

IN THE COUNTY OF WASHINGTON:

VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY  
VIRGINIA GAS AND OIL BOARD

MARCH 17, 2009

APPEARANCES:

**BOARD MEMBERS:**

MARY QUILLEN - PUBLIC MEMBER  
PEGGY BARBAR - PUBLIC MEMBER  
KATIE DYE - PUBLIC MEMBER  
BILL HARRIS - PUBLIC MEMBER  
DONNIE RATLIFF - COAL REPRESENTATIVE  
BRUCE PRATHER - OIL REPRESENTATIVE

**CHAIRMAN:**

BUTCH LAMBERT - CHAIRMAN OF THE VIRGINIA GAS & OIL BOARD

DAVID ASBURY - DIRECTOR OF THE DIVISION OF GAS & OIL AND  
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BUTCH LAMBERT: Ladies and gentlemen, it's after 9:00 o'clock. It's time to begin our meeting this morning. Let me remind you that if you plan on speaking during the public comment period, we need you to sign up on the yellow pad on the table in the corner over there. Please go do that now. Also, let me remind you, if you have cell phones or pagers or any other kind of electronic communication device to please turn that off or to put it on vibrate, please. These proceedings are being recorded and we do have a rather large crowd today. I would ask you to reframe from any kind of talking or distractions so that the recorder may be able to pick up the hearings as we proceed. At this time, I'll ask the Board to please introduce themselves. I'll begin with Ms. Quillen.

MARY QUILLEN: Mary Quillen, a public member.

PEGGY BARBER: Peggy Barber, a public member from Tazewell County.

BILL HARRIS: Bill Harris, a public member from Wise County.

KATIE DYE: Katie Dye, a public member from Buchanan County.

SHARON PIGEON: I'm Sharon Pigeon with the Office of the Attorney General.

BUTCH LAMBERT: My name is Butch Lambert. I'm with

the Department of Mines, Minerals and Energy.

DONNIE RATLIFF: Donnie Ratliff with Alpha Natural Resources representing coal.

BRUCE PRATHER: Bruce Prather, representing the oil and gas industry.

DAVID ASBURY: David Asbury, Director of the Division of Gas and Oil and Principal Executive to the Staff of the Board.

BUTCH LAMBERT: Thank you. Our first item on the docket this morning is the Board on its own motion will address the issue of post production costs. We've had requests from Senator Phillip Puckett to be able to speak this morning. I notice that Mr. Puckett is here. So, Mr. Puckett, if you'll come forward, please. Good morning, Senator.

SENATOR PHILLIP PUCKETT: Good morning, Butch and Board. I appreciate the opportunity to be here with you today. I'll share some of my concerns and issues that we have dealt with during the General Assembly Session and also give you some idea of where I think maybe we might be and where we might be headed with the post production cost charges on force pooling. I would also say Delegate Bud Phillips is somewhere behind me. We've been in a meeting with Northrop Gramum over in Lebanon. So, he possibly will

be here a little bit in the near future.

I want to do basically three things I think this morning and then be glad to answer any questions that you might have that I could answer. But I want to deal first with the legislative process that we've walked through and to give you some idea of how that process developed and what actually happened in the General Assembly. Then the second thing I want to do is talk briefly with you about what I perceived to be as an opportunity we have for an education process that I think personally I'm as a representative of the 38 Senatorial District. I plan to do with the citizens that I represent in mostly in a way of a town hall meeting. I'll talk to you about that in a few minutes. Then the third thing that I would like to do is to challenge the Board to not let this process just go away. I want you to know I think we have opportunities to move forward. We have some challenges, as your Board is well aware of. When you get a three/three vote on a committee motion, then obviously there's issues within your own Board.

Let me start with the Legislative process very quickly. As you know, Delegate Phillips and I had identical Bills that were introduced in the Senate and also in the house. Bud will probably talk about his own Bill, so I'll not do that. I'll simply talk about Senate Bill 1204. In

that process, we had success in the Senate in getting that Bill passed. The Bill itself said that there should be no post production charges on the 12 and 1/2% royalty of a person who was force pooled in their gas situation. I would be less than honest if I didn't say I don't think there was a whole lot of opposition as we move through the Senate with that Bill. I don't think the industry as a whole made very much effort to try to stop my bill in the Senate.

Now, I don't say that to be critical of the industry because during that time frame we were very seriously engaged in trying to reach what we thought might be a compromise. We actually delayed my Bill until almost the very last Commerce and Labor Committee meeting in order to try to get to a point where we could compromise and agree. Unfortunately, that didn't happen as we left the Senate. As my Bill left the Senate, it left in that identical form. As you've been told, Delegate Phillips Bill actually got amended a little bit on the House floor. I think Bud will speak to that. But, his Bill was amended and he did not object to that immediately because he wanted to try to keep his Bill alive to not...not knowing exactly where that might go.

So, anyway, as my Bill moved to the House and

began the Committee process in the House, we were negotiating very honestly and very sincerely to try and reach a compromise. The further we went through that process, the less success we seemed to have. In that process, almost in a...I'm going to say a matter of a week or so or less, the industry went ahead and opposed the Bill in a very strong way. They made a considerable effort to try to defeat the Bill in the House. They did defeat the Bill in the house by a vote of sixteen to four in House Agricultural Committee.

Now, what I would point out in this process, I think, is that even up until the very end we were trying to meet to resolve the conflict. There was at least some effort, I think, to try to amend my Bill, which I refused because of the language that was out there. I will say this for my own record, the agreement which I actually ended up laying on the table was not an agreement that might have suited everybody on this Board. I had actually agreed to a fifty cent post production charge at one time. The industry, I think, came with an eighty-two cent figure, which I thought was way too much, not substantiated with the evidence that I thought it should have to merit that.

Now, once that process was over, I looked back on that and I think my original purpose in bringing the Bill

was because I felt very strongly that a person who had already been forced into a situation that they didn't want by the force pooling process was entitled to royalty free of any post production charges. I must say to you, and all due respect to the Board, even in willing to try to comprise, I believe the Board order has overstepped its authority to allow post production charges in a force pooling situation. The reason I believe that is as I read the Gas and Oil Act there is nothing in the Gas and Oil Act that allows for post production charges. It's not even mentioned. Historically in the Legislative process, when an Act or a Bill or a Law is put into affect most all aspects of that Bill are included to give authority to whoever the Bill might speak to. In this case, to the Gas and Oil Board and the industry, there is nothing in that Act that I find that says post production charges can be levied in a force pooling situation. I contend this. I made this testimony at both at the Senate Committee and the House Committee that, in my opinion, once an individual is force pooled and give up almost everything they have and they give up seven-eighths of everything they have for the company to do the process and the bring the gas to the point of sale that there should not be any additional charge. A royalty payment is exactly what it says it is. It's a payment at the point of sale without

any additional charges. I believe that's pretty clear in the Code. Just for the record, I'd say I'm not an attorney and not a legal scholar. But, I find nothing in the Code that allows that.

I want you to know today, I still feel very strongly that way. I would qualify that by saying that I also understand the Legislative process very thoroughly, I believe. I know it's going to be extremely difficult to move forward through the Legislative process. I just got a taste of that in the House Committee about three weeks ago. I know what that's going to be like if we move through that process again. But, I still feel very strongly that a person who is force pooled should not have anything taken from their royalty after that first point of sale.

Let me move quickly to the next area that I want to address, the education piece. I had made a personal commitment and a public commitment to the people that I represent in the 38 Senatorial District to hold what I'm going to call a Town Hall type of meeting. I want the people that I represent to understand the process that we've walked through and where we are as far as the possibilities of getting a Bill through the General Assembly. I want to listen to them. I want to hear their opinions and I want to hear their complaints and I want to hear their ideas for

resolving the issue.

I want to challenge this Board this morning to be willing to do the same thing. Now, to say that you meet here in Abingdon once a month, again, with all due respect to what you've done down through the years, there are a lot of people in the coalfield region and the gas regions of the 38 Senatorial District, which I represent and it is most of the gas producing counties. There's a few outside of that. But, they have not had a chance really to speak up on the issue. I'm not saying that's the Board's fault. But, I would encourage the Board to be willing to be involved in this process outside of Abingdon and go to the counties that are affected in this.

Now, why do I believe that this necessary? In the last six to eight months as I've walked through this process, I have listened, tried to understand what's going on and I've talked to both companies and citizens. I've been before the Board a time or two, but mostly I've listened to company and the general public. What I find is there are...there's a lot of confusion about what goes on and what has happened down through the years in the gas and oil production process. I don't have to go through the process with this group because you all are much more familiar with it than I am. But, what I have learned is if

I own gas, and I don't own any gas that I know of, I have opportunities to participate in different ways. I would say to you again this morning, my Bill and my concern this morning is only with the force pooling situation. As I walked through that process, I had citizens that would say to me, "You know, I get a check, but nobody tells me anything about how my royalty payment is, you know, arrived at." Now, I've been in the Legislative process long enough to know that there's two sides to every story and I try to listen to both of them. But I must tell you as I sit down with the gas companies and talk to them about that situation, I didn't get a much better answer. In fact, some could not even produce to me how that process would be developed. I don't know that today. I would say this, there are some that are trying to do a good job in that. They...I think I heard them say they could even do better. I would say to this Board today, we can do better than what we're doing today. If you're sending me a royalty check I least deserve the courtesy of knowing of how you arrived at what you're sending me. Keep in mind, most of the people across the gas fields are much like me. They don't have a clue about what's going on. So, that's why I want to walk through as much as I can with the people that I represent, the educational process because I believe we can do a better

job. I believe I've heard that from gas people too that we can do a better job in that process. So, as I do this through I hope the month of April, I have not set any meetings anywhere at this time, but as I walk through this process during the month of April I hope to be able to do that. I have, I think, gas people who are committed to helping me through the process so that I can share that with my people that I represent.

I've been told that less than 20% of what the gas wells that we have are force pooled situations. I hope that's correct. If it's not, I would appreciate knowing the correct answer. I've also heard from the gas companies and the industry that if we do zero post production charges in force pooling everybody will want to be force pooled. Well, personally, I find that hard to believe because the process of going through a force pooling situation to get a check is just unbelievable to me. Some people don't even get checks. It's sitting in escrow as I talked to you about in November. We can do a better job with escrow and that's another issues for another day. But, I don't really believe that people will subscribe to going to a force pooling situation. But let's suppose everybody did go to a force pooling situation. What does that say about what we're doing right now? It doesn't speak very strongly to me that we're going through a

process now that's very favorable to anybody who is involved in that process. Again, I think we have a lot of work to do. I hope that we have a commitment down the road from the Board to be involved in that process.

The last thing that I want to say to you this morning and I plead with you on, and this is no reflection personally on anyone on this Board, but my observation has been down through the years there's a feeling whether it's true or not out in the general public that this Board has not been very fair in representing all parties. I think it's extremely important, and it might be the most people thing I say to you this morning, that we restore confidence of the general public in the impartial work of this Board. I don't know how you feel about that. You may be angry at me for even saying about that. I wouldn't say it if I didn't think it were true. Down through the years as the Board has issued orders or whatever you do when you allow situations to happen with oil wells and royalty owners, I think there has been a significant feeling that the Board has been more partial to the company and the industry than they have the general public. I would say until just recently in the last year or so, twelve to eighteen months, has there been any expression in a strong way on this Board for the interest of the individual involved in the force

pooling situation.

So, I would ask that, you know, you take a look at that. When you have a situation that ends up in a three/three tie, as I said earlier, I think the Board, obviously, has issues that they need to address and deal with as far as being impartial and fair to everyone that comes before this Board. I'm here this morning to say to you that I've tried to educate myself as much as I could. I'm not the expert. I don't know everything. But, I'm here to tell you there is an issue that's not going away. We have an opportunity to fix this and do it right. If you're willing to help us work toward that, then I think we can get there. I plead for you this morning to help us do that. I hope that as you move forward from this day that you will make an effort and a commitment to do that. I am not here today to ask the Board to do anything.

I'm here, as I've said, to lay out what I see the issues are. I hope I've done that in that a fair and honest way. I've tried to do that. I'll be glad to try and answer any questions that anyone might have.

BUTCH LAMBERT: Thank you, Senator. Senator, let me know as far as the Department of Mines, Minerals and Energy, through our Division of Gas and Oil, we are willing to participate in your public forums and we'll do whatever

we need to do to be able a viable partner in that with you. At what the extent that the Board can be involved as individuals because they all have other jobs and hopefully they can participate, but we will invite those folks to joins us as well.

SENATOR PHILLIP PUCKETT: I will remind you, I also have a real job. That's a scheduling problem for me also.

BUTCH LAMBERT: Questions from the Board?

BILL HARRIS: If I might make a comment, first of all I'm just recovery from this bales palsy. So, it involves the mouth and eye and everything. It doesn't work quite right. Senator, I wanted to applaud you for your efforts and working on behalf of the people of the Commonwealth. I served on that Cost Committee and I was one of the folks actually who supported no deductions being taken from the...no post production...deductions being taken from royalties. My feeling has always been that one-eighth was not enough to begin with, but I know that's kind of an industry standard. We don't really have too much choice in that. There's some ways to, I guess, work with that. But for people who are force pooled, I've always felt that we add insult to injury first of all by taking the gas that they may or may not want to let go initially. But, then to give them one-eighth royalty, which again is not enough, and

then shave away from that for post production. I've always thought that was unfair. I've said that in many, many forums and in that Cost Committee that we worked with. We just couldn't get an agreement among everyone there. But I do applaud your efforts. I'm not sure where we go from here with that. But, I really believe that we...that as a Board we're probably more out of touch with the public than we should be. This is my personal feeling. I'm not speaking on behalf of the Board, but this is my personal feeling. I would like to see some kind of education outreach. I think that's very good to do that. But, I do support your efforts. I'm not sure where we're going to go from here. When I've talked to the industry about this, it's always, you know, everyone has to bear the cost of production and post production and that sort of thing. But, to me there's something called goodwill and I think that it is...I would think that the companies would benefit in ways that are not material all of the time money wise if they would not reduce that. I think they would have a lot happier citizenry that they're removing the gas from. But, that's just what my feeling is. I just think that that would...that would be the best thing that I think we could do at the present time is to actually move in that direction to no post production costs. I don't know if it will happen. But, thank you for

coming and speaking.

SENATOR PHILLIP PUCKETT: Mr. Chairman, let me just respond a minute to that. I've had conversations with Director Steve Walsh about the process. He has indicated that, as you have indicated, that they are very much willing to being involved in the educational process. So, I think that's something that we certainly can move forward toward and I think once we go through that process we'll have a better understanding of both sides of the issue and how people, you know, feel whether it's from the company's standpoint or whether it's from the citizen's standpoint. When we know that, we have a better opportunity to address the issue. You see, in the past, the frustration of the citizenry is that no one is listening. No one is hearing me. I personally have heard that in the last twelve to fifteen months that I've tried to walk through some of this and educate myself. We owe it to them. Whether you agree with them or not, whatever your position is, we must be good listeners. If we're not willing to listen, we don't have an opportunity to solve the problems. I think I heard from Steve Walsh that we're willing to do that and listen.

BUTCH LAMBERT: Any other questions or comments from the Board?

DONNIE RATLIFF: Mr. Chairman, I also have to

commend Senator Puckett. It's not often that he's on the other side of the industry and he fought for his (inaudible) in this battle. I was there. I guess, I sat down on the wrong side of the room and was accused of being sided with the coal industry...with the gas industry. If you all had seen Senator Puckett, I was waiting for him to quote the scripture. I mean, he was preaching to the Committee. I looked for a scripture out of 1st John of something to come out any minute. But, he did...he did an excellent job in presenting the Bill. I have to commend him for that.

SENATOR PHILLIP PUCKETT: Thank you, Donnie.

BUTCH LAMBERT: Any other questions or comments?

(No audible response.)

BUTCH LAMBERT: Thank you, Senator. We appreciate your time to be with us today. Thank you.

SENATOR PHILLIP PUCKETT: I would say, again, thank you for letting me be here. I'm due at another meeting at CGI and Northrop Gramum at 10:00 o'clock. I'll stay for a few minutes. One thing I would like to encourage you, there are some people, I think, that are going to maybe want to speak. I am not aware of that one way or the other. But, I was ask to say a word about letting the citizens speak. Some of them need to go here and there. Some of them even paying people to stay with others while they're doing this.

So, if you could expedite that a little bit, I'd appreciate it very much.

BUTCH LAMBERT: Thank you, Senator.

SENATOR PHILLIP PUCKETT: Thank you.

BUTCH LAMBERT: I see Delegate Phillips has joined us. Before---

(Applause.)

BUTCH LAMBERT: Before Delegate Phillips speak, I think Ms. Quillen has an announcement about a tornado drill that we're all going to have to participate in here in a few minutes.

MARY QUILLEN: And this is...this is a state requirement. That's not something that we're just doing just to inconvenience you. It's a requirement that all state agency participate. At 9:45 they will ask us to leave and when we do we go out this door, go down this hall, go down the stairwell to the first floor and in the stairwell and in room 143. There will be people observing. So, please abide by what...the directions that are given to you because it is a very serious issue and a state responsibility that we have to provide this.

BUTCH LAMBERT: Thank you, Ms. Quillen. Good morning, Delegate Phillips.

DELEGATE BUD PHILLIPS: Good morning, Mr. Chairman.

How are you?

BUTCH LAMBERT: I'm good this morning. Thank you for being with us this morning.

DELEGATE BUD PHILLIPS: Thank you for giving me the opportunity to speak with you this morning. I listened with great intent what...to the Senators comments this morning. My comments are going to be probably a little different from his in terms of looking at this from a politics's point of view.

If you look at the history of the coalfields you know there's always been some conflict about the issue of land owners versus mineral owners. That has been a historic and ongoing conflict for many, many years. Probably the most...I think probably the most conflict that I have seen in my lifetime has just recently developed over the issue of gas in the coalfields as to force pooling royalty issues, land owner rights and I think that's coming out of two things.

Number one, is the need for natural gas and energy. It's going to grow and continue to grow. The need for coal and the need for natural gas to supply the United States in the world's energy needs. When that grows and when minerals become a hot commodity, folks are looking to invest. Folks are looking to produce. Land owners are

wanting their fair share of whatever that commodity sells for on the world market. I think that's probably one issue that's first and foremost.

The second issue is that land owners in many respects are becoming more educated about what their rights are and what issues that they feel that needs to be redressed. I think when these two issues collide I think you're going to have major issues that is going to be in front of the public, in front of the General Assembly that will have to be addressed one way or the other.

I agree totally with Senator Puckett, this issue is not going away. The citizens are not going to let it go away. I don't think the General Assembly is going to let it go away. Obviously, I don't think the companies at this point in time are willing to let it go away because they feel like they have something of interest there too to lose or to gain.

So, saying that, you know, I've been trying to get my arms around this issue over the last probably six months to look at it and to evaluate it. This was a short session of the General Assembly. It's not a...you don't have a lot of time to do a lot of real important work in a short session. The budget was a major issue in this session. We had about 3.7 billion dollars that we had to worry about and

trying to balance that budget. Quite frankly, most of the work in the House was based on that budget and trying to make sure were at work and they didn't lose their jobs and we educated our children. So, there's an upcoming General Assembly coming in January of '10. I think the General Assembly will be ready one way or the other to tackle this issue. I have had some discussions with some of my colleagues in the house and I believe that the House is ready to move on this issue for a number reason, and I'll go into my comments as to why I believe they're ready to move.

But, the first thing I want to get into is the issue of the legal ramifications of force pooling. I've never been in favor of force pooling. If you go back and check my voting record, I was the only member of the Virginia House of Delegates to vote against force pooling. It was ninety-nine to one. I was the only one that voted against it because at that time I didn't feel it was fair and I didn't think it was equitable the way it was drafted. I was a young member of the House at that time. Sometimes you look around and you try your best to understand the issues, but the Bill was there and gone before you knew what was going on. It just sailed right on through.

But taking that in context, you have to know where I'm coming from about the force pooling issues. I do not

believe that this Board has the Legislative or administrative authority to make any deductions from any funds that have been held in force pooling...in the force pooling account. I do not believe that you have that authority. Virginia operates under the Dillon Rule. The Dillon Rule means that you only get what authority is listed in the statute. You can't expand it. You can't narrow it. You only get what's there. I am calling upon the Board to ask the Attorney General for a written opinion as to whether or not this...I'm talking about an official Attorney General's opinion whether or not this Board has the Legislative authority under the Dillon Rule to grant a company the right to make deductions from royalties. I do not believe...and I've been there twenty years and I'm also an attorney, but I'm not an expert in the energy field, but I can read Legislation and I understand what the Dillon Rule is. I don't believe, and I say it again, that you have the authority to allow any company or any individual to make a deduct from any royalty payments that are made under the statute. I just don't think you have that. I'm asking that you do that and do it post haste.

If you're not willing to do that...and you'll need to let me know if you're not willing to do that, if you're not willing to do that, I'm willing on behalf of the

citizens of Southwest Virginia to file a motion in the Dickenson County Circuit Court asking the Dickenson County Circuit Court to rule upon whether or not this Board has the authority to make those deduct in what is called a Declaratory Action...Declaratory Judgment Action. I'm willing to do that on behalf of the citizens of my District. Then it will be squarely in the hands of a Circuit Court Judge and the Virginia Supreme Court to interpret that statute. I hope it doesn't get there. But, I believe that very quickly the Circuit Court of Dickenson County will review this matter. All of the parties can come in and file their briefs, we'll argue it, whoever wins I'm sure is going to have an Appeal up to the Supreme Court and I believe the Supreme Court has been looking at these issues. I think the Supreme Court is ready to rule on this issue from a number of things that I've read, from a number of things that are coming out of the Supreme Court. So, that's two things that I think that this Board needs to look at that's being there...being faced is number one, do you have that authority? If you're not going to ask for the Attorney General's opinion, you let me know. I'll immediately file this motion for Declaratory Judgment asking whether or not you have that authority.

