court Reporter speaks up that she needs to swear
21 the witness in. The witness is duly sworn.)

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LESLIE K. ARRINGTON

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

DIRECT EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Who do you work for?

A. Consol, Inc., as a permit specialist.

Q. And did you prepare the notice of hearing and the application and the exhibits with regard to Unit L-45 that we're seeking to force pool today?

A. I did.

Q. Okay. And, in fact, you signed those documents, correct?

A. Yes, I did.

Q. Okay. Have you passed out today a set of...sort of a spreadsheet that has a set of notes that says notes for March 21, 2000 hearing?

A. Yes, I did.

Q. Is that a summary of the basic information

1 with regard to publication, notice, standing, interest to be
2 pooled, number of wells, whether or not there's a permit, the
3 depth of the wells and the cost of the wells?

4 A. Yes, it is.

5 Q. And is that for...is that information that
6 is contained in each of the applications and exhibits that
7 are on the docket today?

8 A. Yes, it is.

9 Q. So, you could find this information by going
10 through the applications, but you've just summarized it here
11 for the Board?

12 A. Yes, we have.

13 Q. Okay. Who's the applicant in L-45?

14 A. Pocahontas Gas Partnership.

15 Q. Is that a Virginia General Partnership?

16 A. Yes, it is.

17 Q. Is it composed of two partners, specifically
18 Consolidation Coal Company and Conoco, Inc.?

19 A. Yes, it is.

20 Q. Is the request in the application that
21 Pocahontas Gas Partnership be designated as the unit operator
22 for this unit?

23 A. Yes, it is.

24

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1 Q. And is Pocahontas Gas Partnership authorized
2 to do business in the Commonwealth, has it registered with
3 DMME, and does it have a blanket bond on file?

4 A. Yes, it does.

5 Q. Are the people that we're seeking to pool
6 listed in the Notice of Hearing that was...that was mailed
7 and published?

8 A. Yes.

9 Q. And to the extent that we had addresses for
10 the respondents listed in the Notice and again in Exhibit B-
11 3, did you mail to them?

12 A. Yes, we did.

13 Q. With regard to Exhibit L-45, do you want to
14 add anybody today or subtract anybody?

15 A. No, we do not.

16 Q. Okay. The Notice...Notices were mailed
17 when?

18 A. The Notice was mailed on February the 18th
19 the year...in 2000.

20 Q. And have you filed a summary of the Notices,
21 and, in fact, copies of the green cards?

22 A. Yes, we have.

23 Q. Okay. And this was...was the Notice
24

1 published in the Bluefield Daily Telegraph?

2 A. Yes, on February the 22nd.

3 Q. Okay. And have you also filed a Certificate
4 of Publication with the Board this morning?

5 A. Yes, we have.

6 Q. Okay. Tell the Board, with reference to the
7 notes, what the interest in the...on the coal claims and the
8 oil and gas claims are that the applicant has acquired?

9 A. 67.50% of the coal, oil and gas interest.

10 Q. And what are we seeking to pool today?

11 A. 32.5%

12 Q. Okay. With regard to the leases you've
13 obtained and with regard to a willingness to lease the
14 outstanding interest, what would the terms be that you've
15 been offering?

16 A. A one-eighth royalty, a dollar per acre per
17 year with a five---

18 Q. Is that a rental?

19 A. A rental. With a five year term.

20 Q. And once production commences, what happens
21 to the well?

22 A. The royalties take over and there's no
23 rental payment.

24

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1 Q. Okay. And would you recommend those terms
2 to the Board to be inserted in any order with regard to the
3 deemed to have been leased situation?

4 A. Yes, we would.

5 Q. This is an 80 acre unit?

6 A. Yes.

7 Q. Under Oakwood I?

8 A. Yes.

9 Q. And it's a frac unit?

10 A. Yes, it is.

11 Q. Okay. And does the plat show the location
12 of the well?

13 A. Yes, it does.

14 Q. Now, if you'll notice it's really close to
15 the drilling window.

16 A. Yes, it is.

17 Q. Would you tell the Board what you did with
18 regard to making sure that that well is indeed inside the
19 drilling window?

20 A. Yes. We had to actually survey and pinpoint
21 that location so it would be just inside the drilling window
22 to be 750 feet away from tract number one.

23 Q. And within the 300 foot drilling window?

24

1 A. In...yes.

2 Q. Okay. The...is that well drilled?

3 A. Yes, it is.

4 Q. What's the permit number?

5 A. 4274.

6 Q. What's the depth of the well?

7 A. 2,520 feet.

8 Q. And have you included in your application a

9 summary of the costs for that well?

10 A. Yes, we have.

11 Q. And...and what are those costs?

12 A. It's \$243,939.99.

13 Q. And are you seeking to develop the coalbed

14 methane gas under this 80 acre unit below the Tiller Seam?

15 A. Yes, we are.

16 Q. And you don't need a location exception

17 because you've surveyed the well to be inside the drilling

18 window?

19 A. That's correct.

20 Q. On Exhibit B-3, have you set forth the

21 respondents' interest in the unit?

22 A. Yes, we have.

23 Q. Okay. And that would be the number or

24

1 percentage that they would use in terms of estimating
2 royalties or calculating costs to participate and those sort
3 of things?

4 A. Yes, it would be.

5 Q. Have you also filed with the Board today
6 a...an Exhibit E, addressing escrow, or is escrow not
7 required in this unit?

8 A. Escrow would not be required. These are fee
9 owners.

10 Q. Okay. Is it your opinion that the frac
11 wells shown on the plat and described in Exhibit C, that the
12 drilling cost estimate is a reasonable way to develop the
13 coalbed methane within and under this unit?

14 A. Yes, it is.

15 Q. And by your title research and your leasing
16 and so forth, have you assured yourselves that the...that all
17 the owners and their correlative rights would be produced
18 ...protected by this development?

19 A. Yes, they would.

20 Q. That's all I have.

21 BENNY WAMPLER: What about the people that you don't
22 have an address for?

23 LESLIE K. ARRINGTON: We're con---.

24

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1 MARK SWARTZ: We published.

2 SANDRA RIGGS: No escrow?

3 BENNY WAMPLER: Escrow.

4 LESLIE K. ARRINGTON: I'm working on identifying all
5 of those. We've...we've contacted one of them. So,
6 hopefully, we're going to get those addresses.

7 SANDRA RIGGS: But in the meantime?

8 MARK SWARTZ: Well, see, Exhibit E never
9 addresses...I mean, we...at this hearing, we never address
10 unlocateables. We do that on our Affidavit of Elections.
11 So, I mean, you'll...you know, if we can't find them, you'll
12 get something from us when we...when we file for a
13 Supplemental Order. Exhibit E only addresses, as we file it
14 anyway at this hearing and you'll see some other ones, are
15 just conflicting claims.

16 SANDRA RIGGS: Conflicting claims. But in the Order
17 itself, we...we normally in the escrow paragraph state
18 whether an escrow...the agent needs to set up an account or
19 not.

20 MARK SWARTZ: Okay.

21 SANDRA RIGGS: Either under conflicting or unknowns
22 and unlocateables. So, in this, we would have...at this
23 point four unlocateables, right?

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1 MARK SWARTZ: You just...you do include them in the
2 Order on those tracts, but you'll also get something further
3 from us, you know, in the Supplemental Order and we may be
4 able to tract these people down.

5 CLYDE KING: Do we know the percentage of those
6 people?

7 MARK SWARTZ: Uh-huh. Yes, the...if you look at B-
8 3, take tract two, for example, I mean, we've...we know what
9 that tract...what percentage needs to be assigned that entire
10 tract and as we run these people down. hopefully we can
11 determine their undivided interest; and you'll see the same
12 thing for...well, on both the coal and the oil and gas side
13 of tract two. It's 12.775%.

14 BENNY WAMPLER: Any other questions from members of
15 the Board?

16 (No audible response.)

17 BENNY WAMPLER: Do you have anything further?

18 MARK SWARTZ: No.

19 BENNY WAMPLER: Is there a motion?

20 CLYDE KING: So moved, Mr. Chairman.

21 MASON BRENT: Second.

22 BENNY WAMPLER: Motion and second to approve the
23 application. Any further discussion.

24

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1 (No audible response.)

2 BENNY WAMPLER: All in favor, signify by saying yes.

3 (All Board members except for Max Lewis indicate
4 yes.)

5 BENNY WAMPLER: Opposed, say no.

6 MAX LEWIS: No.

7 BENNY WAMPLER: One no. The application is
8 approved.

9 The next item on the agenda is a petition from
10 Pocahontas Gas Partnership for pooling of a coalbed methane
11 unit identified as N-37, docket number VGOB-00-03/21-0773;
12 and I have a request to combine four items here. If there
13 are no objections, I'll go ahead and call those and then if
14 any parties want to address the Board for any of those docket
15 numbers, just let us know. The next one will be a petition
16 from Pocahontas Gas Partnership for pooling of a coalbed
17 methane unit identified N-38, docket number VGOB-00-03/21-
18 0774; and coalbed methane unit identified as N-39, docket
19 number VGOB-00-03/21-0775; and coalbed methane unit
20 identified as O-44, docket number GOB-00-03/21-0776.

21 We'd ask the parties that wish to address the Board
22 in these matters to come forward at this time.

23 MARK SWARTZ: Mark Swartz and Les Arrington, again,
24

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1 on behalf of Pocahontas Gas Partnership.

2 (Leslie K. Arrington distributes exhibits.)

3

4 LESLIE K. ARRINGTON

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

7 DIRECT EXAMINATION

8 QUESTIONS BY MR. SWARTZ:

9 Q. Okay, Les, you need to state your name,
10 again?

11 A. Leslie K. Arrington.

12 Q. I want to remind you, you're still under
13 oath.

14 A. Yes.

15 Q. Who do you work for?

16 A. Consol, Inc., as a permit specialist.

17 Q. Okay. And did you prepare, or cause to be
18 prepared the Notice of Hearing, the applications and the
19 related exhibits for Units N-37, N-38, N-39 and O-44?

20 A. Yes, I did.

21 Q. Did you cause copies of the Notice, the
22 application and related Exhibits to be mailed?

23 A. Yes, I did.

24

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1 Q. When did that happen?

2 A. The Notice was mailed on February the 18th
3 of 2000 and published in the Bluefield Daily Telegraph,
4 February the 22nd, 2000.

5 Q. And this morning, have you filed your
6 certification with regard to mailing and copies of the green
7 cards and a copy of the Bluefield Daily Telegraph's
8 Certificate of Publication for each of these four units?

9 A. Yes, we have.

10 Q. Now, are each of these units that you're
11 seeking to pool Oakwood I units?

12 A. Yes, they are.

13 Q. So, we're talking about frac units?

14 A. Yes.

15 Q. And is there one well proposed for each
16 unit?

17 A. Yes, it is.

18 Q. And do the plats disclose that each one of
19 the wells is within the 300 foot offset drilling window?

20 A. Yes, it is.

21 Q. So you don't need a location exception for
22 any of these units?

23 A. No, we do not.

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1 Q. Have the wells been drilled with regard to
2 these four units?

3 A. N-39 and O-44; N-37 and N-38 is presently
4 under construction.

5 Q. Okay. So did that mean that 39 and 44 are
6 drilled?

7 A. Yes, they are.

8 Q. Okay. And...and 37 and 38 are being
9 constructed?

10 A. They are under construction, yes.

11 Q. Okay. Could you tell the Board what the
12 proposed depth of the wells or the drilled depth of the four
13 wells is?

14 A. Yes. Yes. N-37 is 2,083 feet; N-38 2,131
15 feet; N-39 1,840.10 feet; O-44 is 2,560.50 feet.

16 Q. And have you filed an Exhibit C which sets
17 forth either the cost of drilling and completion or the
18 estimated cost of drilling and completion for each one of
19 these four wells?

20 A. Yes, I have.

21 Q. And...and what is that is either actual cost
22 or estimated cost?

23 A. In...in most cases, at this time it's still
24

1 estimated. We're still working out there on...on each of
2 them. So, it's estimated costs...and the estimated cost for
3 N-37, \$231,454.85; N-38, \$232,862.45; N-39 is \$219,523.33;
4 and O-44 is \$243,867.66.

5 Q. Now, with regard to your standing, or
6 Pocahontas Gas Partnership's standing in each of these units,
7 meaning the interest that they've either leased or otherwise
8 acquired, what is the interest they've acquired in each unit
9 and what is the interest that...that this pooling app...or
10 these applications seek to...to pool?

11 A. Okay. For Unit N-37, we lease 100% of the
12 coal and we have a coalbed methane lease on 99.88035% from
13 the coal, oil and gas owner and we're seeking to pool
14 0.11965% of the coal, oil and gas interest. For N-38, we
15 have leased 99.89905% of the CBM...coalbed methane from the
16 coal and gas owner and we're seeking to pool 0.10095% of the
17 coal, oil and gas interest and we have a 100% of the coal
18 leased. For N-39, we're seeking...we own or lease 99.8965%
19 of the coal, oil and gas and we're seeking to pool 0.10035%
20 of the coal, oil and gas...coalbed methane. We leased 100%
21 of the coal. Unit O-44, we own or lease 99.9185% of the
22 coal, oil and gas coalbed methane. We're seeking to pool
23 0.05315% of the coal, oil and gas interest coalbed methane.

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1 In that unit we lease 100% of the coal.

2 Q. In all four of these applications, is
3 Pocahontas Partnership the applicant?

4 A. Yes, it is.

5 Q. And Pocahontas Gas Partnership is a Virginia
6 General Partnership that has two partners who are
7 Consolidation Coal Company and Conoco, Inc., is that correct?

8 A. That's correct.

9 Q. In each of these four applications, is there
10 a request that Pocahontas Gas Partnership be the Board's
11 designated unit operator?

12 A. Yes, it is.

13 Q. Has Pocahontas Gas filed the necessary
14 paperwork to become authorized to do business in the
15 Commonwealth, is it registered with the Department of Mines,
16 Minerals and Energy and does it have a blanket bond on file?

17 A. Yes, we do.

18 Q. In each of these four applications, have you
19 named the folks that you're seeking to pool in the Notice of
20 Hearing?

21 A. We have.

22 Q. And do you also list them again in the...in
23 Exhibit B-3?

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1 A. Yes, we have.

2 Q. And to the extent you currently have
3 addresses for these folks that are listed in B-3 and you
4 mailed to them?

5 A. We did.

6 Q. In Exhibit B-3, have you also set forth,
7 across from the tract and the folks interested in each tract,
8 or claiming under each tract, their percentage in the unit?

9 A. Yes, we have.

10 Q. And would that be the percentage that will
11 be used for royalty calculations and...and to calculate a
12 carried interest, for example, or a participation cost?

13 A. Yes, it would be.

14 Q. With regard to these four units today, do
15 you want to add anybody or subtract anybody as a respondent?

16 A. No, we do not.

17 Q. Obviously you've leased, you know, something
18 on the order of 98 or 99 percent of each of these units.

19 What are the terms that you have offered to the folks that
20 you've been able to lease from?

21 A. From a coalbed methane lease, we generally
22 use a one-eighth royalty, a dollar per acre per year with a
23 five year term and a dollar per acre per year as a rental

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1 payment until royalty...production begins.

2 Q. Okay. And would you recommend that those
3 terms be included by the Board in any Order it might enter
4 with regard to the deemed to have been leased situation?

5 A. Yes, we would.

6 Q. The...the pool that you're seeking to
7 develop here under the Oakwood I Field rules is from the
8 Tiller on down...coalbed methane from the Tiller on down?

9 A. Yes, it is.

10 Q. And at each of these units you're proposing
11 only one well---?

12 A. That's correct.

13 Q. ---at this point? Okay. Is it your opinion
14 that the plan of development that's disclosed by each of
15 these applications is a reasonable plan to develop coalbed
16 methane under these four units?

17 A. Yes, it is.

18 Q. And by virtue of the title work that you've
19 done to try and identify the claimants and folks who have
20 correlative rights in these units, is it your opinion that
21 this app...these applications actually will protect...serve
22 to protect correlative rights and lessen the likelihood of
23 both physical waste and economic waste in these units?

24

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1 A. Yes, it will.

2 Q. Now, let's take each of the units and
3 make...and see what the escrow situation is. With regard to
4 N-37, you have...you have included and Exhibit E indicating
5 that there is...there are conflicting claims, at least at
6 this point, that would require escrow. Is that correct?

7 A. That's correct, we have.

8 Q. And to the extent any addresses are unknown
9 at this point, that would be disclosed by your Exhibit B-3,
10 correct?

11 A. It would be. There is none.

12 Q. Okay. Turning to N-38. Does Exhibit E to
13 that application also disclose the requirement for escrow
14 concerning tract numbers...tract numbers two and three?

15 A. Yes, it does.

16 Q. And that addresses the conflicting claim
17 issue?

18 A. Correct.

19 Q. Are there any unlocated folks in this---?

20 A. No, there's...no, there's not.

21 Q. With regard to N-39, Exhibit E again
22 discloses a requirement for escrow concerning conflicting
23 claims in tracts two and three. Is that correct?

24

--

1 A. Yes.

2 Q. Are there any folks that are unlocated in
3 this unit?

4 A. No.

5 Q. With regard to O-44, Exhibit E shows a
6 requirement of escrow for conflicting claims for tract three.
7 Is that correct?

8 A. I believe. Yes.

9 Q. And are there any folks that you've been
10 unable to locate in O-44?

11 A. I don't believe so. I couldn't remember
12 that one. No.

13 Q. That's all I have.

14 BENNY WAMPLER: Questions from members of the Board?

15 KEN MITCHELL: Mr. Chairman, one...one technical
16 question on pricing.

17 BENNY WAMPLER: Mr. Mitchell?

18 KEN MITCHELL: I'd...I'd waited until we got to
19 number two before I wanted to ask my question because number
20 one involves number two; and I know it's number two. Number
21 one is history. But on Unit number L-45, which is docket
22 number one, item...it's the sixth item down. It's on the
23 J-55 casing, you reference \$.52 cents per foot and then in
24

1 docket number two, which references N-37, the same item is
2 referenced at \$.30 cents a foot; and then on docket number
3 three and four you go back to \$.50 cents a foot...\$.52 cents
4 a foot. So, I didn't know if that was a technical---

5 LESLIE K. ARRINGTON: That may be a...I may have
6 just copied something in there wrong.

7 KEN MITCHELL: Okay. Because like I said it's \$.52,
8 \$.30---

9 LESLIE K. ARRINGTON: \$.30.

10 KEN MITCHELL: ---\$.52, and \$.52.

11 LESLIE K. ARRINGTON: Okay. I...I can go back and
12 check that and revise it.

13 KEN MITCHELL: I just wanted to call to your
14 attention because that's...that's going to---

15 LESLIE K. ARRINGTON: Okay.

16 KEN MITCHELL: It's probably just a couple hundred
17 dollars, but it will affect your...your total.

18 BENNY WAMPLER: Any other questions from members of
19 the Board?

20 (No audible response.)

21 BENNY WAMPLER: You will revise Exhibit C and submit
22 it---?

23 LESLIE K. ARRINGTON: Yeah. Yes.

24

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1 BENNY WAMPLER: ---to Mr. Wilson?
2 CLYDE KING: Exhibit 3 is the one we were talking
3 about?
4 BENNY WAMPLER: He's talking about the...on the
5 second item, he was talking about their AFE.
6 CLYDE KING: Yeah. Okay.
7 BENNY WAMPLER: There's an Exhibit C. Is there
8 anything further?
9 MARK SWARTZ: No.
10 BENNY WAMPLER: Any other questions from members of
11 the Board?
12 (No audible response.)
13 BENNY WAMPLER: Is there a motion?
14 MASON BRENT: Mr. Chairman, I move that we grant the
15 applications as submitted.
16 BENNY WAMPLER: Motion to approve.
17 DENNIS GARBIS: I'll second.
18 BENNY WAMPLER: And second. Any further discussion?
19 (No audible response.)
20 BENNY WAMPLER: All in favor, signify by saying yes.
21 (All members signify yes.)
22 BENNY WAMPLER: Opposed, say no.
23 (No audible response.)

24

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1 BENNY WAMPLER: You have unanimous approval. I have
2 a request to combine the next two items, six and seven, on
3 our agenda. They are a request...a petition from Pocahontas
4 Gas Partnership for pooling of coalbed methane unit
5 identified as P-43, docket number VGOB-00-03/21-0777; and a
6 petition to pool coalbed methane unit identified as P-44,
7 docket number VGOB-00-03/21-0778. We'd ask the parties that
8 wish to address the Board in this matter to come forward at
9 this time.

10 MARK SWARTZ: Mark Swartz and Les Arrington again.
11 (Leslie K. Arrington distributes exhibits.)

12

13 LESLIE K. ARRINGTON
14 having been duly sworn, was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 QUESTIONS BY MR. SWARTZ:

18 Q. Okay, Les, you need to state your name again
19 for us?

20 A. Leslie K. Arrington.

21 Q. You're still under oath from the last
22 hearings.

23 A. Okay.

24

--

1 Q. These two units are also Oakwood I units,
2 correct?

3 A. They are.

4 Q. Did you have a problem with the title in
5 these two units that...or a title issue that came up between
6 the time you filed for permits and the time you filed these
7 pooling applications?

8 A. Yes, we did.

9 Q. Could you tell the Board that may have been?

10 A. Yes. After we filed the permit application
11 and got in the field and started construction work,
12 people...neighbors and people in the fields tell...kept
13 telling us, we think you don't own all that tract and we done
14 further title work and found that we didn't. So, we have
15 done our...sent our permit modifications and done some
16 additional purchasing, but was still unable to acquire all
17 the interests and that's what we're here for today.

18 Q. To pool that outstanding interest that you
19 discovered?

20 A. To pool the outstanding...yes.

21 Q. Okay. And the permit modifications, were
22 they filed at roughly the same time this application was
23 filed?

24

--

1 A. Yes, they were.

2 Q. So, about a month ago?

3 A. Yes.

4 Q. Have you received any objections?

5 A. To date, I have not, no.

6 Q. Okay. With regard to these two applications
7 then, who is the applicant?

8 A. Pocahontas Gas.

9 Q. And is Pocahontas Gas a Virginia General
10 Partnership?

11 A. Yes, it is.

12 Q. Are the two partners Consolidation Coal
13 Company and Conoco, Inc.?

14 A. Yes, it is.

15 Q. Do both of these applications request that
16 Pocahontas Gas be designated as the Board's unit operator?

17 A. Yes, it...yes.

18 Q. Is Pocahontas Gas Partnership authorized to
19 do business in the Commonwealth, is it registered with the
20 Department of Mines, Minerals and Energy, and does it have a
21 blanket bond on file as required by law?

22 A. Yes, we do.

23 Q. Did you either prepare yourself, or cause to
24

1 be prepared under your direction, the Notices of Hearing, the
2 applications and the related exhibits concerning Units P-43
3 and P-44?

4 A. Yes, I have.

5 Q. Are the names of the folks that you are
6 seeking to pool today listed in the Notice of Hearing that
7 was sent out or mailed out with regard to both of these
8 units?

9 A. Yes, it was.

10 Q. And are they also listed in Exhibit B-3 to
11 both of these units?

12 A. Yes, they are.

13 Q. Do you want to add or subtract anybody as a
14 respondent today?

15 A. No, we do not.

16 Q. When did you mail the Notice and application
17 and exhibits?

18 A. We mailed the Notice on February the 18th of
19 2000, and it was published in the Bluefield Daily Telegraph
20 on February the 22nd, 2000.

21 Q. Okay. And have you filed with the Board
22 today copies of the Bluefield Daily Telegraphs Certificate of
23 Publication and your certification with regard to the mailing

24

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1 of Notice?

2 A. Yes, we did.

3 Q. With regard to the interest that you've been
4 able to acquire and in regard to the interests that need to
5 be pooled, could you...could you tell the Board what those
6 are?

7 A. In...in both cases, we lease 100% of the
8 coal; and coalbed methane, we lease in P-43 99.96605% of the
9 coal; and in the oil and gas interest, we own or lease
10 97.0418%. We're seeking to pool 0.03395% of the coal
11 interest, and 2.9582% of the oil and gas interest. In P-44,
12 we own or lease 100% of the coalbed methane, coal, coalbed
13 methane and 97.0418% of the oil and gas interest.

14 Q. Now, did you read that wrong?

15 A. Let me get that...I'm sorry, I read it
16 wrong. Yeah. 99.808% and we're seeking to pool zero of the
17 coal, and 0.192% of the oil and gas interest.

18 Q. Is one well proposed for each of these
19 units?

20 A. Yes, it is.

21 Q. And is...are each of the wells inside of the
22 drilling window?

23 A. Yes, they are.

24

--

1 Q. Have they been drilled yet?

2 A. Yes, they have.

3 Q. Okay. And...and have you recorded
4 the...either the actual costs or in some instances a
5 combination of actual costs and estimated costs for these
6 wells?

7 A. It is a combination and for well P-43, the
8 total depth was 1,916.20 feet at a cost of \$220,339.25.
9 P-44, was drilled to a total depth of 2,307.10 feet at an
10 estimated cost of \$233,818.51.

11 Q. Okay. With regard to both of these wells,
12 are you waiting for the frac to occur?

13 A. They're just in various stages. I'm not
14 sure, you know, what stage it's in.

15 Q. Okay. Okay. With regard to the interest
16 that you've already acquired in both of these units, what are
17 the lease terms that you've been offering for coalbed methane
18 leases?

19 A. Coalbed methane lease is a dollar per acre
20 per year rental, a one-eighth royalty with a five year pay up
21 term, with a dollar per acre rental, stopping at the
22 beginning of royalty payments.

23 Q. Okay. And these are both 80 acre frac units
24

1 under Oakwood I?

2 A. Yes, they are.

3 Q. And the pool that you're seeking to develop
4 would be the coalbed methane gas from the Tiller on down?

5 A. Yes, it is.

6 Q. Now, does Exhibit B-3 set forth the interest
7 in the unit of each of the folks that you're seeking to pool?

8 A. Yes, it does.

9 Q. And would that be the percentage that...that
10 would be used to calculate a carried interest, a
11 participation or a royalty?

12 A. Yes, it would be.

13 Q. Also, have you submitted an Exhibit E, let's
14 start with Unit P-43?

15 A. Yes.

16 Q. And that discloses that there is a
17 requirement here that some owners are in conflict and with
18 regard to the tracts identified in Exhibit E and the owners
19 identified, there's a necessity for Board escrow?

20 A. Yes, there is.

21 Q. Are there any unknown or unlocateable folks
22 in Unit P-43 at this point?

23 A. No.

24

--

1 Q. Okay. With regard to Unit P-44, is there
2 also a need to escrow because of conflicting claims in the
3 unit?

4 A. Yes, there is.

5 Q. And the tract...the two tracts, tract one
6 and tract three, are identified in your Exhibit E to the
7 application?

8 A. Yes.

9 Q. And the folks within those two tracts are
10 also identified?

11 A. Yes, they are.

12 Q. With regard now again to P-44, are there any
13 folks that are not locateable or not located or unknown at
14 this point?

15 A. No.

16 Q. Okay. With regard to 44 of this morning,
17 have you submitted a revised Exhibit A, page two?

18 A. Yes, I did. Yes, we did.

19 Q. So, that would be a revision since the
20 application was filed?

21 A. Yes, it is.

22 Q. And the coal interest was misstated on that
23 as I recall?

24

--

1 A. Yes.

2 Q. So, you just straightened...straightened
3 that out?

4 A. That straightened it out. Uh-huh.

5 Q. It reported a 100%. It should have been
6 zero?

7 A. Correct. That's what it was.

8 Q. Lastly, is it your opinion that the plan to
9 develop the coalbed methane under each of these units using
10 one well as disclosed by your applications is a reasonable
11 way to develop the coalbed methane under these units?

12 A. Yes, we do.

13 Q. And do you believe that through your
14 research into the title here that you have, in fact, located
15 or identified the owners and claimants within this unit and
16 that this app...these applications will, in fact, protect
17 their correlative rights?

18 A. Yes, it will.

19 Q. That's all I have.

20 BENNY WAMPLER: Let me go back to the...when you
21 talked about the title issue that you had. Did anything that
22 you had discovered there cause your exhibits here to change?

23 LESLIE K. ARRINGTON: Not...well, when we discovered
24

1 it, there was several interests that we did...we were able to
2 purchase and then those are the interests that we could not
3 purchase or lease.

4 BENNY WAMPLER: So, it happened prior to your
5 application here then? Not since...I...I thought you said
6 early on that it was since you applied to the Board that you
7 had made that discovery?

8 LESLIE K. ARRINGTON: No.

9 BENNY WAMPLER: I'm sorry. I misunderstood you.

10 MARK SWARTZ: Since we filed for the permit---

11 LESLIE K. ARRINGTON: Permit application, yes.

12 BENNY WAMPLER: I misunderstood. Okay.

13 MARK SWARTZ: That's okay.

14 BENNY WAMPLER: Any other questions from members of
15 the Board?

16 MASON BRENT: I just have one question.

17 BENNY WAMPLER: Mr. Brent?

18 MASON BRENT: I think I've asked this question
19 before. I notice in all of your applications here, your
20 estimated production ranges anywhere from a 125,000,000 cubic
21 feet to 550,000,000 cubic feet. That's a pretty wide spread.
22 Do you not have enough experience yet in these units to...to
23 narrow that estimate?

24

--

1 LESLIE K. ARRINGTON: Well, we have found across the
2 field that we are getting a wide range in...for instance,
3 last year's drilling we found that...we found zero production
4 on up to good production and that's the reason for our wide
5 range. We have drilled numerous holes that just...in the
6 same general vicinity that they're just not producing. So,
7 we...yes, the range is pretty wide.

8 MARK SWARTZ: And another factor, when this project
9 first started, we were drilling in the hottest areas and we
10 sort have had a feel for where they would be and we have
11 recently completed another line to grant and...and we're
12 really drilling more out of the...of the center and the
13 hottest areas of the fields. So, I think initially---

14 MASON BRENT: Production is more sporadic?

15 MARK SWARTZ: ---our expectations were pretty
16 optimistic with regard to all of the wells and we've got
17 ourselves in a situation now where they really...there
18 is...is more of a variation, but it's because we're moving
19 out of the center of the field. Is that---?