Those things being said, I'll come to the third

issue. I don't think the General Assembly at this point is going to get an opportunity to rule...to make a decision on any Legislative that I or Phillip Puckett puts into the General Assembly next year because this matter will be in litigation. The General Assembly generally does not enter into any issue that's in controversy when there's litigation ongoing. Only after generally the litigation has been concluded will they enter into and consider any particular types of Legislation that be in front of them.

So, the question is, and as I was listening to Phillip very early about the issue of whether or not to grant a deduct or not to grant a deduct, that's not the issue in front of you today. The issue is whether you have that legal authority to permit a deduct or not to permit a deduct. I don't think you have the ability to do either. I don't think you could do either one of them under the law that exists in Virginia today. So, if in fact you are permitting deducts, I think you need to ask the Attorney General is you have that authority based upon the interpretation of the statute. Obviously, an Attorney General's opinion, I understand that clearly, is only his advisory opinion, but I think it carries some weight with you. It should carry some weight. So, we need to know what the law is. We need to know very quickly what the law is. If you

don't ask for an advisory opinion from the Attorney General, please give me written notice within the time period and then I'll proceed to file the Motion for Declaratory Injunction in the County of Dickenson asking that the Judge...Chief Judge over there to make a ruling as to whether you do or you don't.

I don't mean to be...it's not a threat. It's not intended to be a threat. It's not an intent to be stepping on anybody's toes. But, we need to resolve this issue and it's not being resolved. That's the only way I know how to get it resolved is to get the legal clarifications on the issues that I've talked about today. The landowners, obviously, feel like they've been wronged. They feel like they're being shorted. They feel like that things are being taken away from them without due process of law. I strongly suspect that's correct in my opinion that their money and their royalties is being taken away from them without due process of law in this state. That's why I believe in my opinion. Every lawyer in this room has opinions. I believe that the Circuit Court of Dickenson County will rule that you don't have the Administrative authority. If it's Appealed to the Supreme Court, I believe the Supreme Court of Virginia will rule that this Board does not have the Legislative or Administrative authority to make that

deduction.

All you have to do is to go back and look at the decision that the Supreme Court made just in the last...last year. That is probably the biggest precedent that I would point to if it would get to the Supreme Court. The General Assembly delegated some responsibility to some transportation districts in Northern Virginia to raise taxes and to build roads. The Supreme Court looked at that and said it is unconstitutional because the General Assembly did not have the authority to delegate that tax raising ability to anybody. We didn't have that ability to delegate it.

I submit to you that same precedent is going to be a key issue in this decision that will hopefully be issued by the Supreme Court in a very expedited fashion. So, we're in a contrary. We really are. We are in a contrary here. It's time that we set out the motion of getting this legal mess cleaned up. I think that we're going to start on this process one way or the other of getting it cleaned up. So, that would conclude my remarks today. I'd be willing to give you any insight I may have or give you any impressions that I have or give you any opinions that I have or answer any questions that you have.

BUTCH LAMBERT: Thank you, Delegate Phillips. I have just one. Could you explain for the group the

executive process that happened with your Bill and why your Bill was pulled?

DELEGATE BUD PHILLIPS: Well, the reason why is that...one, is that I think Senator Puckett and I we're trying to figure out the right thing to do. In a short session, it's very difficult sometimes to get your arm around the issue to figure out the right thing to do. At that time, I did not believe that there was sufficient support in the Committee to get the Bill out. The Bill was amended to keep that Legislation alive from the standpoint of allowing an opportunity to try and fix this. I saw very quickly that it was not going to be fixed. There was no solutions that could be agreed to. No compromise that could be agree to. Subsequently, I pulled the Bill from the House floor because of that. It was only done with the intent to be amended to determine if there could be a compromise or if there is a way to fix the Legislation. There was not at that time.

BUTCH LAMBERT: Just a follow up question of that, could you, just for the Board's information, tell us what the amendment to your Bill was?

DELEGATE BUD PHILLIPS: What the Bill was and it suggested...not by me, it was suggested that the Bill be amended to allow a certain deduct from coal royalties based

upon some fair allocation, if I recall correctly is what the Bill did.

BUTCH LAMBERT: Do you mean from the gas royalties?

DELEGATE BUD PHILLIPS: From the gas royalties. I'm sorry, from the gas royalties.

BUTCH LAMBERT: And what were those deducts in your amendment?

DELEGATE BUD PHILLIPS: I can't recall the specifics. You would have to pull it out and look at it. It wasn't my language. I didn't draft it. So, it wasn't my amendment overall.

BUTCH LAMBERT: Okay.

DELEGATE BUD PHILLIPS: But, I think that there's only two ways to settle it. One, is either legally or the Legislature. That's the only two ways that I know how to get this resolved is one of the two ways.

BUTCH LAMBERT: Okay. Any questions from the Board?

(No audible response.)

BUTCH LAMBERT: Any comments from the Board?

DONNIE RATLIFF: Mr. Chairman, I'd like to commend Delegate Phillips and the job that he did up there. He represented his people well.

DELEGATE BUD PHILLIPS: Thank you, Mr. Ratliff.

DONNIE RATLIFF: They should be proud.

DELEGATE BUD PHILLIPS: Thank you very much.

BUTCH LAMBERT: Any other questions or comments?

(No audible response.)

BUTCH LAMBERT: Thank you, Delegate. We appreciate your time to spend with us this morning.

DELEGATE BUD PHILLIPS: Thank you very much for allowing me to speak this morning. Thank you.

(Applause.)

(Break.)

BUTCH LAMBERT: Okay, ladies and gentlemen, it's time that we'll get started back. Thank you for your patience while we had to go through that mandatory tornado drill. At this point on the docket, we're going to move up item forty-nine and enter into a public comment period at this time. Those folks that have signed in, I will be calling you as you have signed in. Given the number of people that have signed in to speak and the time that we have here today, I'm going to ask you to limit your comments to two minutes. Then, we'll need to move on. We have a pretty long agenda for today. The first person signed to speak is Jerry Grantham. I'd ask you to please state your name for the record.

JERRY GRANTHAM: Jerry Grantham.

BUTCH LAMBERT: Thank you very much, Mr. Chairman. I'm the president of VOGA, Virginia Oil and Gas Association. I will try and summarize everything as briefly as possible. As Senator Puckett said, we have spent a lot of time on this issue. I think the Board is aware of that. Certainly, the community is aware of that. We've made multiple presentations. We've provided data to the committee showing what our deductions are. We spent a fair bit of time in discussions with the Senator here in Virginia or here in Southwest Virginia and also in Richmond. At the end of the day, we could not reach an agreement. I think the Senator's discussion as to how all of that went was very representative. We did go in, and as you know, proposed to the committee a cap of a \$1.29, I believe it was back last fall. In discussions with the Senator in a meeting in Richmond, we actually proposed a \$1.00 as our proposal. I think the Senator said it was \$.82. I believe in the next meeting there was discussion about taking the high and the low off of that average in, I think, what was called the Olympic scoring system. That was looked at, which was a concept, I believe that came up from the Senator. We reviewed that as an industry and we accepted that. That wasn't what we were looking for, but we felt like in trying to get this issue resolved that was an acceptable number to

us. At the end of the day, we couldn't come to an agreement. As the Senator stated, we had discussions with some of the members in that committee and explained the situation to them. I think they understood that no deducts was somewhat consistent certainly with what has been done in the past and what has been ruled on by previous a Attorney General, if I'm not mistaken. I believe Mr. Kaiser will probably speak to that. What has been reviewed by the Director of the Gas and Oil Division and that effectively a zero deduct policy would be very inconsistent with all of those things and that it is inconsistent with most of the private contracts, virtually all of the private contracts that are out there. So, I think that the members of the House AG committee understood that. It was as the Senator said a 16 to 4 vote. Basically, what came out of that was that---

BUTCH LAMBERT: You have 30 seconds, Mr. Grantham.

JERRY GRANTHAM: Okay, thank you. What came out of that was that that did not come out of committee. There was a recommendation that the issue be studied. To my knowledge, that letter has not come from the committee chairman yet. I have been checking on that, but it's not out yet. VOGA is...VOGA, I guess, recommendation would be that that study be allowed to go forward and that we get the

results of that study back before any action is taken.

BUTCH LAMBERT: Thank you, Mr. Grantham.

JERRY GRANTHAM: Thank you.

BUTCH LAMBERT: Mr. Grantham, let me follow up to your comments that...the Board is aware that there is a letter that is being sent from the House Sub-Committee, but we have not received that letter. We don't know the details that are in that...supposedly in that letter. Thank you. Kyle Robinson. State your name for the record, please.

KYLE ROBINSON: I'm Kyle Robinson. I'm here today to object to the Gas Board taking any interest money from the escrow account to pay for an audit. This interest money belongs to the methane gas owners who were force pooled. I don't think the gas companies will furnish an audit company enough records and it would be a waste of money for methane gas owners or were force pooled. I suggest you have the internal revenue to do an audit. I doubt if the internal revenue could get the records to do a good audit. I'm all for an audit, but I think the internal revenue should do it. The methane gas owners who were force pooled don't need to foot this bill. Thank you.

BUTCH LAMBERT: Thank you, Mr. Robinson. Juanita Sneeuwjat. Please state your name for the record.

JUANITA SNEEUWJAT: Hi. Good morning. I'm Juanita

Sneeuwjat, President of committee for constitutional environmental justice. Some pages are coming around. I did some research on the gas and oil leases, what you should know. Since there's a shortage of time, then I've highlighted that for you. So, you can just glance over it as you will. In the first paragraph, it says, "No land owners is under obligation to sign a lease." Some important terms, cash bonus, primary term, delayed rental, etc. etc. You can read that for yourself. The most favorite nation clause, which a lot of people in this area are not familiar with, and that before a person signs a lease they should consult with their attorney or know what they're signing. They're not mandated to sign anything just because a gas company comes and knocks on the door and says, well, here's preprinted form. On page two, you'll see some things that probably ought to be included in a lease, that's land disturbance, damage to crops, buildings and personal property, free gas leases, underground storage gas lease assignment, reclamation and the cooling off period. A lot of people aren't aware that signing with the gas industry they also have a three day cooling off period just as they have in other contracts. I wanted to bring your attention to the pooling of land area and compulsory integration. This is not picking on the Board day, but I feel that

correlative rights of people have not been upheld to the point that perhaps they could be. I'd like to bring your attention to that and ask you to make a greater effort towards that. Who regulates gas wells? The DMME that they do not regulate private contracts.

BUTCH LAMBERT: 30 seconds.

JUANITA SNEEUWJAT: Pardon?

BUTCH LAMBERT: 30 seconds.

JUANITA SNEEUWJAT: 30 seconds, okay. Well, you do regulate correlative rights and environment of public safety. That's about all I have on that page. That the gas companies need to... need to be cleaning up after themselves at the well site and land reclamation. Thank you. I didn't mean to rush through that. I wanted to say that it's greatly appreciated that you let us speak. A lot of people are in poor health and a lot of people have to take off from work to get here. So, it's a great curtsy and it's greatly appreciated. Thank you.

BUTCH LAMBERT: Thank you, ma'am. Thank you for your comments. Catherine Jewell. Please state your name for the record.

CATHERINE JEWELL: Catherine Jewell. I would like for you to review the comments I've already submitted in numerous pages of comments and research that I've submitted

with respect to the history of this stuff. I would like to address a few things real quick. One, an audit. You absolutely need a complete detailed, not a checkbook, not accounting, audit of what is happening here. The effort needs to be made to correct those. If you will look at the escrow accounts you will notice a lot of zeros that appear every month in those statements. Now, it's interesting because as far as when I checked those wells they are producing, but things are not being deposited. Two, Mr. Grantham said something about it wouldn't be consistent with the leases in this area. Things aren't consistent with the leases in this area for one major reason. There is no competition. There hasn't been competition because of the wording of the Act. You know that and I know that. There are essentially two players in this coalbed methane field. That will stay that way until things change. Please look at the pre-1992 Board orders and put back all of those assurances that were so conveniently removed that protected the royalty owner's correlative rights whose rights were force pooled and whose land was taken by this police body and given to a private company to produce the gas. There has been absolutely no protection. Now, the regulations and the laws require this protection. But we haven't seen it. I haven't seen it on anything. Thank you very much.

BUTCH LAMBERT: Thank you for you comments. Les  
Arrington.

LESLIE K. ARRINGTON: I'm going to pass and rely on  
Jerry Grantham's comments.

BUTCH LAMBERT: Okay. Kevin West.

KEVIN WEST: Good morning.

BUTCH LAMBERT: Good morning. Please state your  
name for the record.

KEVIN WEST: My name is Kevin West. I'm managing  
Director of external affairs for EQT Corporation, what you  
all have known in the past as Equitable Resources or  
Equitable Production. Very briefly just to explain the  
change in our name. It's just the same company, none  
corporate existence has changed. We just wanted to  
recognize some of the things that we have done with our  
horizontal drilling program and technological advances,  
which we hope assist those that have mineral interest in  
producing more oil and gas and minimizing the impact of the  
surface for folks that have interest in the surface of  
property. Very briefly, we would just ask that the Board,  
number one, not take any action today. I don't know what  
the Board's plan is. I saw what the docket item was with  
regard to the change of the current order on deduction of  
post production expenses. I know that both sides of this

issues or any of the sides of this issue there are folks that maybe would not have realized that today that would have been the purpose of today's meeting. So, we would ask that everyone with an interest be given an opportunity to participate. Secondly, we would ask that the Board take no action until the full educational process that Senator Puckett mentioned has taken place. I think that's a...would be a very positive thing for everyone involved for those in the industry, for those that have oil and gas interest. We would welcome the opportunity to participate in that process because we want to be a good neighbor and---

BUTCH LAMBERT: 30 seconds.

KEVIN WEST: ---we think that the interest of everyone involved in this issue could be served by transparency and improving the communication process. So, we would just ask that the Board allow that process to take its course and a decision that's fair and equitable to everyone be made after that has occurred. Thank you very much.

BUTCH LAMBERT: Thank you for your comments. John Sheffield. Please state your name for the record.

JOHN SHEFFIELD: John Sheffield, mineral owner, Buchanan County. I'm not going to address post production right now, so don't worry about it. I kind of have a

question. I need the Board's help a little bit with it, if I could. I was looking through definitions. What I was looking for was a definition of the wellhead in the Act or anything like that. I don't know if Mr. Prather since...sorry about that, Mr. Prather. You are the gas and oil industry. But a definition of the wellhead. It's not a trick question. I'm just trying to see what---

BRUCE PRATHER: Well, the wellhead is where the well comes out of the ground, if you want to put it that way.

JOHN SHEFFIELD: Okay.

BRUCE PRATHER: Normally, under pre-1988 conditions there was either a sub-meter or a master meter. Adjacent to that wellhead maybe a 100 feet or so. That's where the association of the cost of the operator versus where the market was. That's what the wellhead was then. When they deregulated gas there were certain markets they set up as hubs and these prices that were at the wellhead extended on beyond the wellhead to account for these marketing hubs. So, that's what these post production costs are. They take care of these...getting the things to the market.

JOHN SHEFFIELD: Yes, sir. I was just wanting a definition. Thank you for that.

BRUCE PRATHER: Of the wellhead?

JOHN SHEFFIELD: Yeah, just the wellhead.

Basically, where the gas separates from---

BRUCE PRATHER: Well, it has changed.

BUTCH LAMBERT: 30 seconds, Mr. Sheffield.

BRUCE PRATHER: It has changed.

JOHN SHEFFIELD: Okay. Thank you for your time.

BUTCH LAMBERT: Thank you. Thank you for your comments. Frank Henderson.

BRUCE PRATHER: I didn't mean to take all of his time.

BUTCH LAMBERT: He asked. State your name for the record, please.

FRANK HENDERSON: Frank Henderson, Appalachian Energy. I'd like to take a moment to thank the Board for what they do do. I know it's...I've served on a few Boards including VOGA and a lot of work goes in. I don't think any of you are getting rich on the, I think, \$50 a day that it takes...that you get for sitting here and a lot of important work gets done. So, I'd like to recognize that because it is a...you know, it's a sacrifice, I think, for you folks to be here and to be a part of this process. That's number one. I would like to thank Senator Puckett also and Delegate Phillips for their work on trying to come up with a

resolution. I do want to restate Mr. Grantham's comments that the industry did try very diligently to come up with a resolution with a compromise. For the record, we didn't start actually working on trying to kill the Bill there, Senator, until twelve hours before when it became obvious that there was nothing that was going to be resolved. There wasn't going to be a compromise. But, we were trying to work right up to the last minute on that. I guess the one thing that I do want to say and Mr. Kaiser, I believe, we reinforce some of these things. The whole reason for this Board is to foster the development of the resource. Okay, without this Board there would be no gas wells or very few gas wells and oil wells drilled in the state simple and plain. One person with an half an acre mineral ownership in an 80 acre or 60 acre unit could prevent the other parties from having any ability to recover what they want to recover. That's why...that's why the legislature set up the Act so that---

BUTCH LAMBERT: 30 seconds, Mr. Henderson.

FRANK HENDERSON: ---the resource could be recovered and the parties that are force pooled are given fair options to be compensated for being a part of that process. They have three primary options. We've gone through it several times. I just wanted to reinforce that

fact that without this process there would be no development. There would be no tax revenue. There would no royalty. Thank you.

BUTCH LAMBERT: Thank you for your comments. Jim Kaiser. State your name for the record, please.

JIM KAISER: Jim Kaiser, Wilhoit & Kaiser. I represent several clients on a regular basis before the Virginia Gas and Oil Board. Mr. Henderson stole pretty much all of my thunder there, so I don't even know that I'm going to take two minutes. But, I do want to...apparently, there may be some misconception about some of Mr. Grantham's earlier comments. There was not, as far as I know, an Attorney General's opinion done back in '93 when the then Attorney General, Sandra Riggs, looked at this issue. I'm not going to get an argument now whether or not the Board has the statutory authority. I think you can read the statute to say that they do. But aside from that, again, I'd like to reiterate what Mr. Henderson said. This is working administrative Board set up to foster the development of the resource and protect correlative rights. It's not a political Board. I want to briefly touch on the fairness issue, which Mr. Henderson did. Most of my force poolings are done for Equitable Production Company. In most cases,

as you'll see today, we force pool less than 2% of the unit. That means the other 98% want their resource developed. They've signed a voluntary lease in order for that resource to be developed. So, you tell me what's fair about 2% being able to keep the other 98% from developing the resource. That's why this Board was set up. That's why the statute is written the way it is. That's why each person force pooled has three options, two of them allowing to participate up to 100% of their interest. Not one-eighth, eight-eighths. I appreciate what the Board does. I look forward to working with them to resolve these issues.

BUTCH LAMBERT: Thank you, Mr. Kaiser, for your comments. Is there any other one that wishes to comment that didn't sign up?

PATSY MOORE: I did.

COURT REPORTER: You need to come down here.

BUTCH LAMBERT: You need to come down here, ma'am.

PATSY MOORE: I just actually need an answer to---

BUTCH LAMBERT: Come to the mike, please, and state your name for the record.

PATSY MOORE: My name is Patsy Moore. I live on Horn Mountain. What I'm here for, we have a well...a water well that they had went under us and had caused the water

to...we didn't have no water. My well, they've still not sealed it off or anything like that. I called Jerry Crouse. I've called Phillip Lowe and everyone of them. They keep putting me off. Where that mine has blowed before it had... our trailer had rocked and it caused our water to go out. We couldn't get no help with getting water. We've not been paid for the well. The well is still there open. Where we couldn't get them to come and seal it off or anything, it's really a danger. I can't get no help with it. I needed to see if I could maybe bring it up before the Board. They have paid everybody down that hollow for their well and they've also hauled water to them to make sure they had water, here we have nothing, and see what that the Board could do to help us with that.

BUTCH LAMBERT: Thank you, Ms. Moore. I'm going to ask Mr. Asbury if he would be so kind as to follow up with Ms. Moore on this issue.

DAVID ASBURY: Certainly.

PATSY MOORE: Okay. They come up there about a month ago, Wayne Thomas did. He hauls water for Consol. This was back, you know, for this whole duration. He said they send him up there to seal the well off. But, what it is, they gave us...see, they've got our county water there now ready to hook up and we can't even dig our line because

they told us not to be digging there where the well is because it could be full of gas and if we did it could blow. We need some answer on that to see---

DAVID ASBURY: We'll work within our Department of Mines, Minerals and Energy to first determine what Agency...it could be a vertical ventilation hole dealing with the mine atmosphere---

PATSY MOORE: Yeah.

DAVID ASBURY: ---if it is, we'll work with our Division of Mines. If it's related to the Gas and Oil Operations, we'll also work with that to give you an answer.

PATSY MOORE: Well, what they did they went under us and caused the water to go, you know, and---

DAVID ASBURY: Yes, ma'am.

BUTCH LAMBERT: Okay, thank you, Ms. Moore.

DAVID ASBURY: If you'll leave me your number and address and so forth, I'll respond to you.

PATSY MOORE: Okay. Thank you.

BUTCH LAMBERT: Thank you, Ms. Moore.

PATSY MOORE: Thank you.

SHIRLEY KEEN: I'd like to speak just one little minute.

BUTCH LAMBERT: Yes, ma'am. You have two minutes. If you'll come forward and state your name for the record.

SHIRLEY KEEN: My name is Shirley Keen. I live at Contrary. You know, our government went to Iraq and they put Saddam Hussein out because they were taking the people's gas...I mean, their oil. I feel like that we are going through some of the same stuff. We've been fighting since 1993. I have come to this Board time and time and time again. I have never one time seen the people taken into consideration. I want to thank the delegates that came this morning and helping us. There's a lot of people in Buchanan County could use their money, poor people. If they can go to Iraq and do something with Saddam Hussein, surely they can do something for Buchanan County, Dickenson County and wherever else these well people are going. I have been told, you know, it's not worth anything. We're going to get it anyway. I was told this back in '93. I said, well, I own it. Leave it alone. We have got three companies that is interested in buying our gas and oil. We're fixing a contract. We will be selling...the Horn Heirs will be selling their gas and oil. We're getting some contracts. I have property that they can buy, you know. We have got a 20% offer for our gas and oil. That's what we're going to do with ours. Thank you for your time.