20 LESLIE K. ARRINGTON: It's...it's becoming...some of
21 our drilling is becoming more of a just speculation type gas
22 drilling.

23 MASON BRENT: Thank you.

24

--

1 BENNY WAMPLER: Any other questions from members of
2 the Board?

3 (No audible response.)

4 BENNY WAMPLER: Do you have anything further?

5 MARK SWARTZ: No.

6 BENNY WAMPLER: Is there a motion?

7 KEN MITCHELL: Motion for approval, Mr. Chairman.

8 BENNY WAMPLER: Motion for approval.

9 MASON BRENT: I second.

10 BENNY WAMPLER: Second. Any further discussions?

11 (No audible response.)

12 BENNY WAMPLER: All in favor, signify by saying yes.

13 (All members signify yes.)

14 BENNY WAMPLER: Opposed, say no.

15 (No audible response.)

16 BENNY WAMPLER: You have approval.

17 MARK SWARTZ: Could we...maybe could you call these,
18 and then could we just take a moment so Les can get the next
19 five together and pass them out?

20 BENNY WAMPLER: Okay, the people in the audience
21 don't have the Board's agenda here. But for the Board's
22 information, we've been asked to combine eight, nine, ten,
23 eleven and thirteen. I will read the docket numbers so that

24

--

1 you'll know we're skipping twelve and we'll come back to that
2 one for purpose of combining.

3 The first item...the next item on the agenda then
4 will be a petition from Pocahontas Gas Partnership for
5 pooling of a coalbed methane unit identified as Q-43, docket
6 number VGOB-00-03/21-0779; pooling of coalbed methane unit
7 identified as Q-44, docket number VGOB-00-03/21-0780; coalbed
8 methane unit identified as R-43, docket number VGOB-00-03/21-
9 0781; coalbed methane unit identified as R-44, docket number
10 VGOB-00-03/21-0782; and coalbed methane unit identified as
11 S-44, docket number VGOB-00-03/21-0784; and we'd ask the
12 parties that wish to address the Board in these matters to
13 come forward at this time.

14 MARK SWARTZ: Mark Swartz and Les Arrington, again,
15 on behalf of Pocahontas Gas Partnership.

16 BOB WILSON: Mr. Chairman.

17 BENNY WAMPLER: Mr. Wilson?

18 BOB WILSON: We have received three letters from a
19 Ms. Dolly R. Horn, Ms. Carrie Hamond and Mr. George J.
20 Cantrell voicing objections to this pooling and these
21 proceedings. I have copies of these letters for each of the
22 Board members.

23 BENNY WAMPLER: Okay. If you'll distribute those,
24

1 please.

2 MARK SWARTZ: We haven't received those. So, if
3 you've got extra copies, that will be great.

4 (Bob Wilson distributes copies of the letters to
5 the Board members and Mark Swartz. Board members confer
6 among themselves.)

7 BENNY WAMPLER: We'll take a few minutes so the
8 Board can read these because we've just received them.

9 (Off record.)

10 (Leslie K. Arrington distributes exhibits.)

11

12 LESLIE K. ARRINGTON

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

15 DIRECT EXAMINATION

16 QUESTIONS BY MR. SWARTZ:

17 Q. Okay. State your name for us again.

18 A. Leslie K. Arrington.

19 Q. You're still under oath?

20 A. Yes.

21 Q. Did you prepare, or cause to be prepared,
22 the Notices of Hearing, applications and the exhibits in
23 regard to Q-43, Q-44, R-43, R-44 and S-44 that we're seeking

24

--

1 to pool today?

2 A. Yes, I did.

3 Q. Okay. In all of these five applications, is
4 Pocahontas Partnership the applicant?

5 A. Yes, it is.

6 Q. And Pocahontas Gas Partnership is a Virginia
7 General Partnership? Is that correct?

8 A. Correct.

9 Q. And the two partners in that partnership are
10 Consolidation Coal Company and Conoco, Inc., right?

11 A. Yes, it is.

12 Q. Does each of these applications ask the
13 Board as part of its Order to designate Pocahontas Gas
14 Partnership as the unit operator for each of these units if
15 they're pooled?

16 A. Yes, it is.

17 Q. Is Pocahontas Gas Partnership authorized to
18 do business in the Commonwealth, has it registered with the
19 Department of Mines, Minerals and Energy, and does it have a
20 blanket bond on file?

21 A. Yes, it does.

22 Q. With regard to each of these units, have you
23 listed in the Notice of Hearing, and then again in Exhibit B-

24

--

1 3, all of the respondents that you're seeking to pool?

2 A. Yes, we did.

3 Q. Okay. And when did you mail to these folks?

4 A. These were mailed on February...on February
5 the 18th of 2000, and it was published in the Bluefield Daily
6 Telegraph on February the 24th, 2000.

7 Q. And have you this morning filed with Board
8 copies of the Bluefield Daily Telegraph's certificate of
9 publication with regard to each of these units and also filed
10 your certificate with regard to mailing and the related
11 copies?

12 A. Yes, we have.

13 Q. Are each of these units 80 acre frac units
14 in the Oak...under...drilled or sought to pooled and drilled
15 under the Oakwood I rules?

16 A. Yes, it is.

17 Q. Is there one well proposed for each of these
18 units?

19 A. Yes, with the exception of S-44.

20 Q. Okay.

21 A. But that's into the future. Something we'll
22 be developing.

23 Q. Okay. But at this point, your plan...your
24

1 immediate plans are one well per unit with the possible
2 exception of S-44?

3 A. That's correct.

4 BENNY WAMPLER: Mark, let me stop you there. I
5 understand there may be some parties that wish to address the
6 Board in this matter and let them come forward at this time
7 if they'd like.

8 MARK SWARTZ: Okay.

9 BENNY WAMPLER: Just so they're down here and have
10 the same information we're seeing.

11 ORIS CANTRELL: I'm Oris Cantrell. I want to speak
12 on some of this here on that.

13 BENNY WAMPLER: We'll need you to come down because
14 we can't record it from back there. Any...any of you that
15 are interested, we'll...we'll make a microphone available to
16 you.

17 (Oris Cantrell comes before the Board.)

18 Q. Les, do you want to add or subtract any
19 respondents today?

20 A. Yes. There is...as you'll notice, there's
21 some revised exhibits and we have leased 52% of the James
22 Cantrell interest and the interest that we're seeking
23 to...the parties we're seeking to dismiss are listed on that

24

--

1 list that I passed out. They're so numerous that...unless
2 you want me to go through each one of them.

3 Q. Have you also provided the Board members
4 with, although we didn't have enough copies, with some copies
5 for them to share of an exhibit, which is entitled James H.
6 Cantrell heirs, 48.28 acres all minerals except coal, which
7 lists all of those folks and then indicates if and when a
8 lease was offered and whether or not a lease was obtained?

9 A. That's correct, it does.

10 Q. And there's a lease date column in which
11 there are a number of dates indicating that leases were
12 obtained from these...some of these folks, correct?

13 A. It is.

14 Q. And what is...is there a cutoff date for
15 this exhibit?

16 A. Yes, it was. To prepare for this hearing, I
17 had to make a cutoff date to get my exhibits prepared and it
18 was cutoff as of March the 14th and there has been one...one
19 additional lease taken since then. We'll have to do that on
20 our supplemental order.

21 Q. And are there other potential leases as
22 well?

23 A. There could be.

24

--

1 Q. Okay. But at least as of March the 14th,
2 this shows the Cantrell heirs that you have been able to
3 lease?

4 A. That's correct.

5 Q. Okay. And the exhibits that were filed
6 today, by that, I mean the Revised Exhibits B-3, B...A
7 reflect the leases that...of course, the percentages and the
8 leases that you would have obtained through March the 14th?

9 A. Yes, it did.

10 Q. Okay. So, those would...should be...if you
11 compare those, for example, let's just take...let's just take
12 Q-43, when you filed for this hearing in Q-43, if you look at
13 A...at A...page...Exhibit A, page two, you're seeking to pool
14 35.32983%---

15 A. Uh-huh.

16 Q. ---of the oil and gas, correct?

17 A. That's correct.

18 Q. And now if we look at the Revised Exhibit A,
19 page two, which, you know, is through...which reflects leases
20 through March the 14th, what are you seeking to pool as of
21 today?

22 A. 9.99368%.

23 Q. So, you were able to lease about 26%?

24

--

1 A. We have.

2 Q. Between filing and today?

3 A. Yes.

4 Q. If we were to make the same comparison with
5 regard to the other four units that we've combined for this
6 hearing, in each instance, would we see that you have
7 obtained leases for significant portions of the outstanding
8 interest between the time you have filed and today?

9 A. That's correct, it will indicate that.

10 Q. But nevertheless, there is still a need to
11 pool?

12 A. It is.

13 MASON BRENT: So, what's on this sheet is correct?

14 LESLIE K. ARRINGTON: That is...that's...yes.

15 MASON BRENT: The notes from March 21, 2000 hearing
16 is correct?

17 MARK SWARTZ: Yes. Except, with a caveat, that it's
18 correct through March the 14th and when the Supplemental
19 Order is filed, it will reflect at least one more lease and
20 possibly more leases. So, it's going to change again. But
21 not...not until that happens.

22 Q. Now, if you would, Les, go through the notes
23 for...the exhibit notes for the March 21 hearing and indicate

24

--

1 again what it is as of March...what the standing is and
2 the...and what the interest outstanding that needs to be
3 pooled was as of March the 14th with regard to each of these
4 units?

5 A. Okay. Unit Q-43, the coalbed methane lease
6 from the coal, oil and gas owner, we have 100% of the coal
7 leased and 90.00632% of the oil and gas interest. We're
8 seeking to pool 9.99368% of the oil and gas interest. We
9 have a 100% of the coal leased there. Unit Q-44, we...we've
10 leased, for a coalbed methane, 100% of the coal and 94.33662%
11 of the oil and gas interest. We're seeking to pool 5.66338%
12 of the oil and gas interest. Unit R-43, coalbed methane
13 interest, we leased 100% of the coal and 88.21866% of the oil
14 and gas interest. We're seeking to pool 11.78134% of the oil
15 and gas interest. Unit R-44, coalbed methane interest, we
16 leased 100% of the coal and 86.343% of the oil and gas
17 interest. We're seeking to pool 13.657% of the oil and gas
18 interest. In S-44, coalbed methane interest, we leased 100%
19 of the coal and 99.91136% of the oil and gas interest. We're
20 seeking to pool 0.08864% of the oil and gas interest. In all
21 cases, we have 100% of the coal leased under these tracts.

22 Q. With regard to the leases that you have
23 obtained from folks in this unit, and specifically from the
24

1 Cantrell heirs that are listed on the exhibit that you filed
2 today to show who you've leased---?

3 A. Uh-huh.

4 Q. ---what are the lease terms that you've been
5 offering?

6 A. It's our standard coalbed methane lease. A
7 one-eighth royalty and a dollar per acre per year with a five
8 year paid up term for a coalbed methane lease and with the
9 dollar per acre per year, stopping upon payment of royalties.

10 Q. Now, we know that each one of these units is
11 a...is a...is going to be a frac unit under the Oakwood I
12 rules and is the...is the coalbed methane pool that you're
13 seeking to develop by these five wells the coalbed methane
14 from the Tiller on down?

15 A. Yes, it is.

16 Q. With regard to the status of drilling or
17 proposed wells, let's...let's...in which well...in which
18 units have wells already been drilled?

19 A. Q-43, Q-44, R-43 and S-44.

20 Q. Have you filed for permit modifications with
21 regard to any of the wells that were drilled?

22 A. I believe we've filed Q-44, Q-43 and R-43.
23 S-44 is being drafted.

24

--

1 Q. Permit modification?

2 A. Yes, it is.

3 Q. Okay. Do you know whether or not a permit
4 application for R-44 has been submitted yet?

5 A. Yes, it has.

6 Q. Okay. It was...it was just..just very
7 recently?

8 A. About the same time of all of our filings.
9 These applications, the permit modifications.

10 Q. So, within the last month?

11 A. Yes.

12 Q. Okay. Would you go through each of the
13 units and tell the Board what the...either the depth of the
14 well that has been drilled or that's proposed and the
15 estimated costs for each of the wells?

16 A. Yes. Unit Q-43, the well is drilled to a
17 total depth of 2,164.50 feet at a cost of \$234,355.17. Q-44,
18 it's been drilled to...to a total depth 2,013.80 feet at a
19 cost of \$242,999.88. Well R-43, has been drilled; it's depth
20 was 1,685.70 feet at a cost of \$220,291.11. Well R-44
21 is...we haven't received a permit on that well yet. The
22 estimated depth 1,626 feet to a estimated cost of
23 \$220,542.30. And S-44, it's been drilled to a total depth of
24

1 1,824.90 feet, the estimated cost of \$230,318.62.

2 Q. In the Exhibits B-3 and with regard to each
3 of these units, you filed a Revised Exhibit B-3---

4 A. Yes.

5 Q. ---correct?

6 A. Yes.

7 Q. Is there a column entitled interest in unit?

8 A. Yes, it is.

9 Q. And that's opposite each respondent's name?

10 A. It is.

11 Q. And is that the percentage that will be used
12 to pay royalty?

13 A. Yes, it is.

14 Q. And to calculate participation costs or
15 carried costs?

16 A. Yes, it is.

17 Q. Are there any unknowns or unlocateables
18 listed in B-3?

19 A. Yes, there is.

20 Q. Okay. So, the Board Order would need to
21 address that?

22 A. Yes, it would.

23 Q. Staying with Q-44, have you also provided
24

1 the Board with an Exhibit E which sets forth the requirements
2 that you believe are necessary concerning conflicting owners
3 and conflicting claims?

4 A. Yes, we have.

5 Q. And that Exhibit E also shows certain people
6 where addresses are unknown?

7 A. It does.

8 Q. Turning to Unit Q-44, and directing your
9 attention to B-3, again there are folks whose addresses are
10 unknown?

11 A. Yes.

12 Q. And is there a requirement for escrow?

13 A. Yes, there is.

14 Q. And have you submitted an Exhibit E?

15 A. Yes, we have.

16 Q. And that requirement for escrow with regard
17 to Exhibit E that's addressed is conflicting?

18 A. Yes, it is.

19 Q. With regard to Exhibit R-43 in your Revised
20 Exhibits B-3 and E, are there unlocateable folks?

21 A. Yes, it is.

22 Q. And have you set forth in Exhibit E the
23 escrow requirements to address the conflicting claims issues?

24

--

1 A. Yes, we have.

2 Q. With regard to R-44, are there again people
3 that are, at least at this point, unlocateable?

4 A. Yes, it is.

5 Q. And are they identified in Exhibit B-3?

6 A. Yes.

7 Q. In Exhibit...Revised Exhibit E, have you set
8 forth the requirements as you see them for escrow because of
9 conflicting claims or interests?

10 A. Yes, it is.

11 Q. And lastly, with regard to Exhibit...or with
12 regard to Unit S-44 in Exhibit...Revised Exhibit B-3, are
13 there folks that are identified as unlocateable?

14 A. Yes, it is.

15 Q. And have you submitted an Exhibit E with
16 regard to Unit S-44?

17 A. Yes, we have.

18 Q. And does Exhibit E address the tracts in
19 which there are conflicting claims and escrow for that reason
20 would be required?

21 A. Yes.

22 Q. When was the last time you talked to your
23 land people about the status of leasing further folks in this
24

1 unit?

2 A. Yesterday.

3 Q. Okay. And what were you told in terms of
4 whether or not there was any...anything ongoing?

5 A. He's continuing to try to do leases and as
6 of yesterday he did...had acquired one since March the 14th.

7 Q. Does this exhibit listing of the James H.
8 Cantrell heirs also show folks to whom leases have been
9 offered, but where they haven't accepted?

10 A. Yes, it does.

11 Q. Okay. And the dates of that?

12 A. I'm sorry.

13 Q. And the dates?

14 A. Yes, it does.

15 Q. With regard to these five units, is it your
16 opinion that the plan of development using the one frac well
17 under the Oakwood I rules is a reasonable plan to develop
18 coalbed methane from the Tiller on down?

19 A. Yes, it is.

20 Q. And will the proposed well in each of these
21 units contribute to the protection of the correlative rights
22 to various owners and their competing claims and interests
23 and assure that those funds are escrowed awaiting an

24

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1 adjudication as to...as to who's entitled to them?

2 A. Yes, it does.

3 Q. That's all I have.

4 BENNY WAMPLER: This is James H. Cantrell heirs
5 sheet that you've...did you identify that as an exhibit?

6 MARK SWARTZ: Other than as James H. Cantrell heirs
7 spreadsheet, we didn't give it a number. If you want us to,
8 we can.

9 BENNY WAMPLER: I...I'd like to have it put in the
10 record. You testified from it.

11 MARK SWARTZ: Why don't we...why don't we call it F.

12 BENNY WAMPLER: Okay. Do you want to go ahead and
13 make that as an---?

14 MARK SWARTZ: So we'll just identify that as...if
15 you could just make---.

16 BENNY WAMPLER: Exhibit F?

17 MARK SWARTZ: Right. Exhibit F.

18 BENNY WAMPLER: Mr. Cantrell, do you want to go
19 ahead and identify your name for the record for us?

20 ORIS CANTRELL: Yeah, I'm Oris Cantrell. I'm one of
21 James H. Cantrell's heirs.

22 BENNY WAMPLER: Go ahead and---.

23 ORIS CANTRELL: I'd like to speak on really finding
24

1 out who you leased the coal from. You know, who you obtained
2 it. To my understanding, we still own the coal methane and
3 oil.

4 LESLIE K. ARRINGTON: I believe...I have to look at
5 that real quick. I believe it's Hurt McGuire.

6 ORIS CANTRELL: Did you---?

7 MARK SWARTZ: James...James M. McGuire.

8 LESLIE K. ARRINGTON: Yeah. James M. McGuire.

9 ORIS CANTRELL: Did you do a title search to see if
10 Mr. McGuire owned that coal?

11 LESLIE K. ARRINGTON: Yes, sir, we did.

12 ORIS CANTRELL: When did he obtain that?

13 LESLIE K. ARRINGTON: I don't have that information
14 with me. Had I known about the objections, I would have had
15 that information with me. I can get that for you.

16 ORIS CANTRELL: Well, I'd appreciate it if you would
17 get it for me and---.

18 LESLIE K. ARRINGTON: Sure.

19 ORIS CANTRELL: ---stuff. From my information is
20 that the Cantrell heirs still owns the coal and gas and oil
21 under this property. This is one of the deeds and stuff
22 where Mr. Cantrell excepted the coal, oil and a couple of
23 back pines on this property and he reserved that and to my

24

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1 knowledge, it has never been sold.

2 LESLIE K. ARRINGTON: Uh-huh. I'll certainly get
3 you a copy of the James M. McGuire severance deed to you.

4 ORIS CANTRELL: I'd appreciate it. I'd like to see
5 it. Another question on this pooling, how...how does people
6 that's heirs in this know how much money is going into this
7 pooling, or escrow account, whatever you want to call it?

8 LESLIE K. ARRINGTON: Are you going to answer it?

9 BENNY WAMPLER: I'll let you go ahead and answer it.

10 LESLIE K. ARRINGTON: We file our checks...royalty
11 checks are submitted to the escrow bank and you can either
12 call myself, Bob Wilson, or...I don't...I don't how you set
13 that up. Can they call the bank?

14 BOB WILSON: No. You need to call the Division of
15 Gas and Oil.

16 LESLIE K. ARRINGTON: Okay. You either call him or
17 myself and it takes us a little bit, but we can get that
18 information.

19 ORIS CANTRELL: I'd like to have a...I'd like to
20 have telephone numbers from you all to see how...how much is
21 going into these accounts.

22 LESLIE K. ARRINGTON: Okay. If you've got my
23 applications for this hearing, you have my telephone number.

24

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1 ORIS CANTRELL: Yeah.

2 MARK SWARTZ: It's right on the first page.

3 ORIS CANTRELL: Oh, okay. I'll be calling you.

4 LESLIE K. ARRINGTON: And I think Bob's...Mr.
5 Wilson's phone number is on the second page of the Notice.

6 ORIS CANTRELL: But we do want proof that prove that
7 those McGuire heir...McGuires own the property.

8 LESLIE K. ARRINGTON: Sure.

9 MARK SWARTZ: Just so there's...I mean, we will...we
10 will definitely send you a copy of the severance deed and you
11 need to talk to your lawyer about that.

12 LESLIE K. ARRINGTON: Uh-huh.

13 MARK SWARTZ: But there is...you know, we know from
14 the title opinion that there is a severance deed that our
15 lawyer found and we'll send it to you and you can show it to
16 your lawyer so he's starting from zero.

17 ORIS CANTRELL: Uh-huh.

18 MARK SWARTZ: And...and you can consider that. But
19 we will definitely send that to you and you need to give us
20 your address, if it's different, you know, to make sure we
21 get it to you.

22 ORIS CANTRELL: No, it's the same there.

23 MARK SWARTZ: Okay. All right.

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1 LESLIE K. ARRINGTON: Okay. Yeah. That...by the
2 way, that will be in the mail tomorrow. We'll put it in the
3 mail tomorrow.

4 ORIS CANTRELL: Okay.

5 MARK SWARTZ: And just for Mr. Wilson's number on
6 the Notice here on the front page is Les...his number. Okay?
7 On the last page, because we want to be fair and give him as
8 many phone calls as we can---

9 ORIS CANTRELL: Uh-huh.

10 MARK SWARTZ: All right. This is his number, Mr.
11 Bob Wilson's number. Okay. But either one...you know, and
12 this fellow is Les Arrington, who signed the application.
13 So, either one of those guys can track that down for you.

14 ORIS CANTRELL: Okay.

15 BENNY WAMPLER: Mr. Cantrell, what was your first
16 name again?

17 MARK SWARTZ: Horace.

18 ORIS CANTRELL: Oris. O-R-I-S.

19 MARK SWARTZ: Oh, Oris.

20 BENNY WAMPLER: O-R-I-S. O-R-I-S. Thank you. Do
21 you have anything further?

22 ORIS CANTRELL: No. No. I'll talk to him on the
23 telephone and find out where all---

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1 BENNY WAMPLER: Okay.

2 ORIS CANTRELL: ---how much money is going into
3 these poolings and so on. I've got three different wells
4 surrounding my property. I want to know how much has went on
5 those two.

6 BENNY WAMPLER: All right. Mr. Arrington, you
7 received a copy of the letters that Mr. Wilson gave us before
8 we started hearing---.

9 LESLIE K. ARRINGTON: Yes, I did.

10 BENNY WAMPLER: Would you address those, please?

11 LESLIE K. ARRINGTON: I just received them this
12 morning. I hadn't received...I just received them here. So,
13 it will take me a minute to filter through them.

14 BENNY WAMPLER: Okay.

15 (Leslie K. Arrington reviews the letters.)

16 MARK SWARTZ: Well, the letter from...from Dolly
17 Horn basically says that they have...they're not willing to
18 accept the offer of a lease and says that they're consulting
19 with an attorney. I'm not sure that we need to address that,
20 other than we've offered them a lease and would continue to
21 talk to them.

22 LESLIE K. ARRINGTON: By the way, in...in my
23 application before the Board, all these applications, there

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1 was included in that package also a lease with a stamped
2 envelope for its return to us. I mean, not only did we talk
3 to some of them, we mailed it to them on February the 18th.
4 We mailed them a copy of our lease.

5 BENNY WAMPLER: All right.

6 MARK SWARTZ: With regard to Clara Hamond's ob---.

7 DENNIS GARBIS: Excuse me. Is Mrs. Horn here?

8 DOLLY R. HORN: I'm here.

9 BENNY WAMPLER: Would you like to---?

10 DENNIS GARBIS: Would you like to step forward and
11 please elaborate on your letter?

12 ORIS CANTRELL: Just sit right here. That's pretty
13 much---.

14 DOLLY R. HORN: Ah---.

15 BENNY WAMPLER: Go ahead and have a seat if you'd
16 like. We need your name for the record, please.

17 DOLLY R. HORN: Okay. Dolly R. Horn. I'm Dolly R.
18 Horn. We have a double heirship in the property that's
19 stated because my mother was a granddaughter of James H.
20 Cantrell. My grandmother on my dad's side was his half
21 sister and some of my siblings have signed the lease forms
22 and one of my brothers got a check for \$10 and
23 it's...it's...I mean, it's...it's like stealing it from us.

24

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1 If we sign the lease forms, then we're...we're giving the
2 land away. We're giving the rights away.

3 CLYDE KING: Mr. Chairman?

4 BENNY WAMPLER: Mr. King.

5 CLYDE KING: The \$10 you received was the price of
6 signing the lease. That was---

7 LESLIE K. ARRINGTON: That would have been the bonus
8 payment.

9 CLYDE KING: That has nothing to do with the oil and
10 gas that's produced.

11 LESLIE K. ARRINGTON: No, that's...that was just
12 the...the rental payment. Uh-huh.

13 CLYDE KING: Yeah. That was just the payment for
14 signing the lease.

15 LESLIE K. ARRINGTON: Yes. This is...this is an
16 undivided interest and when you start dividing it up
17 as...into the fractions that it's going to be divided into,
18 yes, it is small. I mean...but there's nothing we can do.

19 DOLLY R. HORN: I realize that there's a hundred and
20 twenty-three heirs total in the estate and if we do not sign,
21 then what happens?

22 BENNY WAMPLER: Do you want to explain that?

23 SANDRA RIGGS: The reason they're here today is
24

1 because there are people who have not signed and the statute
2 in Virginia provides that they can come in and file an
3 application for pooling, which is what is referred to as
4 compulsory pooling to get the Board to establish the rate at
5 which the money will be paid. In other words, the Board will
6 establish the lease terms instead of negotiating a lease
7 between the parties, and the Board Order will act very
8 similar to what a lease would be. But it's imposed through
9 this hearing as opposed to you sitting down with them and
10 negotiating.

11 DOLLY R. HORN: In other words, if we don't sign,
12 then you all will go ahead and do...and drill the wells
13 anyway.

14 SANDRA RIGGS: Well, I think, the wells have been
15 drilled already. What they're asking is that your undivided
16 interest in this heirship be compulsory pooled for production
17 purposes and that they be allowed to establish in the
18 instance of either conflicting claims which I...there's
19 ...your tract is in conflict with the coal. So, it would
20 be...the Board would establish through its Order an escrow
21 account. Now, the \$10 you're talking about is like a signing
22 bonus, but also the terms of the Board Order generally
23 provide for a one-eighth royalty. So, once they start

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1 producing the well, each month they will calculate the
2 production and take one-eighth of the proceeds and put that
3 into the escrow account so that when the conflicting claims
4 as between coal and gas and oil are resolved, the parties can
5 come in and pull that money out of escrow.

6 DOLLY R. HORN: In other words, the ones that have
7 signed will still get money from the escrow account?

8 SANDRA RIGGS: Exactly.

9 DOLLY R. HORN: It's not like they just signed their
10 rights away.

11 SANDRA RIGGS: No. No.

12 BENNY WAMPLER: No.

13 MAX LEWIS: No.

14 SANDRA RIGGS: They...I'm sure...I don't know what
15 the terms of the voluntary lease are, but it's probably the
16 same, the one-eighth royalty.

17 DOLLY R. HORN: Okay. And it has several of the
18 unclaimed...I mean, heirs unknown. Frank Boyd's widow is
19 still living. My---

20 LESLIE K. ARRINGTON: Do you have...do you
21 have...could you get me that information?

22 DOLLY R. HORN: Yes, I can.

23 LESLIE K. ARRINGTON: Okay.

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1 DOLLY R. HORN: And it's got my dad's name on there;
2 and as far as I know, I have a half sister which was dad's
3 daughter by his first wife. They told...the gentlemen that
4 approached me told us that because my father had been
5 deceased since 1986, that she would not qualify for a portion
6 and we wanted to know why.

7 BENNY WAMPLER: Well, certainly nothing this Board
8 does would change heirship at all. I can assure you of that.

9 DOLLY R. HORN: That's...that's what he told and he
10 was from...from Consol. I mean---.

11 LESLIE K. ARRINGTON: I don't know what he was
12 talking about. It wasn't Scott Hodges, was it?

13 DOLLY R. HORN: Uh-huh.

14 LESLIE K. ARRINGTON: I...Mark may have to touch
15 base on that. I think there has been some changes in the
16 states through the years. But that is---.

17 SANDRA RIGGS: That would be governed under the
18 inheritance laws---.

19 BENNY WAMPLER: Right.

20 SANDRA RIGGS: ---or whatever, you know, depending
21 how the estate was---.

22 DOLLY R. HORN: Well, her...see, my dad's mother was
23 a Cantrell. It would be still under the Cantrell heirship.

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1 SANDRA RIGGS: Well, anybody that claims ownership
2 has the ability to come in and ask this Board to name them as
3 a claimant, and then ultimately, the Courts or the parties
4 have to work out the ownership interest and it will sit in
5 escrow until that gets resolved. But there is an ability if
6 she...you know, if she wants to come before the Board and ask
7 to be named as a party to this pooling, she can certainly do
8 that.

9 BENNY WAMPLER: She's---.

10 DOLLY R. HORN: Well, she's here today.

11 LESLIE K. ARRINGTON: Okay.

12 BENNY WAMPLER: Do you want to---?

13 SANDRA RIGGS: Well, she can ask to be named as a
14 party to the pooling and we can...we can do that.

15 LESLIE K. ARRINGTON: Excuse me. Mrs. Horn, could I
16 get your phone number and I'll make sure Scott calls you?

17 DOLLY R. HORN: Area code (540) 964-5324.

18 LESLIE K. ARRINGTON: Okay.

19 DOLLY R. HORN: And also, there are one or two
20 heirs of Harm Boyd, which was my dad's brother, I think they
21 are in Tip City, Ohio. I'm not sure about that.

22 LESLIE K. ARRINGTON: Okay. Scott...will you be at
23 home tomorrow?

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1 DOLLY R. HORN: Tomorrow, yes.

2 LESLIE K. ARRINGTON: Scott will call you tomorrow.

3 DOLLY R. HORN: Okay.

4 BENNY WAMPLER: Let's get your sister-in-law's name
5 for the record.

6 DOLLY R. HORN: My half sister?

7 BENNY WAMPLER: Or your half sister.

8 DOLLY R. HORN: It's Dobie, D-O-B-I-E, White.

9 SANDRA RIGGS: W-H-I-T-E.

10 DOLLY R. HORN: Uh-huh.

11 BENNY WAMPLER: Ms. White, you're here? You're
12 Dobie White.

13 (Dobie White indicates affirmatively.)

14 BENNY WAMPLER: Do you wish to be added?

15 DOBIE WHITE: Well, I think I should be.

16 BENNY WAMPLER: Okay. You're added.

17 DOBIE WHITE: Well, I got a paper to sign, but I
18 don't know what to do with it.

19 LESLIE K. ARRINGTON: I think you---.

20 DOBIE WHITE: So, I didn't sign it.

21 MARK SWARTZ: I saw her name.

22 LESLIE K. ARRINGTON: Yeah, I...I think if you'll
23 notice on---.

24

1 BENNY WAMPLER: Her name is right here.

2 LESLIE K. ARRINGTON: Her name is on this list.

3 BENNY WAMPLER: Right. It's on the James H.
4 Cantrell heirs here.

5 SANDRA RIGGS: So, she has already been added.

6 BENNY WAMPLER: It has been...it has been added as
7 an exhibit to the record today. It's Exhibit F if you ever
8 need to refer to it.

9 MARK SWARTZ: Another thing, and I'm not sure you're
10 clear on this because of the way the, you know, question has
11 been answered in pieces, but the money that would be paid on
12 royalty for the gas is going to go into escrow whether or not
13 people sign leases because there's an adverse claim of
14 the...I can never get Hurt McGuire or James M. McGuire trust
15 straightened out here. But I just want to make sure here.
16 Yeah, that...we were talking about the severance deed
17 earlier---

18 DOLLY R. HORN: Uh-huh.

19 MARK SWARTZ: ---that we were going to furnish a
20 copy to Oris, because the James McGuire Trust claims the
21 coal, there's an adverse claim to this gas and all of the
22 money allocable to those tracts is going to go into escrow
23 until that gets sorted out. So, if you sign a lease or don't

24

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1 sign a lease, that money is still going into escrow until the
2 claim of the James M. McGuire Trust and your claims are
3 straightened out. Okay, this Board is not going to do that.
4 I mean, you either settle that or deal with it in Court,
5 but---

6 DOLLY R. HORN: Oh, okay.

7 MARK SWARTZ: So, you know, people who sign a lease
8 really aren't going to be treated any differently than people
9 who don't sign a lease---

10 DOLLY R. HORN: We were---

11 MARK SWARTZ: ---pretty much, you know.

12 DOLLY R. HORN: We were told that if we did not
13 sign, then we were out completely.

14 MARK SWARTZ: No.

15 LESLIE K. ARRINGTON: No. No.

16 DOLLY R. HORN: And that's not true?

17 BENNY WAMPLER: No, it's not true.

18 LESLIE K. ARRINGTON: No, it is not.

19 MARK SWARTZ: And what is...I mean, basically...I
20 mean, you've heard Mr. Arrington talking about the terms of
21 the folks who have accepted the leases have agreed to.
22 Generally speaking the Board will...well, the Board will
23 definitely put terms in their Order and normally they're the

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1 terms that we offer to other people so the people can get
2 treated pretty much the same.

3 DOLLY R. HORN: Okay.

4 MARK SWARTZ: But with whether or not you sign a
5 lease or you don't sign a lease, the money is going to go
6 into escrow until the title question is straightened out.

7 DOLLY R. HORN: Okay. All right. I have one other
8 question.

9 CLYDE KING: Mr. Chairman, I have a question
10 before...excuse me.

11 DOLLY R. HORN: Uh-huh.

12 CLYDE KING: Who told you that you were---?

13 DOLLY R. HORN: That if we didn't sign?

14 CLYDE KING: Right.

15 DOLLY R. HORN: Mr. Hodges.

16 LESLIE K. ARRINGTON: I've...I've got my note. I've
17 already made a note.

18 CLYDE KING: That needs to be corrected.

19 LESLIE K. ARRINGTON: Yeah.

20 DENNIS GARBIS: Quickly.

21 LESLIE K. ARRINGTON: It will be.

22 DOLLY R. HORN: I have one other question. My
23 mother's sister, Cecil Boyd, she had three children that were
24

1 not listed as heirs.

2 MARK SWARTZ: Who are they?

3 DOLLY R. HORN: Barbara---

4 MEMBER OF THE AUDIENCE: McCarty.

5 DOLLY R. HORN: Hardy?

6 MEMBER OF THE AUDIENCE: McCarty.

7 DOLLY R. HORN: McCarty. And Teddy and Freddie
8 Boyd.

9 BENNY WAMPLER: For the record, it's always very
10 helpful for people to identify these other parties for us
11 because that...you know, we need to be able to get in touch
12 with them, whether they're seeking to lease or whether or not
13 they need to get a copy of the Order so they'll know what's
14 going on.

15 LESLIE K. ARRINGTON: What was the...Teddy Boyd?

16 DOLLY R. HORN: Teddy and Freddie.

17 LESLIE K. ARRINGTON: Okay.

18 DOLLY R. HORN: They were twins.

19 LESLIE K. ARRINGTON: Okay. And Scott...Scott will
20 call you tomorrow.

21 DOLLY R. HORN: Okay.

22 LESLIE K. ARRINGTON: Okay.

23 DOLLY R. HORN: All right. Thank you.

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1 BENNY WAMPLER: Thank you, ma'am. Anything further
2 from those of you that came today for this hearing?
3 SANDRA RIGGS: Les, can you provide an amended
4 Exhibit B-3 and E---?
5 LESLIE K. ARRINGTON: I will.
6 SANDRA RIGGS: ---once you identify the heirs that
7 she has called to attention so that we can supplement the
8 record of testimony today for the Board order.
9 LESLIE K. ARRINGTON: Do we...do you need an A-2?
10 Do you want that one revised or just---?
11 SANDRA RIGGS: A-2 is the percentage?
12 LESLIE K. ARRINGTON: Yes, total percentage leased
13 or unleased.
14 SANDRA RIGGS: That wouldn't change, would it?
15 BENNY WAMPLER: That wouldn't change. It would be
16 in B-3 and---.
17 MARK SWARTZ: That's not going to change.
18 LESLIE K. ARRINGTON: Oh, that's right. I'm sorry.
19 SANDRA RIGGS: For the undivided interest.
20 LESLIE K. ARRINGTON: That's right. B...okay.
21 That's right.
22 CLYDE KING: Did we hear from Mr. Cantrell?
23 SANDRA RIGGS: Well, we heard from a Mr. Cantrell.
24

1 I think the one you have the letter from, I don't whether
2 he's here or not.

3 BENNY WAMPLER: The other...the other is George
4 Cantrell.

5 CLYDE KING: Is that Mr...is that George Cantrell?

6 ORIS CANTRELL: He's not here.

7 BENNY WAMPLER: No, he's not here.

8 LESLIE K. ARRINGTON: No, he's not here.

9 CLYDE KING: Oh, I'm sorry. I thought that was---.

10 DOLLY R. HORN: George Cantrell is in the hospital.
11 He had a stroke. No. No. I'm wrong. I'm sorry. That was
12 Lee Cantrell. George Cantrell is deceased.

13 ORIS CANTRELL: No. This is George, Jr. is the
14 (inaudible).

15 LESLIE K. ARRINGTON: No.

16 CLYDE KING: No.

17 DOLLY R. HORN: George, Jr. Okay.

18 BENNY WAMPLER: Well, you've read the letter that he
19 has written?

20 LESLIE K. ARRINGTON: Mark has them. I haven't read
21 through it.

22 BENNY WAMPLER: You're not letting him read them?

23 MARK SWARTZ: It's a permit objection. No, I'm not.

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1 BENNY WAMPLER: Would you like to speak to the
2 letter?

3 MARK SWARTZ: I assume it's a permit objection and
4 if it was timely received, we'll probably hear from Mr.
5 Wilson about it in the permitting process. I mean, it---.

6 BENNY WAMPLER: It just says that he's objecting to
7 the permit issuance.

8 MARK SWARTZ: Right. And he lists all the...well,
9 and he lists the units, the permit.

10 BENNY WAMPLER: And when he listed it. Yeah.

11 MARK SWARTZ: So---.

12 BOB WILSON: I included this letter because it came
13 after the permit was issued and as a response to apparently
14 the Notice of the Board (inaudible).

15 MARK SWARTZ: I'm not arguing about that. I'm
16 just...yeah, I mean---.

17 LESLIE K. ARRINGTON: All of that was sent at once,
18 though---.

19 MARK SWARTZ: It---.

20 LESLIE K. ARRINGTON: ---the modifications and the
21 applications.

22 MARK SWARTZ: But it seemed to me to be a permit
23 objection and it may be timely because of the modifications.

24

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1 I don't know. It's not...well, whatever.

2 BENNY WAMPLER: Well, Mr. Wilson can resolve that

3 part.

4 MARK SWARTZ: We'll...we'll sort that out.

5 BENNY WAMPLER: But as to the hearing today, is

6 he...is he added? Is he...do we already have him listed?

7 SANDRA RIGGS: He's in here.

8 LESLIE K. ARRINGTON: He should be in there.

9 MARK SWARTZ: He's listed.

10 BENNY WAMPLER: I just want to verify that. So, we

11 got to make sure that we don't miss that. So, he is in here.

12 Okay. Do you have anything further?

13 MARK SWARTZ: No.

14 BENNY WAMPLER: Any questions from members of the

15 Board? Mr. Garbis?

16 DENNIS GARBIS: Yes, I'd like to ask a few

17 questions. Mrs. Horn, are you satisfied? Are you...are

18 you...do you feel comfortable with the questions that you

19 asked and the answers that you received? Are you...are you

20 okay with that?

21 DOLLY R. HORN: Yes.

22 DENNIS GARBIS: And, ma'am, are you okay with...with

23 ...now, that your name is being added on?

24

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1 DOBIE WHITE: Well, Am I supposed to sign this or
2 not?

3 BENNY WAMPLER: Ma'am, that's up to you. See, the
4 lease itself is up to you. That's something that you have an
5 ability to negotiate privately with the company. The law,
6 however, provides the companies an ability to come in and
7 pool those persons who do not lease when you have conflicting
8 interest and you'll...and then the law has set out the terms
9 and will protect your interest under those terms. It can't
10 negotiate for you, but it sets...it sets the terms if you
11 don't negotiate. Okay, so, you're...you're protected from
12 that standpoint. Your ability to negotiate with them prior
13 to signing is still open to you up until such time as you
14 receive the Board Order otherwise and throughout that really.

15 DENNIS GARBIS: Mr. Cantrell, are you satisfied?
16 Are you happy? Do you feel comfortable with that you asked
17 you asked question and the answers you received?

18 ORIS CANTRELL: Yeah, I just want to know where they
19 got this...obtained the coal rights and offer...I understand
20 the Cantrell heirs still owns the coal. McGuire says they
21 own, but we want the deeds to show us where they got it and
22 how purchased it and when they purchased it.

23 DENNIS GARBIS: That information will be provided to
24

1 you. Are there any other Cantrell...I just want to make sure
2 that everybody who came here specifically to have their say
3 is afforded that opportunity? Gentlemen and ladies?

4 JOE HORN: I'm Erma Cantrell's husband and
5 (inaudible)---

6 BENNY WAMPLER: We need you to come down. I'm
7 sorry. Because we can't...we cannot pick you up from back
8 there. It's not that we can't hear you. The...we can't get
9 it on record.

10 JOE HORN: Yeah, okay.

11 BENNY WAMPLER: If you'll state your name for the
12 record, please.

13 JOE HORN: Joe Horn. I'm Erma Cantrell's husband,
14 one of the heirs, and Carrie Hamond. She was unable to be
15 here today. Where you sign the lease, everybody I've talked
16 to, when they get a check, they'll get one for \$.98 or maybe
17 for \$3.00 and stuff like this; and a lot of things in this
18 lease that they got here, you sign away a lot of things and
19 you're held for a lot of things to my understanding in it;
20 and it would about take a lawyer to go through this stuff for
21 people to understand what's going on. And I'd like to...I'd
22 like to know how you get to this escrow they're putting and
23 how they can just go ahead and lease your land or do whatever
24

1 they want to. We've got more property there and they've been
2 a pumping gas out of that. We ain't...we ain't got nothing
3 out it. And they claim they lease this coal, and to my
4 understanding, it has been...it has been run back to my
5 McGuires and they own a small portion of this coal that
6 they're...that they're leasing 100% and we'd...we would
7 really like to have proof of where they got this land and how
8 they possessed it.

9 SANDRA RIGGS: Well---

10 MARK SWARTZ: Well, we've run...we've run title on
11 the coal estate and, you know, we have a title opinion and we
12 can provide copies of the severance deeds. What often happens
13 when we give people severance deeds, is you're still going to
14 have questions, but at least you can take that to your lawyer
15 so that we can show you this is what we're being given with
16 regard to the coal interest. So, you'll have the severance
17 deed and we'll do that tomorrow. I mean, if you want to get
18 on the list, just make sure that---

19 JOE HORN: Yeah.

20 MARK SWARTZ: ---we've got your address and we'll
21 send you a copy of that deed tomorrow as well.

22 LESLIE K. ARRINGTON: And what...I don't know the
23 other wells you're speaking to. You're saying other wells.

24

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1 JOE HORN: That's the Horn heirs. The Horn heirs.
2 Linkous Horn heirs.

3 SANDRA RIGGS: Linkous Horn?

4 LESLIE K. ARRINGTON: Oh, okay.

5 MARK SWARTZ: Oh. Oh, okay.

6 JOE HORN: So, he has...he has got some stuff on it
7 there he's going to get with you after while. But...but
8 McGuires...McGuires...McGuires don't own all of that coal
9 property in Buchanan County.

10 SANDRA RIGGS: Well, both of you have been named as
11 parties to the pooling. So, when that gets resolved, whoever
12 prevails would have the claim to the escrowed funds.

13 JOE HORN: And I'd like to know how you get to the
14 escrow funds? How you get anything out of it? And they---.

15 SANDRA RIGGS: How you withdraw money from escrow?

16 JOE HORN: Yeah.

17 SANDRA RIGGS: You...you have to one of...the
18 statute says one of two ways. You either sit down with your
19 conflicting claimants and come to some kind of agreement and
20 the one that have come before the Board in the past is the
21 coal owner and the gas and oil owner have agreed to split the
22 escrow fifty/fifty or some proportionate split, and they come
23 forward with a written agreement to the Board and say we've

24

--

1 resolved our conflicting claims and we would like to withdraw
2 our money out of the account in accordance with our
3 agreement. The other way is you can go into Court and
4 litigate your ownership and get a Court Order that resolves
5 the conflicting claims to the ownership and bring that to the
6 Board and then the Board can disburse based on the Court
7 Order. So, those are the two ways that the statute sets out
8 to withdraw money from escrow. Either one requires
9 resolution of the conflicting claims of ownership.

10 JOE HORN: Well, I just wanted it on the record
11 and...and I want to give you my address and stuff and mail
12 this to me. I'd like to know something about what's going
13 on. If you go down and get a lawyer and take this bunch of
14 papers that thick, hey, you can't pay them \$50 an hour to sit
15 there and go over this; and I...and I feel like that's what
16 they're trying to do is cost people so much they don't want
17 to get a lawyer to start with here and then when they come up
18 and can't get nothing from it.

19 CLYDE KING: Mr. Chairman, I think---

20 BENNY WAMPLER: Mr. King?

21 CLYDE KING: ---that's why this Board is here is to
22 try to take care of the people. We're...we're public
23 representatives and it really bothers me, Les, that you've

24

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1 got somebody that's telling people that if they don't
2 sign---.

3 LESLIE K. ARRINGTON: Oh, that will be remedied of
4 whatever that was.

5 MARK SWARTZ: Well, you know, that's---.

6 CLYDE KING: That really is---.

7 MARK SWARTZ: You know, we're going to talk to
8 Scott, but I hear this a lot and sometimes it's confusion as
9 opposed to misrepresentation and I...you know, I talked to
10 Scott yesterday and he was telling...he told me what he was
11 telling people in terms of what would happen if they didn't
12 sign a lease. Now, he was telling me that he was telling he
13 was going...it was probably a good chance it was going to be
14 pooled. So, I mean, I can get Scott back here next month,
15 but I don't want to give any indication...and we'll talk to
16 him and tell him in no uncertain terms that if he has ever
17 said that, he needs to stop, but I'm not...you know, I can't
18 speak for him and we can have him here next month to defend
19 himself and, in retrospect, maybe I should have had him here
20 today. But, you know, that is improper if he said that and
21 we're certainly going to talk to him about it. But I'm not
22 going to...I know him and I've dealt with him before and he's
23 not the kind of guy that I would expect to do something like
24

1 that. Just in response for what it's worth.

2 JOE HORN: When Lee Cantrell was in the hospital
3 that just had a stroke, he snuck in on him and got him to
4 sign a lease and probably didn't even know what he was
5 signing. He can't read and he's in the hospital now with a
6 stroke. And undermining stuff is going on out there. And
7 I'll tell you what, it needs to be addressed from the Board
8 and need to know what's going on. I mean, this is...this is
9 a sham. In Buchanan, it's a sham that a company could come
10 in and take gas out from under the land and not pay nobody,
11 tear timber down and build roads. The whole Board needs to
12 go through Buchanan County and see what's taking place over
13 there with this company that's railroading people and pay
14 taxes and it's drug out of there...the coal tax drug out of
15 there and in just a little while, Buchanan County is going to
16 be a ghost town and these companies is gone. Bye, bye. I'll
17 see you later and you...you don't have to take my word for
18 it. All you have to do is go through there and see what is
19 taking place and see the people that lives there, what
20 they're getting out of this that's taking place in this
21 county. It's not right. And we put you people in there. We
22 vote for you'ns and put the people in there to take care of
23 it and it should stopped. Now, I don't know of nobody that

24

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1 has got anything out of these...out of these people and
2 they're ripping Buchanan County apart. I'm pretty sure
3 you've heard that before.

4

5 MARK SWARTZ: Well, my response on the money is the
6 trust and large land owning companies that we deal with are
7 receiving a one-eighth royalty, just like we're offering
8 everyone of the Cantrell heirs, period. And, you know, these
9 people can have as many lawyers as they want. They sit down
10 and argue with us and negotiate with us about things, but
11 they're getting a one-eighth royalties, just like we're
12 offering here; and we're not offering people different kinds
13 of deals depending on their leverage, or the amount of money
14 they have, or whether or not they can afford a lawyer,
15 and...you know, when we come to this Board and talk about the
16 leases we've obtained...I mean, we've been here for seven,
17 eight or nine years, I mean, we have occasionally had, you
18 know, objections from Georgia Pacific and other companies,
19 I'm not sure on our pooling applications, but certainly on
20 EREC's and some of the...some of the other ones. You know,
21 they have the same lease terms. They have the same money
22 terms. You know, the one-eighth royalty that we're offering
23 these people and I think it's important to know that. You

24

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1 may not be happy about it, but, you know, there's not some
2 deal for the large companies and some other deal for
3 the...for the individuals. It's a one-eighth royalty.
4 That's the...that's the arrangement that we've had since the
5 beginning; and frankly, it's the arrangement nationwide,
6 generally speaking, when you're talking about oil and gas.
7 But just so you understand that...that, you know, if Hurt
8 McGuire winds up winning, their royalties is one-eighth, too.
9 If they wind up losing, the royalty of the people that were
10 pooled will be the same as their agreement. Just so you know
11 that there's not two different deals on the table. I mean, I
12 can't...that's not going to make you happy, but I just felt
13 that that was important to point out.

14 BENNY WAMPLER: Mr. Horn, the Board is not
15 authorized to make ownership determination. I think you
16 understand that.

17 JOE HORN: Yeah, I understand that.

18 BENNY WAMPLER: You know, that...that is something
19 that if you can't resolve it among the heirs and the other
20 parties would have to have a Court Order determining, and I
21 imagine ultimately you all will have from the Linkous Horn
22 heirs versus Hurt McGuire heirs, who own...who owns what.

23 JOE HORN: Right. Sure.

24

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1 BENNY WAMPLER: And whenever you do, at that point
2 in time, then it's a simple matter of getting the money out
3 of the escrow.

4 JOE HORN: At the eight percent...the eight percent,
5 they is a lot places that I would like to go and just take
6 over and pay a man or a woman 8% of it and take the rest of
7 it. I mean, that's...that's absurd. I'd like to tell
8 everybody here that's absurd. Eighth percent...one-eighth
9 percent and them getting millions...a dragging millions out
10 of there, I mean, that's...that's not...that's just not
11 right. That just don't count up whether...whether I do it or
12 whether you do it or whether you do it, a one-eighth percent;
13 and if I understand it right, Georgia Pacific he meant...he
14 mentioned, I was told that they get \$10,000 an acre for the
15 land and want to go through just the owner for nothing hardly
16 and I'm pretty sure if they...if they go through Georgia
17 Pacific, they pay for every inch and they pay for every
18 switch that's cut and just the individuals, well, we'd like
19 to have a pipeline through your place here; and they ain't
20 telling how many feet on each side of that thing that they're
21 taking away from people that they can't use of that land; and
22 whenever it comes down to it, you don't get nothing out of
23 what they've destroyed.

24

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1 SANDRA RIGGS: Well, nothing in this...this Board
2 Order addresses their entry upon your surface estate.

3 MARK SWARTZ: Well, they don't own the surface.

4 SANDRA RIGGS: Well---.

5 MARK SWARTZ: I mean, at least in the first unit I'm
6 looking at.

7 SANDRA RIGGS: That's what I'm saying.

8 MARK SWARTZ: You know.

9 SANDRA RIGGS: This Board does not grant surface
10 rights or rights of entry.

11 JOE HORN: I'm just telling you what's...I'm just
12 telling you what's taking place and you'ns issuing permits to
13 all of these people over there and they're...and they're
14 running over people and getting away with it. I mean, I know
15 you'ns ain't...ain't supposed to take care of that. They got
16 wells drilled on the Horn heirs and obtained...said they had
17 rights. We had the rights to it and they never got them from
18 us. They got them off somebody, but they didn't get them
19 from us and they said they had the right-of-way to it. They
20 did not have the right-of-way from the Linkous Horn heirs to
21 it and the wells is already on it and we're fixing to prove
22 that, too.

23 SANDRA RIGGS: Well, those are heirship issues---.

24

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1 JOE HORN: Right.

2 SANDRA RIGGS: ---that you need to resolve---.

3 JOE HORN: Right.

4 SANDRA RIGGS: ---you know, where somebody has
5 jurisdiction to resolve them.

6 JOE HORN: Right. Sure.

7 BENNY WAMPLER: And you do understand the royalty
8 is...that we're talking about is set out in law? It's not
9 something that we are sitting here saying that it's one-
10 eighth.

11 JOE HORN: Right.

12 BENNY WAMPLER: We're...we're going by what the law
13 that we have to work with.

14 JOE HORN: Yeah. And that's a wrong law. People
15 ought to get behind that. People we put in office, Rick
16 Boucher and our governor, ought to get behind that and stop
17 that. I mean, it's not right. It's absolutely not right.
18 Sinking people's water and everything else and there they go
19 with it. But...I mean, I ain't...I don't have to bring all
20 that up today. We'll get to that later. So, that's all for
21 me. Okay?

22 BENNY WAMPLER: Mr. King? Yes, sir.

23 CLYDE KING: I have a question for our attorney.

24

1 When criminals go to Court, or whatever for any reason, the
2 Judge appoints an attorney. Do these people have any rights
3 like that that the Court's can appoint---?

4 SANDRA RIGGS: These are civil matters and not
5 criminal matters and, no, unless legal aid, you know,
6 guidelines and that's based on the ability to pay generally,
7 even in criminal law. You have to show---.

8 CLYDE KING: It seems to me like that's something
9 that should be in the criminal...not part of the criminal---

10 SANDRA RIGGS: Well---

11 CLYDE KING: ---because this is not a criminal case.
12 But, I mean, when a...when somebody can't hire an attorney,
13 they should have some right to have somebody represent them
14 because these people can't represent themselves properly, I
15 don't think.

16 SANDRA RIGGS: Well, there's no...no such provision
17 to provide nationwide free legal counsel that I know of.

18 CLYDE KING: Maybe that's what would be a good
19 subject for the law profession down the road.

20 DOBIE WHITE: I want to ask one more question. How
21 many years down the road will we...before we get this money
22 that's in escrow?

23 SANDRA RIGGS: It could be tomorrow if you resolve
24

1 your conflict or it could be however long it takes you to get
2 your title issues resolved.

3 DOBIE WHITE: All right. One more then---.

4 COURT REPORTER: You need to come down here, ma'am.

5 DOBIE WHITE: ---on the Keen property, where they
6 bought from the Keen property about seven years ago, and they
7 was supposed to make us a road up to the graveyard where...on
8 top of the mountain adjoining the Jack White property, around
9 to the graveyard. They've got it up to where they go up the
10 other way to the Jack White property, but around to the
11 graveyard on the Keen property, we had to walk up there
12 Saturday. We went up there Saturday and we couldn't get from
13 the...where they go to the Jack White place around to the
14 graveyard where my husband is buried. We had to walk around
15 there. They have...around there, they have put the pipeline
16 around below the road the way the old road used to be and
17 it's a mud hole knee deep around there that you can't get
18 through and there's ruts you can't get through with a car.
19 Ain't they supposed to fix that road around there to where we
20 can get to that graveyard?

21 BENNY WAMPLER: That's...that's a permit issue. Mr.
22 Wilson will follow up on that with you. Understand
23 now...we'll go ahead and let you talk from back there and

24

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1 that's...that's fine. But while we're recording here, in
2 order to have it on record, you need to come forward. You're
3 welcome to do that, or he'll follow up with you directly, if
4 that's okay.

5 DOBIE WHITE: Okay. I'll just talk to him. I'd
6 just like to have the graveyard...a road graveled around
7 through there to so we can get to the graveyard. I'm going
8 to die one of these days and be buried up there and I want a
9 road around there to where my children can get to it.

10 BENNY WAMPLER: If the permit calls for that, he can
11 take care of that.

12 DOBIE WHITE: And the Keen...Keen heirs...Ms. Keen
13 reserved a acre around that graveyard and they was suppose to
14 make her a road available at all times of the year to that
15 graveyard and it ain't been done.

16 BENNY WAMPLER: Mr. Wilson will follow up with that.

17 DOBIE WHITE: Okay. I appreciate it.

18 SANDRA RIGGS: Now, that's if it's in the permit.

19 BENNY WAMPLER: If it's in the permit.

20 DOBIE WHITE: It's in her...it's in her---

21 SANDRA RIGGS: Well, now, if it's in a private
22 agreement, that's again between the parties.

23 DOBIE WHITE: (Inaudible) she sold them the Henry
24

1 Grizzle property---.

2 LESLIE K. ARRINGTON: I'll fix it. I know
3 what she's talking about.

4 BENNY WAMPLER: Can you take care of it?

5 LESLIE K. ARRINGTON: Yeah.

6 BENNY WAMPLER: Do you want to tell them?

7 DOBIE WHITE: ---that she owned that she inherited
8 from him. When she sold it to the gas company, they was
9 supposed to have make her a road there.

10 LESLIE K. ARRINGTON: Yes. I know what you're
11 talking about and where you're talking about. The road is
12 graveled all the way up the mountain, isn't it, to where it
13 turns off?

14 DOBIE WHITE: To where you turn off at the Jack
15 White place and you turn this way to go to the graveyard.

16 LESLIE K. ARRINGTON: Yes, ma'am. I know where
17 you're talking about. That---.

18 DOBIE WHITE: Okay. I appreciate if it would be
19 graveled around through there.

20 LESLIE K. ARRINGTON: I won't see---.

21 DOBIE WHITE: And a drain pipe where that big mud
22 hole is.

23 LESLIE K. ARRINGTON: Okay. I'll see what I can do.

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1 DOBIE WHITE: All right. I appreciate that. Then
2 I'll be satisfied.

3 LESLIE K. ARRINGTON: Okay. You call me and let me
4 know.

5 DOBIE WHITE: What's your name?

6 LESLIE K. ARRINGTON: Les Arrington.

7 SANDRA RIGGS: Les Arrington.

8 LESLIE K. ARRINGTON: I'm on all the documents that
9 you have there. You call and let me know in about two weeks.

10 DOBIE WHITE: (Inaudible).

11 BENNY WAMPLER: Other questions from members of the
12 Board?

13 (No audible response.)

14 BENNY WAMPLER: Do you have anything, Mr. Wilson?

15 (No audible response.)

16 BENNY WAMPLER: Is there a motion?

17 MASON BRENT: Mr. Chairman, I move that we grant the
18 applications as submitted.

19 BENNY WAMPLER: Motion to grant.

20 KEN MITCHELL: I second the motion.

21 BENNY WAMPLER: Motion and second. Any further
22 discussions?

23 (No audible response.)

24

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1 BENNY WAMPLER: All in favor, signify by saying yes.
2 (All members signify yes except for Max Lewis and
3 Dennis Garbis.)

4 BENNY WAMPLER: Opposed, say no.

5 DENNIS GARBIS: No.

6 MAX LEWIS: No.

7 BENNY WAMPLER: That's two nos. The application is
8 granted.

9 The next item on the agenda, we skipped number
10 twelve on here; that is a petition from Pocahontas Gas
11 Partnership for pooling of a coalbed methane unit identified
12 as R-51. This is docket number VGOB-00-03/21-0783; and we'd
13 ask the parties that wish to address the Board in this matter
14 to come forward at this time.