BUTCH LAMBERT: Thank you, Ms. Keen. At this time, I'm going to close the public comment period. The Board is

going to enter back into docket item number one addressing post production costs. Are there any comments from the Board on anything that we've heard today of post production costs?

BILL HARRIS: Mr. Chairman.

BUTCH LAMBERT: Mr. Harris.

BILL HARRIS: Just as a discussion item, of course, one of the...I guess, Delegate Phillips indicated that maybe that the Legislation does not allow us to make those. I guess we need to make some determination on that end. I don't know what the procedure is to do that. But, I would certainly recommend that we pursue that.

BUTCH LAMBERT: Thank you, Mr. Harris. I think... you know, I appreciate Delegate Phillips'...his request. We will honor that request. Those things take time. I'm expecting at least we'll probably be back here next month and may not have an answer from the AG's office at that time. But, we will honor Mr. Phillips...Delegate Phillips' request. Any other discussion from the Board?

DONNIE RATLIFF: Mr. Chairman.

BUTCH LAMBERT: Mr. Ratliff.

DONNIE RATLIFF: We've been looking at this for over a year. We've gathered a lot of information. We have learned from the experience, I have. I know I've read the

Gas and Oil Act more times in the last six months than I care to share with you. Mr. Prather has had a lot of input from his side of the experience. Ms. Dye has also done a lot of research for the committee and offered a lot of information to us. I couldn't leave out Ms. Jewell and Juanita and Ron Ratliff, who...and, Ms. Jewell, I did go through your packet. I understand and see...I think I follow it. But...and I was in Richmond from January the 11th until the 26th of February and watched the procedure. I did not offer any draft language. I was dealing with coal Bills and Bills that affected our company. But, I read somewhere that I did help draft something. I just wanted that on the record that I didn't draft any Legislation. Mr. Sheffield was there the day the Bill was heard also. I think we've studied it for a year. I think the General Assembly said that zero was not the right number. That sent that message back to us. When I read the paragraph that deals with one-eighth royalty, that paragraph begins...I can't quote it verbatim, but it basically says that parties that are force pooled shall be deemed leased and treated that way. I guess I have a hangup that if you're going to force pool somebody that we're to consider that that group is leased. Therefore, they would be expected to share some of the burdens with the transportation. I spent a couple of hours

yesterday trying to put together a month. I've not shared this with the Board. But, at this time, I would like to make a motion that the Virginia Gas and Oil Board to include in all force pooling orders language addressing how conventional natural gas, coalbed methane and oil are to be valued at the wellhead for purposes of royalty payment. Royalty payments shall be based on a 100% of the value of the gas or oil at the wellhead. The resources owners subjected to force pooling shall be entitled to a royalty payment of no less than one-eighth the value of the gas at the wellhead. For the purpose of the value of the wellhead, it shall be deemed to be sale's price from the first point of sale less post production costs not to exceed a maximum of \$.50 for conventional wells and \$.70 for coalbed methane wells. The value at the wellhead shall be deemed to be the sale's price at the first point of sale less reasonable transportation costs from the well to the first point of sale to be determined in a manner by the Board. Each gas or oil well operator shall make an annual filing with the Department by February the 15th, which will set forth an average of such operator's actual post production costs for the preceding calendar year for all gas and oil produced in the Commonwealth. Such adjustment be calculated by the Board and should be made public annually on April the 1st

and the maximum deductions for post production costs shall be adjusted annually each July 1 if an adjustment to be warranted by the Board. I place that in a form of a motion. I've got copies in case someone couldn't follow.

BUTCH LAMBERT: Has everyone had time to read through the motion?

BRUCE PRATHER: Uh-huh. I have a question. Is this comparable to the scenario that Mr. Asbury gave at our last committee meeting? Does this change that much? Remember, it was Steve Walsh's proposal.

BUTCH LAMBERT: Mr. Prather, I wasn't involved in the committee meetings. So, I don't know.

DONNIE RATLIFF: I had that. But, I did not go back and look at Steve's language.

BRUCE PRATHER: Okay.

DONNIE RATLIFF: So---.

BRUCE PRATHER: I was thinking his \$.75.

DONNIE RATLIFF: This was...this was...I looked at Senator Puckett's Bill and Senator Phi...Delegate Phillips' Bill and tried to put the meat of that in there with the---

BRUCE PRATHER: Oh, okay.

DONNIE RATLIFF: ---deducts...with the caps.

BRUCE PRATHER: I was thinking his was \$.75. Does that a ring a bell with anybody?

MARY QUILLEN: I didn't see...actually see it. I just remembered hearing it.

BILL HARRIS: Yeah, I think it---.

DAVID ASBURY: The information, Mr. Prather, that was proposed to the committee didn't include a value.

MARY QUILLEN: I think it was proposed.

DAVID ASBURY: What it said was that it would value based on the field before the Board and set annually. It did not have these current prices in there.

BRUCE PRATHER: Okay.

MARY QUILLEN: I think it was just mentioned that \$.75 as a---.

DAVID ASBURY: It was a process where the Board would have valued after testimony on annual basis and revisit those prices on an annual basis.

MARY QUILLEN: Uh-huh. Uh-huh.

DAVID ASBURY: But, there was no price or specific price given.

BRUCE PRATHER: Okay.

BUTCH LAMBERT: Any other discussions before I call for a second?

KATIE DYE: Mr. Chairman.

BUTCH LAMBERT: Mrs. Dye.

KATIE DYE: I don't feel like that this is

appropriate at this time given the testimony that we've heard this morning until we receive a decision from the Attorney General.

BUTCH LAMBERT: Okay. Any other discussion?

(No audible response.)

BUTCH LAMBERT: I have a motion before the Board. Do I have a second?

BRUCE PRATHER: I'll second it.

BUTCH LAMBERT: I have a motion and a second. Ma'am Recorder, would you poll the Board?

JIM KAISER: We're going to file an objection.

BUTCH LAMBERT: Well, I think---

JIM KAISER: I'm going to call on the Attorney General. I mean, I don't think we've had anywhere close to due process on this. It was not properly noticed. It wasn't properly set out as to what was going to be done here. The Chairman has already said, "We're not going to do anything without the Attorney General's opinion." What's going on here?

BUTCH LAMBERT: Mr. Kaiser, I think you're out of order. I appreciate your comments. But, I have a motion and a second. I'm calling for a vote.

COURT REPORTER: Mary Quillen.

MARY QUILLEN: No.

COURT REPORTER: Peggy Barber.

PEGGY BARBER: No.

COURT REPORTER: Bill Harris.

BILL HARRIS: No.

COURT REPORTER: Katie Dye.

KATIE DYE: No.

COURT REPORTER: Donnie Ratliff.

DONNIE RATLIFF: Yes.

COURT REPORTER: Bruce Prather.

BRUCE PRATHER: No.

COURT REPORTER: Butch Lambert.

BUTCH LAMBERT: No.

BUTCH LAMBERT: The motion has failed. Thank you.

Okay, we're moving on to docket item number two. This is a petition from Equitable Production Company for pooling of coalbed methane unit VC-53781...or 891, docket number VGOB-08-1209-2393. All parties wishing to testify, please come forward.

JIM KAISER: Mr. Chairman, Jim Kaiser on behalf of Equitable Production Company. If you would, please, go ahead and call the next two items and then we'll have some housecleaning as to two, three and four.

BUTCH LAMBERT: Okay, we're also calling a petition from Equitable Production Company for establishment of a

provision drilling unit consisting of 320 acres for the drilling of horizontal conventional gas wells and served by well VH-531269. This is docket number VGOB-09-0120-2429. We're also calling a petition from Equitable Production Company for establishment of a provisional drilling unit consisting of 480 acres for the drilling of horizontal conventional gas wells served wells VH-531022 and VH-531104. This is unit EPC-2432. This is docket number VGOB-09-0120-2432.

JIM KAISER: Mr. Chairman, at this time, on behalf of Equitable Production Company, I'd like to withdraw all three of those petitions.

BUTCH LAMBERT: Those will be withdrawn. Thank you, Mr. Kaiser. Moving to item six, this is a petition from Appalachian Energy, Inc. for pooling of coalbed methane well AE-237, unit F-3, docket number VGOB-09-0120-2440. All parties wishing to testify, please come forward.

DAVID ASBURY: Mr. Chairman.

BUTCH LAMBERT: Mr. Asbury.

DAVID ASBURY: You may have skipped item five as well.

BUTCH LAMBERT: I think you're right, Mr. Asbury. Thank you.

DAVID ASBURY: Sorry.

BUTCH LAMBERT: We're going to back up to another one. Are you planning to call...do you just want to five right now? We're going through five.

JIM KAISER: Yeah.

BUTCH LAMBERT: Okay, thank you. Okay, let me back up on the agenda. I apologize. We're calling a petition from Appalachian Energy, Inc. for pooling of coalbed methane well AE-199. This is unit F-37, docket number VGOB-09-0120-2439. All parties wishing to testify, please come forward.

JIM KAISER: Mr. Chairman, Jim Kaiser, Frank Henderson and Justin Phillips for Appalachian Energy.

TOM MULLINS: Mr. Chairman, there's a competing application on the Board's docket for this unit. It's docket number fifteen. We'd like to ask that be called at the same time as well on behalf of GeoMet.

BUTCH LAMBERT: We're also calling a petition from GeoMet Operating Company, Inc. for pooling of coalbed methane unit F-37, Rogers well 420, docket number VGOB-09-0120-2453. All parties wishing to testify on this one, please come forward.

TOM MULLINS: We have some witnesses. There's too many people to sit at the table, Mr. Chairman. So, I'll...if it's okay with the Board we'll call them as needed.

BUTCH LAMBERT: Yes, that will be fine.

MARY QUILLEN: This is five and fifteen?

BUTCH LAMBERT: Yes, ma'am.

MARY QUILLEN: Did you call the docket number for fifteen yet?

BUTCH LAMBERT: Yes, I have.

MARY QUILLEN: Is it 09-0120-2453?

BUTCH LAMBERT: Yes.

(Frank Henderson, Justin Phillips and Ertel Whitt are duly sworn.)

GEORGE MASON: Mr. Chairman, before we go on, can we identify some other parties also?

BUTCH LAMBERT: Yes.

GEORGE MASON: George Mason, attorney and Ertel Whitt, consulting engineer. We're here on behalf of the majority owner of the coalbed methane track in this unit, which is LBR Holdings, LLC. We're here in support of GeoMet's competing application.

BUTCH LAMBERT: Thank you, Mr. Mason.

GEORGE MASON: Thank you.

BUTCH LAMBERT: Mr. Kaiser, you may proceed.

JIM KAISER: We did hand out a revised Exhibit B for this unit. What it reflects is a change in the lease status of Tract 3 from unleased to leased, for your

information. I guess, we'll go through our standard testimony to get that on the record and then we'll let GeoMet present their case and then argue it out from there.

BUTCH LAMBERT: Yes, sir.

JUSTIN PHILLIPS

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

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Now, Mr. Phillips, if you'd state your name, who you're employed by and in what capacity?

A. I'm Justin Phillips, land manager for Appalachian Energy.

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

A. Yes, it does.

Q. Are you familiar with Appalachian Energy's application seeking to pool any unleased interest in the unit for Appalachian Energy well AE-199, which was dated December the 19th, 2008?

A. Yes, I am.

Q. Now, does Appalachian Energy own drilling rights in the unit involved here?

A. Yes, we do.

Q. Prior to the filing of this application, were efforts made to contact each of the respondents and an attempt made to work out an agreement regarding the development of the unit including an attempt to work out an agreement with GeoMet for the LBR Holding's interest?

A. Yes.

Q. And what is the interest of Appalachian Energy under lease in the gas estate within this unit?

A. Currently, 22.57%, which lease 56.37% unleased. If you would like to go ahead and ask for the coal.

Q. Well, that can't be right. 22 and 57 don't add up to a 100.

A. 56.37 is unleased.

Q. That still don't add up.

FRANK HENDERSON: Well, this is leased. These two.

A. Oh, I'm sorry. The unleased is...on the gas 22.57 leased---

Q. And 77.43---?

A. And then 38.08 of the coal is leased.

Q. Okay, so what percentage of the two estates remain unleased?

A. 56.37 of the gas and 56.37 of the coal.

Q. Okay. Are there any unknowns in this unit?

A. No, there's not on this one.

Q. Are all the unleased parties set out in Exhibit B-3 to the application?

A. Yes, they are.

Q. Are you requesting this Board to force pool all the unleased interest as listed at Exhibit B-3?

A. Yes.

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

A. Yes, I am.

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

A. One-eighth royalty, five dollar...five year term for a five dollar bonus for a paid up five year lease.

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

A. Yes.

Q. Now, as to those respondents who have not voluntarily leased or voluntarily agreed to some sort of participation agreement, do you recommend that they be allowed the following statutory options with respect to

their ownership interest: 1) Participation; 2) a cash bonus of five dollars per net mineral acre plus a one-eighth of eight-eighths royalty; or 3) in lieu of a cash bonus and one-eighth of eight-eighths royalty share in the operation of the well on a carried basis as a carried operator under the following conditions: Such carried operator shall be entitled to the share of production from the tracts pooled accruing to his or her interest exclusive of any royalty or overriding royalty reserved in any leases, assignments thereof or agreements relating thereto of such tracts, but only after the proceeds applicable to his or her share equal, A) 300% of the share of such costs applicable to the interest of the carried operator of a leased tract or portion thereof; or B) 200% of the share of such costs applicable to the interest of a carried operator of an unleased tract or portion thereof?

A. Yes.

Q. Do you recommend that the order provide that all elections by the respondents be in writing and sent to the applicant at Appalachian Energy, Inc., P. O. Box 2406, Abingdon, Virginia 24212-2406, Attention: Justin Phillips?

A. Yes.

Q. Do you recommend that the order provide

that if no written election is properly made by a respondent, then that respondent should be deemed to have leased and elected the cash royalty option in lieu of any participation?

A. Yes.

Q. Do you agree that the unleased respondents be given 30 days from the date that they receive the recorded Board order to file their written elections?

A. Yes.

Q. If an unleased respondent elects to participate, should they be given 45 days to pay their proportionate share of actual well costs?

A. Yes.

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

A. Yes.

Q. Should the applicant be allowed a 120 days following the recordation date of the Board order and thereafter annually on that date until production is achieved, to pay or tender any cash bonus or delay rental becoming due under the force pooling order?

A. Yes.

Q. Do you recommend that the order provide

that if a respondent elects to participate but fails to pay their proportionate share of well costs, then that respondent's election to participate should be treated as having been withdrawn and void and the respondent should be treated as if no initial election had been filed under the force pooling order?

A. Yes.

Q. Do you recommend that the order provide that where a respondent elects to participate but defaults in regard to the payment of those well costs be paid any cash sum due that respondent within 60 days after the date on which that respondent could have paid those...their share of those actual well costs?

A. Yes.

Q. Do we need to establish an escrow account for this well?

A. Actually, there...I believe there is unknown in Tract 1.

Q. One of the coal?

A. Yes. Brenda Owens Brown.

Q. I'm not sure on that.

A. It would have been filed with the original application, Exhibit E.

Q. Would it be B. E. Stiltner?

A. B. E. Stiltner Estate?

Q. Yeah.

A. Yeah, that's correct.

Q. Okay. So, we do need to establish an escrow account for Tract 4---?

A. Yeah, it's Tract---.

Q. Is that correct? ---or the Board needs to establish an escrow account. Yeah, it looks like they have a half interest in Tract 4. There's no conflicting claim, but they have...they are unknown. So, the Board does need to establish an escrow account for half the proceeds attributable to Tract 4 in this unit?

A. That's correct.

SHARON PIGEON: Do you have a revised Exhibit E?

BUTCH LAMBERT: I don't think we have what you're talking about.

JUSTIN PHILLIPS: No, I just submitted Exhibit B. The original Exhibit E should have been on file.

SHARON PIGEON: The original Exhibit E has 2 and 4.

MARY QUILLEN: 2 and 4.

BRUCE PRATHER: Yeah, it says 2 and 4.

JIM KAISER: Okay. We'll submit a revised Exhibit E to show just Tract 4.

BRUCE PRATHER: Have they cleared up 2?

JIM KAISER: Huh?

BRUCE PRATHER: Have you cleared up Tract 2?

JIM KAISER: Well, there's no conflicting claim.  
Tract 2 is a fee mineral owner.

JUSTIN PHILLIPS: That's correct.

JIM KAISER: And they're none. So, we'll get you a revised Exhibit E today to reflect the half interest in Tract 4 that needs to be escrowed.

DAVID ASBURY: Mr. Kaiser and Mr. Chairman.

BUTCH LAMBERT: Mr. Asbury.

DAVID ASBURY: Also, on the exhibit presented, we do probably need another calculation of the acreage that are leased and unleased, the percentage. Those two numbers we have aren't correct that has been presented.

JUSTIN PHILLIPS: On the Exhibit B that I passed out?

DAVID ASBURY: Yes.

BUTCH LAMBERT: That was my question too. I don't think we're looking from the same pages. A number of them don't add up.

JUSTIN PHILLIPS: Are you looking at the correct Exhibit B because I passed out the---?

BUTCH LAMBERT: Well, I think what you testified to was not what we have.

SHARON PIGEON: What you've done, I believe---.

JIM KAISER: Okay, let's revisit that.

SHARON PIGEON: ---is break this into three different categories, whereas normally you have leased and unleased. You've got two different unleased.

JUSTIN PHILLIPS: That would be my fault. Usually, our Counsel's office did that---.

SHARON PIGEON: And you need to add those, which you didn't do in your testimony.

JUSTIN PHILLIPS: ---and we listed the GeoMet/LBR acreage as leased, which should have been unleased.

SHARON PIGEON: If you add the two unleased, then you get the right number to make it work. So, you need to look at that and see if that's...if that's what you are telling us.

JIM KAISER: Yeah, let's go back. Let's revisit that. I'm going to go back to the percentage unleased and leased on both of the oil and gas and the coal estate.

(Jim Kaiser and Justin Phillips confer.)

Q. Mr. Phillips, do you want to correct your testimony what percentages in both the gas and the coal estate are currently leased and what percentages are currently unleased?

A. The gas estate, Appalachian Energy has

22.57% under lease, okay. That should be the exhibit that you folks have there in front of you now. The remaining percentage that was unleased would be the 56.37 that is unleased plus the...which is leased to another party, plus the 21.06%.

SHARON PIGEON: For a total?

A. For a total of 5...I'm sorry.

DAVID ASBURY: 77---.

JIM KAISER: That's not right either.

(Jim Kaiser and Justin Phillips confer.)

MARY QUILLEN: You're stating that 56.37 is leased.

JUSTIN PHILLIPS: Again, I've got the wrong exhibit that we...they were using for our research. I guess, it would be just best to resubmit this exhibit.

JIM KAISER: No, we can correct it.

SHARON PIGEON: Did you say that the 56.37% is leased to Equitable as opposed to Appalachian Energy?

JUSTIN PHILLIPS: That's correct.

JIM KAISER: It's leased to Equitable and farmed out to GeoMet as far as the coalbed methane gas.

SHARON PIGEON: So, you want to add those?

JIM KAISER: No, that's not leased to us. What is leased to us Tract 1, Tract 3, 1.39% of Tract 4 and 1.39...twice. So, you need to add...we need to add 19.8,

15.51 and 1.39 twice.

MARY QUILLEN: But Tract 3 that 15.51 shows this being unleased.

JIM KAISER: Not on your new exhibit.

MARY QUILLEN: Uh-huh. That's what I've got right here.

BUTCH LAMBERT: It shows on the new exhibit. What you just handed out, Mr. Kaiser, it says "unleased".

MARY QUILLEN: Yeah.

BUTCH LAMBERT: Or "leased", I'm sorry.

JIM KAISER: Huh?

BUTCH LAMBERT: It says, "leased".

JIM KAISER: It says, "leased" on the---

BUTCH LAMBERT: I mean, "unleased", I'm sorry.

MARY QUILLEN: "Unleased."

BUTCH LAMBERT: "Unleased" 15.51 on your new exhibit.

MARY QUILLEN: Yeah, our says "unleased". Yeah.

JIM KAISER: I thought you said A & J Coal was leased.

JUSTIN PHILLIPS: It's not leased to us on the conventional side.

JIM KAISER: It doesn't matter on the conventional side. It's not a conventional well.

JUSTIN PHILLIPS: Well, the coal side is what's...  
where it's leased to us.

JIM KAISER: So, it's unleased on the gas side of  
the CBM estate and leased on the coal side of the CBM  
estate?

JUSTIN PHILLIPS: Correct. We have the CBM leased.

JIM KAISER: So, you're going to have more of the  
coal estate leased for the CBM purposes than you are the gas  
estate?

JUSTIN PHILLIPS: That's correct.

JIM KAISER: Okay. Do we want to take time out and  
redo the math or do we want to say we'll just submit a new  
set of exhibit?

JUSTIN PHILLIPS: We'll submit the new exhibits.

BUTCH LAMBERT: The Board would prefer that you  
work this out and not...we not do new exhibits.

JIM KAISER: Okay.

SHARON PIGEON: We can't do new exhibits without  
testimony.

JIM KAISER: All right. Let's take a recess for a  
minute, if we could.

BUTCH LAMBERT: I think...I'm the one that gets to  
do that, Mr. Kaiser.

(Laughs.)

BUTCH LAMBERT: I think I'm the one that gets to do that.

JIM KAISER: Okay. Well, I would ask for...I would request a recess. I would request a recess...about a five minute recess from the Board.

BUTCH LAMBERT: I think we all need a break. We'll take five minutes. Five minutes, please.

(Break.)

BUTCH LAMBERT: We're ready to begin again. We're ready to begin again.