15 MARK SWARTZ: Mark Swartz and Les Arrington on
16 behalf of Pocahontas Gas Partnership.

17 (Leslie K. Arrington passes out exhibits.)

18

19 LESLIE K. ARRINGTON
20 having been duly sworn, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 QUESTIONS BY MR. SWARTZ:

24

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1 Q. State your name for us, Les.
2 A. Leslie K. Arrington.
3 Q. Did you prepare the Notice of Hear...
4 prepare, or cause to be prepared the Notice of Hearing,
5 exhibits and application with regard to this application to
6 pool R-51?
7 A. Yes, I did.
8 Q. Who are you seeking to pool?
9 A. Oh, I'm sorry. Ronald and Joyce Reed.
10 Q. Did you mail to them?
11 A. Yes, we did.
12 Q. When?
13 A. On February the 24th, 2000.
14 Q. Did you also---?
15 A. I'm sorry. February the 18th, 2000.
16 Q. Okay. Did you also publish?
17 A. We did. In the Bluefield Daily Telegraph,
18 on February the 24th.
19 Q. And have you filed today a proof of mailing
20 and proof of publication with the Board?
21 A. Yes, we did.
22 Q. Did the respondents sign for their mail?
23 A. Yes, they did.

24
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1 Q. If you look at Exhibit...or actually your
2 notes for the hearing, what is the interest that you
3 previously obtained and what is the interest that you're
4 seeking to pool by this application?

5 A. Yes, for coalbed methane from the coal
6 owners, we lease or own 100%; and from the oil and gas
7 owners, we own or lease 98.675%. We're seeking to pool
8 1.325% of the oil and gas interest, and we presently lease
9 100% of the coal interest.

10 Q. Is there a well on this property as of yet?

11 A. No.

12 Q. What's the proposed depth?

13 A. 2,367 feet at a estimated of \$236,293.53.

14 Q. Does the plat indicate that the well is
15 proposed to be located inside the drilling window?

16 A. Yes, it does.

17 Q. This is an Oakwood I frac unit, correct?

18 A. It is.

19 Q. Seeking to produce gas, coalbed gas, from
20 the Tiller on down?

21 A. Yes.

22 Q. Who's the applicant?

23 A. Pocahontas Gas.

24

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1 Q. Is Pocahontas Gas a Virginia General
2 Partnership?

3 A. Yes, it is.

4 Q. Are the partners in that partnership
5 Consolidation Coal Company and Conoco, Inc.?

6 A. Yes.

7 Q. Does the application request that Pocahontas
8 Gas Partnership be designated as the unit operator?

9 A. Yes.

10 Q. Is Pocahontas Gas Partnership authorized to
11 do business in the Commonwealth and registered with the DMME,
12 and does it have a blanket bond on file?

13 A. Yes, it does.

14 Q. Are the only folks you're seeking to pool
15 Ronald and Joyce Reed?

16 A. Yes.

17 Q. Can I assume then that you don't want to add
18 or subtract anybody today?

19 A. No.

20 Q. What are the lease terms that you've offered
21 to folks in general that you've already obtained leases or
22 interest from in this Unit, R-51?

23 A. It's a one-eighth royalty, a dollar per acre
24

1 per year with a five year paid up term with a dollar per acre
2 per year, ceasing as a rental payment when royalties start.

3 Q. Okay. And would you recommend those terms
4 to the Board to be included in any Order that might be
5 entered with regard to the deemed to be lease situation?

6 A. Yes, we do.

7 Q. And at this point, are you just proposing
8 one well?

9 A. Yes.

10 Q. Does Exhibit B-3 that's attached set forth
11 the interest in the unit for the people that are being
12 pooled?

13 A. Yes, it does.

14 Q. And would that percentage be the percentage
15 that's going to be used for calculating royalty, for
16 estimating carried operator charges or for participation
17 costs?

18 A. Yes, it does.

19 Q. Is there a need to escrow here?

20 A. Yes.

21 Q. And you've submitted an Exhibit E with
22 regard to Tract 3-A and 3-B, is that correct?

23 A. That's correct.

24

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1 Q. And that shows conflicting claims that would
2 require escrow?

3 A. It does.

4 Q. These folks are located, so we don't need to
5 deal with an escrow for unlocateables?

6 A. That's correct.

7 Q. Have you contacted these people and tried to
8 obtain a lease?

9 A. Yes, they have been.

10 Q. But so far you've been unsuccessful?

11 A. Correct.

12 Q. Does the plan of development with
13 specifically the drilling of a frac well as shown on the
14 plat, is that, in your opinion, a reasonable plan to develop
15 the coalbed methane from the Tiller on down under this unit?

16 A. Yes.

17 Q. Okay. And would it then protect the
18 competing claimants and their correlative rights by requiring
19 escrow as indicated?

20 A. It will.

21 Q. That's all I have.

22 BENNY WAMPLER: Any questions from members of the
23 Board?

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1 (No audible response.)

2 BENNY WAMPLER: Is anyone here that has questions
3 about...you know, that wants to appear before the Board in
4 this case?

5 (No audible response.)

6 BENNY WAMPLER: The record will show there are not.

7 CLYDE KING: I move we approve it.

8 BENNY WAMPLER: Motion to approve.

9 DENNIS GARBIS: I second.

10 BENNY WAMPLER: Motion and second. Any further
11 discussions?

12 (No audible response.)

13 BENNY WAMPLER: All in favor, signify by saying yes.

14 (All members signify yes.)

15 BENNY WAMPLER: Opposed, say no.

16 (No audible response.)

17 BENNY WAMPLER: You have unanimous approval. Do you
18 want to take a little break?

19 (Board members indicate yes.)

20 BENNY WAMPLER: We'll take a ten minute break.

21 (Off record.)

22 BENNY WAMPLER: The next item on the agenda the
23 Board will consider a coalbed methane gas pooling order,
24

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1 docket number 97-10/21-0610 with respect to Unit O-2/B
2 operated by Buchanan Production Company to amend the
3 supplemental order by the Board on said case to disburse all
4 funds on the...on deposit in the escrow account for O-2/B
5 Unit to John H. Baird. This is located in Oakwood II Coalbed
6 Methane Gas Field in Buchanan County. We'd ask the parties
7 that wish to address the Board in this matter to come forward
8 at this time.

9 MARK SWARTZ: Mark Swartz on behalf of Buchanan
10 Production Company and Les Arrington is also here.

11 BENNY WAMPLER: Any others?
12 (No audible response.)

13 BENNY WAMPLER: The record will show there are no
14 others. You may proceed.

15 MARK SWARTZ: Well, really this is Sandy Riggs'
16 fault. We...when we were...this was years ago. I mean, I
17 have a recollection of this, but when Oxy was still
18 involved---

19 (Sandra Riggs enters the room.)

20 BENNY WAMPLER: You just got blamed for this.

21 SANDRA RIGGS: Oh, okay.

22 MARK SWARTZ: Right. When Oxy was still...now that
23 she's back, I have to take it all back. But when Oxy was

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1 still involved in Buchanan Production Company, the Green
2 Charles heirs and John Baird and Oxy were negotiate...trying
3 to negotiate a lease and I was actually trying to negotiate
4 that lease with them, and frankly, it was just taking
5 forever; and we weren't sure we were ever going to get a
6 lease and Oxy pooled some of these units and subsequently we
7 obtained a lease. When the Oxy/Buchanan Production Company
8 interests were transferred to Consol and Consol Energy, the
9 fact that there was a lease was not picked up; and so there
10 were escrowed funds for Unit O-2/B, which was pooled, but
11 there was a subsequent lease. And basically when Les
12 discovered that we were...that we were doing this and had an
13 agreement from Mr. Baird to pay him directly, we
14 petitioned...we filed a supplemental order and Sandra has
15 attached a copy to... well, I'm blaming Sandra because I
16 don't think...I think there's going to be some ghost writing.
17 But anyway, Bob Wilson sent a letter out and it has an
18 attachment to Les' affidavit which basically says, we pooled
19 this unit and we paid money into escrow. The only money in
20 escrow belongs to these folks from whom we have a lease and
21 who have designated John Baird as their agent for further
22 distribution. So, this is actually a pretty simple
23 disbursement and we have requested that the Board's escrow

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1 agent be directed to disburse 100% of the funds on deposit to
2 Mr. Baird and allow my clients, Buchanan Production Company
3 and their royalty accounting folks, to pay Mr. Baird directly
4 in the future. That's basically what...what we're talking
5 about here.

6 BENNY WAMPLER: Any questions from members of the
7 Board?

8 SANDRA RIGGS: What did he say when I was out of the
9 room?

10 BENNY WAMPLER: He just---

11 MARK SWARTZ: That is was your fault.

12 SANDRA RIGGS: Oh, well, that's all right.

13 CLYDE KING: Here, here.

14 SANDRA RIGGS: I have the Order that was submitted.

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

17 (No audible response.)

18 BENNY WAMPLER: Is there a motion?

19 MASON BRENT: So moved.

20 KEN MITCHELL: I second.

21 BENNY WAMPLER: A motion for approval and second.

22 Any further discussions?

23 (No audible response.)

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1 BENNY WAMPLER: All in favor, signify by saying yes.

2 (All members signify yes.)

3 BENNY WAMPLER: Opposed, say no.

4 (No audible response.)

5 BENNY WAMPLER: Unanimous approval.

6 MARK SWARTZ: Thank you very much.

7 BENNY WAMPLER: Thank you. The next item on the
8 agenda, the Board on its own motion will consider
9 conventional gas pooling order which was prior to today
10 entered as the docket number 93-01/19-0314 with respect to
11 drilling Unit EH-114 operated by Virginia Gas Company to
12 amend the supplemental order entered by the Board in said
13 case to disburse all funds on deposit in the Board's escrow
14 account for the EH-114 unit to the heirs of John T. Looney
15 Estate. It's located in Buchanan County. We'd ask the
16 parties that wish to address the Board in this matter to come
17 forward at this time.

18 JIM TALKINGTON: Jim Talkington with Virginia Gas
19 Company.

20 BOB WILSON: Mr. Chairman?

21 BENNY WAMPLER: Mr. Wilson?

22 BOB WILSON: We received a faxed letter yesterday
23 from Sharon (McCoy) Hutchinson raising some questions about
24

1 the process with that was gone through to actually put this
2 money in escrow to start with. I'd like to pass these out to
3 the Board at this time.

4 BENNY WAMPLER: All right. Thank you.

5 (Bob Wilson distributes the letter to the Board
6 members.)

7 JIM TALKINGTON: Mr. Chairman, if I may, I'm just
8 going to pass out a copy of the supplemental and the
9 affidavit.

10 (Jim Talkington distributes the supplement and
11 affidavit.)

12 BENNY WAMPLER: Sir, would you state your name for
13 the record?

14 JOHN LOONEY: My name is John Looney.

15 BENNY WAMPLER: Okay.

16 JOHN LOONEY: And I'm a heir of the John T. Looney
17 Estate and my purpose here is to obtain money that's been in
18 escrow for several years to be released.

19 BENNY WAMPLER: Let me just stop you there and then
20 we'll come back to you. We'll take a few minutes to read
21 this letter that we've just received. Did you get a copy of
22 the letter?

23 JOHN LOONEY: No, I didn't.

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1 (Bob Wilson gives a copy of the letter to John
2 Looney.)

3 (Board members read the letter.)

4 BENNY WAMPLER: Okay, Mr. Talkington, you may
5 proceed.

6 JIM TALKINGTON: I've passed out a copy of the
7 amended supplemental order, attached to it the affidavit and
8 attached to that is Exhibit B showing the disbursement to the
9 John T. Looney heirs of the funds in escrow. In addition,
10 there should be an Exhibit C which shows the remaining funds
11 that are now in an escrow account. I'd like to just point
12 out that due to a Notice of Violation that we received
13 regarding the Lewis Elswick heirs, our accounting department
14 inadvertently transferred all funds that were either Lewis
15 Elswick heirs or in suspense into the escrow account. So now
16 all of those funds are in escrow in addition to the Lewis
17 Elswick heirs which were the original unknown and
18 unlocateables. In addition, the last page is a copy of a
19 letter that was sent to me by the escrow agent yesterday,
20 giving the amount currently in the escrow account for the
21 total of the unit and the Exhibit B will have to be revised
22 accordingly to that. When the Board was supplied with the
23 exhibit, we only had our records because the escrow agent was

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1 in transition of being changed to a new bank. I'm sure the
2 new escrow agent, once they get a little more familiar, will
3 be better able to provide a breakdown, but this is accurate
4 as per February the 20th of 2000.

5 BENNY WAMPLER: The Exhibit B that we have today is
6 accurate as of February the 20th of 2000, is that right?

7 JIM TALKINGTON: Actually, no. The Exhibit B is
8 not. The letter received from the escrow agent and the
9 amount indicated on that letter is as of February 2...20th,
10 2000.

11 BENNY WAMPLER: All right.

12 JIM TALKINGTON: They did not have the March
13 disbursement included in that amount as of the date.

14 BENNY WAMPLER: Thank you for that clarification.

15 CLYDE KING: Do you have that last one?

16 BENNY WAMPLER: The last...it should be the last one
17 on the handout that he gave you, the last sheet.

18 CLYDE KING: Oh, okay.

19 BENNY WAMPLER: Do you got it?

20 CLYDE KING: Uh-huh.

21 BENNY WAMPLER: Okay. And what he's saying is that
22 balance that is being referred to is as of February the 20th,
23 2000.

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1 SANDRA RIGGS: The escrow agent's figures would
2 include interest less fees charged to the unit. Yours
3 is...reflects principal deposits only?

4 JIM TALKINGTON: Yes.

5 SANDRA RIGGS: And that would account for the other
6 difference.

7 BENNY WAMPLER: Do you have anything further, Mr.
8 Talkington?

9 JIM TALKINGTON: No, sir, I don't.

10 BENNY WAMPLER: Now, Mr. Looney, you are which
11 ...which of the Looneys?

12 JOHN LOONEY: John...John D. Looney.

13 BENNY WAMPLER: John D. Looney?

14 JOHN LOONEY: Yeah.

15 BENNY WAMPLER: Okay. Are you in favor of this? Is
16 that what you're speaking of favor of?

17 JOHN LOONEY: Yes. I'd like to retrieve the money
18 from escrow.

19 BENNY WAMPLER: Okay. And that's what this proposal
20 is to do.

21 JOHN LOONEY: Yes, sir.

22 JIM TALKINGTON: I'd just like to thank Mr. Looney.
23 Without his efforts, we never would have been able to come
24

1 up with the heirs and addresses that we needed to close this
2 escrow account.

3 SANDRA RIGGS: Now, the account will not be closed?

4 JIM TALKINGTON: No. Only for the John T. Looney
5 heirs.

6 SANDRA RIGGS: Right.

7 BENNY WAMPLER: And that money will paid directly to
8 them then?

9 JIM TALKINGTON: Yes, sir.

10 CLYDE KING: Is this letter we have...may I ask a
11 question?

12 JIM TALKINGTON: Yes, sir.

13 CLYDE KING: We have a letter from a Sharon
14 Hutchinson. If you get a letter returned, don't you proceed
15 to follow up on it to see where you really should go with it.

16 JIM TALKINGTON: Well, the only thing that we could
17 do in regard with the Looney heirs is...is look at the Estate
18 and how the address was on the Estate. I can't speak for
19 actions that took place for Virginia Gas in 1992 because I
20 was not employed by them. But the original notifications
21 went out certified mail and returned unclaimed. There was no
22 other address listed in the courthouse records and without,
23 you know, just going door to door, I don't...I don't know

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1 what else an individual could do to track down the heirs.
2 There was no list of heirs in the courthouse. There was no
3 settlement of the estate, nothing that would provide any
4 direction to go by to locate the heirs. The post office had
5 no forwarding address. So, there wasn't much else that could
6 be done. That is a problem, though, especially with the EH-
7 14, the remaining funds that are in escrow. Some of those
8 are known individuals, but currently unlocateable due to no
9 forwarding address and I know I spoke with Ms. Davis at the
10 Department of Gas and Oil on this issue and, you know, she
11 felt that this was probably not uncommon to other companies,
12 but what do you---.

13 CLYDE KING: Which you have a lot of return mail,
14 though?

15 JIM TALKINGTON: We have a few, yes.

16 CLYDE KING: Do you?

17 JIM TALKINGTON: Yes. Yes. Where maybe the
18 individual might pass away and there is no settlement of the
19 Estate or they relocate and there is no forwarding address.
20 So, we...we typically will put it into a suspense account.

21 CLYDE KING: I wonder how she was advised that the
22 letter was returned.

23 SANDRA RIGGS: She probably contacted Gas and Oil.

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1 JIM TALKINGTON: She contacted Virginia Gas and I
2 explained to her the process and asked that she contact the
3 Department of Gas and Oil.

4 BENNY WAMPLER: Any other questions from member of
5 the Board?

6 KEN MITCHELL: One question, Mr. Chairman.

7 BENNY WAMPLER: Mr. Mitchell?

8 KEN MITCHELL: Is it...is it...and this may be a
9 legal question, is it possible to go to voter registration or
10 any other type of scenario that might give us a name or a
11 forwarding address? Could...could he...could he in the
12 future go to a voter registration list or request a voter...I
13 guess, the registrar to provide information on that person?

14 JIM TALKINGTON: Well, I'll say just with the new
15 access to the Internet, it's going to make locating
16 individuals much easier because you can just type in a name
17 and get that name from all over the country. Now, it's going
18 to be up to the company to put the effort forward to go down
19 that list of John Smiths and just mark them off as they
20 contact them, trying to locate the individual that this
21 pertains to. So, it's going to require an effort by the
22 company to go above and beyond if you will.

23 KEN MITCHELL: Do...do you feel in this case
24

1 that...that your company put forth enough effort to...to
2 locate---?

3 JIM TALKINGTON: Again, I can't speak to actions in
4 1992.

5 KEN MITCHELL: Right. I understand that.

6 JIM TALKINGTON: I can tell you that when Mr. Looney
7 himself contacted the Department of Gas and Oil and then
8 contacted me, you know, with his help, we pushed forward with
9 this and we're able to now close out this interest.

10 KEN MITCHELL: But in the case in these three, I
11 believe Mr. Burl Radcliff and Elsie Deel and Lewis Elswick
12 heirs, that money will...will still remain in the account?
13 It will still be there?

14 JIM TALKINGTON: Yes, sir. Yes, sir.

15 KEN MITCHELL: Okay. Okay.

16 BENNY WAMPLER: Any other questions from members of
17 the Board?

18 (No audible response.)

19 BENNY WAMPLER: Is there a motion?

20 KEN MITCHELL: Motion to approve.

21 MAX LEWIS: I make a motion.

22 BENNY WAMPLER: Motion to approve.

23 MAX LEWIS: Yeah, approve.

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1 BENNY WAMPLER: Mr. Mitchell, will you second?

2 KEN MITCHELL: Second. Yes, sir.

3 BENNY WAMPLER: Any further discussions?

4 (No audible response.)

5 BENNY WAMPLER: All in favor, signify saying yes.

6 (All members signify yes.)

7 BENNY WAMPLER: Opposed, say no.

8 (No audible response.)

9 BENNY WAMPLER: You have approval. Thank you.

10 Thank you, Mr. Looney. The next item on the agenda is the
11 Board on its own motion will consider a conventional gas
12 poolings heretofore entered in as VGOB docket number 92-
13 03/17-0205-01 with respect to drilling Unit EH-65, operated
14 by Virginia Gas Company, to amend the supplemental order by
15 the Board in said case and disburse all funds on deposit in
16 the Board's escrow account for EH-65 to heirs of Corbett
17 Hill, deceased, and close the escrow account for said unit;
18 and this is located in Dickenson County. We'd ask the
19 parties that wish to address the Board in this matter to come
20 forward at this time.

21 JIM TALKINGTON: Jim Talkington, Virginia Gas
22 Company, Mr. Chairman. If I may, I'd like to pass out a copy
23 of the amended supplemental.

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1 BENNY WAMPLER: Yes.

2 (Jim Talkington distributes a copy of the amended
3 supplemental.)

4 JIM TALKINGTON: I provided you with a copy of the
5 amend...third amended supplemental order as well as the
6 affidavit, an Exhibit B of the Corbett Hill Estate. This is
7 a situation that, I believe in September, Virginia Gas came
8 in front of the Board to close out, or attempt to close out,
9 the Nancy Wood Hill heirs. In circulating Notice of that
10 Hearing, it flushed out, if you will, the Corbett Hill heirs
11 and that's what I have in front of you on Exhibit B. Also,
12 on the last page following Exhibit B is, again, a letter from
13 the escrow agent indicating as of February the 20th, 2000 the
14 amount in that account. The figure shown on Exhibit B will
15 need to be revised as per the figure provided by the escrow
16 agent.

17 SANDRA RIGGS: All of the money is going out of the
18 account?

19 JIM TALKINGTON: This will close out this account.

20 SANDRA RIGGS: So, whatever is on deposit is what
21 the Order should reflect for disbursement?

22 JIM TALKINGTON: Yes, ma'am.

23 SANDRA RIGGS: Okay.

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1 CLYDE KING: 77 must include interest then?

2 BENNY WAMPLER: Interest, less fees. Any questions
3 from members of the Board?

4 KEN MITCHELL: One question, Mr. Chairman.

5 BENNY WAMPLER: Mr. Mitchell?

6 KEN MITCHELL: On the second document that we have,
7 about the middle of the page, "The unit operator filed with
8 the Board a second amended affidavit on September 20, 1999."

9 JIM TALKINGTON: Uh-huh.

10 KEN MITCHELL: And later it says, "The Board further
11 directed the escrow funds attributed to the interest be
12 disbursed to them."

13 JIM TALKINGTON: Yes.

14 KEN MITCHELL: This is, here again, I'm going back
15 to September the 20th of '99. Now, I was reading this last
16 night, you have two Exhibit Bs. One Exhibit B is dated
17 1/27/00. The other Exhibit B is dated 9/17/99.

18 JIM TALKINGTON: Uh-huh.

19 KEN MITCHELL: So, am I right to presume that the
20 Exhibit B dated 9/17/99, it's a much more extensive list?
21 Those...those were paid out? Is this...is this---?

22 JIM TALKINGTON: Exactly.

23 KEN MITCHELL: Okay. I just wanted to be sure that
24

1 those were paid out.

2 JIM TALKINGTON: And this individual was one of
3 those original heirs.

4 KEN MITCHELL: Right.

5 JIM TALKINGTON: But was unknown and unlocateable at
6 the time.

7 KEN MITCHELL: Okay. So...so really we're working
8 off the Exhibit B dated 1/27/00.

9 JIM TALKINGTON: You can look at it that way, yes.

10 KEN MITCHELL: Okay. Okay. Thank you, Mr.
11 Chairman.

12 BENNY WAMPLER: Thank you. Any other questions from
13 members of the Board?

14 (No audible response.)

15 BENNY WAMPLER: Do you have anything further, Mr.
16 Talkington?

17 JIM TALKINGTON: No, sir.

18 CLYDE KING: I move that we approve.

19 BENNY WAMPLER: Motion to approve. Any---?

20 MAX LEWIS: I second.

21 BENNY WAMPLER: Second. Any further discussion?

22 (No audible response.)

23 BENNY WAMPLER: All in favor, signify by saying yes.

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1 (All members signify yes.)

2 BENNY WAMPLER: All opposed, say no.

3 (No audible response.)

4 BENNY WAMPLER: Unanimous approval. Thank you.

5 JIM TALKINGTON: Thank you for your time.

6 BENNY WAMPLER: The next item on the agenda is a
7 petition from Equitable Production Company for pooling of a
8 coalbed methane gas unit identified as VC-4371. This is
9 docket number VGOB-00-03/21-0785; and we'd ask the parties
10 that wish to address the Board in this matter to come forward
11 at this time.

12 JIM KISER: Mr. Chairman and members of the Board,
13 Jim Kiser on behalf of Equitable Production Company. Our
14 witnesses in this matter will be Mr. Troy Gieselman and Mr.
15 Martin Puskar. I'm giving you now a copy of Mr. Gieselman's
16 resume. This will be his first time to testify before the
17 Virginia Gas and Oil Board.

18 (Jim Kiser distributes the resume to the Board
19 members.)

20 JIM KISER: If there's nobody further, I'd ask that
21 this witnesses be sworn.

22 (Witnesses are duly sworn.)

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TROY GIESELMAN

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

DIRECT EXAMINATION

QUESTIONS BY MR. KISER:

Q. Mr. Gieselmann, if you'd state your name for the Board, who you're employed and in what capacity?

A. Troy Gieselmann, Equitable Production Company, Landman.

Q. Now, since you've not previously testified before the Board and we're going to offer you to the Board as an expert witness in the area of land and oil and gas leasing, would you in your own words go through both your educational background and your work experience?

A. Sure. I received a BA in Petroleum Land Management at The University of Houston in '94. Shortly after that time, I started working with Equitable as a Landman. I'm primarily responsible for most of the land functions relating to Kentucky and Virginia, specifically oil and gas lease and coalbed methane gas lease acquisitions.

JIM KISER: Mr. Chairman, we'd like to move Mr. Gieselmann as an expert in land and oil and gas leasing matters and we'll take any questions that the Board may have

1 regarding his experience or background.

2 BENNY WAMPLER: Is there any questions?

3 DENNIS GARBIS: Not withstanding the fact as a
4 graduate of Texas A & M, I...I can make comment to somebody
5 from The University of Texas.

6 CLYDE KING: You knew that was coming, didn't you?

7 TROY GIESELMAN: I didn't know he was an Aggie.

8 DENNIS GARBIS: You have to be careful now. I don't
9 want to hear any Aggie jokes. I welcome you.

10 TROY GIESELMAN: Well, thank you very much. I was a
11 Petroleum Engineering major at The University of Texas for
12 three and a half years before I realized that that's not what
13 I wanted to do with my life. I switched to Land Management
14 ...Petroleum Land Management at that point.

15 BENNY WAMPLER: Anything further from members of the
16 Board?

17 (No audible response.)

18 BENNY WAMPLER: He's accepted. You may proceed.

19 Q. And do your responsibilities include the
20 land involved in the unit for VC-4371 and in the surrounding
21 area?

22 A. Yes.

23 Q. And you're familiar with Equitable's
24

1 application seeking a pooling order for EPC well number VC-
2 4371, which was dated February 17, 2000?

3 A. Yes.

4 Q. Is Equitable seeking to force pool the
5 drilling rights underlying unit as depicted at Exhibit A,
6 that being the plat the application?

7 A. Yes.

8 Q. And does the location proposed for well
9 number VC-4371 fall within the Board's order for the Nora
10 Coalbed Gas Field?

11 A. Yes.

12 Q. Now, prior to filing the application, were
13 efforts made to contact each of the respondents and an
14 attempt made to work out a voluntary agreement regarding the
15 development of the unit?

16 A. Yes.

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

19 A. Yes.

20 Q. Okay. What is the interest of Equitable in
21 the gas estate within the unit?

22 A. 98.13% leased.

23 Q. 98.13. And what is the interest of
24

1 Equitable in the coal estate within the unit?

2 A. We have 100% leased.

3 Q. Okay. Now, are all unleased parties set out
4 in Exhibit B to the application?

5 A. Yes, they are.

6 Q. And are you familiar with the ownership of
7 the drilling rights of parties other than Equitable
8 underlying this unit?

9 A. Yes.

10 Q. And the amount...the percentage of the gas
11 estate that remains unleased at this time...at the time of
12 the hearing is 1.87%?

13 A. That's correct.

14 Q. Okay. Now, were efforts made to determine
15 if any individual respondents were living or deceased or
16 their whereabouts, and if deceased, were efforts made to
17 determine the names and addresses and whereabouts of the
18 successors to any deceased individual respondents?

19 A. Yes, there were.

20 Q. Were reasonable and diligent efforts made,
21 and sources checked to identify and locate any unknown heirs,
22 including primary sources such as deed records, probate
23 records, assessor's records, treasurer's records and

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1 secondary sources such as telephone directories, city
2 directories, family and friends?

3 A. Yes.

4 Q. In your professional opinion, was due
5 diligence exercised to locate each of the respondents named
6 in Exhibit B?

7 A. Yes, it was.

8 Q. And are the addresses set out in Exhibit B
9 to the application the last known addresses for the
10 respondents?

11 A. Yes.

12 Q. Are you requesting this Board to force pool
13 all unleased interest listed in Exhibit B to the application?

14 A. Yes.

15 Q. Now, are you familiar with the fair market
16 value of drilling rights in the unit here and in the
17 surrounding area?

18 A. Yes.

19 Q. Could you advise the Board as to what those
20 are?

21 A. A \$5 bonus, a five year lease and one-eighth
22 royalty.

23 Q. Did you gain your familiarity by acquiring
24

1 oil and gas leases, coalbed methane leases and other
2 agreements involving the transfer of drilling rights in the
3 unit involved here and in the surrounding area?

4 A. Yes.

5 Q. In your professional opinion, do the terms
6 you have testified to represent the fair market value of and
7 the fair and reasonable compensation to be paid for drilling
8 rights within this unit?

9 A. Yes.

10 Q. Now, based on any respondents who we're
11 force pooling today, do you recommend that those respondents
12 as listed at Exhibit B be allowed the following options with
13 respect to their ownership interest within the unit - one,
14 participation; two, a cash bonus of \$5 per net mineral acre
15 plus a one-eighth of eight-eighths royalty; three, in lieu of
16 a cash bonus and one-eighth of eight-eighths royalty share in
17 the operation of the well on a carried bases as a carried
18 operator under the following conditions: Such carried
19 operator shall be entitled to the share of production from
20 the tracts pooled accruing to his interest exclusive of any
21 royalty or overriding royalty reserved in any leases,
22 assignments thereof or agreements relating thereto of such
23 tracts, but only after the proceeds applicable to his share
24

1 equal, (A) - 300% of the share of such costs applicable to
2 the interest of the carried operator of a leased tract or
3 portion thereof; or (B) - 200% of the share of such costs
4 applicable to the interest of a carried operator of an
5 unleased tract or portion thereof?

6 A. Yes.

7 Q. Do you recommend the order provide that
8 elections by a respondent be in writing and sent to the
9 applicant at Equitable Production Company, P. O. Box 1983,
10 Kingsport, Tennessee 37662, Attention: Rita Barrett...Rita
11 McGlothlin-Barrett, Regulator?

12 A. Yes.

13 Q. And should this be the address for all
14 communications with the applicant concerning any force
15 pooling order?

16 A. Yes.

17 Q. Do you recommend that the order provide that
18 if no written elections is properly made by a respondent,
19 then such respondent shall be deemed to have elected the cash
20 option in lieu of participation?

21 A. Yes.

22 Q. Should any unleased respondents be given
23 thirty days from the date of the execution of the Board Order

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1 to file written elections?

2 A. Yes, they should.

3 Q. And if an unleased respondent elects to
4 participate, should they be given forty-five days to pay for
5 their proportionate share of well costs?

6 A. Yes.

7 Q. Does the applicant expect any party electing
8 to participate to pay in advance that party's share of
9 completed well costs?

10 A. Yes.

11 Q. Should the applicant be allowed a hundred
12 and twenty days following the recording date of the Board
13 order, and thereafter, annually on that date, until
14 production is achieved to pay or tender any cash bonus
15 becoming due under the force pooling order?

16 A. Yes.

17 Q. Do you recommend that the order provide that
18 if the respondent elects to participate, but fails to pay
19 their proportionate share of well costs satisfactory to the
20 applicant for payment of said costs, then respondents
21 election to participate should be treated as having been
22 withdrawn and void and such respondent should be treated just
23 as if no initial election had been filed under the force

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1 pooling order, in other words, deemed to have leased?

2 A. Yes.

3 Q. Do you recommend that the order provide that
4 where a respondent elects to participate, but defaults in
5 regard to the payment of well costs, any cash sum becoming
6 payable to such respondent be paid within sixty days after
7 the last date on which such respondent could have paid, or
8 made satisfactory arrangements for the payment of said costs?

9 A. Yes.

10 Q. Okay. In this case, we have both unknown
11 owners and conflicting claimants to the oil and gas and coal
12 estate. So, do you recommend that the order provide
13 that...that a operator pay into an escrow account created by
14 this Board all costs or proceeds attributable to an unknown
15 interest or conflicting interest where they shall be held for
16 the respondent's benefit until such funds can be paid to the
17 party by order of this Board or until the conflicting claim
18 is resolved to the owner...the operator's satisfaction?

19 A. Yes.

20 Q. And who should be named the operator under
21 any force pooling order?

22 A. Equitable Production Company.

23 JIM KISER: Nothing further of this witness at this
24

1 time, Mr. Chairman.

2 SANDRA RIGGS: I have one question. Will a portion
3 of Tract Two get escrowed as well as Tract Four for
4 conflicting claims?

5 JIM KISER: Yes.

6 BENNY WAMPLER: Any questions from members of the
7 Board?

8 (No audible response.)

9 BENNY WAMPLER: Do you want to tell us...since we've
10 had the question raised about due diligence in other
11 applications where you have the unknown address, do you want
12 to tell us what you've done in the case of Lowell Barton to
13 obtain that address?

14 TROY GIESELMAN: Yes, sir. Actually we had...we had
15 force pooled all of these individuals previously and---

16 JIM KISER: Numerous times. I'm sorry. Go ahead.

17 TROY GIESELMAN: On several occasions previous to
18 now, and probably the main effort that was made was through
19 the direct...the family members. You know, the closest
20 family members, nobody seems to know what has happened and,
21 you know, beyond that, I'm not sure whether the Internet was
22 employed at this time. But I do know that we, you know, did
23 check all the available courthouse records and there were no

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1 affidavits of this on file.

2 BENNY WAMPLER: For these unknown and unlocateables
3 like that, is that an active part of your program is to
4 continue to search for those addresses?

5 TROY GIESELMAN: It's not something that I do...know
6 ...actually, as we're dealing with the other family members,
7 you know, we do...you do, continually try to, you know,
8 request that they...they notify us if they ever hear...you
9 know, get word of where that family member ended up.

10 BENNY WAMPLER: Any other questions from members of
11 the Board?

12 (No audible response.)

13 BENNY WAMPLER: Call your next witness.

14

15 MARTIN PUSKAR

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

18 QUESTIONS BY MR. KISER:

19 Q. Mr. Puskar, would state your name for the
20 Board, who you are employed by and in what capacity?

21 A. Martin Puskar. I work with Equitable
22 Production Company and I'm a Petroleum Engineer.

23 Q. And you've previously testified before the
24

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1 Virginia Gas and Oil Board and your qualifications as an
2 expert witness in the area engineering and operations have
3 been accepted by the Board?

4 A. Yes.

5 Q. And do your responsibilities include the
6 land involved in the unit for VC-4371 and in the surrounding
7 area?

8 A. Yes.

9 Q. And are you familiar with the proposed plan
10 of development for this well?

11 A. Yes, I am.

12 Q. What is the total depth of the proposed
13 well?

14 A. The total depth is 1,848 feet, which
15 includes all the formations consistent with the application.

16 Q. And what are the estimated reserves for this
17 unit?

18 A. We've estimated 400,000,000 cubic feet.

19 Q. And are you familiar with the well costs for
20 the well under the plan of development?

21 A. Yes, I am.

22 Q. Has an AFE been reviewed, signed and
23 submitted to the Board as Exhibit C to the application?

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1 A. Yes.

2 Q. And was this AFE prepared by an engineering
3 department knowledgeable in the preparation of AFEs and
4 knowledgeable in regard to well costs in this area?

5 A. Yes.

6 Q. In your professional opinion, does this AFE
7 represent a reasonable estimate of the well costs under your
8 plan of development?

9 A. Yes, it does.

10 Q. At this time, could you state for the Board
11 both the dry hole costs and the completed well costs?

12 A. The dry hole costs are \$64,741 and
13 these...and the completed well costs is \$161,000.

14 Q. Do these costs anticipate a multiple
15 completion?

16 A. Yes.

17 Q. Does the AFE include a reasonable charge for
18 supervision?

19 A. Yes, it does.

20 Q. In your professional opinion, will the
21 granting of this application be in the best interest of
22 conservation, the prevention of waste and the protection of
23 correlative rights?

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1 A. Yes, it does.

2 JIM KISER: Nothing further of witness at this
3 time, Mr. Chairman.

4 BENNY WAMPLER: Any questions from members of the
5 Board?

6 MASON BRENT: How good do you feel about your
7 400,000,000 cubic foot estimate for production?

8 MARTIN PUSKAR: That's a tough one because you're
9 always stepping out in different directions from off setting
10 wells, but through out the field in the Nora Field, you know,
11 there's...there's a pretty good spread of what we feel
12 reserves are and this is probably sort of in the middle of
13 the road type estimate---

14 JIM KISER: An average.

15 MARTIN PUSKAR: Of an average and stuff and some of
16 the off set locations and stuff in the area and that's...
17 that's pretty much how we've come to that kind of a number
18 all the time.

19 BENNY WAMPLER: Any other questions from members of
20 the Board?

21 (No audible response.)

22 BENNY WAMPLER: Do have anything further?

23 JIM KISER: Mr. Chairman, we'd ask that the
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1 application be approved as submitted.

2 BENNY WAMPLER: Is there a motion?

3 MAX LEWIS: I make a motion we approve it.

4 BENNY WAMPLER: A motion to approve.

5 KEN MITCHELL: Second.

6 BENNY WAMPLER: Second. Any further discussions?

7 (No audible response.)

8 BENNY WAMPLER: All in favor, signify by saying yes.

9 (All members signify yes.)

10 BENNY WAMPLER: Opposed, say no.

11 (No audible response.)

12 BENNY WAMPLER: You have approval. Thank you.

13 JIM KISER: Thank you.

14 TROY GIESELMAN: Thank you.

15 MARTIN PUSKAR: Thank you.

16 BENNY WAMPLER: The next item on the agenda is a
17 petition from Columbia Natural Resources for a well location
18 exception for proposed well CNR-24073. This is docket number
19 VGOB-00-03/21-0786; and we'd ask the parties that wish to
20 address the Board in this matter to come forward at this
21 time.

22 JIM KISER: Mr. Chairman and members of the Board,
23 Jim Kiser on behalf of Columbia Natural Resources. Our
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1 witnesses in this matter will be Ms. Mary Ann Fox and Ms.
2 Becky Barnes. We'd ask that they be sworn at this time.

3 (Witnesses are duly sworn.)

4 MASON BRENT: Mr. Chairman, I'd like the record to
5 reflect that I'm recusing myself.

6 BENNY WAMPLER: It shall reflect that. You may...
7 there are no others. You may proceed.

8

9 MARY ANN FOX

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

12 DIRECT EXAMINATION

13 QUESTIONS BY MR. KISER:

14 Q. Ms. Fox, could you state your name for the
15 record and who you're employed by and in what capacity?

16 A. My name is Mary Ann Fox. I'm employed with
17 Columbia Natural Resources, Inc., and I'm a law services
18 coordinator.

19 Q. And you have previously testified before the
20 Virginia Gas and Oil Board when we've been seeking variances
21 for wells on...in the area of land matters?

22 A. Yes, I have.

23 Q. And do your responsibilities include the
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1 land involved in this area, that being well 24073, and in the
2 surrounding area?

3 A. Yes.

4 Q. And are you familiar with the application we
5 filed seeking a location exception for this well?

6 A. Yes, I am.

7 Q. Have all interested parties been notified as
8 required by Section 4B of the Virginia Gas and Oil Board
9 regulations?

10 A. Yes, they have.

11 Q. Now, we're seeking an exception from one
12 well in this case and that's CNR Well 23606, which is located
13 2,233 feet...roughly 2,234 feet from the proposed location
14 for 24073. Does CNR have the right to operate this
15 reciprocal well?

16 A. Yes, CNR does.

17 Q. Okay. And are all of the...are the...is the
18 property in the adjacent quadrants or the surrounding area
19 also under lease to CNR?

20 A. Yes, and we have the right to operate
21 reciprocal wells in all that area. Yes.

22 Q. In fact, you have a well that's about
23 roughly 3,000 feet to North, 2178A?

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1 A. Yes, that's correct.

2 Q. Okay. So, and basically, what I'm getting
3 at, Ms. Fox, it would be your testimony that there aren't any
4 correlative rights issues?

5 A. Correct. There are no correlative right
6 issues.

7 Q. Okay. Now, could you explain for the Board,
8 based on the plat, why we're seeking a location exception for
9 this particular well?

10 A. Yes. If we went any more South or West, we
11 would be closer to this well than for which we are already
12 seeking this variance for. If we went North or East, the
13 typography is such that the terrain...it is such a rough
14 terrain that we cannot even create a well. We can't even
15 create a drilling location.

16 Q. So, the slope is such that you would not be
17 able to build a location?

18 A. That's correct.

19 Q. And you would be unable to drill this well
20 and, therefore, produce and capture the reserves located
21 under these particular tracts?

22 A. No. We have checked the entire area and
23 have tried to move the well and this is exactly...this is the

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1 only place we could be put this well.

2 Q. And you've talked to...this is not...you've
3 received permission from Pine Mountain from Mr. Brillheart
4 for this location even though it's not on him, but he's got
5 two tracts in the unit?

6 A. Correct.

7 Q. And you've also talked to your adverse oil
8 and gas owner, the Raines family, and their...this location
9 is acceptable to them?

10 A. That's correct.

11 JIM KISER: Okay. Nothing further of this witness
12 at this time, Mr. Chairman.

13 BENNY WAMPLER: Any questions from members of the
14 Board of this witness?

15 (No audible response.)

16 BENNY WAMPLER: Call your next witness.

17

18 BECKY BARNES

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

21 DIRECT EXAMINATION

22 QUESTIONS BY MR. KISER:

23 Q. Ms. Barnes, could you state your name for
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1 the Board, who you're employed by and in what capacity?

2 A. My name is Becky Barnes. I'm employed with
3 Columbia Natural Resources and I'm a Senior Prospect
4 Engineer.

5 Q. And you've also previously testified before
6 the Virginia Gas and Oil Board as a expert witness in the
7 areas of operations and engineering?

8 A. Yes, I have.

9 Q. And you're familiar with the application
10 that we filed seeking a location exception for well number
11 24073?

12 A. Yes, I have.

13 Q. And in the event this location exception
14 would not be granted, would you project the estimated loss of
15 reserves?

16 A. 400,000,000 cubic feet of gas.

17 Q. And what is the total depth of the proposed
18 well under the plan of development?

19 A. 6,051 feet.

20 Q. And this will be sufficient to test...to
21 penetrate and test the common sources of supply in the
22 subject formations as listed in the permit that has been
23 filed with the DGO?

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1 A. Yes.

2 Q. And are you requesting that this location
3 exception cover conventional gas reserves including the
4 designated formations from the surface to the total depth
5 drilled?

6 A. Yes.

7 Q. And in your professional opinion, will the
8 granting of this location exception be in the best interest
9 of preventing waste, protecting correlative rights and
10 maximizing the recovery of the gas reserves underlying the
11 unit for well number 24073?

12 A. Yes.

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

15 BENNY WAMPLER: Any questions of this witness from
16 members of the Board?

17 KEN MITCHELL: One question, Mr. Chairman. The
18 existing well and the proposed well, do you...I believe you
19 stated there was a possibility of 400,000,000 cubic feet loss
20 if the second well wasn't drilled?

21 MARY ANN FOX: That's correct.

22 KEN MITCHELL: Is this...is this what you testified?

23 MARY ANN FOX: Uh-huh. That's right.

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1 KEN MITCHELL: Now, is there...is there something
2 between, and I'm talking underground, is there something
3 between the existing well and the proposed well that would
4 stop the gas from flowing over to the first well? Is there a
5 fault? Is there a...is there something down there that would
6 block it?

7 MARY ANN FOX: No, there's not a fault. But in
8 order for the well to drain a certain area, you have to have
9 enough pressure for the gas to migrate to the well location
10 and these wells in general, you know, typically drain an
11 area, you know, of 1,250 feet circle. We usually use a
12 circle. It's not an exact circle of 1,250 feet radius.
13 Usually there's not enough pressure to draw the gas from the
14 well from the out lying areas farther than that.

15 KEN MITCHELL: Okay. You answered my question.
16 Thank you.

17 BENNY WAMPLER: Any other questions from members of
18 the Board?

19 (No audible response.)

20 BENNY WAMPLER: Do you have anything further?

21 JIM KISER: We would ask that the application be
22 approved as submitted, Mr. Chairman.

23 CLYDE KING: I have a quest...I'm sorry, Mr.
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1 Chairman.

2 BENNY WAMPLER: That's okay.

3 CLYDE KING: The cost...I don't see any figures as
4 far as cost.

5 JIM KISER: We don't particularly provide that.
6 It's not required on a location exception because you don't
7 have anybody affording any elections as far as participation,
8 which is why it's in force pooling applications. But I would
9 say you're probably looking at maybe a quarter of a million
10 dollars on a well like this.

11 BECKY BARNES: Maybe a little less---.

12 JIM KISER: Yeah.

13 BECKY BARNES: ---from that area.

14 BENNY WAMPLER: Other questions?

15 BOB WILSON: Mr. Chairman, I might suggest---.

16 BENNY WAMPLER: Mr. Wilson?

17 BOB WILSON: ---that in future if topography is
18 going to be used for the reason to locate the wells, that the
19 Board members be supplied a topographic map so they can reach
20 their own judgement relative to your assessment.

21 MAX LEWIS: A lot of this we just have to take your
22 word. You're saying this is rough and the terrain is so bad.
23 We don't know that, you see. We just have to take your word
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1 for that.

2 CLYDE KING: I move we approve, Mr. Chairman.

3 BENNY WAMPLER: Motion to approve.

4 DENNIS GARBIS: I second it.

5 BENNY WAMPLER: Second. Any further discussion?

6 (No audible response.)

7 BENNY WAMPLER: All in favor, signify by saying yes.

8 (All members signify yes.)

9 BENNY WAMPLER: Opposed, say no.

10 (No audible response.)

11 BENNY WAMPLER: You have approval. Thank you. The
12 Board; it's fifteen minutes to twelve. Do you want to keep
13 going?

14 (Board members indicate yes.)

15 BENNY WAMPLER: Keep going. The next item on the
16 agenda the Board will consider a petition filed by James R.
17 Henderson, IV, of Henderson & DeCourcy on behalf of Terrance
18 Hall, appealing to the Board the decision of the Director of
19 the Division of Gas and Oil in an Informal Fact Finding
20 Hearing (IFFC 11499) concerning proposed wells CBM-PGP-R50
21 and CBM-PGP-R51. This is docket number VGOB-00-03/21-0787.
22 We'd ask the parties that wish to address the Board to come
23 forward at this time, please.

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1 TERRANCE HALL: Hello. My name is Terrance Hall. I
2 go by Terry. It's much less formal. And this is my counsel,
3 Mr. Henderson.

4 BENNY WAMPLER: Mr. Henderson.

5 MARK SWARTZ: Mark Swartz and Les Arrington.

6 BENNY WAMPLER: All right.

7 BOB WILSON: Bob Wilson as Director of the Division
8 of Gas and Oil.

9 BENNY WAMPLER: Okay.

10 JAMES R. HENDERSON, IV: We had filed a petition for
11 appeal on Mr. Hall's behalf. Mr. Hall is one of two owners
12 of this tract. The other being his brother who lives in
13 Florida. Mr. Hall resides on the tract and also does some
14 farming on the tract; and there are two applications that
15 have been appealed. One of which is referred to as CBM-PGP-
16 R50, and the other CBM-PGP-R51. And, you know, to make it
17 somewhat easier to follow, there are actually two tracts of
18 land involved, both of which are owned by the Hall brothers.
19 One is a large tract of a hundred...I believe about a
20 hundred and seventy-three acres and the other is a smaller
21 tract of less than ten acres. PGP-50...R-50 is located on
22 the large tract and R-51 is located on the contiguous smaller
23 tract. I would like to ask Mr. Hall, first of all, to

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1 explain why he phys...objects to the physical imposition on
2 his property of these well sites and the associated roads and
3 pipelines.

4 TERRANCE HALL: The specific location proposed by
5 PGP for the well site known as R-51 on this smaller tract,
6 somewhere in the neighborhood of ten acres, involves the
7 building of a road that the company has requested, a 75 foot
8 right-of-way that request...it would involve a pipeline which
9 also involve a requested 75 foot right-of-way and the well
10 site itself. The particular lay of this land has very
11 little useable space, probably entirely less than three acres
12 and they've effectively asked to take a large portion of this
13 for their use and it would deny me free access to the land,
14 as well as the East/West lay of the road and the North/South
15 lay of the pipeline, which effectively quarters the land.
16 So, of this ten acres, I would have maybe two acres that I
17 could actually use and access to the rest of it would mean
18 crossing their particular right-of-way...requested right-of-
19 way. So, it would just be very intrusive into this small
20 tract of land.

21 JAMES R. HENDERSON, IV: Now, the larger tract, can
22 you explain to the Board where the proposed well is located?

23 TERRANCE HALL: Living in the country, we use just
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1 local landmark things and we have a field that is at best six
2 acres that we refer to as the hay field. For thirty years,
3 that has been the source of cutting feed for winter silage
4 and winter feed for our cattle. They have proposed crossing
5 the corner of this hay field and placing the road right
6 across one end of the hay field, and placing the well site
7 adjacent to this just below the hay field with typography at
8 the top of the field.

9 JAMES R. HENDERSON, IV: Now, you use this hay field
10 and actively farm the property?

11 TERRANCE HALL: Yes, it is used yearly, and we cut
12 hay off of it, usually two cuttings if the weather permits,
13 and that's our primary source of hay around us.

14 JAMES R. HENDERSON, IV: Are there many naturally
15 flat areas on the property?

16 TERRANCE HALL: No, sir. There are very few
17 naturally flat areas on the property. It's...the property is
18 essentially situated on the top of a mountain ridge and then
19 it falls off to either side. Several of you are familiar
20 with Buchanan County and it's just very difficult to find
21 flat land there, and for the Brown Mountain area that this is
22 located on, probably if you took all of the flat mountain top
23 area that I have and put it together, it would be under

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1 thirty areas and possibly under twenty; and some of that
2 still has some slope to it, but it's still useable if we
3 exercise caution.

4 JAMES R. HENDERSON, IV: As an owner of the
5 property, do you have an opinion on whether the wells, roads
6 and pipelines that have been proposed by the applicant reduce
7 the value and usefulness of your property?

8 TERRANCE HALL: It would force me to purchase feed
9 or to discontinue the present production of what few animals
10 that we have as far as the R-50 site and its crossing of the
11 hay field. It would reduce that value. It would reduce my
12 access to the land. Any future plans to build or to
13 construct on the smaller ten area tract would be inhibited by
14 access and by the nearness of the well. If we decided to
15 sell, we probably would get a third of what we would have
16 gotten. That's just a rough estimate. But I think it would
17 be safe considering how the land would be quartered. So, I
18 think it would be an adverse effect on the value.

19 JAMES R. HENDERSON, IV: Now, has...has there been a
20 roadway begun on the property already?

21 TERRANCE HALL: Yes, sir, over my objections. I
22 have taken some photographs that...that show that they have
23 already constructed across the ten acres, a roadway that with
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1 the Board's permission I'll---

2 MARK SWARTZ: I would like to object. We tend to
3 get into issues that are not before the Board. This road was
4 constructed under a permit issue for S-51, which is not a
5 subject of this appeal, not a subject of the hearing it has
6 been appealed from, and so I don't see that it has anything
7 at all to do with these two objections because it was
8 permitted under a completely different well permit
9 application.

10 BENNY WAMPLER: What's the relevance of showing the
11 Board?

12 JAMES R. HENDERSON, IV: It...two things, sir. One
13 is, it's my understanding that this road is intended to be
14 used as access to both S-51 and to R-51. Secondly, rather
15 than talking about theoretically what might happen if a
16 permit is granted, I think we have an illustration here of
17 what does in fact happen when a permit is granted and this is
18 part of the impact that Mr. Hall is objecting to on this
19 other property. My understanding is that S-51 could have
20 been accessed, and Mr. Hall can confirm this, by another
21 existing right-of-way. So, the reason this road is being
22 built is not simply for S-51. It's being built as access for
23 both S-51 and R-51 and is part of the application that we're

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1 objecting to.

2 TERRANCE HALL: Yes. Uh---.

3 MARK SWARTZ: Well, just finish my---.

4 BENNY WAMPLER: I'll...I'll overrule the objection
5 from the standpoint of it...to the extent that it shows the
6 Board what...what is involved in constructing the access
7 road.

8 TERRANCE HALL: As---.

9 BENNY WAMPLER: But not to the extent of getting
10 into the other...into S-51 or something not before the Board.

11 TERRANCE HALL: I understand.

12 JAMES R. HENDERSON, IV: Understood.

13 TERRANCE HALL: Because the S-51 site was located on
14 another landowner's property, I was not aware of the full
15 impact of this when it came for discussion and realizing, of
16 course, that the decision has been made and ramifications
17 thereof. They listed on that application that the road that
18 here is less than six months old. They listed that as an
19 existing road. That road did not exist prior to six months
20 ago. The road was constructed. They...they completely
21 misrepresented on that...on that application that the road
22 was there and that's just not the case. There is another
23 right-of-way and existing road that comes from a different

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1 location off of State Rt. 621 and goes down and intercepts
2 with the new road that they built. It was the existing road
3 that accessed all of the property that S-51 was located on.
4 So, they wantonly disregarded my rights as a property owner
5 and I...I feel, in order to do an end run and have this road
6 place for R-50...R-51.

7 JAMES R. HENDERSON, IV: And, Mr. Hall, is it your
8 understanding that the applicant is required under the
9 Coalbed Methane Act to certify that it has the right to
10 conduct the application, the operations that it is proposing
11 to conduct on your property?

12 TERRANCE HALL: That is my understanding.

13 JAMES R. HENDERSON, IV: Now, at the initial hearing
14 in this case, do you recall that the applicant stated that it
15 had the right to conduct these operations pursuant to a
16 severance deed from 1903? It was made by a Riley Altizer.

17 TERRANCE HALL: That was their assertion. Yes, sir.

18 JAMES R. HENDERSON, IV: Now, have you had an
19 occasion to examine that deed yourself to see what its
20 provision are?

21 TERRANCE HALL: Yes, sir, I have.

22 JAMES R. HENDERSON, IV: Now, there's part of this
23 that I've underlined for convenience. I would ask you to
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1 tell the Board what this deed provides.

2 TERRANCE HALL: It...the southwest corner of a tract
3 of 226.39 acres of which the said Riley Altizer has reserved
4 the surface.

5 JAMES R. HENDERSON, IV: Now, in this deed there
6 were two tracts, one of 100 acres and one of 226 acres, is
7 that correct?

8 TERRANCE HALL: Correct.

9 JAMES R. HENDERSON, IV: And to your understanding,
10 does your property derive from the 226 acres?

11 TERRANCE HALL: Yes, sir. That is my understanding.

12 JAMES R. HENDERSON, IV: And that was the portion of
13 this property on which the rights to use the surface were
14 reserved?

15 TERRANCE HALL: Were reserved. Yes, sir.

16 JAMES R. HENDERSON, IV: And, I believe, there's a
17 later point in this deed where it states specifically the
18 Riley Altizer had the right and privilege to clear 100 acres
19 of the said two hundred and 226.89 acres?

20 TERRANCE HALL: Yes, sir.

21 JAMES R. HENDERSON, IV: Even though the timber
22 rights to that property were conveyed?

23 TERRANCE HALL: Well, it reserves the...the use of
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1 coal and timber for any domestic purposes.

2 JAMES R. HENDERSON, IV: Okay. And have you
3 examined an additional deed in your chain of title that
4 concerns the conveyance of the mineral rights in the Riley
5 Altizer property, and I'm referring specifically to the deed
6 made by Thomas Rider in 1906?

7 TERRANCE HALL: Thomas Rider of Pennsylvania was the
8 original purchaser of the coal rights to...to most of the
9 property in that particular area of...of what you know as the
10 Jewell Ridge Quadrangle. As he conveyed, the deed of
11 conveyance from him to the...I believe it was known as
12 Pocahontas Land Company or Pocahontas Mining Corporation. At
13 that point, he specifically states here as, "Except..."
14 Okay. "Reserve and excepting from the operation of this
15 conveyance a certain amount of acres, which were heretofore
16 conveyed in---," and some other deeds. It's very difficult
17 to read. But the gist of it on our research is that he...he
18 was exempting the surface rights.

19 JAMES R. HENDERSON, IV: Were there any mention of
20 surface rights in the paragraph of this deed that pertained
21 to the Riley Altizer property?

22 TERRANCE HALL: No, sir. No mention of surface
23 rights or access rights whatsoever.

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1 JAMES R. HENDERSON, IV: Now, with regard to the
2 severance deeds for both of these tracts of land, both the
3 large one and the small one, do they specifically set out
4 those minerals which are being severed?

5 TERRANCE HALL: Yes, sir. He was very specific and
6 left no room for interpretation, from my understanding. It
7 reads something to the order of all coal, minerals, metals
8 and oil and timber.

9 JAMES R. HENDERSON, IV: Now, is there anything in
10 either deed that talks of permitting gas wells or pipelines?

11 TERRANCE HALL: The gas or pipelines pertaining to
12 gas is not mentioned anywhere. It's specifically excluded
13 from the list on both of the...on all of the deeds involved.

14 JAMES R. HENDERSON, IV: And have you had occasion
15 to grant the use of the surface for the purposes that are
16 proposed in these applications to PGP at any time?

17 TERRANCE HALL: They have approached me for specific
18 rights, but I've not granted any...not granted any rights to
19 them for any of these operations.

20 JAMES R. HENDERSON, IV: Okay. That's all we have
21 on direct presentation. Answer any questions Mr. Swartz may
22 have.

23 MARK SWARTZ: No questions. I'd like to make
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1 something in the nature of an opening statement before I call
2 my witnesses.

3 BENNY WAMPLER: Okay. Let me see if the Board
4 members have any questions of this witness at this time.

5 (No audible response.)

6 BENNY WAMPLER: Okay. Go ahead.

7 CLYDE KING: How long...excuse me. I'm sorry. How
8 long have you owned the property.

9 TERRANCE HALL: My father purchased the property in
10 1961 and it was in the late '60s that he conveyed the
11 property by deed to my brother and myself, joint ownership.

12 BENNY WAMPLER: Okay, Mr. Swartz.

13 MARK SWARTZ: I thought I would share the history of
14 this collection of permits and objections with the Board
15 before I put Mr. Arrington on the stand and Mr. Elswick.
16 There were a series of objections filed to, I think, five
17 wells, if I'm not mistaken, which objections were heard in
18 front of Mr. Wilson. We had a hearing, I think it was back
19 in September. And at that hearing in September, Mr. Wilson
20 overruled certain of the objections and issued certain
21 permits and required the parties to confer with regard to
22 certain other location issues. So, essentially back in the
23 fall of last year, the permit for S-51 was...the objection

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1 was overruled. It was a ground water objection and the
2 permit for S-51 was issued, which is why we built the road.
3 So, the road that you've seen pictures of and that we're
4 talking about today was permitted under S-51 and is, in fact,
5 nearly complete, if not complete.

6 Two of the objections that were made in the fall,
7 and I'm thinking it was September, pertained to R-51 and
8 R-50. Mr. Wilson entered his original decision with regard
9 to the objections arising out of the September hearing and
10 basically said I want the parties to get together and try and
11 come up with alternative locations in the units with regard
12 to R-51...R-50 and R-51.