JIM KAISER: Thank you, Mr. Chairman. At this point, we'd like to...I'll ask Mr. Phillips to correct his testimony.

JUSTIN PHILLIPS

DIRECT EXAMINATION RESUMES

QUESTIONS BY MR. KAISER:

Q. Mr. Phillips, if you could for the Board, please, state what the unleased and leased percentages are in this unit for both the gas estate and the coal estate?

A. 38.09 as leased and 61.91% is unleased.

Q. And we will submit some revised exhibits to accurately reflect those numbers, correct?

SHARON PIGEON: Is that both?

A. That is both the gas and coal, yes, ma'am.

SHARON PIGEON: I'm...if you don't mind, could you---

JIM KAISER: What happened was there was some confusion on the conventional gas leased.

SHARON PIGEON: So, it was 38.09 and 61.91 on the---

JIM KAISER: Yes, ma'am.

SHARON PIGEON: And you will provide us a new exhibit.

Q. And, Mr. Phillips, who should be named operator under any force pooling order?

A. Appalachian Energy, Inc.

JIM KAISER: Nothing further of this witness at this time, Mr. Chairman.

BUTCH LAMBERT: Any questions from the Board?

(No audible response.)

TOM MULLINS: Mr. Chairman.

BUTCH LAMBERT: Mr. Scott.

TOM MULLINS: On behalf of GeoMet---

BUTCH LAMBERT: Mr. Mullins, I'm sorry.

TOM MULLINS: That's okay. I've been called worse than that. I spoke with Mr. Kaiser. With leave of the Board, this might expedite things, to let Appalachian go ahead and present their jurisdictional information evidence to the Board and let GeoMet do the same. Then we can take evidence or argument or both concerning the operator issue once the Board has heard from both companies as to their application themselves.

BUTCH LAMBERT: Okay.

TOM MULLINS: Is that okay with---?

BUTCH LAMBERT: Yes. Thank you, Mr. Mullins.

TOM MULLINS: Then I won't have any questions right now with that understanding.

BUTCH LAMBERT: Okay. Questions from the Board?

(No audible response.)

BUTCH LAMBERT: You may call your next witness, Mr. Kaiser.

FRANK HENDERSON

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

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Mr. Henderson, if you would state your name, who you're employed by and in what capacity?

A. Frank Henderson, the president of Appalachian Energy.

Q. What's the total depth of this proposed well under our plan of development?

A. 2,048 feet.

Q. And the estimated reserves underlying the unit?

A. 250 million cubic feet.

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

A. Yes, it has.

Q. In your opinion, was it prepared by someone knowledgeable in the preparation of AFEs and knowledgeable in particular to well costs in this area?

A. Yes.

Q. In your opinion, does the AFE represent a reasonable estimate of the well costs?

A. Yes, it does.

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

A. The dry hole costs is \$148,166. The completed well costs \$417,631.

Q. Do these costs anticipate a multiple completion?

A. Yes, they do.

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

A. Yes.

Q. In your professional opinion, would the granting of this application to Appalachian Energy be in the best interest of conservation, the prevention of waste and the protection of correlative rights?

A. Yes, it would.

JIM KAISER: Nothing further of this witness at this time, Mr. Chairman.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Anything further, Mr. Kaiser?

JIM KAISER: Not at this time. I guess, with the agreement with Mr. Mullins we'll let them put on their record evidence as to the pooling application and then we'll have our discussion as to who should be named operator.

TOM MULLINS: Mr. Chairman, with that understanding, we call Mr. Dallas Nestle with GeoMet.

(Dallas Nestle is duly sworn.)

DALLAS NESTLE

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

DIRECT EXAMINATION

QUESTIONS BY MR. MULLINS:

Q. Would you please state your name?

A. Dallas Nestle.

Q. And by whom are you employed, Mr. Nestle?

A. GeoMet Operating Company.

Q. What are your job duties?

A. Project manager for the Virginia/West Virginia operations.

Q. Are you familiar with the application that has been filed on behalf of GeoMet for unit F-37, docket number fifteen today before the Board?

A. Yes, I am.

Q. How many acres does this unit contain?

A. 80.

Q. And is this a Oakwood Field unit?

A. Yes, it is.

Q. And the unit number, I stated it, was F-37, is that correct?

A. Yes, F-37.

Q. Does GeoMet have drilling rights in this

unit?

A. Yes.

Q. Okay. To your knowledge, are there any party respondents listed on Exhibit B-3 that should be dismissed?

A. No.

Q. What is the percentage of coal ownership that GeoMet has under lease in this unit?

A. 53.46%.

Q. And the gas?

A. The same 53.46.

Q. Okay. And was notice sent as required by Virginia Code Section 45.1-361.19?

A. Yes.

Q. And was notice also published in the newspaper for any unknown/unlocateable interest for other interest of that nature?

A. Yes.

Q. Okay. Do you have that list?

(No audible response.)

TOM MULLINS: We'll provide that to the Director.

Q. Is GeoMet authorized to do business in the Commonwealth of Virginia?

A. Yes.

Q. Has GeoMet filed the required bond?

A. Yes.

Q. What are the...what terms does GeoMet offer to those who voluntarily enter a lease agreement with them?

A. GeoMet offers a \$20 per acre for a five year paid lease with a one-eighth royalty.

Q. And you would ask that in the event the Board grants this pooling at those terms be applied to the pooling order as well?

A. Yes.

Q. Okay. In your opinion, is that a fair and reasonable set of lease terms?

A. Yes.

Q. What percentage of the oil and gas estate are you seeking to pool?

A. 46.54%.

Q. That's the same for the coal estate as well?

A. That is correct.

Q. Okay. Are there unknown owners?

A. Yes.

Q. Those are listed on Exhibit E to the application?

A. Correct.

TOM MULLINS: One of the things that I should have done, Mr. Chairman, we have revised exhibits that we need to pass out. One of the things that, I think, the Board asked us to do...I think Mr. Swartz may have asked us to do was to list Island Creek Coal Company on that, which we have now done. So, we'll pass those around.

Q. Which tracts are involved as far as needing to be escrowed by the Board?

A. Tract 2 and Tract 5.

Q. Okay. And what is the total percentage to be escrowed due to the unknown and unlocateable owners for those tracts?

A. 1.279167%.

Q. And that is listed on Exhibit, is that correct?

A. That's is correct.

Q. Are there any parties whose interest are in dispute?

A. Yes.

Q. Which tracts are involved in that?

A. Tract 2 and Tract 3.

Q. And what's the total percentage to be escrowed due to conflicting ownership potential?

A. 24.11%.

Q. And does Exhibit indicate that as well?

A. Yes, it does.

Q. Is the...is GeoMet asking that the Board pool the unleased interest in this unit?

A. Yes.

Q. To whose attention should correspondence be set in regards to this application?

A. Joey Stevenson, Land Manager, GeoMet Operating Company, 5336 Stadium Trace Parkway, Ste. 206, Birmingham, Alabama.

Q. Are you familiar with the well cost estimates for this well?

A. Yes.

Q. The AFE is indicates that it was prepared by Donna Walker. Who is Donna Walker?

A. Donna Walker is our project analysis.

Q. Does she work under your direct supervision and control?

A. She does.

Q. All right. What is the total depth of the well for this proposed unit?

A. 2,226 feet.

Q. And what do you estimate the reserves to be?

A. 988 million standard cubic feet.

Q. And what are estimated well completion costs?

A. \$528,423.

Q. Review the AFE and double check it. We're all vulnerable to that. What are the estimated dry hole costs?

A. \$303,148.

Q. Okay. And we've just passed out an Exhibit AFE with the Board indicating those costs and expenses, is that correct?

A. That is correct.

Q. In your experience, do the estimated well costs...strike that. Does the AFE provide for a reasonable supervision charge?

A. Yes.

Q. And, in your opinion, would granting of this application promote conservation, protect correlative rights and prevent waste?

A. Yes, it would.

TOM MULLINS: I don't have any other questions of Mr. Nestle at this time, Mr. Chairman.

BUTCH LAMBERT: Questions from the Board?

MARY QUILLEN: Was this in two different things? I

don't have that revised---

PEGGY BARBER: Here it is.

MARY QUILLEN: Oh.

TOM MULLINS: I apologize. I probably should have passed them both out at the same time.

MARY QUILLEN: Could you repeat those?

TOM MULLINS: Repeat the numbers?

BUTCH LAMBERT: What number?

SHARON PIGEON: The AFE numbers?

MARY QUILLEN: Uh-huh.

DALLAS NESTLE: Okay. The well completion cost is \$528,423. The dry hole cost is \$303,148.

BUTCH LAMBERT: Would you go over those completed costs again because your sheet doesn't match your application?

TOM MULLINS: The sheet---

DALLAS NESTLE: Did I round them up to the---

TOM MULLINS: ---it's a revised AFE. If you're asking for a comparison to the application---

BUTCH LAMBERT: Yes.

TOM MULLINS: ---we're moving to amend that application for this new amended sheet.

BUTCH LAMBERT: Okay.

SHARON PIGEON: Your cover sheet on your revised

AFE and your AFE are \$.50 different.

DALLAS NESTLE: Somebody did some rounding there I would say. \$.50.

SHARON PIGEON: We really prefer you stick to one number when you're doing your testimony and exhibits.

TOM MULLINS: We'll make that amendment.

SHARON PIGEON: I just want to get that for the record.

TOM MULLINS: I understand.

BILL HARRIS: Mr. Chairman.

BUTCH LAMBERT: Mr. Harris. Let me ask a question, if I might, about the two AFEs. I notice that the second is quite a bit higher than the first. Could you maybe address the reason why needed to...why you needed to change that?

TOM MULLINS: To make sure that I'm following the question, between Appalachian and us?

BILL HARRIS: No, I'm sorry.

BUTCH LAMBERT: No between yours.

BILL HARRIS: The revised...the one that came with your original application and the revised on that was just handed out. I just wondered...I mean, there's a...we were at 458 and then we're at 528 and I'm just wondering...and, I guess, I could compare line by line, but I just wanted to know if there was some general something that may have

occurred that---

DALLAS NESTLE: The original AFE was written without respect to the topography and the location of the well. Once the well location was determined, the elevation was higher. So, the depth of the well was increased. So, that was a contributing factor to the change in the costs.

BILL HARRIS: I do have one other question if I might ask.

BUTCH LAMBERT: Mr. Harris.

BILL HARRIS: I notice the very first item on both of these is other legal services and expenses. I'm not sure that we've seen that on AFEs. I may be wrong. But, could you maybe explain why that figure...I mean, we're looking at...the first item under intangible drilling costs. You have some legal fees listed. I'm not sure...I mean, I may stand to be corrected, but I don't remember seeing those in the past.

TOM MULLINS: It is not unusual for those to be included. I don't know how they're listed on other operator's AFEs. I think the Board may be aware that some of the past expenses for lawyers in some of these matters have been extraordinary and that's a cost of the well and that's the way it's built.

BUTCH LAMBERT: Ms. Quillen.

MARY QUILLEN: I have a question. You just made the comment that because of the topography then the well was deeper on the original---

DALLAS NESTLE: Well---

MARY QUILLEN: ---application.

DALLAS NESTLE: The TD doesn't change, but because the topography if it's on top of the mountain versus down lower, the depth of drilling changes.

MARY QUILLEN: Oh, okay.

DALLAS NESTLE: The overall length that you have to drill to get the total depth.

MARY QUILLEN: Okay.

BUTCH LAMBERT: Any other questions from the Board?

(No audible response.)

BUTCH LAMBERT: You may call your witness, Mr. Mullins.

TOM MULLINS: That's all we have on the application itself. Then, I don't know who wants to go first with what. Now, it's the competing application part.

BUTCH LAMBERT: Mr. Kaiser.

JIM KAISER: I call Mr. Henderson again.

FRANK HENDERSON

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. And, again---

(Frank Henderson and Jim Kaiser confer.)

JIM KAISER: Let him hand these exhibits out that we've prepared before this. This is kind of unusual, I know, for the Board to have these competing applications for operatorship of the unit. Again, I'll point out the statutory charge of the Board, which is to promote the efficient and recovery of the Commonwealth's resource and protect correlative rights. We will...okay. So, in conjunction with the exhibits, I'm going to call Mr. Henderson and what you through these. Again, this is the evidence that we're putting on to provide the Board with a solid evidentiary reason to support our application to be operator of this particular unit.

Q. Mr. Henderson, does Appalachian Energy have a consent to stimulate from Island Creek Coal Company?

TOM MULLINS: Objection. That's a permitting issue. The Board has previous ruled upon that issue in other applications. It's not relevant to the issue pending before the Board.

JIM KAISER: Well, I think it's relevant because, again, I don't think its prudent or wise on the Board's part to approve someone as the operator of a unit if there's no

reasonable chance that they can obtain a permit to drill the well. It's kind of counter productive.

TOM MULLINS: The Board heard this multiple times in some of the applications that were competing applications between GeoMet and CNX. Mr. Wampler consistently ruled that that was a permitting issue that did not impact the pooling of the unit and did not allow, as my recollection is, that evidence to be tendered to the Board. Subject to my memory being...sometimes it fails, but that's recollection of the ruling of the Board at that time. There are transcripts...I may have a transcript here that contains that...those set of objections and were the Board sustained those objections.

BUTCH LAMBERT: I'm going to allow Mr. Mullins' objection.

JIM KAISER: Okay. We'll move on to the set of exhibits that we've passed out. Again, we'll go back to Mr. Henderson. We're going to deal her with...primarily our focus here is going to be on operatorship. Both the ability to operate at a lower cost and achieve higher production. We're going to talk a little bit about the infrastructure in this particular area.

Q. Let's---

A. I guess, the first thing would be to, I guess, give a brief explanation of the map that we handed

out that shows the units in question. If you look in the northeast corner, the top right corner unit C-38, C-39 and D-38, those are units that are currently controlled by GeoMet. The units in green F-32, E-38 and G-38 are currently controlled by Appalachian. If you look at the F-38 unit in between E-38 and G-38 that is also...F-38 is also controlled by GeoMet. The units in contention are F-33 through F-37, which are in yellow. The reason we just tried to provide a simple map here that showed the units in contention, current control and what Appalachian Energy is proposing. The units in the northeast corner have been under control by GeoMet for nearly two years and have not been developed...at least two years.

TOM MULLINS: Objection to that, Mr. Chairman. These units...if I'm understanding the units that he's talking about, they're on Appeal with the Circuit Court. That's considered due diligence and extends the period of time. So, to the extent that he's arguing a due diligence argument, I object to that because that's specifically allowed by the regulations.

BUTCH LAMBERT: Is that where you're going, Mr. Henderson?

FRANK HENDERSON: Where we're going, sir, is...Mr. Chairman, is that we have acreage in those units that has

not been developed while GeoMet has been the operator...that was granted operatorship by this Board. That's part of our argument is that those units have not been developed. We, in the meantime, have developed many units to the south of there. Our...it's a critical part of our argument that that's why we should be granted the operatorship of these particular units to protect our rights and our leasehold rights in the five units in contention.

TOM MULLINS: Operatorship of other units are really not relevant to the units in questions, Mr. Chairman. That's our position.

FRANK HENDERSON: And our position is that they are completely relevant.

TOM MULLINS: That goes back to the same ruling of the Board the Chairman just made about the permitting issues and those ancillary issues.

BUTCH LAMBERT: I'm going to allow Mr. Mullins' objection.

JIM KAISER: Have those been handed out?

FRANK HENDERSON: Yeah. We've got another handout here we'd like to, I guess, reinforce our argument for why Appalachian should be the operator.

Q. Before we get into cost and production, does Appalachian Energy have existing infrastructure in the

area of these units?

A. Yes, we do.

Q. And what does it consist of?

A. It consists of gathering pipeline system and compression in close proximity. If you look at the map, the roll of G units, G-32 through G-37, we have all of those wells in production and online producing at this time.

Q. Okay. In preparation for these five hearings, we did a AFE comparison exhibit which, I guess, is no longer correct because originally the information that GeoMet submitted with each of their five units for some reason was five AFEs for exactly the same amount, \$458,378. So, that's what we used for our comparison. We just heard testimony from them apparently that 458 is now 528. I don't know about the other four units. But I assume maybe they're again somewhat more than the 458...378, which was, again, submitted for exactly the same for all five units. If you take Appalachian Energy's average AFE cost for those five units, Mr. Henderson, what would the average cost be per well?

A. \$416,370.

Q. And then, again as I stated, based upon the information we received of the applications, at that time GeoMet's average AFE was 458 and 378?

A. That's correct, based on the information that we had.

Q. Now, it appears that it...we don't know about the other four, but at least for this one it's now up to 528 which represents---?

A. Right. Which is 70,000 increase.

Q. ---a \$122,000 difference, is that correct?

A. That's correct.

Q. Okay. So, their cost to drill this well would be...at least their projected costs to drill this well would be \$112,000 more than yours, correct?

A. That's correct.

BRUCE PRATHER: I have a question.

BUTCH LAMBERT: Mr. Prather.

BRUCE PRATHER: Are the wells we're talking about they the same identical locations where you're putting your well versus where theirs is?

A. No. Our particular...they're in the same unit, but not---.

BRUCE PRATHER: Yeah, I understand that.

A. ---in the---.

BRUCE PRATHER: You know, when we're comparing AFEs, is you were talking about the same location it would be a lot more valid.

JIM KAISER: Well, I think it's fairly safe to assume that you're going to pick the lowest cost spot to drill in that unit, Mr. Prather.

BRUCE PRATHER: Exactly. Right.

JIM KAISER: So, they should be a little bit more similar. I mean, I don't know why you're going to go drill somewhere that's going to cost you more if it's an elevation or topography issue.

TOM MULLINS: Objection to the (inaudible) comments by Counsel. That's not evidence.

Q. Continuing on, Mr. Henderson. We also have prepared some production data as an exhibit for the Board.

A. That's correct.

Q. Okay. Can you...if you can point them to that and kind of explain what we've done there.

A. Okay, these will be the last two handouts of what was just handed out there, the last two pages. If you look at the production, what we did was compare the thirty-six wells that we've drilled. Not all of them in line, but we went ahead and showed that these were all thirty-six wells that are in the general...the immediate vicinity of the contested units. The wells that have production are indicated. We have several that are pending pipeline

hookup---.

TOM MULLINS: Mr. Chairman, I object to information from units...unless there is some correlation that he can lay a foundation as to why these units would be expected to produce like these other example units that he's trying to offer into evidence. Unless that foundation can be laid, you know, geology, you know, some reason---.

A. We have...if you look at the---.

JIM KAISER: Wait a minute.

BUTCH LAMBERT: Wait a minute.

A. I'm sorry.

TOM MULLINS: ---then I object. It's not relevant to this unit...or these units.

BUTCH LAMBERT: Mr. Henderson---.

JIM KAISER: Let me lay the foundation then, Mr. Chairman. I didn't know we were in a Court of law, but---.

Q. Mr...if you would look at your exhibit again, Mr. Henderson, could you point out why some of those wells are highlighted in blue and the significance of that?

A. The wells highlighted in blue immediately above the contested units and those are operated by Appalachian Energy.

Q. So, those are adjoining the contested units?

A. That's correct.

Q. So, you would submit that maybe the production figures from those units would be relevant?

A. That's correct.

Q. Okay. And what is your...what is your production data show?

TOM MULLINS: Just for the record, I'll object. The Board may let that in for its...his assumption that it's going to be the same because it's one unit over. Without geology, engineering or some other opinion coming into it, it's our opinion that it's hearsay and it's not relevant.

BUTCH LAMBERT: Thank you, Mr. Mullins. I was going to followup that. What's the correlation here?

FRANK HENDERSON: The correlation---

BUTCH LAMBERT: I mean, help us understand why you're showing this production from other wells related to this application.

FRANK HENDERSON: The correlation here is to show you that we've developed units immediately adjoining the contested units. Those wells have been in production. If you take a look at our production numbers, our average production numbers of those adjoining units in the Dwight... what we call the Dwight Whitewood Field of Buchanan County. Our production is better than one and a half times the

average than the GeoMet wells that are in production in Virginia. You know, for trying to define whose could be the better operator here, our whole goal here was to show the Board that we've built a history of developing coalbed methane in the immediate vicinity in the twenty units and we've established a proven track record of having wells that are one and a half times greater than any CBM well that GeoMet has in production in Virginia.

BUTCH LAMBERT: So, is that the argument that we're getting ready to hear here, I'm a better operator than this guy? Is that what it's going to boil down to?

JIM KAISER: In some part, certainly. Let me make another point, and I don't know if I'm stepping on anybody's toes here or what, but in the past...I mean, this Board is not a Court of law. I don't know where you've got the authority to make evidentiary rulings. I mean, in the past as an administrative agency you've been wide open as to what you've let in certainly with the public and certainly in some of the other contested hearings I've heard. I mean, this...I don't know where all of that is coming from.

BUTCH LAMBERT: Well--.

TOM MULLINS: Can I respond?

BUTCH LAMBERT: Let me respond to that. I think at a couple...maybe a month or two ago you asked me to do the

same thing to rule on a motion that you had made. So, that's why I'm allowing it today.

JIM KAISER: To rule on an objection that I had made?

BUTCH LAMBERT: On an objection, yeah.

JIM KAISER: I don't remember that.

BUTCH LAMBERT: On some...I have to go back and check the record.

JIM KAISER: Well, that's something that probably needs to be looked at.

BUTCH LAMBERT: Okay. I'll take your comment. Mr. Mullins.

TOM MULLINS: The Board's practice, as any tribunal, has to be to manage the presentation of evidentiary matters that come before the Board. The Board conducts itself under the APA guidelines for its hearings. That certainly contemplates only relevant evidence come before the Board and it's a proper objection and it's proper for the Board to consider under the APA under Title 2.2 of the Code, objection raised by opposing parties. I mean, that's sort of...our position is that's part of the embodiment of the law that the Board has to follow.