13 The parties met, and Mr. Arrington and Mr. Elswick
14 will testify about that meeting, on the ground on both of
15 these tracts, within both of these units for the purpose of
16 trying to come up with alternative locations. A day after
17 their meeting, Mr. Arrington called Mr. Wilson and said,
18 "We've reached an agreement. You don't need to set a further
19 hearing. I'll be filing modifications with regard to our
20 agreement." Mr. Hall then called Mr. Wilson a day or two
21 later and said something to Mr. Wilson which caused Mr.
22 Wilson to conclude that the parties had reached an agreement
23 because he didn't set any further hearing. He didn't feel

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1 that there was a need to have a further hearing, or further
2 discussions with regard to this, based on the phone calls
3 that he had gotten from Mr. Arrington and Mr. Hall. Mr.
4 Arrington then falls permit modifications showing the
5 locations of the spots that they had picked when they were
6 out there on the ground to make the permit now conform to
7 what he felt his agreement was. And then to everyone's
8 surprise, at least on my side of the table, in early
9 December, after we had filed the permit modifications that we
10 thought we had an agreement on, we got more objections.
11 Okay.

12 So, what we're here on today is a hearing that
13 occurred on the modification. In other words, the change of
14 location. So, what you're...what you're dealing with today
15 is not the original locations that were proposed for either
16 R-50 or R-51, but, in fact, what we're talking about are the
17 modified locations that were submitted by Mr. Arrington in
18 late November that we had a hearing on sometime, I think, in
19 January of this year.

20 Following that hearing, Mr. Wilson entered an Order
21 that granted both permits at the alternative locations. Now,
22 the statute and it was quoted by Mr. Wilson in his decision,
23 but I just...let me bring it to your attention very

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1 specifically. As you probably know, the statute sort of
2 breaks out the objections that different kinds of people can
3 make, and there's a location exception available to surface
4 owners and it reads as follows: That they can object to the
5 lo...now, it's a quote "location of the coalbed methane well
6 or coalbed methane well pipeline will unreasonably infringe
7 on the surface owner's use of the surface provided that a
8 reasonable alternative site is available within the unit."
9 And then there's something about contractual agreements that
10 follow it up.

11 Basically what the statute provides is that a
12 surface...if a surface owner objects to the location because
13 it unreasonably infringes on that surface owner's use of the
14 surface, if you can't find an alternative site, the statute
15 requires that the permit be granted. If you can find an
16 alternative site, the statute requires that the permit not be
17 granted for the original location. So, essentially the
18 statute forces people to sit down and figure out whether or
19 not there is some less objectionable or less intrusive site.

20 Now, let's...and basically what Mr. Wilson's decision was,
21 you guys have met and you've picked a site that is less
22 objectionable, and I'm going to grant the permit for the less
23 objectionable site consistent with what the statute requires.

24

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1 Now, we have a petition for appeal, and the law is
2 that you've got ten days after you get his decision and they
3 filed within ten days. There's no...no problem there. But
4 you need to say what you're complaining about. And in their
5 petition for appeal with regard to both of these units, and
6 the reason I'm taking some time with this, because I think
7 the petition for appeal essentially discloses that they don't
8 have an appeal. Item one is an argument that there is some
9 contractual or deed impediment to Consol's rights to pursue
10 activities on these tracts. Basically, it's...it's a title
11 objection. Those title objections were raised in the past.
12 Mr. Wilson, in both of his decisions, has indicated that, you
13 know, he doesn't have the power to adjudicate title, to
14 adjudicate severance deeds, to adjudicate whether or not the
15 mining rights under severance deeds give you the right to do
16 what you're proposing to do or not. But what he did find was
17 that the requirement that the operator certify that they have
18 the right to be on the property, that that certification was,
19 in fact, made in all of these permit applications. There's a
20 disagreement, obviously, because Mr. Hall doesn't think we've
21 got the right to do it, but the applications are all
22 certified based on title opinions, and we can spend a lot of
23 time on that, but that the operator has got...that they have

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1 a right to be on the property under the severance deeds. So,
2 item one is not a ground for objection that this Board or Mr.
3 Wilson can entertain.

4 Now, item two is what we're talking about today.
5 But under the statute, I mean, it's foregone conclusion. I
6 mean, if...if you can find an alternative site that becomes
7 the location under the statute and if you can't, you go to
8 the original. So, you know, there's nothing to be talking
9 about today.

10 Then the last objection is, all remaining
11 objections are preserved. Well, there was no appeal from the
12 original decision with regard to the five wells. So, you
13 know, there's none of that on the table today.

14 And with that said, I'd like to call Mr. Elswick
15 first to talk about the visit that he had with Mr. Hall at
16 the site and what he did in response to that and then briefly
17 call Mr. Arrington.

18 BENNY WAMPLER: All right.

19 MARK SWARTZ: Darrell, if you want to have a seat
20 here. Get your right hand in the air.

21 (Witness is duly sworn.)

22

23

DARRELL ELSWICK

24

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

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. SWARTZ:

5 Q. Could you state your name for us?

6 A. My name is Darrell Elswick.

7 Q. Darrell, who do you work for?

8 A. I work for Del-Rick Corporation.

9 Q. And what involvement has Del-Rick
10 Corporation had in...in the road for S-51, for example?

11 A. We have a construction crew that is
12 presently constructing on that site.

13 Q. Okay. Do you do contract work for Consol
14 and Buchanan Production Company and Pocahontas Gas
15 Partnership?

16 A. Yes, we do.

17 Q. Did you have occasion to meet Les Arrington
18 and one of Consol's landmen and Mr. Hall at two of these well
19 locations that we're talking about today?

20 A. Yes, we did. R...site R-50 and R-51.

21 Q. Okay. Did you personally go out there?

22 A. Yes, I did.

23 Q. Okay. Can you tell the Board what you did
24

1 and what discussions you had with Mr. Hall and...and
2 what...what was accomplished at that meeting?

3 A. Well, we met with Mr. Hall first on site
4 R-51. He had objections to the original location where it
5 was staked. We met at the staked area. At that time, Mr.
6 Hall indicated that he had some intention of in the future of
7 maybe building a house there close to that site and requested
8 that if we put the site there, could we move it further away
9 from the original location. He stated at that time...well,
10 we asked how far would be suitable and a 100 foot mark was
11 suggested and at that time we moved the stake approximately
12 100 to 120 feet further down away from the area where he had
13 proposed his house site and flagged it there for the
14 engineers to locate.

15 Q. And what is on that R-51 site at the present
16 time, if anything?

17 A. What, the terrain type?

18 Q. The terrain, any buildings or improvements.

19 A. There is no buildings there. All
20 indications was that it had been timbered fairly heavily. No
21 large marketable trees standing. Mostly just small growth,
22 bushes and brush.

23 Q. But you could tell just from your own
24

1 observation that it had been timbered recently?

2 A. Yes, in the near past, it had been timbered.

3 Q. When you say you moved it 100 feet, where
4 did that 100 feet suggestion come from, or 100 foot
5 suggestion?

6 A. I don't recall. All I know is Mr. Hall
7 indicated that he wanted it further away from the original
8 location and a spot was picked a 100 to 120 feet down the---

9 Q. Okay, when you stake...and when you staked
10 that spot, was he present while you were staking it?

11 A. Yes.

12 Q. Okay. With regard to R-50, could you tell
13 us whether or not you met at the site and what happened?

14 A. Yes, we met at R-50 site. The original
15 location was located in his field. I don't know which
16 direction. It was the far corner of the field. It was the
17 level part of the field with our road coming in on the other
18 end of the field and paralleling the field below the actual
19 field itself and coming back up into the site. And Mr. Hall
20 indicated at that time that he didn't want us building in his
21 field. So, we looked for an alternate location. He
22 suggested down in the hollow below...a pretty good ways below
23 the field. We went down in there and looked and found a

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1 cliff line. Mr. Hall also indicated that there was a spring
2 down there that he didn't want disturbed. And also, to get
3 to that location on down in the hollow, we'd had to have
4 built probably a 25 to 27% grade road, which is really not
5 useable for large equipment. And we walked around in the
6 area a while and decided on another location just out of the
7 field above the cliff line, being a lot more expensive site
8 to build than the original location.

9 Q. But it was out of the middle of the field as
10 well?

11 A. Yes. It was out of the field. The road,
12 though, would take up a small portion of the field coming
13 into the site. We could not get out of the field due to a
14 power pole with guy wires and also a cliff that ran directly
15 underneath it prohibited us from joining onto Rt. 616.

16 Q. What was the condition of that field? Was
17 there hay growing in it? What...what was in it?

18 A. It was a mown field. It had previously been
19 cut that fall.

20 Q. Did you make any proposal to Mr. Hall while
21 you were out there to perhaps clear and grade some additional
22 surface?

23 A. Yes. We made a sug...or I made a suggestion

24

1 to Mr. Hall. We were going to take up 30 or 40 feet of
2 the...one end of the field. I suggested that a possible
3 alternative would be by us taking that section of the field,
4 we could grub and clear some more land on the lower end of
5 the field, which would still be tractor accessible, and resow
6 that for him and actually he would end up with more useable
7 space than what we would be taking out with our road going
8 across the end of his field; and we also agreed to put up a
9 fence along that roadway and around the edge of field where
10 the site would be located.

11 Q. When...when you left that evening after your
12 discussions with Mr. Hall concerning R-50 and R-51, what
13 did...what did he indicate to you in terms of whether or not
14 he needed to get with other family members or anything along
15 that line?

16 A. Well, his...his comment was that he liked
17 the alternate location better and he favored the idea of
18 maybe clearing more land, but it would have to be okayed with
19 his brother in Florida.

20 Q. Okay. So, when you left, you didn't feel
21 that day that you had an understanding because he had to do
22 something further?

23 A. Right. He needed to contact his brother.

24

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1 MARK SWARTZ: Right. That's all I have of this
2 witness.

3 BENNY WAMPLER: Any questions from members of the
4 Board?

5 (No audible response.)

6 BENNY WAMPLER: You may---.

7 MAX LEWIS: How much---?

8

9 CROSS EXAMINATION

10 QUESTIONS BY MR. HENDERSON:

11 Q. Mr. Elswick, how much of the Hall property
12 did you look over when you went out there?

13 A. As far as alternate locations?

14 Q. Well, most...well, let me just ask you.
15 Most of the property is fairly steep terrain, isn't it?

16 A. That's correct, it is.

17 Q. There's not much useable flat space there?

18 A. That's right. It's mostly hillside and
19 cliff.

20 TERRANCE HALL: May I ask Mr. Elswick a couple of
21 questions?

22 (No audible response.)

23 TERRANCE HALL: Mr. Elswick, would you tell us what
24

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1 time of day I met you?

2 DARRELL ELSWICK: It was late afternoon.

3 TERRANCE HALL: Can you be more specific?

4 DARRELL ELSWICK: We were on site R-51, I don't
5 know, I think 4:30 or somewhere in that area, and then moved
6 on out to R-50 after that. It was getting close to...getting
7 fairly close to dark.

8 TERRANCE HALL: Actually, it was even a little later
9 than that and the first site was not staked in my presence.
10 The stake was---

11 MARK SWARTZ: You know, if...excuse me. He can
12 testify again, you know. But you can't ask a witness
13 questions and then argue with him. So, maybe we should let
14 the lawyer ask the questions and if the witness wants to
15 testify again, fine. But, you know, it's just not an
16 appropriate way to proceed to get an answer and then argue,
17 you know.

18 TERRANCE HALL: Okay. Thank you. Sure. Thank you.
19 I appreciate that thought.

20 (Terrance Hall confers with James R. Henderson,
21 IV.)

22 BENNY WAMPLER: Do you have anything further, Mr.
23 Swartz?

24

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1 MARK SWARTZ: No.

2 BENNY WAMPLER: Mr. Henderson?

3 JAMES R. HENDERSON, IV: Nothing in addition.

4 BENNY WAMPLER: Members of the Board? Mr. Garbis?

5 MAX LEWIS: This alternate---.

6 BENNY WAMPLER: Oh, I'm sorry.

7 MAX LEWIS: This alternate location that you were

8 talking about that you said was a cliff line. How much did

9 you estimate that the location would cost you to build it

10 there?

11 DARRELL ELSWICK: Well, to be honest you can't say.

12 We...I tried to stake it on top of the cliff line. You

13 can't see the rock underneath. We know there's rock below us

14 and I'd say it would probably be 30 to 35,000 just to

15 construct the site location.

16 MAX LEWIS: Well, that's not...not a real great

17 amount for a location on top of a mountain.

18 DARRELL ELSWICK: Well, considering where it was, it

19 would have been probably a \$10,000 site. That's just

20 construction costs. That doesn't include, you know, brush

21 crews, hydroseed and gravel, and all of that.

22 MAX LEWIS: The pipeline, would it have been...would

23 it have been any harder to build with the location there than

24

1 it would---?

2 DARRELL ELSWICK: I cannot say. I...I do not do
3 pipelines. Just road and site constructions. I have no idea
4 how the gas line was proposed for that site.

5 MAX LEWIS: I know \$35,000 on the mountain was not a
6 whole lot for a location.

7 DARRELL ELSWICK: That's just---.

8 MAX LEWIS: If I built...if I built them, it would
9 cost a 150,000.

10 DARRELL ELSWICK: Well, that's just...now, you try
11 to be as cost effective as you can.

12 MAX LEWIS: I know.

13 DARRELL ELSWICK: But and too, like I say, you don't
14 know what, once you tear the top soil off of the ground
15 there, what type of rock you're going to hit. That's just
16 a...that's a modest estimate of what it probably would be, if
17 not more depending on the type of rock and how much hammering
18 you would have to do to get the site down to grade.

19 BENNY WAMPLER: Mr. Garbis?

20 DENNIS GARBIS: I'd like to get back to that
21 original (inaudible) that you were probably speaking about.
22 So originally, if I understand this correct, there was going
23 to be a pipeline in one direction and perpendicular to that,

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1 there would be a road effectively as you testified there
2 would be an...do you have a drawing for that effect, and then
3 subsequent to that, do you have an alternate, what was
4 potentially an alternate arrangement on that particular site?
5 I would like to see what that looks like.

6 JAMES R. HENDERSON, IV: I don't think that the road
7 and the pipeline changed all that much.

8 (James R. Henderson, IV confers with Terrance
9 Hall.)

10 JAMES R. HENDERSON, IV: Now, these are the company
11 maps which shows a location of R-51, which is the---

12 BENNY WAMPLER: You'll need to speak up a little
13 bit.

14 JAMES R. HENDERSON, IV: And here's the well site.
15 If you'll flip over to the page in front of that, there's a
16 separate map that shows the pipeline. How that will bisect.
17 There again, there's the road and the well site would be
18 here.

19 DENNIS GARBIS: Where is Mr. Hall's ten acres of
20 land. Do you have that depicted?

21 JAMES R. HENDERSON, IV: We have another map that
22 shows that.

23

24

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1 (James R. Henderson, IV gets the map.)
2 JAMES R. HENDERSON, IV: Just to locate...here is R-
3 50.
4 DENNIS GARBIS: Uh-huh.
5 JAMES R. HENDERSON, IV: (Inaudible) on this map.
6 R-51 was not on this survey map. But this is where---.
7 DENNIS GARBIS: That would be roughly right up here,
8 it looks like.
9 JAMES R. HENDERSON, IV: Uh-huh.
10 DENNIS GARBIS: Looking at those contour lines.
11 JAMES R. HENDERSON, IV: Right. Now, this is the
12 smaller tract and this is the larger Hall tract here.
13 DENNIS GARBIS: Uh-huh.
14 JAMES R. HENDERSON, IV: So, the smaller tract, you
15 would have the road coming through here and then the pipeline
16 coming down here.
17 DENNIS GARBIS: So, this is R-50 and this is R-51.
18 (Dennis Garbis reviews the maps.)
19 DENNIS GARBIS: So, as far as an alternative
20 arrangement on the...looking at this ten acre, I...can
21 somebody elaborate on that or show where it...where a
22 potential...if there was a subsequent agreement, how did this
23 facilitate concerns of Mr. Hall? Mr. Swartz, could you
24

1 address that or your---?

2 DARRELL ELSWICK: I didn't understand the question.

3 DENNIS GARBIS: In other words, like...originally
4 you had R-50/R-51 you had ten acres over here. You've got
5 this pipeline that would be coming up the...well, I guess, it
6 looks down...down the hill here. What were the alternative
7 arrangements for...the discussion that you had to ease his
8 concerns?

9 DARRELL ELSWICK: On the gas line part of it or just
10 the site itself?

11 DENNIS GARBIS: Well, let's...let's address the road
12 issues since you're the road person.

13 DARRELL ELSWICK: Just to get it away...mostly to
14 get the site further away from his area where he had proposed
15 to build a home. We couldn't go down the...any...any further
16 away due to being out of the drill window. I think the
17 eighty acre tract borders right below it and we couldn't move
18 it much further without getting out of that window.

19 DENNIS GARBIS: All right. Thank you.

20 BENNY WAMPLER: Other questions from members of the
21 Board?

22 (No audible response.)

23 BENNY WAMPLER: Call your next witness.

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1 MARK SWARTZ: Les.

2 (Leslie K. Arrington and Mark Swartz confer.)

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6 LESLIE K. ARRINGTON

7 having been duly sworn, was examined and testified as

8 follows:

9

DIRECT EXAMINATION

10 QUESTIONS BY MR. SWARTZ:

11 Q. Mr. Arrington, I'm going to remind you that
12 you're still under oath from earlier this morning---

13 A. Yes.

14 Q. ---and ask you to state your name?

15 A. Leslie K. Arrington.

16 Q. I'd like to start with Mr. Garbis' question
17 about what changed with regard to the location. Maybe you
18 could walk over to show him the plats of the original
19 location and then the modified location.

20 A. Okay. We moved it down the spur
21 approximately 200 feet. If you go down that spur, we did get
22 away from what he was calling his building lot, which
23 is...I'm pointing toward on...on Exhibit 1-A and the R-51

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1 application. As we drove in here, there's an existing...a
2 little access road that comes in right here, right...right on
3 the edge of his property that comes in and there was a flat
4 area in this area...in this vicinity, approximately 400 feet
5 from where the well was staked. When we restaked it, our
6 original stake was somewhere right in here and then we came
7 back and moved it approximately 200 feet down this spur.
8 Now, your concerns over the pipeline after that, we can
9 change that pipeline anytime. I mean, this is just going
10 down steep grade and there's nothing there, you know.
11 That...that equipment can work on anything. So, the pipeline
12 is no concern for us. But the well site, we can't get over
13 the side of the hill and build a well site that's cost
14 effective. So, we got down this spur as far as we could and
15 staked that location, which was 200 feet different than we
16 originally proposed.

17 Q. Les, would you show him the well plats so he
18 can---?

19 A. Yes. This...here's the original well plat
20 that was filed. Here's the subsequent, the amended, and all
21 of this was done under permit revisions. It wasn't a
22 modification. It was done as a permit revision. And you can
23 see the original well and underneath there, right here, you

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1 can see that it's approximately 200 feet difference in
2 distance.

3 DENNIS GARBIS: What's the scale?

4 A. An inch to 400.

5 DENNIS GARBIS: Okay.

6 Q. To summarize, in response to his expression
7 that he had plans to some day build a house on the---?

8 A. That was what I could---.

9 Q. And he wanted the well further away?

10 A. Yes.

11 Q. You moved the well roughly 200 feet further
12 away?

13 A. We did.

14 Q. Now, with regard to the pipeline, does the
15 pipeline that's proposed go across the flat part, the house
16 site, or does it go over the steep hill in a different...a
17 completely different direction?

18 A. Okay. And I'm going to speak to both wells
19 on the pipeline.

20 Q. Well, let's...let's stay with this one.

21 A. Okay. R-51, that does not hit any level
22 land other than right at the well site. It goes down a steep
23 grade to our existing pipeline that's down there.

24

--

1 Q. In fact, it goes the opposite direction away
2 from the house site?

3 A. That's correct. It does.

4 Q. Okay. Now, with regard to the pipeline on
5 the other tract.

6 A. On the other tract, again, it goes down
7 hill. It goes away from his field. It is a steep terrain
8 area, away from everything.

9 Q. Mr. Arrington, with...did you also...were
10 you also present when...when Mr. Elswick met with Mr. Hall
11 out at these...at R-50 and R-51?

12 A. Yes, I was.

13 Q. Why were you out there?

14 A. To try to come up with some sort of a
15 reasonable alternative with Mr. Hall.

16 Q. Okay.

17 A. And to...that was on November the 11th and
18 we met him at approximately at five o'clock in the evening.

19 Q. And how long did you spend out there, do you
20 think?

21 A. Well, I left...I left that area at 6:30.

22 Q. Was it still light when you left?

23 A. No.

24

--

1 Q. Were you at both sites, R-50 and 51?

2 A. Yes, sir, I was.

3 Q. And were there alternative locations staked
4 at both sites before you left?

5 A. Yes, there was.

6 Q. When you left that evening, how did you
7 leave it with Mr. Hall as to where you guys stood?

8 A. Okay. When I left, I felt that we had an
9 agreement on the location. Although at no time did...it was
10 a reasonable location...reasonable alternative location, and
11 even at that point, Mr. Hall had a concern with water.
12 There's a bunch of springs on the sites in the areas. I sent
13 our field representatives out that does our water sampling
14 and we had an extensive water survey done just for...to make
15 sure that we didn't interrupt any water sources and if we
16 did, we had some record of them.

17 Q. Well, when you left that night, though, did
18 you feel like he needed to get back to you or someone on your
19 staff one more time, or did you feel like you had reached an
20 agreement?

21 A. I felt at that time when had an agreement
22 and as I...the next day in the office, I told Jim Hamlin, who
23 had been contacting Terry, that he needed to contact Terry to
24

1 have him give Mr. Wilson a call and let him know that we had
2 reached an alternative location. And that same day I called
3 Mr. Wilson myself and told him that.

4 Q. Because you know from experience that Mr.
5 Wilson needs to hear from both sides?

6 A. He did.

7 Q. No. But you know that?

8 A. Yes.

9 Q. So, you asked Mr. Hamlin to tell Mr. Hall
10 that he needed to make a call?

11 A. Yes, sir, I did.

12 Q. And then did you submit permit revisions?

13 A. Yes, sir, after surveying, I submitted them
14 to the State, and not only that, I had to submit those to the
15 other lessors of other minerals there and get their approval.
16 So, along with submitting them to Mr. Wilson and getting his
17 approval, I also got the other lessors' approvals.

18 Q. To the change of locations?

19 A. Yes, sir.

20 Q. And then lo and behold, you got some more
21 objections?

22 A. We did.

23 Q. Was that---?

24

--

1 A. Unexpected.

2 Q. Okay.

3 A. Totally.

4 Q. And then we had another hearing?

5 A. We did.

6 Q. And we're here today?

7 A. Yes.

8 Q. Now, the road that's being constructed that
9 we've seen photographs of today---?

10 A. Uh-huh.

11 Q. ---what...what well was that permitted in
12 conjunction with?

13 A. Yes. That was permitted under well S-51.
14 We did have an original permit objection on that, which was
15 denied and permit issued and we have proceeded forward. We
16 did construct the road and it's part...the road and site
17 there is probably near finished.

18 Q. Is it...as you understand it, has it been
19 Mr. Hall's position that there is no place on either of these
20 tracts where he would be happy to have you?

21 A. That's correct.

22 Q. And so it's not that he's saying, I'm
23 delighted to have you where you are, he's simply saying it's
24

1 Q. And the outer dotted line shows an eighty
2 acre unit.

3 A. It does.

4 Q. That would be the drilling unit. Then
5 there's an inter-dotted line.

6 A. It is.

7 Q. And what does that signify?

8 A. That's...we have to be away from the outer
9 line or the unit boundary 300 feet to allow for equal
10 production, everybody to receive equal production from the
11 different units.

12 Q. Okay. So, anywhere within this inter-dotted
13 line you can locate a well, is that correct?

14 A. We...we could have.

15 Q. Okay. And for Unit R-50, the well site
16 that's chosen is up in the upper right hand corner of this
17 section, is it not?

18 A. Yes. The second location, it is.

19 Q. Okay. And actually the first and second
20 location were both up in that upper right hand corner?

21 A. I'm sorry?

22 Q. They were both up in that upper right hand
23 corner, were they not?

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1 A. The...R-50?

2 Q. Yes.

3 A. R-50, it was more...the first location was
4 more a centered location than the second location.

5 Q. It was in the upper right quadrant, was it
6 not?

7 A. Yes. The second location, yes.

8 Q. Okay. And the public road goes through that
9 drilling section in a number of places, does it not?

10 A. Yes, it does.

11 Q. So, there are other locations in this area
12 where a well could be drilled, even off of the Hall property?

13 A. The Hall property probably accounts for
14 roughly 70% of that unit. Typographically, there's not many
15 locations.

16 Q. By typographically, you mean the rest of the
17 area is steep?

18 A. Yes.

19 Q. And this area was chosen because it's just
20 about the only flat space in there?

21 A. That's true.

22 Q. And so it costs less to use it?

23 A. Well, it costs less and, as I said, about
24

1 steep grade.

2 Q. Okay. And on the R-50 well site, that is
3 located at the lower left hand---?

4 A. You're talking about R-51?

5 Q. R-51, excuse me. The lower left hand---?

6 A. Yes, sir.

7 Q. ---portion? You're fairly close to the
8 edge?

9 A. It is.

10 Q. And, again, was done for the same reason,
11 the typography?

12 A. It was. Uh-huh.

13 Q. These are just about the only two flat areas
14 up on that ridge, aren't they?

15 A. There's not much flat area up there.

16 Q. Okay.

17 A. Right. Our well sites are topographically
18 driven.

19 Q. There within the drilling area for the R-51
20 well, there are a number of places where it's accessed by
21 other roads and the public road on Rt. 621, are there not?

22 A. Well, the thing you're failing to look at
23 there, that would require...if you're looking on the North

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1 side of the highway---.

2 Q. Uh-huh.

3 A. ---that requires pipeline road bores and
4 other work that...that can't...we can't get over there
5 because that's so much...so steep on the North side of the
6 highway. On the South side, Mr. Hall's property is...is
7 what's on the South side of the road.

8 Q. And so why are you saying you couldn't use
9 anything on the North side here?

10 A. On the North side, it's extremely steep
11 terrain and that's a road bore to get to the other side of
12 the road.

13 Q. Okay. Now, road bore means it would cost
14 out more money to get the pipeline under the road?

15 A. Sure.

16 Q. Okay. That's all the additional questions I
17 have.

18 MARK SWARTZ: Nothing further.

19 BENNY WAMPLER: Any questions from members of the
20 Board?

21 (No audible response.)

22 BENNY WAMPLER: Mr. Wilson, do you have anything you
23 want to add to the testimony that has been presented here

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1 today?

2 BOB WILSON: I can pretty much say that I think it
3 has been pretty well summarized. The sequence of hearings
4 and the conferences that we had and the decisions that were
5 rendered. To me, the questions at both hearings revolved
6 around property ownership issues, which I've attempted to
7 make clear in both decisions that we could not decide
8 their---.

9 JAMES R. HENDERSON, IV: I have one thing to bring
10 with Mr. Wilson since it was mentioned by Mr. Swartz, and
11 that was, I think at the hearing that was had in January,
12 sir, that Mr. Hall made the statement that what he had told
13 you on the phone was that these other sites were less
14 objectionable. I think he confirmed that that essentially
15 was what was said, Not necessarily verbatim.

16 BOB WILSON: Correct. I was going...I was going to
17 touch on that, as a matter of a fact, that part of the
18 statements were that we were under the impression that we had
19 an agreement as to alternative locations and, I think, that
20 is correct. We'd...the operator and I were under the
21 impression that we had this agreement. Mr. Hall stated at
22 the later conference that he did find these locations less
23 objectionable, but he, I believe, essentially says he finds

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1 no locations on his property acceptable, or something to that
2 effect. And basically, the...the...this appeal has to do
3 with that...the right to not in...and unreasonably infringe
4 on the surface owner's property and whether that right has
5 been addressed and accounted for.

6 JAMES R. HENDERSON, IV: May I have a moment to
7 respond to some of the things that Mr. Swartz raised?

8 BENNY WAMPLER: Yes, sir.

9 JAMES R. HENDERSON, IV: One thing that was said,
10 and I think this was...I find it somewhat perplexing being in
11 the law business, was that the only things that can be
12 discussed here today were those which were discussed at the
13 latest hearing that was had. That's not my understanding of
14 what the statute provides. There was no reason for Mr. Hall
15 to file an appeal of these two permits before they were
16 issued. There was, in the legal sense, no final Order to be
17 appealed before it was issued and the fact that he had
18 made...that the Director had made statements that pertained
19 to these applications in granting the other permits, I think,
20 is simply irrelevant. I think we have done what we need to
21 do to preserve our objections all along the line and I think
22 the suggestion that we should have taken this appeal before a
23 permit was issued is contrary to how this statute is supposed

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1 to work.

2 SANDRA RIGGS: Well, I think the reference is in
3 45.1-361.36(B) that says, "No petition for appeal may raise
4 any matter other than matters raised by the Director or which
5 the petitioner put in issue either by application or by
6 objection proposals or claim made in specified in writing at
7 the Informal Fact Finding Hearing leading to the appealed
8 decision."

9 BENNY WAMPLER: In other words, this is not a de
10 novo hearing. You---.

11 JAMES R. HENDERSON, IV: Oh, no, I understand that.

12 BENNY WAMPLER: You're appealing on the record.

13 JAMES R. HENDERSON, IV: I simply...I simply don't
14 think, though, that we are foreclosed on any issues that
15 we've raised. The---.

16 MARK SWARTZ: My comment in that regard was, you
17 never appealed S-51. You passed pictures of the road around
18 and S-51 was...that road was permitted under S-51. It was
19 subject to a hearing in September. You didn't file an appeal
20 and that was my comment. I mean, I'm not talking about R-50
21 and 51.

22 JAMES R. HENDERSON, IV: Well, Mr. Swartz, your
23 comments went beyond on that and if you're insisting on

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1 proper decorum, I would like to be able to finish my
2 statement before you make any rebuttal remarks if you..if you
3 would.

4 BENNY WAMPLER: Go ahead, Mr. Henderson.

5 JAMES R. HENDERSON, IV: What you specifically said
6 was, "There was no appeal from the original decision."

7 MARK SWARTZ: Correct.

8 JAMES R. HENDERSON, IV: And I think that was
9 directed at these applications and not just to the S-51.
10 Now, the other issue that has been raised that I would like
11 to speak to you is the issue of the extent to which these
12 applications have to deal with the right of the company to be
13 on this property doing these operations. I think we've made
14 it clear that we respectfully disagree with Mr. Wilson's
15 views on this and we have raised at every opportunity our
16 objections to the legality of what they're doing. Now, the
17 statute says that the burden is on the applicant to
18 demonstrate compliance and I think that there is...is a good
19 reason for this and that is, you know, these individual
20 landowners are going to find it very difficult to...to
21 litigate these issues step by step by going to Court. Going
22 to Court on these issues is very expensive and is very time
23 consuming. But the statute says to the applicant, and in

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1 this case PGP, it's up to you to demonstrate compliance with
2 the law so that you can get a permit issue. And one of the
3 things that the statute requires is certification of their
4 right to conduct these operations and I submit to you,
5 gentlemen, that even if the statute didn't require that, that
6 the Constitution of the State of Virginia and the
7 Constitution of United States would similarly require that an
8 agency of this Commonwealth not be empowered to issue such
9 permits to someone who doesn't have the right to carry out
10 the operations in the permit. And I think that the
11 certification required by the statute does raise an issue
12 that the landowner is entitled to contest.

13 In this case, Mr. Hall has presented to the Board,
14 and to the hearing examiner, very specific information on why
15 the surface rights of entry don't exist. Now, I'm not
16 stating that the Board has the right to issue rights of entry
17 or to act as a Court in deciding disputes between landowners
18 or landowner and a trespasser or whatever. What I do contend
19 is that both the hearing examiner and the Board have the
20 right and the obligation to determine whether or not the
21 applicant has met its burden of properly certifying that it
22 has the right to conduct operations. I think that if you
23 interpret the law to say that it can simply certify that with

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1 no consequence if it's contested, then you're doing an
2 injustice to these landowners because you're saying you have
3 got to go to Court and spend the time and money contesting
4 this once we've issued the permit. Now, this company is not
5 going to go to Court, quite obviously, and get a declaratory
6 judgment or anything else establishing its right to do this.
7 As soon as the permit is issued, they'll do what they did
8 with this other permit even over objection, on come the
9 bulldozers and the changes start to be made in the land.
10 That means if a landowner wants to protect their rights, he
11 has got to go through the time and considerable expense of
12 contesting this.

13 I think that the statute gives this Board the...the
14 opportunity and the duty to determine whether there is a
15 proper certification of these operations or not. I think
16 that we have substantially rebutted the claim that they are
17 authorized to do this. The fact that there is a mineral
18 severance deed does not mean that you then have to come
19 in...you have the right to come in and use the surface for
20 any purpose you wish or for any purpose at all. It is
21 perfectly possible for a mining company, and I'm sure that
22 many cases like this you've seen, to have the right to mine
23 without any right to use the surface. And I submit to you

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1 that that's what happened in this case. The right to use the
2 surface was not conveyed and they don't have the right to
3 conduct the operations that they're proposing.

4 We've cast this in another light to make sure we
5 preserve this objection, and that is simply that we've made
6 the argument and we make it here, that the statute allows you
7 to object if the use to which your property is being put is
8 unreasonable. Now, I would submit to you, gentlemen, that
9 building roads and pipelines where you don't have a right to
10 use the surface is simply, per se, unreasonable, particularly
11 when there are other areas within the drilling unit that
12 these operations could be conducted on even if they have to
13 be conducted at a greater expense.

14 BENNY WAMPLER: Mr. Swartz, do you have a closing
15 argument?

16 MARK SWARTZ: Yeah, the permit application contains
17 the statement, "I hereby state that the applicant named above
18 has the right to conduct operations as set forth in the
19 application and the operations planned." It's signed in all
20 three...all two...in these two instances and it's...and
21 there's a notary. There's an argument about title. All that
22 is required in the permitting process is that the operator
23 take the affirmative step of certifying that they have the

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1 right to do what they're proposing to do. If it turns that
2 Mr. Hall's right and the severance deed that Mr. Arrington
3 relied on when he signed the certification doesn't grant the
4 mining rights that the operator needs, well, then maybe we've
5 got a trespass issue here. But it's...it's not the job of
6 Mr. Wilson to adjudicate title before he, you know, enters a
7 permit and it's not your job to do that either. The
8 certification was made here. It was made under oath and
9 we've got a dispute as to who has got what rights on this
10 property under the severance deed. It's clear that we've got
11 a dispute and we're not going to resolve that in front of
12 you, even if we could. So, that's step one.

13 The title issues are not on the table here. An
14 appropriate certification was made. It was made and
15 verified. In fact, there's a form that the DMME has for well
16 permit applications, I mean, that's in there. You have to
17 sign that to make an application for a permit. If you can't
18 make that certification, you can't apply.

19 The other issue goes to moving the well location.
20 Basically the way the statute was drafted, if the operator
21 wants to hold fast to the original location that it applies
22 for in a well permit, it essentially has to prove that there
23 is no other location in the entire eighty acre unit that it

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1 could be on. Otherwise, the permit's going to be denied if
2 there's an unreasonable impingement. So, I mean, basically
3 the statute says to an operator, if you're going to hold, you
4 know, anybody' feet to the fire on the original location,
5 then it's your burden to show that you can't put this well
6 anywhere else, which obviously would cause an operator to try
7 to relocate because it's going to be rare that you couldn't
8 put it somewhere else. So, the exercise here that was
9 directed to the parties was meet out at this site and work
10 out something and that's what my client did. They
11 moved...they have filed permit revisions to move the well
12 locations from the original location to a less...consistently
13 less objectionable location and under the terms of the
14 statute, I think, that Mr. Wilson did the right thing and I
15 would encourage you to put your seal of approval on his
16 decision. That's all I have.

17 JAMES R. HENDERSON, IV: Can I make one additional
18 comment, and I'm sure counsel will correct me if I'm wrong,
19 but a fundamental rule of statutory interpretation in
20 Virginia is that you do not interpret a provision of the
21 statute so that it has no meaning. The statutes are supposed
22 to be...it is presumed that the legislature meant something
23 when they wrote those words into law. I submit that the

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1 interpretation that the applicant is putting on the
2 requirement for certification, or the right to conduct the
3 operations, would render it essentially meaningless. That's
4 contrary to established law in Virginia. That in looking at
5 the statute the question is, what did the legislature intend?
6 Now, I don't think they intended that you could simply sign
7 a certification which could not then be questioned in order
8 to get this application granted. This was an integral part
9 of the application that has to be made before this permit is
10 granted. Now, I don't think that there is a reasonable
11 interpretation of the law that says that you can simply sign
12 that and there's no consequence and no penalty for being
13 wrong. That this is---

14 MARK SWARTZ: I don't recall saying that there was
15 no penalty for being wrong.

16 JAMES R. HENDERSON, IV: I think you said there was
17 nothing that could be done about it.

18 MARK SWARTZ: I think I said that you could sue
19 for---

20 SANDRA RIGGS: Nothing here.

21 MARK SWARTZ: ---trespass. Okay. I mean, the bet
22 here is that we're right and have a right to operate on that
23 property based on the title work that we've done and we've

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1 certified that we feel we have the right to be on there.
2 You're saying we don't. Well, you know, there's a way to
3 resolve that, but it isn't here.

4 BENNY WAMPLER: Okay. I think we've heard...any
5 questions from members of the Board? We've heard the
6 evidence.

7 DENNIS GARBIS: I...I have a question.

8 BENNY WAMPLER: Mr. Garbis?

9 DENNIS GARBIS: What is it in this case where you
10 have a surface owner and there's a question on...what...what
11 rights do the operator's have to come on somebody's property,
12 and in this case put a pipeline, a well or a road, in
13 conjunction with a...well, I guess, we give...if we...if he
14 has...if they come before the Board and they get a permission
15 to drill a well, I guess, the road is...is part of that.

16 SANDRA RIGGS: The permit does not grant to them any
17 right to go on somebody's surface. All it does is, if they
18 have certified they already have that right, then they're
19 entitled to get a permit that regulates the way that they go
20 about doing that so that there's not environmental harm and
21 the things that are meant to be protected by the statute.

22 Now, the operator has to acquire that right-of-
23 entry, or that right-of-way, in some other way and it can be

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1 done in one of three different ways that I know of right off
2 the bat; one is through the severance deed, which they talked
3 about, can address the issue; one, is through---

4 DENNIS GARBIS: You mean the severance deed allows
5 right-of-entry.

6 MARK SWARTZ: For the mining rights.

7 SANDRA RIGGS: Well, it severs...it severs the
8 mineral.

9 MAX LEWIS: Sometimes it does.

10 SANDRA RIGGS: In Virginia, there is an...there is
11 case law that grants to the owner of the mineral an implied
12 right to access the surface to extract that mineral. So,
13 they can have an implied easement at law. And the third
14 possible way is that they can go to him and negotiate for a
15 right-of-way.

16 MAX LEWIS: Yeah.

17 SANDRA RIGGS: Now, generally, my understanding,
18 based on prior testimony to this Board, is even if they have
19 it in a severance deed, and even if they have an implied
20 easement, for goodwill, they generally go and try to
21 negotiate a right-of-way anyway. If they fail to do that,
22 then they will fall back on either their severance rights or
23 their implied easement rights. Now, I don't know about this

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1 particular case because we don't...but, I mean, under the
2 law, generally, that's how they acquire a right-of-entry on
3 the property.

4 MAX LEWIS: They have that right, but if they do any
5 damages, they are liable for the damages.

6 SANDRA RIGGS: But that's all civil actions in
7 Court---.

8 MAX LEWIS: Yeah, I know it. But they have---.

9 SANDRA RIGGS: ---not before this Board.

10 TERRANCE HALL: Mrs. Riggs, can I ask you a
11 question?

12 MAX LEWIS: It don't excuse them from that.

13 TERRANCE HALL: You said that implied within the
14 severance documents are the rights to obtain those?

15 SANDRA RIGGS: There is case in Virginia that
16 addresses implied easements generated---

17 TERRANCE HALL: But in the case where...where that
18 is excepted and surface rights are retained?

19 SANDRA RIGGS: Well, surface rights...you wouldn't
20 have a severance deed unless surface rights had been
21 retained. That's what a severance deed is.

22 JAMES R. HENDERSON, IV: We...we disagree with you
23 about the implied easement. Okay?

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1 BENNY WAMPLER: We're not going to argue that
2 (inaudible).

3 SANDRA RIGGS: I don't know what your deed says
4 because I---.

5 BENNY WAMPLER: We'll cut...we'll cut that
6 discussion right now.

7 SANDRA RIGGS: Yeah.

8 BENNY WAMPLER: Okay. You know, one thing that we
9 clearly have to deal with, it says, "The only objections to
10 permits or permit modifications which may be raised by
11 surface owners are: The operation planned for the soil and
12 erosion when sediment control was not adequate or not
13 effective; measures in addition to the requirement for a well
14 water protection stream or are necessary to protect fresh
15 baring strata; the permitted work will constitute a hazard to
16 the safety of any person; and," and this was the one that was
17 modified in a more recent year statute, "the location of the
18 coalbed methane well or coalbed methane well pipeline will
19 not unreasonably infringe on the surface owners use of the
20 surface provided, however, that a reasonable alternative site
21 is available within the unit and granting the objection will
22 not materially impair any right obtained in an agreement
23 valid at the time of the objection between the surface owner
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1 and the operator or their predecessors or successors and
2 interest." Now, as to the surface owner, that's...that's
3 361.35(B).

4 CLYDE KING: What is the question for the Board, Mr.
5 Chairman?

6 BENNY WAMPLER: The question of the Board is you
7 have before you a decision by the Director of the Division of
8 Gas and Oil and it's whether or not to uphold that decision,
9 which he...he granted the alternative location in the...in
10 the decision and it's whether to uphold that or to overturn
11 it is their request here.

12 JAMES R. HENDERSON, IV: That and, I think, with
13 regard to the specific items that are allowed by the statute.
14 But the evidence is that the company never considered any
15 drilling sites off of the Hall property; and the statute is
16 written in terms of whether there are alternative,
17 unburdensome drilling sites within the unit, not on this
18 man's property.

19 DENNIS GARBIS: Mr. Hall, have there been any, and I
20 may be treading on tender territory over here, if I'm out of
21 line, please correct me, but, I mean, you know, as far as
22 I'm...I'm trying to put myself in your position over there
23 and somebody comes on my property and, you know, I'm pretty
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1 sensitive to the takings clause of the constitution because I
2 see where that's...at least in my opinion, that's an
3 infringement of the government on the citizen, in my opinion
4 only. So, I think I'm sensitive to that issue. But has any
5 arrangements been made to...for compensation or for the use
6 of your land for...I mean, is that...is that part of this?
7 Is that...Ms. Riggs, am I...am I going out of---

8 BENNY WAMPLER: It's not something that Mr.
9 Wilson...well, I'll let Ms. Riggs answer. But it's not
10 something that Mr. Wilson can consider. Those kinds of
11 negotiation are separate and apart from what we decide.

12 DENNIS GARBIS: So---

13 MARK SWARTZ: Yeah, we're...we're arguing over
14 money. I mean, there have been discussions and we haven't
15 been able to agree on a number. You know, the Direct...I'm
16 not sure that has anything to do with this. But, I mean, the
17 direct answer is there have been proposals and counter
18 proposals and we can't agree on the amount.

19 DENNIS GARBIS: Well, I appreciate your candor,
20 because I...let's cut to the chase here if that's what we're
21 talking about then, let me know that. Then I...that's
22 ...that's---

23 JAMES R. HENDERSON, IV: But I think the other side
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1 of that is if these permits are granted, in order to get
2 anything, Mr. Hall and his brother have to go to Court.

3 MARK SWARTZ: Well, our offers aren't contingent on
4 that.

5 CLYDE KING: Excuse me, Mr. Chairman. Are you
6 inferring that there is some negotiation about paying for the
7 road?

8 MARK SWARTZ: There have. Oh, yeah. There have
9 been. I mean, yeah, there's a pipeline across his property,
10 which we...which we---

11 CLYDE KING: I haven't heard that.

12 MARK SWARTZ: ---negotiated and paid for in the
13 past that's separate and apart from this and we've
14 reached---

15 CLYDE KING: Well, I mean, in this particular one.

16 MARK SWARTZ: In this particular situation, there
17 have been proposals and counter proposals and we can't agree
18 on an amount of money that's acceptable. He wants more than
19 we're willing to pay, but we...you know, we're talking. We
20 haven't talked recently---

21 CLYDE KING: Yeah, I haven't heard that.

22 DENNIS GARBIS: No, that's why---

23 CLYDE KING: I haven't heard that.

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1 MARK SWARTZ: ---because we're not feeling, you
2 know, real good about each other at this juncture, but we've
3 had those discussions.

4 CLYDE KING: Are we allowed to listen to it all?

5 MAX LEWIS: No.

6 CLYDE KING: No.

7 SANDRA RIGGS: It's not part of our consideration.

8 JAMES R. HENDERSON, IV: Yeah, I think there's a
9 difference between saying that they're in negotiations and
10 saying that in the takings viewpoint, are they legally
11 obligated to pay and, I think, the position they're taking on
12 this appeal would lead you to the conclusion that they're
13 not. That what they're doing as far as dealing with land
14 owners, including this one, is purely voluntary on their
15 part.

16 DENNIS GARBIS: And again---.

17 TERRANCE HALL: I have received no...no money
18 whatsoever for the road that has been built across my
19 property.

20 DENNIS GARBIS: Well, see...well, I guess the
21 problem I have with it is when they...yeah, you have the
22 option of going to Court and, of course, I put myself in that
23 position. Nobody wants to spend legal fees and going to
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1 Court with that uncertainty, because obviously by proving
2 this, that gives the operator unfair advantage over you.

3 TERRANCE HALL: Yes, sir.

4 DENNIS GARBIS: And I don't particularly care for
5 that.

6 TERRANCE HALL: An offer was made. Within the offer
7 were several things I found untenable. One of these is that
8 it was un...it was a surface rights into perpetuity. The
9 lease that they initially offered me gave them eternal
10 rights. There was...there was an open-ended thing. Now,
11 gentlemen, someone in my line of title back there sold
12 the...sold the coal, metal, minerals and oil and at that time
13 the standing timber rights and now almost a hundred years
14 later, I'm bound by what this person did, whether or not they
15 really knew what they were doing because Mr. Altizer was
16 illiterate. He signed the contract with an X. That's
17 conjecture. I don't what...what he knew. But this is
18 property that my father purchased, that my brother and I
19 would like to hold onto for our daughters and keep in the
20 family. I was not prepared to sign away perpetual rights to
21 a good portion of my property. That was...and finance not
22 withstanding, I wasn't prepared to do that. In my counter
23 proposal, I did ask for more money and I did limit what I

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1 felt was a reasonable time limit for the use and some
2 requirements for reclamation which was not offered in the
3 original lease proposal. So, I...I tried to be reasonable,
4 knowing that there are two sides. But, Mr. King, yes, to
5 answer your question, there has been no money that has
6 exchanged hands for...for the damage that has been done, nor
7 has any lease been signed.

8 DENNIS GARBIS: Of course, looking at it from the
9 other side of view, I mean, obviously if you drill a well
10 there, I mean, that's going to be there for perpetuity. Now,
11 I maybe...at some point in time if---

12 TERRANCE HALL: A concrete slab.

13 DENNIS GARBIS: ---it doesn't become of use and
14 they....for reclamation, they would withdraw and take all the
15 equipment out.

16 TERRANCE HALL: My understanding is that the coal
17 seam that they're intending to frac and degas is slated to be
18 mined somewhere twelve to twenty years in the future and
19 they're degassing it now in preparation for that. That's my
20 understanding. I'm not sure how accurate I am. But, yes,
21 now and forever, there would be a concrete slab about the
22 size of this floor area. But that's a lot different than a
23 pipeline left in the ground and a fenced off area that they

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1 could come into and drill a 1,000 feet further down to
2 another gas pocket that they might discover in the future or
3 a road that they're under no obligation to reclaim.

4 JAMES R. HENDERSON, IV: Now, these wells, as such
5 as we understand it, have a limited life expectancy. There
6 would be a point in time where they produce no more gas. At
7 which point they will be capped and taken out of use.

8 TERRANCE HALL: As...as far as the money issue and,
9 Mr. Lewis, if I approached you and asked to purchase
10 something from your...from your garden and you gave me the
11 right to do that. If I had purchased this for four or five
12 years, you know, it would be different if I said, well, I
13 have the right to pull a truck across your yard to get these
14 things out of your garden and it would be a lot different if
15 I offered you \$5 or mowed the grass once or if I offered you
16 \$200 for damaging your yard. So, while money is an issue,
17 that's not the primary issue. Okay, so, that was my...that
18 was my reasoning and the reason that I approached it that
19 way.

20 BENNY WAMPLER: Any other questions from members of
21 the Board?

22 MAX LEWIS: I'd like to see you all get together and
23 make some kind of an agreement between both of you, if it's

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1 possible, until you all can agree on the location.

2 CLYDE KING: I certainly agree and I don't see
3 anything with our Director at all. I wish, Mr. Chairman, we
4 could postpone anything on this maybe until our next meeting
5 and see if they can't come up with some reasonable---.

6 MARK SWARTZ; Well, I guess, you know, I need ask a
7 question point blank because the position is there is no
8 location on either of their tracts where they want at all.
9 So, if that's the position to send us back to his property to
10 look further, I think it's an exercise in futility. I'm not
11 saying it in a negative way, but, you know, we're willing to
12 look on his land and entertain other alternatives, you know,
13 no question about it.

14 CLYDE KING: Mark, I think the question I have, and
15 maybe I'm totally wrong, is that he has offered to take a
16 certain amount of money. You've offered to take...give a
17 certain amount. You're apart.

18 DENNIS GARBIS: You're a very creative man, Mr.
19 Swartz.

20 MARK SWARTZ: We're still going to have to do that,
21 whether or not you issue a permit. I mean, all we're talking
22 here is leverage and you're putting---.

23 CLYDE KING: I don't think the permit is not a
24

1 problem, is it? He has already got the permit.

2 MARK SWARTZ: No, we don't.

3 SANDRA RIGGS: No, that's what's being appealed.

4 MARK SWARTZ: Well, yes...well, it's being appealed.

5 I mean---

6 CLYDE KING: Being appealed, but you---

7 MARK SWARTZ: Right. He has overruled the
8 objection. But, you know, I'm prepared to leave today and
9 continue to talk money because that's what we've been talking
10 and we're going to continue to talk money because, as Max
11 points out, you know, there are surface damages here. That
12 doesn't go away. I mean, that's always going to be under
13 consideration. You're better off working this stuff out than
14 not. But, you know, I don't want to have to send my boys
15 back out in the field on a surface location alternative when
16 we've basically been told, you know, if you don't cut a deal
17 with me, I don't want you on my property because I...I
18 just---

19 DENNIS GARBIS: Mr. Swartz---

20 CLYDE KING: I think you...you probably---

21 DENNIS GARBIS: You're are very articulate and a
22 very persuasive person. I'm sure you could do very nicely in
23 this endeavor.

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1 JAMES R. HENDERSON, IV: I think the---

2 MARK SWARTZ: I don't...I don't have a checkbook,
3 though. So, I never have these discussions.

4 JAMES R. HENDERSON, IV: I think Mr. Hall has
5 articulated his concerns about the matter. Obviously, he and
6 his brother would prefer not to have the wells on his
7 property. But if they're going to have the wells on the
8 property, their concerns are not to lease these access rights
9 in perpetuity, if they don't have to, and to have the least
10 objectionable impingement on their property rights and fair
11 compensation for what they're losing. I mean, in looking at
12 this situation, there's two flat spots...well, actually
13 there's three flat spots on this ridge. One, is where Mr.
14 Hall lives and these are the other two. Other than that, you
15 know, this stuff is goat country. This is a material
16 disadvantage to have these things there and I don't think
17 it's unreasonable to say if you're not willing to put it
18 somewhere else in this drilling unit, it's because it's
19 saving you mega bucks to not have to drill right in the
20 middle of these squares. You ought to be a little bit more
21 reasonable and not...not be asking them to sign away these
22 rights forever because these wells have a useful life.
23 They're going to go out of production eventually and yet the

24

1 landowners would be stuck with this permanent impingement on
2 their property rights for no apparent purpose that we can
3 ascertain. So, what I'm saying in Mr. Hall's behalf and what
4 in the old movies "his mouth piece", although frankly I tend
5 to doubt that Terry needs one, he does very well at
6 explaining his positions. The Halls have, never at any
7 point, said we refuse to negotiate further and I think that
8 they have set forth exactly what their concerns are in no
9 uncertain terms.

10 TERRANCE HALL: The last proposal that I gave
11 to...to...I believe it was to Mr. Arrington by way of Mr.
12 Henderson was never responded to.

13 JAMES R. HENDERSON, IV: And since it---.

14 BENNY WAMPLER: That's a proposal for settlement or
15 a proposal for location or---?

16 MARK SWARTZ: He wanted \$25,000.

17 BENNY WAMPLER: Have you ever proposed a location?

18 TERRANCE HALL: When I met with Mr. Arrington and
19 Mr. Elswick, I was doing so under the direction of Mr.
20 Wilson. My understanding was that as an Officer of the
21 Virginia Board that he was directing me to do something and
22 so I complied. I didn't like it, but I complied. I told
23 them that the...they were actually two or three places that I

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1 discussed with them. They rejected several of them off hand,
2 just said that that's not an option. Finally, I showed them
3 the two locations that I expressed, and I believe that
4 everyone that was there would remember that I said, this is
5 less objectionable than the original site. Gentlemen, having
6 a tooth filled is objectionable, but not as objectionable as
7 having a root canal. So, I really didn't want either, but it
8 was less objectionable to have this other site. It would be
9 less intrusive, still intrusive, still lowering my property
10 values, still tying up a good portion of my useable property
11 of which I would still be paying taxes on. I have a problem
12 with that. I'm sorry. It bothers me to pay taxes on some
13 land that somebody else is using.

14 JAMES R. HENDERSON, IV: And since it obviously
15 doesn't harm us for this matter to be carried over to the
16 next meeting, we do not object.

17 KEN MITCHELL: Mr. Chairman?

18 BENNY WAMPLER: Mr. Mitchell?

19 KEN MITCHELL: Being the...being the very junior
20 member of this Board, I...I realize I have a whole lot to
21 learn. But I...but I would like...you know, I don't like to
22 see things hanging in mid-air. I would make a formal motion
23 that we uphold DGO Director's rulings and I would ask for a
24

1 second. At that point, I would like to comment on my reasons
2 and my...and my reason for making this motion.

3 BENNY WAMPLER: I have a motion. Is there a second?

4 MASON BRENT: I second.

5 BENNY WAMPLER: Motion and second. You may comment.

6

7 KEN MITCHELL: Mr...thank you, sir. You know, we've
8 listened to a lot things here and...and everything that's
9 been explained is that we can't look at the money end of it.
10 I...you know, I'm sorry. As much as I feel for the
11 landowner, I cannot look at the money end of it. That...that
12 is a decision that will set on that side of the table. As
13 far as loss of useable property, you know, there is appeals
14 to the Commissioner of Revenue, or someone, and obviously, if
15 you can show there's...there's a loss of useable property, I
16 think, the Commissioner of Revenue should lower your property
17 values, and I think your attorney could submit that to...or
18 yourself could do that. We...we have a very intricate case
19 here where there has...there has been some negotiation,
20 but...but not final negotiation. I believe there has to be a
21 resolution here and I think the resolution is that we've got
22 to go on with the program. We're under threat from overseas.
23 The people are kicking sand in our face because they feel

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1 that they've got America by the...you know, by the throat.
2 And so I...you know, even though I don't think they do, I
3 think we have to look at our energy sources. But by the same
4 token, Virginia, by all statute, is a property rights state.
5 Virginia is a property right state. And my county is
6 Stafford, we're very concerned about people's property
7 rights. So, I think the Court would take very strong
8 objection if there were a violation of someone's property
9 rights. I think that has got to be decided there, and here
10 again, if it's costly, God Bless America, I'm sorry for that,
11 but it's the American way. We don't...we don't have
12 a...there's no alternative source. So, I think we've got to
13 go on with the program. I think Mr. Wilson gave...gave a
14 very adequate...I read this last night and I...you know,
15 sitting in a hotel room by myself, I had nothing else to do
16 but do some serious reading. And the appeal caught my eye
17 more than any other item. So, I...I read all that was here
18 and I appreciate the testimony from all parties concerned. I
19 thank you for your testimony, but...but I think we've got to
20 go on with the program and I...and that's no offense to
21 anyone here, but I think we need to go on with it.

22 CLYDE KING: Mr. Chairman, I have a substitute
23 motion. I respect everybody involved in this, but I move

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1 that we delay this until next month.

2 DENNIS GARBIS: I second it.

3 BENNY WAMPLER: Motion and second on the substitute.

4 Any further discussion?

5 (No audible response.)

6 BENNY WAMPLER: All in favor of a substitute motion,
7 signify by saying yes.

8 (Max Lewis, Clyde King and Dennis Garbis signify
9 yes.)

10 BENNY WAMPLER: We have three yeses.

11 (Benny Wampler and Sandra Riggs confer.)

12 BENNY WAMPLER: No, it doesn't. It's a tie. Roll
13 call. Yes.

14 KEN MITCHELL: I was just going to clarify something
15 and I presume that our legal counsel is also our
16 parliamentarian. In the case of a tie, according to
17 Roberts---

18 MAX LEWIS: Right here.

19 KEN MITCHELL: Right. Okay.

20 BENNY WAMPLER: Well, that's what...I was just going
21 to roll call it and see...just have it on record.

22 COURT REPORTER: Mr. Brent?

23 MASON BRENT: I vote no with regard to the
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1 substitute motion.

2 COURT REPORTER: Mr. Mitchell?

3 KEN MITCHELL: I vote no in regards to the
4 substitute motion.

5 BENNY WAMPLER: No, in regard---.

6 MAX LEWIS: I vote yes.

7 COURT REPORTER: Mr. King?

8 CLYDE KING: Yes.

9 COURT REPORTER: Mr. Garbis?

10 DENNIS GARBIS: Yes.

11 KEN MITCHELL: According to Roberts Rules Of Order,
12 if that's something that we base our meeting on, a tie dies.

13 BENNY WAMPLER: That's right.

14 MAX LEWIS: That's right.

15 BENNY WAMPLER: That's right.

16 MAX LEWIS: Yes, you're right.

17 BENNY WAMPLER: That's what you have to base it on.
18 We don't have anything else, but---.

19 CLYDE KING: You got nothing else to do.

20 BENNY WAMPLER: Now, we vote on the original motion.

21 We have a motion and it's seconded. All in favor, signify
22 by saying yes.

23 (Mason Brent and Ken Mitchell signify yes.)

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1 BENNY WAMPLER: Opposed, say no.
2 (Max Lewis, Clyde King and Dennis Garbis signify
3 no.)
4 BENNY WAMPLER: A roll call.
5 COURT REPORTER: Mr. Brent?
6 MASON BRENT: I vote yes.
7 COURT REPORTER: Mr. Mitchell?
8 KEN MITCHELL: I vote yes on my motion.
9 COURT REPORTER: Mr. Wampler?
10 BENNY WAMPLER: I vote yes on the motion.
11 COURT REPORTER: Mr. Lewis?
12 MAX LEWIS: I vote no.
13 COURT REPORTER: Mr. King?
14 CLYDE KING: No.
15 COURT REPORTER: Mr. Garbis?
16 DENNIS GARBIS: No.
17 BENNY WAMPLER: A new motion. Let's see how creative
18 we are.
19 DENNIS GARBIS: Could we possibly...could these
20 people step outside and give them an opportunity to get some
21 fresh air and to do what else while we got to item number
22 twenty and then you come back in here?
23 MARK SWARTZ: Well, you already have my check on
24

1 item twenty. So, I don't need to be here.