BUTCH LAMBERT: You're right, Mr. Kaiser. This is the first one of these that I have been involved in

personally. I'm not sure that the Board has seen one of these before. I think it's very important that we hear both sides of the argument. You're here asking us---

JIM KAISER: That's my point, just let everything in I mean, you're not a Judge.

BUTCH LAMBERT: I totally agree with that, I'm not a Judge. But, I do have some responsibility that this Board receive---

JIM KAISER: I understand that you can control it as to what's jurisdictional. I understand that. But, as to what's relevant, that's another question.

BUTCH LAMBERT: Well, and that's why I asked the question, are we just going to hear who's the best operator here. I mean, if that's...if that's the whole case that we're going to hear, I can produce more gas than this guy, then let's get to it...you know, let's hear that.

JIM KAISER: Well, that's what we're getting to. Our point is we can produce more gas at a lower cost and we have existing infrastructure.

FRANK HENDERSON: And we---

TOM MULLINS: But, that have to do that through evidence that's relevant to this unit. They can't just say we pick a unit out and this is it. They need to say we've done studies on unit F-37 and we have sample core hole data

that says there's this much gas present and this is our anticipated based on geology and engineering studies. They can't just say we went over to the unit next door and that unit produced this much. They have to have evidence to show what this unit is. We have that evidence. We've got a petroleum engineer and a geologist coming in to testify. But to do the next door stuff, it's not relevant, it doesn't apply to this unit, and I believe that objection has also been sustained when arguments were made trying to bring other unit data in to a force pooling concerning a particular unit.

BUTCH LAMBERT: Well, again, let me say, if both are asking this Board to make a call on who's the best operator, and that's what I've heard from both parties, I think it is relevant that we hear all of the evidence of all of the wells in the area that can show us that information. So---

TOM MULLINS: As a foundational standpoint, he needs to locate these units and why they are...how far away they are and how relevant they are? Until he does that, the proper foundation, again, is not---

BUTCH LAMBERT: I think he was into that when we got interrupted here. Mr. Henderson, I'm going to allow you to continue with that discussion on your production in

that area.

JIM KAISER: Okay, thank you, sir.

FRANK HENDERSON

DIRECT EXAMINATION RESUMES

QUESTIONS BY MR. KAISER:

Q. Mr. Henderson, following that line, could you, again, talk about these units that abut the southern side of this contested area?

A. Based on our experience with the wells that we've drilled in the immediate area on units adjoining the contested units, we found the geology to be very similar and the production speaks for itself. These numbers are numbers that were submitted to the DGO, annual production numbers. Although we did include one set of numbers here for a well that was recently turned in line just to give...no numbers have been submitted to the state yet. But, I think the numbers speak for themselves. We've had great success in this area. We feel that we're in the best position to be the operator to both drill and produce the wells.

Q. Mr. Henderson, how many wells has Appalachian Energy drilled in Virginia?

TOM MULLINS: Objection to the relevance. Again, it's not how many in Virginia. It's how many---

Q. Okay, how many have drilled in this area,

Mr. Henderson?

A. In this immediate area, we've drilled thirty-six wells.

Q. Okay. And would it be your testimony as the president of Appalachian Energy that you have found in this...so, you've drilled thirty-six in this immediate area. Would it your testimony that an operator often finds when you're doing...I'm going to call this infill drilling, when you're doing this type of drilling that often production from adjoining units will be very similar?

A. That's correct. We would consider it development drilling. But we would expect to see similar results on the contested units.

BUTCH LAMBERT: Mr. Henderson, may I ask another question? In your exhibit that you handed out with the well and unit locations, how come we don't have any information from G-38 or G-39 or do we? I'm I missing it?

FRANK HENDERSON: G-38 that was a...we have not drilled AE-205 yet. G-39 those wells are...actually, they're not operated...that box should not have been colored in green. That's operated by another company.

BRUCE PRATHER: Are those coalbed methane wells?

FRANK HENDERSON: They are coalbed methane wells, yes, sir. G-205 is a well that we're...we recently force

pooled...or that unit, we force pooled that unit and we're in the permitting process right now.

BUTCH LAMBERT: Okay. How about E-38?

FRANK HENDERSON: E-38 that's also a unit that was recently force pooled two months ago, I believe. I think both of those units were done...were force pooled two months ago and we're working on the permitting of those wells.

BUTCH LAMBERT: Nothing...you don't have the wells drilled?

FRANK HENDERSON: No, they're not drilled. No, sir.

BUTCH LAMBERT: Okay. F-32?

FRANK HENDERSON: F-32 was also recently force pooled. It was the same...the same date. It was two months ago. F-32, E-38 and G-38 we force pooled those units and we were uncontested even though those units contained LBR acreage.

Q. Again, the units that you have highlighted in blue on that exhibit are the units that are immediately to the south of these contested units, correct?

A. That's correct. On the production numbers, yes.

Q. So, it would be your testimony based upon the evidence that we have presented that Appalachian Energy

should be granted operatorship of these units based upon lower costs, higher production and existing infrastructure?

A. That's correct.

JIM KAISER: Nothing further of this witness at this time, Mr. Chairman.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Mr. Kaiser, I have one question. I think I just heard you say that the wells in question are south of the green that's being contested.

JIM KAISER: There's five actually being contested.

BUTCH LAMBERT: Okay. And those are F-33, F-34 and 35---?

JIM KAISER: No, it's G-33, G-34, G-35---.

FRANK HENDERSON: That's where we have production.

JIM KAISER: Right. Where we have production.

FRANK HENDERSON: But the---.

JIM KAISER: That's the point I was trying to make.

BUTCH LAMBERT: Okay. I just needed to clarify that. It's maybe what you said, but I misunderstood you. Thank you.

JIM KAISER: Okay.

BUTCH LAMBERT: Any questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do you have anything further, Mr. Kaiser?

TOM MULLINS: I have questions, Mr. Chairman, to cross examine him.

BUTCH LAMBERT: Let me see if he's got anything further then I'll moved to you.

JIM KAISER: Nothing further of witness at this time.

BUTCH LAMBERT: Mr. Mullins.

CROSS EXAMINATION

QUESTIONS BY MR. MULLINS:

Q. In reviewing the application for the F-37 and you estimated reserves of 250 million, is that correct?

A. That's correct.

Q. And the AFE is based upon production of 250, that's what folks have to look at to rely upon to decide whether to participate or take a one-eighth royalty, is that correct?

A. That's correct.

Q. And if the reserve information and recoverable reserve information is different between two operators, do you have any reason why that would be different for an Appalachian well as to a GeoMet well?

A. Appalachian has taken the position that we have elected to submit very conservative reserve estimates. Our feeling is that we would rather if there was a party that was going to be force pooled that elected to participate, we'd rather they be surprised with exceptional above average production above the estimate rather than an inflated number.

Q. Would it not also drive their decision whether to participate, what the anticipated recovery is going to be? In other words, they may participate at 500, but not at 250.

A. I would expect if they were going to participate in the well that they would do some of their own engineering work to evaluate whether they want to invest that kind of money.

Q. So, they need to do their own reserve calculation...recoverable reserve calculation for them to be able to make an election on whether to participate or not?

A. What I said is that if I were going to make an investment in a force pooled unit, I would do my own...I wouldn't solely rely on the estimate, which is just that an estimate, I would do my own evaluation before electing to participate in that well.

Q. What did you do you use to arrive at the

estimate for unit F-37 as 250 million?

A. How did we arrive at that unit...that number?

Q. For this unit, how did you arrive at 250 million as the estimated recoverable reserves?

A. Our engineering department arrived at that based on prior estimates.

Q. So, you used an estimate to do this estimate?

A. Well, it's based...any estimate is based on prior production. As you can see, we've only had these wells in production since 2007 according to our...if you look at well number two, AE-157, we've already produced a 126 million cubic feet on that particular well in two years. Again, our stance is that we would prefer to be conservative and provide a number that is achievable.

Q. What's the lifetime...what's the life expectancy for production from these wells?

A. It can range anywhere from...I think, the earliest CBM well in production was drilled in 1988 in Virginia. So, we've only had a little over twenty years of production experience. I've heard and seen estimates of, you know, anywhere from thirty to fifty years.

Q. Okay. And on the well that you just talked

to us about about the three years production, that amount was recovered in three years, but you're using that to base a 250 estimate on?

A. No, I didn't say that we used that particular estimate or that particular---

Q. Which well was that that you told us about three years and such a high volume?

A. It's listed number two, AE-157 in unit G-34.

Q. Okay. Let's talk about that unit, G-34. You have two wells in that unit, do you not?

A. That's correct.

Q. And so the costs for the drilling and completion would be double?

A. If you drill two wells, it would be close to double because your infrastructure would be in place with maybe like the...there may not be as much money invested in the gathering system.

Q. And you have two wells in that unit?

A. We have two wells in every unit.

Q. Okay. Now, does your AFE reflect the drilling of two wells for unit F-37 or the drilling of one well?

A. No, we normally...we just have one well

slated in that particular unit right now.

Q. Okay. Do you anticipate coming back to the Board and asking for a second well like you have all the other wells that you've told us about?

A. That's possible. We would evaluate the... probably evaluate the first well and then decide whether we wanted to drill a second well.

Q. And that would be at, again, almost double the costs for the authorization for expenditure by the time everything is said and done for the two wells for the one unit?

A. If we came back and reforce pool the unit for a second well, then the costs for the second well would be reflected in that.

Q. So, when you talk about the cheaper operator, your evidence didn't include the cost of the second well per unit, did it?

A. I only see one well on your application, sir.

Q. I'll get to my application. I'm asking you about yours right now. The evidence that you've put forward to this Board as to the fact that you are the better operator and using these surrounding units as the basis for that, for unit G-34 you did not include in that calculation

the two well scenario, did you?

A. When we file an application to add a second well to a unit by force pooling, we also revise the reserve estimates at that point to reflect more than one well in the unit.

Q. Okay. Let me go back---

A. And it will reflect the production and the additional reserves that that well would bring.

Q. Your testimony that you were the cheaper and better operator based upon the application in F-37 and using the adjoining units did not factor in the double well scenario that you...that your own evidence says that you do? Isn't that true?

A. We're just applying for one well in this unit at this time. If you look...if you notice, we listed... we didn't list the production by unit, we listed the production by individual well within the units. So, each well stands on its own as to what the potential production deliverability could be.

Q. Maybe I misunderstood your testimony. I understood you to say the Board should look to unit G-34 as a comparison as to why you are a better operator. Was that not your testimony?

A. My testimony was that the Board should

evaluate all of the wells that we've drilled south of contested units as a reflection of our capabilities to be the better operator.

Q. And was G-34 one of those?

A. Yes, G-34 is one of those.

Q. And it has got two wells?

A. That's correct.

Q. And when you gave your expense factor, you did not include that second well? That's the only point I'm trying to make. You did not advise the Board they needed... when they looked at the expense for drilling and operating that well, you did not include that second well in unit G-34 as part of your evidence, did you?

A. No, I did not. The reason I did not is because we're only talking about one well that we've applied for in this particular application and each well speaks for itself.

Q. Okay. Now, unit G-36 two wells, correct?

A. Correct.

Q. And that's to achieve the production that you're telling us about that's on your form, is that correct?

A. That's correct.

Q. Unit G-35 two wells?

A. Correct.

Q. Each of those would have approximately...not quite, but approximately the double expense factor, true?

(Jim Kaiser and Frank Henderson confer.)

A. Our testimony reflects that on a well by well basis, we're the lower cost operator in these units.

Q. I'm asking for the production...the total production from the unit.

A. Well, if you want to add them up, sir, have at it.

Q. I don't know what they are because you've not told it to us, what the two wells cost per each one of those units.

BUTCH LAMBERT: I think we need to move on here. I understand the point you're trying to make, Mr. Mullins, and I don't know if we're going to get there the way we're going...this questioning we're going to get there. So, if we can, let's move on. Mr. Henderson, I understand what you're trying to tell us. Mr. Mullins, I see your point too. I just don't think we're going to get a compromise here. So, let's see if we can move this on just a little bit.

TOM MULLINS: Okay.

BRUCE PRATHER: Mr. Chairman, could I make a comment?

BUTCH LAMBERT: Mr. Prather.

BRUCE PRATHER: On your wells here, I noticed that all went on line in 7/08. As these coalbed methane as you go up are kind of slow, you know. When you start the first month and you go up. At some point in time, you reach the pentacle of production on that thing and then it hits a decline. These wells are so young, how many of these wells do you think have reached that apex.

FRANK HENDERSON: I'd have to look at the decline curves on each one of them to tell you. We've, you know...we've seen some wells that are continuing to increase or are basically flat and we've seen others that have come up and dropped off slightly.

BRUCE PRATHER: Right. I mean, the thing---

FRANK HENDERSON: I mean, those numbers come off the DGO production numbers that are...that have been submitted to the state.

BRUCE PRATHER: You know, if you're talking about a relevance of wells, you have to know when you hit that pentacle and where it starts down. In other words, these things will get better every month to a certain point and then they start coming down. So, I think when you put all

of this stuff together, you know, you have to take that into account.

FRANK HENDERSON: Basically, what we were just trying to provide is a history of the wells---

BRUCE PRATHER: Yeah.

FRANK HENDERSON: ---in the immediate area that we had drilled and what the average production is on these particular wells.

BRUCE PRATHER: Okay.

BUTCH LAMBERT: Anything further, Mr. Mullins?

TOM MULLINS: Yes, I do.

Q. Again, on unit G-34, was that a force pooled unit?

A. Yes, it was.

Q. Okay.

A. I believe so.

Q. On the initial pooling application, did you list 250 million as the recoverable reserve?

A. I don't recall off the top of my head.

Q. Okay. What about the second...for the second well, did you include 250 million as the recoverable reserve of the second well?

A. I'd have to pull the application and see exactly how we listed that.

Q. You don't know...you don't know the answer sitting here today?

A. No.

Q. Okay. Are you...have you reviewed the GeoMet application?

A. Yes, I have briefly.

Q. And have you reviewed the estimated production over the life of the well as per GeoMet?

A. Yes, I'm aware that you have a 980 some million estimated reserves for your well.

Q. The cost of the two wells plus your recoverable reserve versus the cost of one GeoMet that the...their estimated cost of reserves, which number comes out better?

JIM KAISER: I'm going to object to that question. We're trying to deal in facts and not estimates. That's what we gave you, facts.

BUTCH LAMBERT: Yeah, I agree.

FRANK HENDERSON: These are actual production numbers---

TOM MULLINS: Can I make a record of that for appellate purposes, Mr. Chairman?

BUTCH LAMBERT: Yes.

TOM MULLINS: He has not given facts. His

application says an estimated reserve of 250 million. He has also given us an authorization for expenditure of a certain amount. He's basing his argument on two wells and not one well. We don't know what the facts are for Appalachian for this unit. I would anticipate that he would come back before this Board and ask for second well. So, when they start talking about the facts, they've not presented any reserve analysis information or the gas content in the coal seam. They've not presented any geological evidence concerning what's down there. They've just said, look at our wells next door without telling the two wells. So, I think for purposes of a factual argument we should be allowed to explore that.

BUTCH LAMBERT: Thank you.

FRANK HENDERSON: Mr. Chairman, could I respond to that? What we---

TOM MULLINS: He's not an attorney. He can't---

BUTCH LAMBERT: No.

TOM MULLINS: This was an objection for the record.

BUTCH LAMBERT: I ruled on his objection.

JIM KAISER: And, again...let me respond to it then. Again, what we are doing in our presentation before you as to who should be the operator in this unit is on a well by well basis and not on a two wells versus one well

basis.

BUTCH LAMBERT: Gentleman, it's noon. We're going to continue this one after lunch.

TOM MULLINS: Yes, sir.

DONNIE RATLIFF: This the first one we've heard, you know that, don't you?

BUTCH LAMBERT: Yes.

SHARON PIGEON: No, this is the first one we're trying to hear.

(Laughs.)

BUTCH LAMBERT: Ladies and gentlemen, we're going to take a lunch break and we'll be back in...resume at 1:00 o'clock.

TOM MULLINS: Is the room going to be closed or is it going to be left open for leaving out materials here?

SHARON PIGEON: That will be fine. We'll be here.

BUTCH LAMBERT: Yeah, we'll be here.

(Lunch break.)

BUTCH LAMBERT: We're ready to resume. Mr. Mullins, are you ready?

TOM MULLINS: Yes, sir.

GEORGE MASON: Before we get started, Mr. Chairman, George Mason for the record. I'd like to make sure the Board knows that LBR Holdings, LLC joins in all of the

objections that have been enunciated by Mr. Mullins previously and those that might come up without having to make an objection each time. So, it will be a continuing objection on our part.

BUTCH LAMBERT: Okay. It's noted. Thank you, Mr. Mason. Mr. Mullins, I think we left off with you.

TOM MULLINS: Yes, sir. I was getting ready to ask some question about this page right here. Mr. Henderson...is there an exhibit number to this document?

SHARON PIGEON: We need to do that, we did not, on all of these new pieces of paper.

FRANK HENDERSON: No, we did not put exhibit numbers on those. I apologize.

SHARON PIGEON: Well, that's not a criticism. We just need to have them marked for the record. I think you had---

FRANK HENDERSON: Do you want to make A---?

SHARON PIGEON: AA.

JIM KAISER: AA.

FRANK HENDERSON: AA. There were two production sheets that had discussed. Actually, we just referred to the one.

SHARON PIGEON: It has three sheets to it. Is that what you're talking about?

FRANK HENDERSON: Yeah. Do we need to order...  
talk...in order that we discussed them?

SHARON PIGEON: However you want to do it.

FRANK HENDERSON: Okay. We'll, we can just call  
this one, it was on the top, BB.

SHARON PIGEON: Okay.

FRANK HENDERSON: Then CC and DD.

TOM MULLINS: Which one is CC? There is two of  
these.

SHARON PIGEON: The next one down---.

BILL HARRIS: Is there a reference number  
someplace?

GEORGE MASON: Are there two of these?

MARY QUILLEN: No, there's one---.

BUTCH LAMBERT: No, just one.

TOM MULLINS: There are two of these.

BUTCH LAMBERT: There's two of those and we're  
trying to decide which is which.

BILL HARRIS: Down at the bottom, one has 9 wells  
and the other one has 13. I don't know which is which.

SHARON PIGEON: I think 9---.

FRANK HENDERSON: The 13 well would be CC.

BILL HARRIS: CC, okay.

MARY QUILLEN: Oh, 13.

FRANK HENDERSON: On the production data. The 9 well would be DD.

BUTCH LAMBERT: Did you all get that, Mr. Mullins?

TOM MULLINS: I think I've got it.

BUTCH LAMBERT: Okay.

Q. All right. In reference to Exhibit BB, the---

TOM MULLINS: Mr. Chairman, I guess to take a step back. I'm not envisioning putting on this evidence for every single one of these five units. So, with your permission, I will reference all five units during this presentation to save from having to do that.

BUTCH LAMBERT: If Mr. Kaiser is okay with that, the Board will be okay with that.

JIM KAISER: Yeah, I'm in agreement with that.

BUTCH LAMBERT: Okay.

TOM MULLINS: All right.

Q. Mr. Henderson, on Exhibit BB, the yellow ones...the ones that highlighted in yellow, the five, are the ones that are in contest, is that correct?

A. That's correct.

Q. Okay. And the numbers that have different amounts listed next to them like AEI 38.08 and GEO 56.370. AEI is Appalachian Energy and the GEO is GeoMet?

A. That's correct.

Q. And each one of those...that's what it means when those abbreviations are used, correct?

A. That's correct.

Q. Okay. And the numbers represent how much interest each company has in those respective units, is that correct?

A. That's correct.

Q. So, for F-37 Appalachian has 38.08% and GeoMet has 56.37%?

A. That is correct.

Q. And F-36, Appalachian has 24.98% and GeoMet has 75.02%?

A. That's correct.

Q. For F-33, Appalachian 36.12 and GeoMet 54.89, correct?

A. Correct.

Q. And F-34, 32.21 for Appalachian and 60.15 for GeoMet, correct?

A. Correct.

Q. And for F-35, 21.76 for Appalachian and 78.24 for GeoMet?

A. That's correct.

Q. GeoMet has the majority in each one of

these units? I mean, you agree with that, don't you?

A. That's correct.

Q. Now, Exhibit CC and DD you have in blue the units that us for you comparison that have unit numbers on them, but the rest of the wells of Appalachian don't have the unit numbers on them, do they? They just have well numbers.

A. That's correct. That was inadvertently left off.

Q. Okay. And some of the units that you've included for GeoMet are fairly far removed from this location, are they not?

A. I don't understand your question.

Q. Sure. The area that we're talking about is F-33 through F-37 and TTT-36 is not close to F-37, is it?

A. As far as the production numbers---?

Q. Correct.

A. ---is that what you're referring to on CC?

Q. Sure.

A. That's correct.

Q. In fact, some of these wells are so far removed, they're no even on the map that you presented to the Board to use as a comparison, true, and that's Exhibit AA?

A. That's correct. There were no wells that you operate that were in close proximity.

Q. Now, what geological analysis did you all do for units F-33 through F-37? What studies did you perform?

A. We performed our internal evaluations.

Q. Okay, what does that consist of?

A. It consists of...it consists of evaluating each unit for the particular coal seams, coal thickness and the production potential that we feel based on offset wells.

Q. Is that unique for each unit?

A. Is our evaluation unique for each unit?

Q. Yes, sir.

A. Yes. We select our drilling depth and which formations we think we're going to encounter. It is unique.

Q. Okay. Now, there's two of the wells that you are proposing that are going to be either immediately adjacent to or within the mine works of the VP4 mine void, is that correct?

A. I think there's three units, F-33, F-34 and F-35 that are all include portion of the VP4 mine void.

Q. Okay. And would it be fair to say to say that the production analysis from the Pocahontas Number 3

seam will be different or anticipated to be different for those wells?

A. Not necessarily, no.

Q. So, you'll get the same production from the absent P-3 seam as you would from a P-3 seam that is fraced and completed in a regular coalbed methane well?

A. No, I didn't say that.

Q. Okay. Well, then my question is, is it...is there a difference between wells that are going to be drilled in to the mine void as, I think, F-33 and F-34 and maybe F-35 from a production standpoint than one that's going to be drilled directly in the coal seam and conventionally completed?

A. We have not...our application and the location of our well does not include a well that goes into the...that's going to drill into the mine void.

Q. Okay. My understanding...I just want to make sure I'm clear, the plat that you submitted does not show a well location either in or adjacent...immediately adjacent to the VP4 mine void, that's your testimony?

A. The wells that we have selected do not... will not penetrate the mine void.

Q. Immediately adjacent to or within a block---?

A. I don't have...if you want to refer to a particular plat, I'd be happy to look at it.

Q. Okay. Let's look at the plat for unit F-33.

MARY QUILLEN: What number is that on the agenda?

TOM MULLINS: Sure.

DAVID ASBURY: Number nine, 2443.

TOM MULLINS: Number nine and number eleven with the GeoMet application.

A. That well is not intended to be in the mine void.

Q. As shown is it or is it adjacent to the mine void?

A. It looks like it's adjacent to the mine void.

Q. And based upon that plat, would you expect production to be different as the application is submitted to this Board than a well drilled and completed in a VP3 seam?

A. Not necessarily.

Q. So, the estimated reserves, which are regulatorily required to be in the application, would be identical for a well drilled adjacent to the mine void based upon your internal analysis as opposed to one that is

completed in the VP3 seam?

A. On that particular well, if we were that close to the mine void we would not frac the P3?

Q. Okay. Would that then render your estimate of recoverable reserves inaccurate?

A. No, because it's an estimate.

Q. So, you can delete the largest gas bearing strata for completion purposes and your testimony for the Board is you don't have to adjust your estimate of recoverable reserves?

A. It's an estimate.

Q. So, was that yes?

A. Yes, it's an estimate.

Q. Was there any analysis of the coals for gas content or performed by your company in any of the areas around here?

A. In which way.

Q. To see how much gas was in the coal?

A. Our analysis consist of...we've not done any core analysis. Our analysis consist of what the production is from the wells that we're producing.

Q. So, your data is driven solely from what you derive in other words, is that...is that your testimony?

A. It's not driven solely by that. It's

driven by that consideration.

Q. What else is it driven by?

A. By the coal thickness and the coal quality.

Q. Okay. And what data do you do core samples to get coal thickness or coal quality or how do you determine that when you do your analysis?

A. Could you repeat that?

Q. Sure. Where do you get your information on coal thickness and coal quality for these units?

A. We get the thickness based on the offset wells that we've drilled.

Q. So, you get the information, again, from the wells you've drilled as close as you drill to them? I mean, that's you...the other wells are still your source of information?

A. Usually, that's the best source of information bearing any core data that we...we've not drilled any cores...the core wells.

Q. So, the answer to the question, that is the source of your information?

A. That's one of the sources of our information.

Q. Okay. I'll go back to three questions back. What are the other sources of your information?

A. We look at the regional geology and we look at the offset data and then we evaluate which units and potential locations to drill the wells.

Q. Okay. The geology, what's the source of the data for the geology? Where do you get that information?

A. You'd have to ask our geologist.

Q. Is he here?

A. No, he's not.

Q. So, here today you can't give us the answer to that question?

A. I think the answer to your question is, take a look at the production...I don't know where you're going with the question here. The production in the offset wells speaks clearly for itself. This is nonsense.

Q. I understand that you don't like answering my questions. However, you testified that you used geologic data to base your estimate reserves. I asked you what the source of that was. Your answer was ask the geologist who is not here. My repeat question to you was, so I...you don't have that information available for the Board today, is that true?

A. What I have available for the Board today is clear cut production data from offset wells, production

that has been taken out of the ground and put in a pipeline and sold. I don't have estimates of, you know, \$908...and \$80,000,000 or 80 million cubic foot projections based on whatever information GeoMet is using.

Q. I agree. You don't have what we're using. All of your applications lists a blanket 250 million, do they not?

A. That's our...kind of our standard estimate. I notice that yours is 980.

Q. Well, we'll get into ours here in a minute. Besides the geologic data that's not available today and your offset well information, the coal thicknesses and the quality that you've told us about, is there anything else that you've used to estimate recoverable reserves from these units?

A. Our geologists and engineers do the estimates of the reserves. I don't personally do that. We drill wells to prove what the reserves are and we don't, you know, drill core holes. We drill wells to produce them.

Q. I understand. That wasn't my question. My question was very straight forward. The source of information, and that's all I'm trying to do is when I present my evidence I contrast that to the Board, your source of information is the offset wells, you've made that

very plain, geologic data that is not available to the Board today and coal thicknesses and quality. That's your source of data for your estimate of reserves. Isn't that---?

A. That may be...that may not be all inclusive. Like I said, I don't do the particular analysis.

Q. So, you don't know if that's all or not?

A. No, I don't.

TOM MULLINS: I don't believe I have any other questions of him at this time.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: I had one---.

JIM KAISER: Can I redirect a little?

BUTCH LAMBERT: A little, yes.

#### REDIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Mr. Henderson, let's go back to, I guess, it's CC or BB, the production data. Can you just read us what the average daily production on Appalachian Energy wells are versus GeoMet's wells?

TOM MULLINS: Objection, again, Mr. Chairman, because we've already established that some of these units they're trying to contrast to GeoMet wells aren't even on

the map he provided.

BUTCH LAMBERT: And---.

JIM KAISER: It's going to go to how great they're going to tell you they are here in a little while---.

TOM MULLINS: He can---.

JIM KAISER: ---I'm just pointing it out to tell you that they're not very great.

BUTCH LAMBERT: Well, Mr. Kaiser, we have the information.

JIM KAISER: All right. You can read through it yourself, I guess.

BUTCH LAMBERT: I can read it, yes.

Q. Mr. Henderson, as far as any kind of negotiations that took place prior to this hearing to try to settle these five units. Can you sort of detail those for the Board?

TOM MULLINS: Mr. Chairman, number one, I really don't mind, but traditionally settlement negotiations---

JIM KAISER: This isn't a Court of law.

TOM MULLINS: Excuse me.

BUTCH LAMBERT: Excuse me, gentlemen.

TOM MULLINS: Traditionally, settlement negotiations are not admissible at any tribunal even under the APA guidelines, which govern this Board. It's improper

to try to interject those settlement discussions as evidence in this matter. It has gotten nothing to do with who is the best operator.

BUTCH LAMBERT: Okay. I'm going to allow his objection. Can I ask a couple of questions and maybe help settle this matter and let's not have to go through the rest of the day with this issue? Just for the Board's information, and I'd like to throw this out to both, how many acres does GeoMet control in the unit?

TOM MULLINS: I can give you the percentages. Acreage may take me a minute.

BUTCH LAMBERT: I would ask the same of---.

TOM MULLINS: The smallest majority that we have is 54.89% up to 78%.

BUTCH LAMBERT: Well, if you go by that---.

FRANK HENDERSON: We did it based on the percentage of the unit in our summary here, Exhibit BB.

BUTCH LAMBERT: Well, let me ask you one question about that, Mr. Henderson. Look at F-36, and you've got the AEI and GeoMet proposed. Can you explain that?

FRANK HENDERSON: Actually, that's where Mr. Kaiser was going in our...of course, we've continued this...these units...these contested units for two months now. We had proposed a sharing of the five units whereby Appalachian

Energy would operate F-33, F-34 and F-35 and that GeoMet would operate F-36 and F-37 as part our negotiations. We were---

BUTCH LAMBERT: Okay. So, if I was looking at---

FRANK HENDERSON: ---...we received no...they were not even receptive to our proposal.

BUTCH LAMBERT: I appreciate that little bit of information. If we were to look at the percentage controlled in this F-37, how much would it be from Appalachian Energy? Is 24.98?

FRANK HENDERSON: No, the percentage of the unit would be 38.08.

JUSTIN PHILLIPS: To be exact it's 38.09.

BUTCH LAMBERT: I'm sorry, F-36. I'm sorry.

FRANK HENDERSON: That's correct.

BUTCH LAMBERT: 24.9 acres.

FRANK HENDERSON: For unit F-36.

MARY QUILLEN: Is that...may I ask...that's percent and not acres, is that correct?

FRANK HENDERSON: That's correct. Percentage of an 80 acre unit.

JIM KAISER: Of the unit.

BUTCH LAMBERT: Of the unit, uh-huh. So, F-37 you're telling...I just want to make sure we're correct,

that Appalachian Energy controls 24.98%?

JUSTIN PHILLIPS: Yes.

FRANK HENDERSON: That's correct.

SHARON PIGEON: F-36.

BUTCH LAMBERT: I'm sorry. I keep saying 37...36, I'm sorry. Okay, thank you. Mr. Mullins, how much interest did GeoMet control in this unit?

TOM MULLINS: GeoMet controls in F-36 75.02%.

BUTCH LAMBERT: I just wanted to make sure. They gave us that figure. I wanted to make sure that you was in agreement with that figure.

TOM MULLINS: Yes, sir.

JIM KAISER: I'll remind the Board that you don't have to control any acres in a CBM unit to apply for a force pooling.

BUTCH LAMBERT: I understand. I'm just asking the question. Are there any questions from the Board?

(No audible response.)

BUTCH LAMBERT: Mr. Mullins, you may continue. Do he have any more evidence? I'm not going to ask Mr. Henderson anything further. If he's got more witness---

BUTCH LAMBERT: Okay. All right. Do you have anything further, Mr. Kaiser?

JIM KAISER: Not right now.

BUTCH LAMBERT: Okay, Mr. Mullins.

TOM MULLINS: I'd like to call Mr. Burns.

MARY QUILLEN: Mr. Chairman, could I---?

BUTCH LAMBERT: Ms. Quillen.

MARY QUILLEN: ---ask just a quick question? Are everyone of these five, are we going to be hearing the same information over and over and over again or---?

BUTCH LAMBERT: I think we just agreed---.

MARY QUILLEN: ---is it going to be incorporated as just this one presentation?

BUTCH LAMBERT: I think we agreed earlier that it would just be this one.

MARY QUILLEN: Okay. I just wanted to clarify that.

JIM KAISER: We're going to incorporate it.

BUTCH LAMBERT: Incorporate.

TOM MULLINS: Right. Just save from having to do that.

MARY QUILLEN: Thank you.

TOM MULLINS: The Board is going to give us latitude to sort of go from...to ask questions for particular units, if necessary.

(Gary Burns is duly sworn.)

COURT REPORTER: State your name.

GARY BURNS: Gary Burns.

GARY BURNS

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

DIRECT EXAMINATION

QUESTIONS BY MR. MULLINS:

Q. Where do you live?

A. I live in Tuscaloosa, Alabama.

Q. And what do you do for a living?

A. I'm the geology manager for GeoMet.

Q. What does a geology manager do?

A. I oversee the calculation of gas reserves for all of the company projects. I'm also charged with prospect generation and kind of guiding a team to look at other opportunities, whether that might be exploration, grass roots projects that the company develops or acquisition opportunities as well.

Q. Do you have any education training or background in that field, and if so, what is that?

A. Yes, sir. I'm a graduate of the University

of Alabama with a B.S. in geology. I have been blessed to have been in the coalbed methane industry every since college, which is going on twenty-one years now.

Q. And can you give us a brief history of your employment background?

A. Sure. I started out doing some field mapping in the coalbed methane industry where we go out and map joints, fracture patterns and outcrops and looking for areas of enhanced permeability in order to site coalbed methane wells. I logged wells for a while. I ran geophysical logs. After that, I became a project manager and eventually became project geologist for major projects. One of which I was blessed to be on was is second most prolific project in this country. It out in the (inaudible) basin of Utah. It's called Drunkard's Wash.

Q. Okay. What areas of the country or if it's beyond the United States, what areas do you have supervisory control for GeoMet in your position?

A. Primarily Alabama, West Virginia, Canada. We have been involved in some projects in the Rocky Mountain Region, Louisiana, but we are not currently active in those areas at this time. Right now it's Alabama, West Virginia and British Columbia.

Q. And Virginia as well?

A. And Virginia, yes.

Q. Okay. Are you familiar with the area that is in conflict today and specifically the Oakwood Field units F-33 through F-37?

A. Yes, sir, I am.

Q. Okay. Have you done any type of analysis in your role as a geologist concerning this area and specifically these units?

A. Yes, sir, I have.

Q. Could you explain to the Board what that was...how you went about it and what your conclusions were?

A. Okay. We...in order to calculate Coalbed methane reserves, there are four perimeters that you multiply together. As Mr. Henderson stated, the coal thickness is a primary perimeter. Coal thickness is determined generally from your electric logs, your density logs or it might be from core descriptions from core logs that were conducted from the mining industry. Whatever available information that you may have that's what you would use. You multiply coal thickness times the coal density, which you determine from lab analysis or estimate from logs. Multiple that times the area that you're interested in acres. Then there's gas content in terms of cubic feet per ton. For every company that I've every

worked with, our philosophy has always been there is no substitute in estimating gas content other than direct measurement. So, what we do is we employ a coring contractor to go out and drill a core hole from the surface to total depth. We core every bit of strata that's in the wellbore and retrieve it by a wire line. Every coal seam that we encounter that may have the potential to produce gas, we will...if it's generally six inches or greater, we will take that coal seams that comes to the surface and we'll run desorption tests. That is we have gas canisters. The coal is placed in the canister and the amount of gas that is desorb off of that seam is measured. These tests take two to three months. But the benefit, of course, it helps you better estimate what your gas in the ground is. I may need to state too, we kind of say reserves interchangeably and they can mean two different things. We've stated recoverable reserves in the permit, but that number is a percentage of the reserves that are actually in the ground that may not be recovered. So, once we know the gas content, which has been measured from every seam, we can calculate the reserves of this area where this core hole has been drilled. Over the last six or seven years ago, we have drilled as a company in this region over forty...forty core holes primarily in McDowell and Wyoming Counties, West

Virginia, but also several in Buchanan County. By having that core data it helps us in determining what the gas content is when we drill a production well...offsetting production well. We have over two hundred and forty producing wells at this time. So, that allows us to...you know, how do we determine what reserves are in undrilled areas? We produce a map of reserves. We contour the values over this large area and that helps us better estimate what the reserves are in an undrilled area. That's how, you know, we developed a gas in place for these subjected units.

Q. Okay. And once that information is...first, let me ask you a little bit about the company. Is the geology and the engineering side separated or...what happens to the data once you get done with it?

A. Okay. We work...relatively we're a small company. We work closely with the reservoir engineering department. We provide them the gas in place and based on production performance, whatever analogs may be available from other projects a recovery factor would be assigned for gas...our production wells.

Q. And the recovery factor is what's listed on the pooling application for the recovery amount...the total is on there, right?

A. The amount is in there, yes, sir. We

assume...in this case, what we use is about a 65% recovery rate at this time, which---

Q. And why do you use 65%?

A. That is...in talking with our reservoir engineer who incidently we've worked together too on other projects, again, taking analogs from not only the projects we've been involved with, but in looking at some performance of some more mature coal basins, we feel 65% is just a good average. But to tell you the truth, we have been involved in projects that exceeded...far exceeded 65%. Only time will tell as, I believe, Mr. Henderson stated about the age of the oldest well in this state. You know, this is relatively a young industry.

Q. Now, is one source of data production wells that are offset or do you...do you agree or disagree with his assertion that production wells are an element to be considered?

A. Well, production wells, in my opinion, they are definitely...you know, they are helpful for...if you have no other data available, what your production rates are going to look like and what your production profile may look like. They are not near as helpful in determining how...what your recoverable reserves are going to be, in my opinion.

Q. Okay. Is that why there is a variation in the five applications that are at issue and the estimated recoverable reserves in the GeoMet applications?

A. That's right. The estimates that we've provided, as you can see, they're kind of a hard number. They vary. They're not even rounded. They were just pulled off with a reserve map that we generated.

Q. Okay. Do you have any experience with or opinion about drilling adjacent to old mine works?

A. I've never had the experience of doing that. I can tell you based on our analysis in terms of the P3 seam. P3 is by far the thickest seam in this region. If I had to estimate, I'd say 25% of your total reserves. 20 to 25% of the gas in place in this area are in the P3 seam. There's probably another 10% of the total reserve that would be below P3.

Q. So, if the well floor did not penetrate through and below the P3, you wouldn't recover that gas?

A. No, no.

Q. Are any of the well loc...if you know, and you may not be the person to ask and I apologize if I'm asking you a question that you're not the guy to ask. Are the well locations as indicated on the application of GeoMet, are any of those within or adjacent to the VP4 mine

works, to your knowledge?

A. No, sir, they are not.

TOM MULLINS: I don't have anything else of this gentleman.

BUTCH LAMBERT: Questions from the Board?

BRUCE PRATHER: I have a question.

BUTCH LAMBERT: Mr. Prather.

BRUCE PRATHER: I assume you start out with coal thickness on this formula and I assume that you're fracing the same zones every time to come up with your total, is that correct?

GARY BURNS: Yes, sir.

BRUCE PRATHER: Are there some every now and then that you don't have that zone?

GARY BURNS: We do use a thickness cut off. I mean, as you may know, the---

BRUCE PRATHER: Yeah.

GARY BURNS: ---stratify is...you know, I am a geologist, but I'm sure not an expert on the coal stratify in Virginia. But, I know enough to know that they really...it's a high energy environment. Some seams will be sanded out. There's traumatic changes in thickness over a relatively short distances. But, we do stay consistent with out perforating. But, there are some cases, you know, where

a seam may be less than...you know, it could be just a few inches thick and in those cases, we will bypass those. You know, this is...it may not be relevant, but just for your information, we...that gas is being recovered more than likely even though some of those aren't...if they're in close proximity of perforations that could be extracted as well.

BRUCE PRATHER: Okay.

BUTCH LAMBERT: Any other questions from the Board?

(No audible response.)

BUTCH LAMBERT: I have one.

GARY BURNS: Yes, sir.

BUTCH LAMBERT: You talked about core holes---

GARY BURNS: Yes, sir.

BUTCH LAMBERT: ---and the number you drilled in this area or in McDowell County and the surrounding West Virginia Counties.

GARY BURNS: Right.

BUTCH LAMBERT: Can you tell the Board how many you drilled that would be adjacent to or in close proximity to the five wells that are in question or the five units that are in question?

GARY BURNS: We have...we have drilled two core holes on this, you know, large amount of our mineral lease.

Our closest one to this area is about a mile and a third away from this area.

BUTCH LAMBERT: Okay, thank you. Any other questions from the Board?

(No audible response.)

BUTCH LAMBERT: Mr. Kaiser.

CROSS EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Okay. So, Mr. Burns, you...on this whole LBR lease you've drilled two core holes, right?

A. Yes, sir.

Q. And the closest one is at least a mile and a half away?

A. Yes.

Q. And how many...you said you GeoMet has 240 producing wells companywide?

A. At least, in Virginia and West Virginia.

Q. And how many of those are in Virginia?

A. Thirteen.

Q. Thirteen. So, you've...okay. And what's your drilling budget for this year?

TOM MULLINS: Objection. I didn't ask him that. He may know. If he knows, he can answer it. He's---

JIM KAISER: Well, I think he's opened the door by saying how many wells were done and what core wells they're drilling and...he has opened the door.

BUTCH LAMBERT: Let him state his objection, Mr. Kaiser, and then I'll make a ruling. Go ahead, Mr. Mullins.

TOM MULLINS: If knows, I don't have an objection to his answering that. But, I don't think this is the gentleman that's in charge of the drilling program. He's in charge of the estimates from a geologic standpoint. So---.

BUTCH LAMBERT: You may answer that question if you know the answer.

A. I don't know the dollar amount, but we're looking at around, you know, 20 wells in this region for the year.

Q. Okay. And would it be accurate that you have received some sort of consent another coal owner to drill twenty wells?

TOM MULLINS: Objection. This goes back to what we started with on the consent and 2500 foot waivers, Mr. Chairman. This is going right back to that.

BUTCH LAMBERT: Is that really what your question is, Mr. Kaiser?

JIM KAISER: I've got somewhere I'm going with this, yes.

Q. My question is, if your budget is 10 million and your AFEs are 538 and you've got twenty wells that you've already gotten a consent to stimulate and that you can move forward on, where are you going to get the money to drill these five wells and why were all your AFEs the same amount and then all of a sudden they're different today?

BUTCH LAMBERT: I don't believe I heard him give us an answer on his drilling budget.

JIM KAISER: Well, he said twenty wells, so you can do the math. 20 times 538 is over 10 million. Well, we'll move on to the next question. Just keep that in mind.

Q. What reserves have you calculated for these wells?

A. They range...the gas in place on these ranges from about 1.3 to 1.5 bcf...1.4 bcf in place.

Q. How long do you estimate it will take to recover these reserves?

A. Thirty...twenty-five to thirty years.

Q. Twenty-five or thirty years. And of the---  
?

A. Actually...actually, there...if I'm not mistaken, there will be another witness coming forward, a reservoir engineer, who can expand on that.

Q. Have you looked at the exhibit that we prepared on the comparison of the production data between Appalachian Energy's thirty-one wells that we've used and your thirteen wells?

A. I have not seen what you have prepared, sir.

TOM MULLINS: Which one of those...CC or DD?

JIM KAISER: Either one is fine.

TOM MULLINS: Which one does the witness have?

JIM KAISER: CC, I think, is what he has.

A. Okay.

Q. Okay. And what reserves did you calculate for those wells?

A. The gas in place on...there are two areas in Virginia. The units....let's just say, C-44, C-45, B-45, C-47, C-46, one, two, three, four, five, B-44 and C-43 are about three or three and a half miles away to the north...back to the east/northeast. Our reserves in that area are, we estimate they are a little bit...a little bit higher than this particular area. You're looking at around 1.7 or so in the ground. The other units, the six other wells, these with the triple letters, these are located approximately five miles or so up to the north where we do have core data in that region. I can't tell you what the reserves are

there, but they are significantly lower than the other seven wells that we are speaking of.