2 CLYDE KING: Item twenty.

3 MARK SWARTZ: See, I'm just like the full-time guy.
4 They can't get rid of me.

5 DENNIS GARBIS: And I appreciate that. I tell you
6 what, you're a regular fixture over here.

7 MARK SWARTZ: You know, at least I brought the money
8 for number twenty.

9 DENNIS GARBIS: We greatly appreciate that.

10 MARK SWARTZ: I'm trying to keep it short.

11 DENNIS GARBIS: That's right.

12 BENNY WAMPLER: We can't really do that since he's
13 on the docket and I'd have to call the docket.

14 DENNIS GARBIS: Okay.

15 MARK SWARTZ: Well, you can call...they...I don't
16 know if you know this, but you can confer with counsel. I
17 mean, you can take a break and get us out of here and meet
18 among yourselves to---.

19 CLYDE KING: We can go into executive session.

20 MARK SWARTZ: ---talk to Ms. Riggs.

21 (Board members confer among themselves.)

22 MARK SWARTZ: Or you could accommodate...you could
23 deny the petition for appeal, but stay your denial for thirty

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1 days to give the parties thirty days to negotiate from my
2 standpoint. I mean, I don't know if that gets---

3 DENNIS GARBIS: Well, I think that's what we
4 had...that's what we originally--.

5 CLYDE KING: That's what we thought we was doing.

6 MARK SWARTZ: Well, it's a little different.
7 But---

8 KEN MITCHELL: Mr. Chairman, I would make a
9 substitute motion. No, I'm going back to my original motion
10 because the first two are dead. I would make a motion for
11 the...that we approve the DGO Director's decision and request
12 a sixty day scenario for them to come back and have a
13 negotiated settlement.

14 MARK SWARTZ: A sixty day stay. Is that---?

15 CLYDE KING: That's a sixty day stay?

16 KEN MITCHELL: Right.

17 CLYDE KING: I second.

18 BENNY WAMPLER: Motion and second.

19 DENNIS GARBIS: Now, what is this going to
20 accomplish? I mean, because---

21 KEN MITCHELL: Well, I...we have a very---

22 CLYDE KING: It does what we talked about. It puts
23 it off for sixty days.

24

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1 DENNIS GARBIS: I know. But, I mean, it has a full
2 force of effect. He's got---

3 MARK SWARTZ: No, we're delayed sixty days from
4 starting any work on these two sites, which will give us an
5 incentive to go back and try to negotiate. I mean, if we
6 work something out, great, all of this goes away; and if it
7 doesn't, sixty days from now, he's upheld and we move on, is
8 the way I understand what you're proposing.

9 CLYDE KING: Yeah.

10 BENNY WAMPLER: Yeah, he said---

11 MAX LEWIS: We don't know for certain that you're
12 going to do anything, though.

13 DENNIS GARBIS: Yeah, what...what do we have---

14 MARK SWARTZ: You guys have dealt with me for years.
15 I guarantee you---

16 DENNIS GARBIS: That's exactly why I'm saying it.

17 MARK SWARTZ: We're going to make another offer.
18 That we're going to make another offer. We may not
19 make...reach an agreement, but we're going to make another
20 offer and see what happens.

21 CLYDE KING: Then I think we---

22 MARK SWARTZ: And I can't---

23 CLYDE KING: ---accomplish what we want to
24

1 accomplish.

2 MAX LEWIS: No.

3 CLYDE KING: Yeah, we have. He's willing to talk
4 about it. They're willing to talk---

5 KEN MITCHELL: Mr. Chairman?

6 MAX LEWIS: Well, they may be willing to---

7 KEN MITCHELL: I believe...I think both parties need
8 to take a look at this Board. It's a three to three split.
9 So, I mean, don't...I mean, if you all look at the cards, you
10 need to do something. I think by doing something, I think
11 you need to get together and I think the sixty day scenario
12 gives you ample time to get together and gives the attorneys
13 time to talk to each other and gives---

14 MARK SWARTZ: Because the clients usually do better.

15 KEN MITCHELL: Right. Well, and that's---

16 CLYDE KING: And cheaper.

17 KEN MITCHELL: That's fine.

18 MARK SWARTZ: And it's more cost effective.

19 BENNY WAMPLER: And obviously, we want to send a
20 clear message that we prefer you all to work it out rather
21 than us trying to work it out.

22 CLYDE KING: I think that's what we want to---

23 DENNIS GARBIS: Precisely.

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1 BENNY WAMPLER: You know, we're trying not to get
2 over into that territory.

3 CLYDE KING: Yeah.

4 TERRANCE HALL: I understand that. But if I may
5 comment, you made an illusion to an energy shortage and
6 foreign countries kicking sand our face---

7 BENNY WAMPLER: I'm going to...I'm going to cut you
8 off because we're...we have to make a decision here.

9 TERRANCE HALL: Okay.

10 BENNY WAMPLER: I have the Board's motion---

11 CLYDE KING: An (inaudible) question.

12 BENNY WAMPLER: ---and a second and open for
13 discussion with the Board. I'm sorry.

14 TERRANCE HALL: Okay. I was---

15 BENNY WAMPLER: Nothing towards you. We just can't
16 do that right now.

17 TERRANCE HALL: Could one of them ask me a question?

18 BENNY WAMPLER: Any other discussion?

19 MAX LEWIS: Yeah, I've been in this situation before
20 and I know as far as Mark and them is concerned, whether they
21 do anything or not, they're going to get their way. I know
22 that. But I think that they ought to try to get together and
23 work this thing out and be kindly agreeable with both sides.

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1 CLYDE KING: I think that's what we're doing.

2 MARK SWARTZ: We're going to make another offer.
3 We're going to take another stab at it and it's not going to
4 be me. Okay? It will be people that, you know, do this for
5 a living; and we settle a huge amount of stuff that you never
6 see. I mean, no kidding.

7 MAX LEWIS: Well, I know that. I know that.

8 MARK SWARTZ: You know, this is our major league
9 project. Now, you don't see that many unhappy people here,
10 which means we settle a lot of them.

11 BENNY WAMPLER: I'll cut you off, too.

12 CLYDE KING: A question---

13 MARK SWARTZ: So, we'll take another stab it.

14 BENNY WAMPLER: That's the question here. We have a
15 motion and a second. All in favor, signify by saying yes.

16 (All members signify yes except for Dennis Garbis.)

17 BENNY WAMPLER: Opposed, say no.

18 DENNIS GARBIS: No.

19 BENNY WAMPLER: One no, that carries. A sixty day
20 stay.

21 (Members confer among themselves.)

22 TERRANCE HALL: Mr. Wampler, a question. If
23 sometime in the future, this happens to go into litigation by
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1 your vote...by voting to uphold the permit, even with the
2 stay, doesn't that put your weight on...in favor of PGP over
3 me if this should over go into litigation?

4 KEN MITCHELL: Mr. Chairman---?

5 BENNY WAMPLER: I'll let you ask your attorney.

6 SANDRA RIGGS: Well, you can appeal this decision
7 that they just made if that...that's your prerogative, to
8 take an appeal of their decision.

9 JAMES R. HENDERSON, IV: Well, hopefully we wouldn't
10 have to do that for sixty days.

11 BENNY WAMPLER: Right.

12 JAMES R. HENDERSON, IV: I mean, I assume that...
13 that's being attempted.

14 BENNY WAMPLER: That's right. Nothing is in effect
15 for sixty days.

16 BOB WILSON: Mr. Chairman, let me clarify our
17 responsibility on this. We are going to put a stay on the
18 permit for sixty days from today, is that correct?

19 MAX LEWIS: Right.

20 SANDRA RIGGS: Has the permit been issued?

21 BOB WILSON: The permit is issued. Yes.

22 MARK SWARTZ: Right.

23 CLYDE KING: That's what I thought.

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1 SANDRA RIGGS: So, you're staying the drilling?

2 BENNY WAMPLER: Staying on any activity on the
3 permit for sixty days.

4 MARK SWARTZ: Well, we haven't started construction
5 on the sites is my understanding.

6 LESLIE K. ARRINGTON: No.

7 (Board members confer among themselves.)

8 MARK SWARTZ: We have not started construction on
9 either one of these. So, that's not a problem for us. We
10 can live with that.

11 (Board members confer among themselves.)

12 BOB WILSON: Yeah. They were the only two...the
13 only two---.

14 (Mark Swartz confers with Leslie K. Arrington.)

15 CLYDE KING: That's only 51.

16 BOB WILSON: R-50 and R-51.

17 MARK SWARTZ: 50...R-50 and 51.

18 BENNY WAMPLER: Okay. One thing that...that...to
19 get over some of this concern is to report at maybe at the
20 next Board meeting the progress on the meeting.

21 MAX LEWIS: To see what progress you've made.

22 CLYDE KING: I'd like to...yeah, I think we need to
23 do...have---.

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1 MAX LEWIS: Yeah. Then maybe something---.

2 BENNY WAMPLER: With the intent, and you're looking
3 for an intent of...clarification of the intent of the motion
4 which carried, and as I understand it, that intent was a stay
5 on activity for sixty days. The motion was to uphold the
6 inspector's decision, but a stay on activity for sixty days.

7 CLYDE KING: Right.

8 BENNY WAMPLER: And report back next time on...on
9 the progress to date. Thank you.

10 TERRANCE HALL: Thank you. Thank you, Ms. Riggs.
11 Thank you, gentlemen.

12 BENNY WAMPLER: The next item on the agenda, when I
13 get to it, the Board will consider a recommendation by the
14 Division of Gas and Oil Director that the Board impose a
15 civil charge against Pocahontas Gas Partnership pursuant to
16 VGOB-92-0529-022. This is docket number VGOB-00-03/21-0788.
17 We'd ask the parties that wish to address the Board in this
18 matter to come forward at this time.

19 MARK SWARTZ: Mark Swartz and Les Arrington on
20 behalf of Pocahontas Gas Partnership.

21 BOB WILSON: Bob Wilson as the Director of the
22 Division of Gas and Oil.

23 BENNY WAMPLER: Go ahead and state your name.

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1 KENNETH OSBORNE: My name is Kenneth Osborne. I'm
2 one of the Linkous Horn heirs.

3 BENNY WAMPLER: Mr. Wilson, do you want to lead off?
4

5 BOB WILSON: Yes. In response to the November Board
6 hearing in which in answer to certain questions, the
7 representative of Pocahontas Gas Partnership indicated that
8 certain funds that was supposed to be escrowed had actually
9 been internally suspended. Those monies were not being
10 deposited into the account in accordance with the Board
11 Order. A Notice of Violation was issued on Unit PGP T-37,
12 permit number 3592 in response to this; and in response to
13 that a Notice of Violation, a recommendation of civil charge
14 has been assessed according to Board Order 92-0529-0226 and
15 the Civil Charge procedural rule, which is a portion of that
16 Order. The procedural rule provides tables for determining
17 the amount of the violation, the seriousness they are and
18 such. The seriousness of the violation was taken from table
19 one. It's pretty explicit under damage to correlative rights
20 or resources and failure to make a payment in accordance of
21 the Board Order carries three to four points. Four points
22 were assessed on that matter. Under the degree of
23 negligence, which is table two, the points available for that
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1 is zero to six. Four to six signifies gross negligence,
2 which is defined as knowing or intentional conduct. The
3 testimony indicated that this was indeed knowing conduct. We
4 assessed five positive points for the degree of negligence.
5 Good faith points are available under the rule according to
6 how the operator complied with the Notice of Violation and
7 the abatement thereof. A minus four points, which is the
8 maximum allowable, was given here because actually the Notice
9 of Violation was abated very quickly after the Notice was
10 issued. Actually, the abatement took place as a response to,
11 I believe, the Board Hearing itself and predated the
12 requirements of the Notice of Violation by some time. So,
13 that's under the heading of extraordinary measures taken to
14 abate the violation. That gave us under the plus/minus a
15 total points of five which, according the procedural rule,
16 would require a civil charge of \$650. A history of
17 violations on that site, there were no violations against
18 that site prior to the date of...of this action. So, that
19 requires that the base civil charge amount be reduced by 10%,
20 which is \$65. Leading to a total recommended civil charge of
21 \$585.

22 BENNY WAMPLER: Any questions for Mr. Wilson?

23 (No audible response.)

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1 BENNY WAMPLER: Mr. Osborne, do you have
2 anything---?

3 KENNETH OSBORNE: Not on that. No, sir.

4 BENNY WAMPLER: Mr. Swartz, do you have anything?

5 MARK SWARTZ: Actually, this particular unit, when
6 Mr. Arrington was here in November, he was talking about the
7 two units that Danny McClanahan was in, in terms of
8 suspending that, and it turned out that no monies had been
9 paid late on those units and this unit came as a complete
10 surprise. Your notice in the letter, at least that was sent
11 to Les by Mr. Wilson, this suspense...production started in
12 December of '98 and...and, I'm sorry, there was a
13 Supplemental Order...it was pooled in June of '98. There was
14 a Supplemental Order of March of '99. But production began
15 in December of '98, about eleven or twelve months before we
16 were here in November. Les was completely unaware of the
17 suspense until he checked on all of the units that were
18 discussed at the...at the hearing in November. When he got
19 with the folks from Conoco who do the accounting in Ponca
20 City, they had no explanation as to why they had suspended
21 this stuff for eleven months. I mean, well before the
22 dispute with Mr. McClanahan and there's...I mean, we don't
23 have an explanation as to why this was suspended. It

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1 certainly was not in response to any of the pooling hearings
2 in the summer since it pre-dated that by about six months.
3 So, it's clear that, you know, someone in the accounting
4 department just booted this and we have tendered our check in
5 the recommended amount. We've straightened this out and we
6 apologize to the Board. I mean, it was clearly a mistake.
7 We don't have an explanation from Ponca City as to...as to
8 why the mistake occurred in December of '98. But, you know,
9 it was a mistake. We apologize. We've paid, you know, the
10 recommended civil charge. I gave Ms. Riggs a check for that
11 this morning. If the Board changes the amount, we'll
12 certainly change the check. But we don't want to give any
13 impression that this was something that we were happy about
14 and we certainly apologize and have tendered...tendered the
15 recommended amount.

16 BENNY WAMPLER: Any questions or comments? Mr.
17 Osborne?

18 KENNETH OSBORNE: Unless I misunderstand and I am,
19 I'm sorry, but did Mr. Swartz just say that Mr. Arrington
20 wasn't aware that this was a suspended account?

21 MARK SWARTZ: You can answer.

22 LESLIE K. ARRINGTON: Okay. Yeah, you were...you
23 were referring back to T-36 and S-36. Now that's the one you
24

1 were referring to. T-37 at that time wasn't even a subject
2 to it...to that discussion. When I went to checking on the
3 T-37, that's...I mean, all of the units that Mr. Wampler told
4 me to check on, that's when I found out that this one was
5 suspended. I did...I had no idea that this one was
6 suspended. In that discussion, we were speaking to S and T-
7 36.

8 KENNETH OSBORNE: But you were aware that there was
9 no money in those accounts because you...because you said you
10 brought it up on yourself---.

11 LESLIE K. ARRINGTON: In those two. That's correct.
12 But not...not T-37. Not T-37, because I knew there was a
13 dispute in the other two.

14 KENNETH OSBORNE: Okay.

15 LESLIE K. ARRINGTON: And we were trying to, you
16 know, get it set up proper...what we felt was proper before
17 the money went into it.

18 KENNETH OSBORNE: Okay. On those accounts that we
19 had checked on, there's something...I'm just...I'm...I don't
20 have an answer for it. I mean, I'd like an explanation, and
21 if I'm not mistaken, Mr. Wilson was also concerned about
22 the...the great difference in these was when I had these
23 units checked on as an actual escrow account, the amount of
24

1 money is there, so on and so forth, and I gave Mr. Wilson
2 the...the unit numbers and stuff and they was listed as A and
3 B and so on and so forth, which he, in fact, got back with me
4 and told me that just because it didn't state on here it was
5 A or B, that it still it represents such. But there was
6 another one that was, if I'm not mistaken, I don't have the
7 paperwork here in front of me, it was S-35 and I had a...the
8 account checked on that and that account...I mean, these
9 accounts show all together reflecting somewhere in the
10 neighborhood of little over \$3,000 as of...of December the
11 31st, 1999; and then the other well that I had checked on,
12 this S-35, it showed in the escrow account, if I'm not
13 mistaken, a balance of \$.27.

14 BOB WILSON: I don't remember the...the exact
15 amounts and to be quite honestly, I can't put that with a
16 specific unit right here. But there was one of the units
17 that had a matter of cents in it, less than a dollar. I
18 don't remember which one it is.

19 BENNY WAMPLER: Those are producing...producing well
20 in that unit and (inaudible)?

21 BOB WILSON: Again, I---.

22 LESLIE K. ARRINGTON: You know, I just can't answer
23 it. Not---.

24

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1 BENNY WAMPLER: Okay.

2 BOB WILSON: I...I don't remember which one it is.
3 I didn't bring notes with me on that today.

4 BENNY WAMPLER: But clearly S-35 is the one you
5 were questioning?

6 KENNETH OSBORNE: Yes, sir.

7 LESLIE K. ARRINGTON: We'll check on it. That's no
8 problem.

9 KENNETH OSBORNE: I inquired on it and you sent me
10 a fax and the fax stated that the account for that unit had,
11 I could be off a cent or two here, but roughly \$.27

12 BENNY WAMPLER: The unit is what's important to us
13 right now.

14 KENNETH OSBORNE: Yes.

15 BENNY WAMPLER: So, we can check that out and make
16 sure there's not something suspended on that.

17 CLYDE KING: Mr. Chairman, do we just need a motion
18 to accept what Mr. Wilson---?

19 BENNY WAMPLER: That's right, or to change it if you
20 have any problems---.

21 CLYDE KING: I move it.

22 DENNIS GARBIS: I second.

23 BENNY WAMPLER: We have a motion to accept the civil
24
25

1 charge and a second. Any further discussion?

2 KEN MITCHELL: Mr. Chairman?

3 BENNY WAMPLER: Mr. Mitchell?

4 KEN MITCHELL: Not to belabor the point, the...when
5 I was reading this, I noticed that the Notice of Violation
6 was issued 11/24/99, and then a letter was written to Mr. Bob
7 Wilson that, on December the 2nd, 1999, Debbie at First
8 Virginia Bank confirmed the checks were received that day.
9 So, when I look at 11/24/99, and then when I look at December
10 2, there's thirty days in November. So, that leaves six and
11 two. So, there's eight total calendar days, not business
12 days, but calendar days. So, I believe that they operated
13 somewhat quickly, assuming there may have been a weekend in
14 there. I don't have my calendar with me for 1999. You know,
15 a violation can be a violation, but a willful violation would
16 be a terrible violation. A non-wilful violation is not...I
17 don't think a terrible violation. Under testimony...under
18 sworn testimony, it is stated that it is a non-willful
19 violation, which...which under Virginia statute, you know,
20 I'm going into criminal codes and other things, a non-willful
21 violation is not as strong as a willful violation. So, I...I
22 think there was a mistake made. I'm sorry that it happened.
23 I'm sorry for the gentlemen that it happened to. In a case

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1 like this where immediate...immediate response of a grand
2 total of eight days, I...I think acted in a responsible
3 manner. I...I would wish that everyone would act in a
4 responsible manner upon receiving a Notice of Violation. I
5 think eight days is...is commendable. You know, I'm...I'm
6 surprised that it was done that quickly.

7 BENNY WAMPLER: Any further discussion?

8 KENNETH OSBORNE: If I may, Mr. Wampler---?

9 BENNY WAMPLER: I can't do it right now.

10 KENNETH OSBORNE: Oh.

11 BENNY WAMPLER: We can as soon as we finish the
12 vote. Okay?

13 MASON BRENT: I...I would just comment on that a
14 little bit. I think Mr. Wilson has given...has recognized
15 how quickly they corrected it in giving them four credit
16 points here.

17 MAX LEWIS: He give them four points for that.

18 MASON BRENT: I'm real...personally, I'm
19 (inaudible). I'm very, very sensitive to the fact these
20 folks need to be very responsible in not making these kinds
21 of mistakes. I'm agreeing that when it comes to a vote, I
22 think we need to uphold the violation to send a message that
23 this...whether it's your accountants or whoever it is, they

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1 need to do this stuff right.

2 BENNY WAMPLER: Yeah. And it does need to be
3 immediate because, you know, you don't need a suspense...you
4 don't need accounts held in suspense if this says thirty-five
5 is there, you know, that's another issue of concern that we
6 have to look into. Any other discussion?

7 (No audible response.)

8 BENNY WAMPLER: All in favor, signify by saying yes.

9 (All members signify yes.)

10 BENNY WAMPLER: Opposed, say no.

11 (No audible response.)

12 BENNY WAMPLER: You have approval. Now, you may
13 comment before we close.

14 KENNETH OSBORNE: All right. Mr. Wampler,
15 just...just as to that goes during...on that hearing you
16 stated a couple of times...which they agreed to have that
17 money in the account within fifteen days, at the end of it
18 you also ordered that it be in there within fifteen days.
19 They did not comply with that because they went over fifteen
20 days before they had the money in there.

21

22 The only other thing I would like to bring up is,
23 I'm well aware that the Board does not do these decisions on

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1 deeds, money and so on and so forth, but I think it should be
2 recognized that when companies, such as Consol or Pocahontas,
3 submit information that they attest to where people...certain
4 people owns the land and coal and so on and so forth, I have
5 addressed with you a couple of times on this matter, also
6 with Mr. Wilson, and which I, in fact, took the proper steps
7 that you instructed me to try to talk to Mr. Arrington about
8 it and I guess they just finished their...maybe didn't want
9 to talk about this, but what this concerns is, and it was
10 brought up earlier about Hurt McGuire. Hurt McGuire owned
11 all the coal or owned the coal that has to do with the lot of
12 this land. At a meeting, we asked if they would provide
13 proof that they owned it. Mr. Arrington instructed us that
14 he would send us a copy verifying proof. Which what he sent
15 was a copy of a deed dated the 17th day of August, 1893
16 between a W.P. Stilwell and his wife, and between a Mr. J. M.
17 McGuire and a John B. Hurt of where they purchased this land
18 from Mr. Stilwell containing 143.10 acres and this was their
19 proof about where Hurt McGuire owns the coal. Again, let me
20 say this deed was dated in 1893. But when I done a deed
21 survey check, and one of the problems a lot of my people down
22 here are having, they cannot afford these lawyers at \$50 and
23 \$100 an hour to research these deeds and they depend a lot on
24

1 me to go through this, and I have a lot of time in these
2 deeds, but what I have come up with was a deed that was made
3 between a Lewis M. Robinette, and his wife from Kentucky, to
4 a Mr. W.P. Stilwell in Buchanan County. The deed was made
5 and it mentions 80 acres. But it states Mr. Stilwell only
6 purchased one-eighth of this 80 acres and if you break it
7 down, it's 10 acres, 12 acres or whatever. And of all of my
8 findings, that's what he owned at that particular time up
9 until the 17th of November, 1897 when he obtained from a
10 James H. Meadow another 50 acres and another 12 acres. Mr.
11 Arrington's explanation to this was it was sold...the deal
12 was made by boundary and not by acres. Whether it was or
13 not, doesn't change the fact that the only thing that I show
14 of Mr. Stilwell owning was the one-eight percent of 80 acres
15 which he obtained from Mr. Robinette in 1887 and it goes down
16 here to the deal made with Hurt McGuire in 1893, which states
17 143.10 and this was in 1893 and it wasn't until 1897 that Mr.
18 Stilwell obtained another 50 and another 12 acres from a
19 James H. Meadow.

20 So, I don't...I don't see...I don't understand why
21 they can, you know, present evidence like this they said was
22 thoroughly checked. If it was thoroughly checked...I'm not
23 an attorney. I do not claim to be, but it's...but the type

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1 of deeds that give some of them are legible. This is what
2 they sent us. The bottom part is not real legible, but we
3 managed to decipher it anyhow. The rest of these deeds, it
4 clearly states that Mr. Stilwell did not own a 143.10 acres
5 to make a deal with Hurt McGuire in 1893; and that only...not
6 only puts the Horn subject to as far as the acreage that
7 we...the mineral rights reserved for us, also the coal goes
8 with that, but you know, it also goes on to whoever else Hurt
9 McGuire made deals with whether it would be Coke Raven, Coke
10 Carbon, Pocahontas Gas Partnership, because in these packages
11 we get, Pocahontas Gas Partnership and Consol makes mention
12 that they own above and below Tiller seams 100% of the coal
13 and they say that they made the deal and they obtained it
14 from Hurt McGuire and it goes down that Hurt McGuire obtained
15 it from a J.P. Stilwell. Mr. Stilwell did not own the land.
16 So, how did they obtain it from him?

17 BENNY WAMPLER: Now, you know, and as I've told you,
18 you know, they're running a risk of trespass there. If
19 they're wrong, they...then, you know, and you can prove that
20 you certainly, you know, have a cause of action there I would
21 think depending on what...what you obtained. I appreciate
22 your time.

23 KENNETH OSBORNE: I just...I just wanted to make
24

1 mention to the Board here because that's the only way that I
2 see where it's recognized is to, you know, just...I just have
3 to chip away at this one piece at a time.

4 BENNY WAMPLER: We understand. Thank you.

5 BOB WILSON: To answer your question earlier I did
6 find my notes here, the S-37 unit had \$57.97 in it. That was
7 the one that we---.

8 KENNETH OSBORNE: No, sir.

9 BOB WILSON: Is that not the one you're talking
10 about?

11 KENNETH OSBORNE: It was S...S-35?

12 BOB WILSON: I...I couldn't say then. That's why I
13 don't have that right...the proper one right in front of me.

14 (Board members confer among themselves.)

15 KENNETH OSBORNE: I had...I had asked you for a copy
16 of the escrow accounts, which you very promptly got to me and
17 to verify where they had put the money in, and then what I
18 went back to was the other one that I had a concern with,
19 which was the S-35, and then it took you a couple of days to
20 get that information, but which, again, you was real prompt
21 about getting it to me.

22 BOB WILSON: And this is as of the end of December
23 really. We still don't have...we don't...we thought we were

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1 going to have the January report by now, but we do not,
2 unless they come in today.

3 KENNETH OSBORNE: Yes.

4 BOB WILSON: So, this is as of the end of December
5 here.

6 KENNETH OSBORNE: Yes, sir. Yes, sir.

7 BENNY WAMPLER: Okay, Mr. Brent.

8 MASON BRENT: I just wanted to ask one thing before
9 we go off the record here. We changed our escrow agent---

10 BENNY WAMPLER: Yes, we did.

11 MASON BRENT: ---at the first of the year and I've
12 not heard anything about how that's going now that First
13 Union is now the---

14 BENNY WAMPLER: Well, the transition was a little
15 rugged, quite frankly, getting all the information. But as
16 far as dealing with the new escrow agent, everything is going
17 quite well.

18 MASON BRENT: Do you think we can get some report
19 put on the agenda for the next meeting, just a fifteen
20 minute report?

21 BENNY WAMPLER: Yes, we've...that's scheduled
22 ...yeah, scheduled to do. They were just---

23 MASON BRENT: Oh, it is on the schedule?
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1 BOB WILSON: They're due for...I think they're due
2 for a quarterly report which would be next month---

3 BENNY WAMPLER: Next month.

4 BOB WILSON: ---because the quarter doesn't end
5 until the end of this month.

6 BENNY WAMPLER: Right.

7 BOB WILSON: Just for information, they do have the
8 monies posted according to the final records from First
9 Virginia Bank. They are working toward getting subsequent
10 monies posted to those accounts. It has been kind of slow
11 because the...basically, because it's just new to them
12 and...but we talked to them yesterday as a matter of fact,
13 and we were hoping to have January's report by today. But it
14 did not come in last night. But, they're---

15 MASON BRENT: I'm sure...I'm sure that was a hard
16 task making that transition.

17 BENNY WAMPLER: Well, it was, tremendously.

18 KENNETH OSBORNE: I'd like to thank the Board for
19 hearing me today. Have a good day.

20 BENNY WAMPLER: Thank you.

21 MASON BRENT: Thank you.

22 MAX LEWIS: Thank you.

23 BOB WILSON: I have a procedural thing here. This
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1 check from PGP for the civil charge is made out to the
2 Treasurer of Virginia. This has to be, I believe, paid to
3 the County in which this infraction occurred, which would be
4 Buchanan County and only subsequent to a Board Order. So, I
5 think, if I'm correct in that, I believe this will have to be
6 returned and made out to Buchanan County after we issue an
7 Order on that. Again, correct me if I'm wrong.

8 BENNY WAMPLER: Or we can deposit it and write a
9 check.

10 SANDRA RIGGS: Do you want me to return it to them
11 with the Order and instruct them to do that---?

12 BOB WILSON: Yeah, I would---.

13 SANDRA RIGGS: --or instruct them in the Order to
14 do that or whatever?

15 MAX LEWIS: The Commissioner of Revenue for Buchanan
16 County has that.

17 BOB WILSON: Yes. I'm...I'm almost certain that's
18 the way it's supposed to be.

19 MAX LEWIS: The Treasurer.

20 SANDRA RIGGS: Well, I can---.

21 CLYDE KING: The Commissioner of Revenue.

22 MAX LEWIS: The Treasurer for Buchanan County.

23 MASON BRENT: That would be easier.

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1 (Board members talk among themselves.)

2 SANDRA RIGGS: I'll check and make sure according to
3 statute that it's right. Do you want me to take the check
4 back?

5 BOB WILSON: Yes, please.

6 SANDRA RIGGS: Okay.

7 BENNY WAMPLER: Thank you all very much. I
8 appreciate it.

9

10 STATE OF VIRGINIA,

11 COUNTY OF BUCHANAN, to-wit:

12 I, SONYA MICHELLE BROWN, Court Reporter and Notary
13 Public for the State of Virginia, do hereby certify that the
14 foregoing hearing was recorded by me on a tape recording
15 machine and later transcribed by me personally.

16 Given under my hand and seal on this the 11th day
17 of April, 2000.

18 NOTARY PUBLIC

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20 My commission expires: August 31, 2001.

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