Q. So, out of the thirteen producing wells that you have in Virginia...that's all you have, right, thirteen?

A. In Virginia, yes, sir.

Q. Right. You're saying that a group of them that are about five miles away to the north are going to...that the production is not only worse than the other group of wells that is represented on the exhibit, but you expect it to be worse than the production from these five units, correct?

A. The production to the north to be worse---?

Q. Yeah.

A. ---than these five units?

Q. Yeah.

A. Yes.

Q. Okay. And then what did you say about the other group of wells that's three and a half miles away?

A. That's about 1.7 bcf is what I would...if I had to give you a number, that's our average gas in place for that region.

Q. And---?

A. That, again, based on core data and---

Q. Well, do you think the production figures that we're showing support that?

A. Yes. Let me...I think you may...there will be some other exhibits coming that might help explain it. As you can tell, some of these are much lower...some of them have already bypassed their peak. They're four year old wells. Some of these have cum already more than well over 250 million. So, see, this is kind of just a month to month comparison. But, some of these wells are four years...four years old. So, I don't know if that makes sense or not.

Q. But you're saying that if you take this data, which is factual data from the DGO and extrapolate it that you're still going to get 1.7 reserves?

A. No, no, no, sir. That's the gas in place. So, whatever 65% of that number would be.

Q. And you're projecting 980 per unit on the five contested units, correct?

A. I apologize. Could you repeat that?

Q. You're projecting 980 million cubic feet on the---?

A. That's for F-37. The average of the five units is right at 900 million.

Q. And 25 to 30 years producing, that's with drilling just one well per unit?

A. That is...that would be for one well per unit, yes.

Q. Mr. Burns, is it possible for a coal seam to become thicker or thinner over an 80 acre unit?

A. Yes, sir, it is.

Q. And could a coal seam thicken or pinch out over an 80 acre unit?

A. Yes.

Q. And how would this affect the reserves?

A. Probably...if it were to pinch out in 80 acre unit and you didn't have any evidence that it would, you know, thicken back up again, then that would not be counted in your reserves. So, it would...so, your reserves would be lower. If the seam is not there, we don't count it.

JIM KAISER: That's all we have right now for this witness, Mr. Chairman.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Mr. Burns, I'd like for you to clarify one statement that you made. Looking at the wells that you referenced earlier from the GeoMet side, you said all of these wells or most of these wells were four years or older.

GARY BURNS: No, sir. If I said that, that was incorrect. We have several of those that are on the east side of these units. We've got seven wells in that area. Several of those were drilled in...have been producing since '05, but the others are going to be younger than that. That would be the oldest Virginia wells that we've got.

BUTCH LAMBERT: Okay, thank you, sir. Any questions?

MARY QUILLEN: I just have one question.

BUTCH LAMBERT: Ms. Quillen.

MARY QUILLEN: Which one of these are those older wells?

GARY BURNS: Ma'am, I apologize, but I recognize them by the well number and not by these units. I'll tell you what, if I could take a peak another exhibit I'll get an answer for you real quick.

(Gary Burns reviews an exhibit.)

GARY BURNS: Ma'am, I believe that would be B-45 and C-46.

MARY QUILLEN: And these are the ones that you said that are four years old?

GARY BURNS: They've got to be approaching. They were drilled in earlier '05.

BUTCH LAMBERT: Just to clarify, these are wells

that are further away?

GARY BURNS: Here are our units. We're talking about these wells right in here. Then, this is seven wells here. The other six Virginia wells we have would be up here.

BUTCH LAMBERT: Okay.

GARY BURNS: This three and a half miles away roughly from the units and then roughly five miles to the north we've got another six wells drilled.

BUTCH LAMBERT: Okay. Any other questions?

(No audible response.)

TOM MULLINS: Can I ask one follow up?

BUTCH LAMBERT: Yes.

#### REDIRECT EXAMINATION

QUESTIONS BY MR. MULLINS:

Q. Looking at either C...looking at CC, which is in front of you, on the ones that you've just been asked about, the monthly production is for the period mostly for the calendar year of January '08 to January '09. In other words, it's not for the...necessarily for the life of the well, it's only for that distinct period?

A. A snapshot in time, yes. That's the way I interpret this.

Q. But do you...can you testify one way or another whether the cumulative production numbers are accurate or not?

A. Not without...you know, not without checking it, but they do look reasonable.

Q. Okay. For example, on C-46, that's approximately 240 million in production?

A. That's correct.

Q. And that's...according to this exhibit, that's since February of '05, is that correct?

A. That's correct.

TOM MULLINS: I don't have any...

BUTCH LAMBERT: Anything further, Mr. Mullins?

TOM MULLINS: I have another witness.

BUTCH LAMBERT: You may call your next witness.

(John Hollingshead is duly sworn.)

COURT REPORTER: Please state your name.

JOHN HOLLINGSHEAD: John Hollingshead.

TOM MULLINS: Spell your last name, please.

JOHN SHEFFIELD: H-O-L-L-I-N-G-S-H-E-A-D.

TOM MULLINS: All right, sir.

JOHN HOLLINGSHEAD

having been duly sworn, was examined and testified as

follows:

DIRECT EXAMINATION

QUESTIONS BY MR. MULLINS:

Q. And what do you do for a living?

A. I am a reservoir engineer.

Q. What is a reservoir engineer?

A. Basically, I kind of take the ball and run with it after a resource assessment has been done by our geology group.

Q. And you have testified before this Board before as an expert witness, is that correct?

A. I have.

Q. All right. Since there's some new faces on the Board, could you give us a review of your education, training and background?

A. I sure can. I graduated from the University of Alabama in 1983...December of '83 receiving a petroleum engineering degree. I worked approximately twenty-three years in the oil and gas industry. A little over twenty of those years have been spent exclusively working on coalbed methane. Thirteen of those years have been exclusively doing reservoir engineering work and CBM projects.

Q. Do you hold any licensures or certification

in your field?

A. Yes, I do. I have a professional engineering license in the State of Alabama.

Q. What areas of the country are you required to do your work for GeoMet?

A. Right now most of our activities are located in the State of Alabama. We have a project ongoing there that we're developing. We have a project in West Virginia. We have very few wells as was stated a while ago. Thirteen wells in the State of Virginia. We have a pilot project that is ongoing up in British Columbia, Canada right now. It's moving beyond the pilot or small development stage getting ready to expand into a larger development.

Q. And is that under your area of operations as a petroleum engineer?

A. Yes, it is.

Q. Okay. Are you familiar with both this area and in particular units F-33 through F-37 that are at issue today?

A. Yes, I am.

Q. How did you become familiar with it?

A. Primarily getting prepared for this hearing is where the majority of the focus points have been on this.

Q. Okay. What did you...what did you do?

Explain to the Board how you went about your analysis as a reservoir engineer in developing the reserve information for these units?

A. Okay. Well, I think probably what would be best to do right now is just...if I could, and it would please the Board, I would like to hand out some exhibits and just kind of give you a brief walk down of how I progressed through and trying to come up...in coming up with a determination of what we might expect in the area. As Terry said, there has been quite a bit of core drilling, although limited amount of drilling in Virginia. We do have gas content numbers that have been created. So, once everybody gets this, I'm assuming that we'd probably put an exhibit number on this.

Q. We will.

A. Okay.

Q. We will do it as we go through them. And with the Chairman's permission if I can use numbers like Exhibit 1, 2 and 3 that might keep things straight since we used letters. So, the one I have on top is this colored map and we'll call that Exhibit 1. If you could start your explanation of that, please.

A. First off, what I would like to do is kind of direct each one of you all to look at kind of lefthand

legend. It kind of gives you a breakdown of what the map is showing you here. Basically what this is, it is taking the three year cumulative production out of a grouping of wells that are shown in the colors. There's a symbol highlight down there that shows a color code that distinguishes between GeoMet, CNX, Appalachian and Equitable. Although it's not in our specific area across the state line, you know, I want the focus of that area to begin with because that is where...you know, we've a development in West Virginia. That's where the majority of our wells have been producing at. Those red numbers that are shown above is the amount of cum production over a three year period.

Q. When you cum production, what that means for a guy like me is the cumulative amount of gas that has been produced so far from this well, is that what that means---?

A. Huh---.

Q. ---and if it doesn't mean that, then tell me what it means?

A. That does not mean that. That is only looking...taking...when that well started and after a three year period summing up all of the gas and then plating it on this graph. Actually, we have wells that are older than three years. So, the number would be higher than what is

stated right here, which would...I guess one thing that I would like to note, you know, when I'm going through...we have limited production or no production down in this focus area. So, what I need to do from a reservoiring standpoint is start off in an area and try to work down and create some kind of analog that is going to be able to help me forecast what I might expect of future production in the area of interest that I'm looking at. So, I started off by looking at our production and then coming down. But one thing that I would like to note or at least to pull out is that all of the green dots, which are GeoMet wells over that time period, you can see that many of those wells...not all of them...I mean, there is some coal variabilities that come into play...other issues that come into play. But in general, you can see that our cum production over this three period has been better than many of the other operators to the southwest...to the south and southwest of our wells.

Q. To make sure I understand, what does the red number mean? I mean, I thought I knew, but I don't know. Does the red number mean how much gas is being produced from that well ever or for a certain time period?

A. For a three year period. It was just...it was just coming...you know, that's one of the things. Look at wells...group of wells and over a finite time period see

how production has done over that set time period. That is what these red numbers are showing is what production has been produced over a three period.

Q. Okay, go ahead. I just wanted to be on the same page.

A. If I can get you...direct you to the next page.

Q. If we could call that Exhibit 2 then.

A. Okay. Here, again, the majority of our production has been predominantly in the state of West Virginia. It's very limited in the amount of the activity that we've done in Virginia. But what this is showing you and there also symbols, but the only thing that stuck with were just our wells. Each year at the end of the year we have to do a reserve report. These were the reported numbers that come...that came out of that reserve report. Here, again, the red number on top is the amount of cumulative production disregarding the three period. But from the first day that that well went on production to this...to the end of the year 2008. The green number that is shown below that is the amount of remaining reserves that we intend on getting over a time period. If I might be able to elaborate a little bit on the life of the well, I totally agree with what Mr. Henderson says. Usually, there is a

range of producing life of anywhere from 30 to 50 years that could be expected out of a CBM well. Many wells in mature basin...the black water basin in Alabama is one of those. Those wells have been on line producing and there are other wells in this area of, you know, Virginia and the Oakwood Field that I would say that are...have been online in a...you know, probably approximately twenty years. So, what I would like to show you is...if you'll notice on here, you'll see two outlined areas. Mr. Burns, the geologist, a while ago he mentioned that we had some production to the northeast of these subjected wells. So, I've outlined seven...our seven Virginia wells.

Q. Is this the area that you're talking about?

A. That is correct.

Q. Okay.

BUTCH LAMBERT: And you have labeled GeoMet type of curve?

A. That is correct.

BUTCH LAMBERT: Okay.

A. And then I went down to the southwest where...in purple is the subjected wells that we were talking about, F-33 through F-37. I do agree with Mr. Henderson that it is important when you're trying to create an analog or a forecast on production to see what kind of

production there is in the area. So, basically what I'm doing, I'm starting in West Virginia with a lot of data that we have in-house as a starting point. Create what kind of...see what that data is telling us as far as a reservoir standpoint. But more specifically, the reason that there is a type of curve shown on those, if you'll flip to the next page, that is a comparison...those seven GeoMet wells versus the seven Appalachian wells.

Q. We'd label that Exhibit 3, please.

A. I'm not sure if you've heard the term times zero plat, but it is something that is quite frequently used in our industry. Basically, what it means is if I had a well that I drilled two years ago and I had a well that I drilled six months ago, basically, just like the name implies it moves everything to a zero point and you come up and over... you'll be able to tell or estimate what kind of production for that first month those summation of production out of those groupings of wells divided by the number of days that they've been online producing. That is what I've created here on the times zero plat. Recognizing there is some distance. There can be some perimeters that may be a little bit different. But by and large, I mean, this...I mean, this graph right here is quite intuitive. We have picked out five to six months of just under 200 mcf

a day on those seven wells. It appears that their production is peaked out and probably about sixteen or seventeen plus or minus a 155 mcf a day. Okay. So, we can get you to turn to the next page---?

Q. Which would be Exhibit 4.

A. Exhibit 4?

Q. Yes, sir.

A. In a similar fashion as Mr. Henderson had mentioned a while ago, I performed an exercise where I went in and I got a grouping of wells...well, actually 58 wells that kind of run around the perimeter or locate, you know, kind of in the focus area of where these subjected wells are. I pulled down from DGO the production data that was available out there. I went to it and looked at...to see what the max peak rate is. What this graph is showing you, this is basically a histogram. What I have done is I have looked at the next gas rate from 40 to 60 mcf per day. There were six wells...in the 60 to 80 there were six wells for a cum count of twelve. And that went all the way up to a range of 300 to 320 mcf per day, which there was only one well in that account. Basically, what I was looking at as I was saying, well, you know, I was trying to find...come up with an analog what is realistic. We know from looking at this, if I go in the 120 to 140 mcf per day range, you'll

see a percentage of total is about the mid point. So, our expectation of gas production achieving, you know, somewhere in that 130 mcf per day rate is pretty good. We know that we're going to probably have some wells that do less than that. But we also expect to have wells that are going to do better than that. So, that was, you know, one look at it. The next page---

Q. Exhibit 5.

A. ---if you'll notice on the right hand side there is an arrow that goes to a well and then there is a focus area. That focus area is pointed in to the units...the subjected units that we're talking about, F-33 through F-37. What I did was I looked at the production data. Obviously, the more data that you have the better decision or forecast that you can make. So, I went through and I looked at wells that had a fairly mature or long term production life. I selected those seven wells. One...six of those seven wells are CNX wells. The one on the far right of where our well...where the well symbol is is our production well. So, most of the data that I use was from public data and pertain to wells that CNX had drilled. By looking at that, if I can get you to flip to the next page. I apologize for this one. I don't typically give graphs that have purple bars on them. When I made color copier of

them, it kind of got faded a little bit there.

Q. And that will be Exhibit 6.

A. Yes. So, based off the production that was available on those seven wells, I looked up or cum up the amount of production that has been cum to date on those wells. The average producing life...well, the shortest life was about forty-eight months. That would be our well. There was one well that was...that had been producing up to 93 months. But on average, production was...these wells have been on line about six years. What this graph is telling you, it is showing you gas cum over that time period and months online. Specifically, the first three you can already see that in that six month period or six year period we've already gone by the 250 cumulative production point. If our projections are right, they're still many more years...you know, possibly thirty more years of production that could be expected out of these wells. So, I feel that a 250 cumulative production expectation out of a well in this area is not only conservative, it's...in my opinion, it's extremely conservative. The red bar basically just gives you an idea of how many months online production those wells have been, which brings me to my final curve.

Q. That's Exhibit 7.

A. What this is, you'll notice that there is a

black curve on here that has the production out to approximately 93 months. What that is a time zero curve of those seven wells. So, basically, what it's saying that the initial production started off about sixty...although there is some ups and downs over it, it does increase in production over a period of time of about forty-eight months or four years, relatively flat for about twelve months and then it goes on the decline. That yellow curve that is shown in the middle of those is what an average expectation of production we would expect...our type of curve over a long term for a CBM well. That curve, as you can see in the bottom legend, it says, "base type of curve" 905 million, which is in the neighborhood of approximately about 65% of the gas in place number that Terry, our geologist, had just mentioned just mentioned a minute ago. So, one way to make estimates of changes, there may be a little bit more thickness. There may be a little less thickness. As was shown in each one of these applications, we had shown a range on the low side in F-33 that we would cum approximately 832 million cubic feet and then on a high range F-37 we had said that we were going to cum in the neighborhood of 988 million. So, basically the middle curve has developed a type of curve. What happens is when I put in the 832, that type of curve is shifted down, but the

shape of the curve stays the same. So, basically the black curve is saying that we're going to cum over a 45 year period approximately 832 million cubic feet of gas. If the well for F-33...I mean, F-37 is put in there, we're estimating that we're getting to get about 988 million and that well is shifted up. This is on wells that have not been drilled yet. So, you know, it's...basically, what I've tried to do is start off with a lot of data that I have in West Virginia and kind of work myself down and then use what data I have available in the specific area and develop a forecast curve. So, that is kind of the prog...you know, process that I go through when I am trying to project production and that I will use in other things...economics and things of that nature.

Q. What's the scale along the lefthand side of Exhibit 7? It says, "Gas production (MCF PD)".

A. That is an MCF per day. Basically, our base type of curve says that we're going to start out at about 70 a day plus or minus and then increase over a forty-eight month period to approximately around 130 mcf a day. Stay flat for a period of time of about 12 months and then go on a decline over a forty-five year period. I have just shown in...the reason that I've got 240 months is that if I show you a full forty-five months it just mashes everything

out and you lose the detail of what I'm trying to show what I've done here.

Q. And if you're not witness the witness to answer this question, tell me that you're not. What affect does the methodology of completion of the well have to do with the production?

A. Oh, I think it has a lot to do. We do specific things...I mean, we use the open hole camera to be able to identify...you know, actually look and see where gas is coming out of the coal seams, picking up areas of some of these coals. When you're looking at an electric log, the resolution to be able to really nail down that coal real specifically can be difficult. Pretty much everything that we do prior to running our pipe casing and the hole, they run a camera so we can...to try to get a visual of it. We try to go in and there will be additional testimony here in a minute that's going to be more specifically into the completion aspects of it. I believe that his opinion will be, you know, we try to focus in on doing more stages. Making sure that we get our sand into the coal seams where we need it. Prompt those fractures that we create to allow a dewatering and then gas desorption out of the coal seams.

Q. And was all of this information utilized by you in providing the estimates of recoverable reserves as

are listed in the applications before the Board?

A. Yes, it is. One other thing that I would like to add. I mean, it's a real easy calculation. One of the metrics that is used in the oil and gas industry is funding and development costs. It may be a term that you've heard of or haven't heard of, but I would ask each of you guys to...if you have an opportunity, if you just took the dollar amount of capital expenditure that we're saying that we're going to spend and divide that by the amount of reserves that we feel like that we're going to be able to get out of this resource. You'll come out with a dollar amount. The reason that I say that is the 250 million based on just the F-37 as shown here, Appalachian is planning on spending \$417,531 and are going to get 250 million that they're showing. We're saying that we're going to spend, yes, quite a bit larger of an amount of \$528,000 plus or minus divided by the 988. Basically, our funding and development cost is coming up to \$.54 cents. Whereas, if you did the calculations based off their numbers, that's a \$1.67. So, from an investment prospective I think it shows that our metrics are much more attractive for everybody. It's just an easy calculation. You know, it's just one of the things that we look at. I mean, there are other things that go through...that are worked through the economics

process.

Q. And your recoverable reserve were based...of course, based on the methodology of stimulation that you've briefly told us about, but also of one well?

A. Say that one more time.

Q. Sure. The estimates of recoverable reserves that you've provided for the inclusion in the applications that are before this Board include both the methodology of stimulation that you've briefly told the Board about, but also one well per unit?

A. That is correct, yes.

TOM MULLINS: Okay. I think that's all I have of this gentleman.

MARY QUILLEN: I just had one question.

BUTCH LAMBERT: Ms. Quillen.

MARY QUILLEN: What about these other sheets that were in that packet that you handed out? They look like they're duplicates. Did somebody just mess up putting them together?

JOHN HOLLINGSHEAD: Yes.

MARY QUILLEN: That's what I thought.

JOHN SHEFFIELD: Yeah, throw them away. I'm sorry about that. I guess, the name Jack Rabbit printing is appropriate there.

(Laughs.)

BUTCH LAMBERT: Any other questions from the Board?

BRUCE PRATHER: I've got a question.

BUTCH LAMBERT: Mr. Prather.

BRUCE PRATHER: On your area gas projections, what basis do you have for bringing that curve...in other words, if I bring that curve on a straight line down as far as you have it for ninety-six months, I can bring it almost down to nothing in twenty years. What basis do you have for keeping that curve up where you've got it?

JOHN HOLLINGSHEAD: Yeah, there was one well that had like several additional months. If you'll notice that drop off on the black curve---

BRUCE PRATHER: Yeah. Right.

JOHN HOLLINGSHEAD: ---so basically the larger cluster of wells or a number of wells that go into the mix the more valid I would say it is. I did not bring it down through that last month just because I don't know if there was operational issues. I don't know if that well is having problems. I don't know if it has got the scale in there. If there is operational issues that are being attributed to that. So, that's the primary reason why I didn't bring it straight down through there.

BUTCH LAMBERT: Any other questions?

(No audible response.)

BUTCH LAMBERT: I have one question. We heard Mr. Burns testify just before you. He talked about three areas...three gas areas of where wells were drilled that GeoMet has been involved in. I think he testified that according to your own calculations that the amount of gas in those different areas was not the same. As a matter of fact, one of them was drastically lower than the other two. So, how can you make that comparison using that area down to this area...down to the area that's in question?

JOHN HOLLINGSHEAD: More specifically, I mean, because dealing with geology...I mean, that...these are the resources in this area that they have supplied to me as far as analogs. I mean, I'm assuming that you're talking about the wells five miles to the north of it?

BUTCH LAMBERT: Yes. And then three and a half miles in a different---

JOHN HOLLINGSHEAD: Right.

BUTCH LAMBERT: So, how can we...help us understand how we can make that comparison to the area in question?

JOHN HOLLINGSHEAD: Up in that area there is...I don't know how to answer you quite honestly. I don't know... I haven't focused on that area up there during this review.

TOM MULLINS: Mr. Chairman, may I clarify? I think...I think he may know the answer. He may not understand your question. If I could...if I could help him with that.

BUTCH LAMBERT: Yes, Mr. Mullins, if you could try and then I'll tell you whether or not that's---

TOM MULLINS: All right. As I understood the line of inquiry...they want to know how you can take remote information and bring it to make relevant to the units that are at issue? Specifically, he was asking you about those ones five miles away and three miles, but it's the remote information. How do you take that data and bring it to make it relevant to the five units that are in question?

BUTCH LAMBERT: Let me add to that too. We're looking at the GeoMet type of curve on Exhibit 2. I think you were trying to compare that data down to the AE type of curve near or adjacent to the units in question. We heard previous testimony before you that the gas quantity is not the same.

JOHN HOLLINGSHEAD: Right.

BUTCH LAMBERT: There's a much difference in the volume in those areas. So, how do we make...help the Board understand how we make that comparison.

JOHN HOLLINGSHEAD: Really that first...because one

of the things that you're looking at is the first page of that exhibit?

BUTCH LAMBERT: No, I'm looking at the second page of Exhibit 2---.

JOHN HOLLINGSHEAD: Okay.

BUTCH LAMBERT: ---and then your Exhibit 3.

TOM MULLINS: You can refer to any of them to help explain it.

BUTCH LAMBERT: Absolutely, yes. Please do that.

TOM MULLINS: He's just saying that's what he looked at.

JOHN HOLLINGSHEAD: Yes, okay. Basically, the cumulative amount it was just...really to show that it...to focus into the point that we've had great success in this area relative to other operators that are around us, that was pure...the majority of reason of why that was used. As far as---

TOM MULLINS: Exhibit 2.

JOHN HOLLINGSHEAD: ---Exhibit 2, the type of curve, it was the closest data set that we had to these wells. I mean, theirs...as was stated earlier, there may be a lower gas content up in that area. The thicknesses may be less. There may be several different things in that area that doesn't exist in here. What I have been told by geology is that the thicknesses and gas contents in the area

of where these seven wells are located at versus the seven wells...our unit numbers that Appalachian wells are located at are fairly similar. So---.

BUTCH LAMBERT: When you say fairly similar, are you talking about in production or are we looking at gas quantities as a whole in the area?

JOHN HOLLINGSHEAD: Gas quantities...gas in place. Potential resource that may be abstracted out of the coal seam.

BUTCH LAMBERT: And that's something that you identified...or GeoMet has identified through their core drills?

JOHN HOLLINGSHEAD: That is correct.

BUTCH LAMBERT: But I understand there was no core drills in this area?

JOHN HOLLINGSHEAD: There have been two...I think we have a core hole about a---

BUTCH LAMBERT: A mile and a half.

JOHN HOLLINGSHEAD: ---mile and a third. Yeah.

BUTCH LAMBERT: A mile and a third I think was---

JOHN HOLLINGSHEAD: Away from this. But specifically in these units, no there actually is not. One of the things...I mean, you bring up a good point. One of the exercises that we tried to do before we came over here,

we tried to pull thickness logs out of the records. A lot of the Appalachian wells have been online for twenty-four months. We couldn't find any. I don't...we were informed that they hadn't been filed yet. So, it wasn't data that we had access to. It would have been nice to be able to incorporate that in to this data set. So---

BUTCH LAMBERT: Okay.

TOM MULLINS: Could you explain Exhibit 5 and how that may or may not have helped you obtained any numbers?

JOHN HOLLINGSHEAD: Yeah, I mean, it...going back, I mean, you know, it's a valid statement that Mr. Henderson had made earlier. You look at the production in the area. That was why these seven wells over an east/west direction that are in proximity would be a good analog to try to develop a type of curve out of them.

TOM MULLINS: What's an analog, I mean, for a guy that was a liberal arts major in college?

JOHN HOLLINGSHEAD: Well, basically, it's just a...you look at...say for instance, look at the production and see how that...those coal seams have produced. Are they similar in thickness? Are they similar in gas content? How does the coal quality? What is the production? Basically, trying to take a variety of things to create an analog in one area that may be transferred to another area. If you

don't have all of that data, but they are...due appear to be somewhat similar in wells that have been drilled that are not your wells. You know, that's basically what was attempted to be done on that...it's like in those seven wells.

BUTCH LAMBERT: Staying with Exhibit 5, the focus area, you've got an arrow pointing to 419. Do you know what unit that is?

JOHN HOLLINGSHEAD: Yes. Let's see 419...416 to the left of you...let's see 416, 417, 418, 419 and 420 is F...that's F-36, yeah. That's just an area to kind of get you in the general proximity of where these subjected wells are relative to one of the earlier...to the subjected wells that are on the earlier exhibit.

BUTCH LAMBERT: Any other questions from the Board?

(No audible response.)

BUTCH LAMBERT: Mr. Kaiser, do you have any questions?

JIM KAISER: Yes, I do.

#### CROSS EXAMINATION

#### QUESTIONS BY MR. KAISER:

Q. If we turn to your Exhibit 3 for a second... can I call you, John?

A. You sure may.

Q. All right, John. How far away did we say that the seven wells represented by that red plotted line are?

A. Those wells are approximately about three miles.

Q. Maybe you said three and a half miles, would that be right?

A. Three to three and a half in that proximity depending on which well you're talking about.

Q. In your earlier testimony, just given...I think you stated that the more production data you have the better determination you can make as to your reserves?

A. I did state that as being one of the criteria that would be extremely helpful in trying to develop an analog. You are correct from that aspect.

Q. And if you were evaluating an area to drill, would you prefer to have data from wells in adjacent units or wells from three and a half miles away?

A. Absolutely...I mean, in proximity...the closer the proximity, I would have to say that those are good wells to try to utilize.

Q. And as a reservoir engineer, would you prefer to base your reserve estimates on core data or actual

production data?

A. Both. I think they go hand in hand. I think that the resource assessment of knowing...having open hole logs to nail down exactly what your thickness are, what your gas contents by direct cannister test is extremely important. It could...if you don't have that data, you could certainly possibly underestimate the amount of reserves. But that is just one facet of it. The other facet is that having production in the area, you have from the chemistry test how much gas there is, but it doesn't tell you how the production or methane gas is going to come out of that reservoir. So, by having production data, I think is important as well.

Q. Based on the cumulative production data that AI has listed in their exhibit, what would you estimate their reserves to be?

A. Which exhibit is that?

Q. CC.

A. Well, I can tell you right now, I couldn't tell you that at this spur of the moment. So, I mean, it's...I'll just have to say that I don't know or I can't at this moment. I would not...I try not to make off the hip estimate on calculating reserves. I think it does take diligence. It does take time. It takes information to go

through the process. So, I apologize if I defer not to try to tell you how much reserves...as I stated earlier, I mean, we've looked for thicknesses. So, I don't know...we looked for their open hole logs. They weren't available. That is a key component in try to determine how much reserves are in the ground along with production, which production was available and that was something that we did pull and get from the DGO.

Q. Let's turn to Exhibit 4 in your packet. We've got a total of...in this data that you've compiled, we've got...it appears to be like a well count...a total well count of fifty-eight wells.

A. Yes, I have.

Q. How many of those are in Virginia?

A. All of those are in Virginia.

Q. This is compiled from everybody from the wells across the Board from different operators, correct?

A. Yes, it is.

Q. And...so, in other words, you've got thirteen wells. So, at least forty-five of those other wells have got to be somebody else's?

A. Yes, that is fair. Thank you.

Q. By definition, correct?

A. That is correct.

Q. Okay. Now, out of the hundreds and possibly thousands of coalbed methane wells that have been drilled and have been brought before this Board for the units to be force pooled, and I've been doing this for seventeen years now, I would say that 99.5% of them list estimated reserves at 250 to 500 million. How do you explain---

TOM MULLINS: Objection to what---

Q. How do you explain you listing your reserves---

BUTCH LAMBERT: Let's let him finish and then---

Q. ---at roughly 1 bcf?

TOM MULLINS: I withdraw it and let him answer.

A. Well, actually, right now...I mean, if you go to the next exhibit in the six year time period out of those seven wells, I mean, you've got six of the seven that are already at 250. I know that those wells are not going to be plugged in the next month or the next year. There is probably...as said earlier or I said earlier there is probably at least 30 more years of production...I would have to...I would have to call issue by taking a rubber stamp on those thousand wells or whatever you just stated and rubber stamping 250 million a well on them. I mean, to me from a reservoir standpoint, that is not good engineering.

Q. Why are the majority of your wells in West Virginia that you're using for this data?

A. The majority of our wells in West Virginia, we do not have issues. The rules and regulation---

TOM MULLINS: Objection. What's the relevance of him asking where the wells are...I mean, I think he's trying to get back into---

JIM KAISER: No, I'm trying to get at the accuracy of the data---

TOM MULLINS: Let me finish.

JIM KAISER: ---is what I'm trying to get to.

BUTCH LAMBERT: Let's let him finish. I think I know where he's going with that.

TOM MULLINS: I think the purpose of the question was to go back towards the consent to stimulate density...the well distance issue. If that's purpose, I object. I think the Board has ruled on that.

BUTCH LAMBERT: Well, from my standpoint, I appreciate the question because as I asked earlier...and I'll rule in just a second when I give you my explanation, when I asked the question earlier as to where the data came from or how can the Board compare...make that comparison. If that's where Mr. Kaiser is going, I'll allow. If he's going back to the stimulation issue, I won't.

JIM KAISER: That's where I'm going. I mean, you've thrown all of this data out about bcf wells and they're, you know, quite a ways away. They're in West Virginia and quite a ways away from the location of these five contested units and you've testified that the production data from adjacent units would be better than core holes or production data from however far away West Virginia is. That's all I'm getting at.

A. No, I didn't. I said in conjunction with production and core holes and not one. I mean, the two have to be intertwined with each to get more representative data. So, I mean, I wouldn't...I wouldn't enjoin those two criteria that goes into the process.

Q. John, do you know does GeoMet have any infrastructure in the area that we're talking about here?

A. In the immediate---.

Q. The immediate area of the contested units?

A. At this point, no we do not have any pipeline access out of the area. That is something is ongoing right now that we are in the process of getting ready to build access out of the area to our compressor station. So, do we have immediate hookup? No, we don't. Do we feel like we will be able to get a hookup and get this gas out of there? We certainly do.

Q. And do you know, and I'm not trying to ask you an unfair question and you can just say you don't know, but do you know that if GeoMet were granted operatorship of these five units that you have the capital in budget to drill these five wells?

A. Absolutely.

JIM KAISER: Okay. I don't have any questions further, Mr. Chairman.

BUTCH LAMBERT: Questions from the Board?

BRUCE PRATHER: I've got a question.

BUTCH LAMBERT: Mr. Prather.

JIM KAISER: Can I---?

BRUCE PRATHER: On your first map here, as far as I'm concerned if I was going to use this map, I'd use this map to (inaudible) my production over a three year period. That would give you better ideas of where this stuff is going and if you use the cubes...I mean, basically, if you look at your red areas in here and the areas that are highlighted, that's where that thing is going if that's correct. The other thing about it is that you've got to remember that these are fractured wells. If any of these wells are fouled up on the fracture process than they won't be a good valid point. So, you know, you've got to keep that into prospective.

JOHN HOLLINGSHEAD: I agree with that.

BUTCH LAMBERT: Any other questions from the Board?

JOHN HOLLINGSHEAD: Can I clarify or add on to the budget question just a minute ago? We have twenty wells that we do plan on that are in our budget. But we do, as a company, we have...we can do an additional add on to our current existing budget of twenty wells that we plan on drilling in this area. So, adding five addition wells, I can guarantee you our management would love to drill these well because we feel that these wells will be very good producers and very...generate very good cash flow for our company. Not only that, be very cash flows for the royalty owners. So, as far as getting money to drill these, I can say a 100% there would be no problem getting that money to be able to drill these.

BUTCH LAMBERT: Anything further, Mr. Mullins?

TOM MULLINS: Not of this witness.

BUTCH LAMBERT: Does the Board need a break?

SHARON PIGEON: Yes.

BUTCH LAMBERT: Okay. Give us ten minutes.

(Break.)

BUTCH LAMBERT: Okay, ladies and gentlemen, it's time for us to get started back if we're going to get out of here before midnight.

COURT REPORTER: We are.

SHARON PIGEON: We are. We're going to be getting out of here right about---

JIM KAISER: Based on that comment, I'll pare my witnesses down to just one more then, Mr. Chairman.

(Laughs.)

TOM MULLINS: It's Mr. Whitt. He needs to be sworn.

(Ertel L. Whitt, Jr. is duly sworn.)

ERTIL L. WHITT, JR.

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

DIRECT EXAMINATION

QUESTIONS BY MR. MULLINS:

Q. Would you please state your full name?

A. Ertel L. Whitt, Jr.

Q. And what do you do for a living, Mr. Whitt?

A. I'm a professional engineer.

Q. How long have you been a professional engineer?

A. Forty-five years.

Q. Okay. And you have worked in and around the coal fields of Buchanan County, Virginia, West Virginia

and Kentucky for that entire length of time?

A. At least forty of those years, yes, sir.

Q. Okay. And you worked for LBR Holdings, is that correct?

A. Yes. I'm a consulting engineer for LBR Holdings.

Q. And you've testified as both a fact and an expert witness before this Board on prior occasions, is that---?

A. I have.

Q. Okay. And the purpose of having you here today is to advise the Board as to the position of the Rogers folks who actually own the gas concerning the two (inaudible). If you would, would you...being the majority owner in every one of these units, what is the position of LBR Holdings concerning the operatorship of these units?

A. As you stated, LBR Holdings is the majority owner in all five and it is our position that we would like for GeoMet to be our operator. They are our farmee. Of course, Equitable is our lessee. There are provisions in that lease that are not in every lease. For instance, we've been talking about post production costs being deducted. There are no post production costs taken out of our lease. There is no severance tax deducted from our one-eighth

royalty interest on any of the...on any of the CBM wells that we have on the property. That's a big bite right there.

Q. So, basically your lease provisions did not allow anyone that...the lessees or the farmees, being GeoMet in this case,---?

A. Right.

Q. ---to deduct post production costs or the severance tax costs---?

A. Correct.

Q. ---for the production of that gas? They just pay---?

A. Right.

Q. ---the gross royalty?

A. Right. I have...we have five different operators operating on LBR Holdings properties both in conventional gas and coalbed methane. But I have prepared a minor exhibit that just shows the comparison between Appalachian Energy who does have some conventional...two conventional wells that were force pooled on the Rogers property. There are also two other wells that are...were voluntary units with Equitable...actually with Ashland Exploration years ago. But the numbers that are represented on this chart are just from the last three years. We didn't

have December. So, it's actually a thirty-five month comparison between the price that Rogers received from Appalachian Energy from their wells as opposed to what GeoMet paid us. As you can see in looking at that, I went ahead and gave analyzed. Each year GeoMet folks were paying us about \$.70 more per mcf than what Appalachian Energy was paying. Now, that's a net pay. That's what we received. The royalty report that we received from Appalachian Energy on EH-10 and EH-15 they don't show us any deductions and we don't know that what their...if there is or isn't any deductions. We get quantity and we get to pay. So, we don't...we don't know what those are. But with...but our CBM lease does exclude any post production charges as well as severance tax being deducted.

Q. How many acres in Buchanan County does lease encompass?

A. It's around 6500 acres.

Q. Okay. And based upon the rate of return that you're getting between the two companies, what is the position of Rogers as to which operator it would prefer be named by this Board?

A. Well, we would certainly prefer that GeoMet be named as the operator because their track rate with us on the wells that have drilled in West Virginia is excellent.

They have been actively developing the property. They have abided by the leases and are giving...you know, a real good producer for us. That's who holds our lease.

TOM MULLINS: And for identification purposes, Mr. Chairman, I'd like to have this marked as Exhibit 8, if that's okay.

BUTCH LAMBERT: Yes, acceptable as Exhibit 8.

Q. And as I...have you looked at the applications as filed by both GeoMet and Appalachian?

A. Yes, I have.

Q. And is it your understanding the lowest percentage that the Rogers interest has in any unit is in F-33 and that's 54.89%? In other words, we own more...you all own more than half and we have a farmee agreement to produce more than half of that unit?

A. Yes. It runs from 54.89 up to 78.24% that Rogers owns in each of these five units.

Q. And that's unit F-35 and Rogers own and we have the right to produce more than three quarters of that unit, 78% of that unit?

A. That's correct.

TOM MULLINS: I don't have anything else of Mr. Whitt.

BUTCH LAMBERT: Questions from the Board?

MARY QUILLEN: I have just one question---.

BUTCH LAMBERT: Ms. Quillen.

MARY QUILLEN: ---just for my own information.  
You said that you do not pay any severance tax? Does---?

ERTIL L. WHITT, JR.: It's not deducted from our royalty interest. The operator has to pay severance tax on the entire amount, but they're not allowed to deduct it from our royalty interest.

MARY QUILLEN: That was my question. I just wanted that on the record.

ERTIL L. WHITT, JR.: Right. Right.

BUTCH LAMBERT: Any other questions from the Board?

(No audible response.)

BUTCH LAMBERT: Mr. Kaiser?

JIM KAISER: Yes.

#### CROSS EXAMINATION

#### QUESTIONS BY MR. KAISER:

Q. Mr. Whitt, would it fair to say that the difference in a year by year basis in what you're being paid by GeoMet and what you're being paid by Appalachian Energy represents the deduction of post production expenses? I mean, it looks like---.

A. That's possible. I'm not sure.

Q. It looks like \$.59 on one and \$.40 some cents on another and---.

A. That's possible.

Q. Okay. And have you made any attempt to inquire of Appalachian Energy should they be granted operatorship of these units whether or not they would abide by the terms and conditions of your lease?

A. I have not spoken to that issue. But in prior testimony, they said they would take...in the initial testimony, their witnesses said that they would be taking post production charges, as I recall.

Q. When did they say that? Who said that?

A. This gentleman sitting to my right.

Q. When did he say that?

A. I think he did when we were going through it, but maybe I'm wrong.

Q. I think you're wrong.

A. Okay. I'll withdraw it then.

JIM KAISER: That's all I've got.

BUTCH LAMBERT: Any other questions from the Board?

(No audible response.)

BUTCH LAMBERT: Anything further, Mr. Mullins?

TOM MULLINS: In light of the hour, no, sir.

BUTCH LAMBERT: Discussions from the Board?

TOM MULLINS: Mr. Chairman, are you going to give the attorneys an opportunity to argue or---?

BUTCH LAMBERT: Probably not.

(Laughs.)

SHARON PIGEON: Have they not been arguing?

TOM MULLINS: I thought I would ask.

(Laughs.)

BUTCH LAMBERT: What have we been doing for the last eight hours?

TOM MULLINS: This was just presentation.

(Laughs.)

SHARON PIGEON: On your end maybe.

TOM MULLINS: I was just going to sum it up for you.

BUTCH LAMBERT: Do I have a motion from the Board?

(No audible response.)

BUTCH LAMBERT: Any discussion from the Board? Any further questions that the Board would like to ask?

BILL HARRIS: Mr. Chairman, I---.

BUTCH LAMBERT: Mr. Harris.

BILL HARRIS: ---really would like to hear a brief summary---.

(Laughs.)

BILL HARRIS: ---from each person.

SHARON PIGEON: Two minutes.

BILL HARRIS: Two minutes.

BUTCH LAMBERT: Can we allow each one two minutes?

BILL HARRIS: Yeah, that sounds good.

BUTCH LAMBERT: Mr. Kaiser.

JIM KAISER: Mr. Henderson has requested that he be allowed to do it. Is that okay or do you want me to do it?

BUTCH LAMBERT: Yes.

JIM KAISER: It's okay.

FRANK HENDERSON: I'll be very brief, Mr. Harris.

Just in summary from our standpoint, the first exhibit, Exhibit A, that we gave you just showed the relationship of wells that we currently control and units we currently control. Wells that have been drilled and units currently controlled by GeoMet that no wells on them. As I mentioned before, the three units there have been in control of GeoMet for three wells and no wells have been drilled...or two years, I'm sorry, and no wells have been drilled. We feel that in light of that, we're in the best position to develop and produce the five units in questions. We do have moneys invested in the three...at least one of the three units that we participated money that's being held. No well has been drilled. Again, we're in a position to do that now. From a...you know, from a closing standpoint, we do have the

consent to stimulate on these particular units. We're ready to drill the wells upon permitting. We have, you know, infrastructure immediately to the south of here so that we can take the gas and move it to market. We just feel that we're a lower...our AFEs have proven to be lower. Granted their AFEs are one well. Personally, we feel that...our company feels that it's justified and areas allow us to drill two wells in the unit that that is the most prudent way to extract the resource and to get royalty for both the lease parties and the mineral...the working interest owners. Finally, our production that we have in Virginia immediately adjacent of these units is better than a 150% better than anything that GeoMet has, which is three and a half miles away. Based on those facts, we feel that we're in the best position to be the operator and we request to be granted the operator of these units.

BUTCH LAMBERT: Thank you. Mr. Mullins.

TOM MULLINS: Sure. A couple of points, Mr. Chairman and members of the Board, first and foremost, the one thing that he didn't address is how much interest he actually has in each one of these units. Appalachian's highest interest is less than the majority. There is not a single unit that GeoMet does not have a majority interest in in some of these units over 70% interest in. You've heard

from the party that is going to be the most affected by the ruling of this Board and that's LBR Holdings. They will be directly affected in their pocketbook by the ruling of this Board. You've received evidence, not from GeoMet, but from them as to their rate of return. You've also heard evidence about estimates of recoverable reserves that one of the things that the evidence...they kept mentioning was how our initial AFEs were the same. I'd submit to you their estimates of production are rubber stamped the same. They're the same. They're not based upon anything other than that's what we've always done. We've brought force evidence from a petroleum engineer and from a geologist to offer to this Board an explanation as to why the reserve information is different. We've justified that based upon the testimony of these experts and how they went about doing it. The infrastructure issues was touched upon by the petroleum engineer. It's going to be laid. Any new well you don't lay your infrastructure in anticipation. When you get your well ready to drill you lay your infrastructure. I think the Board's own records will indicate the pipeline of GeoMet is another way out of Buchanan County. The cost factor, one of the things they kept harping on, the ability...they're the lower cost operator. The evidence they put forth to justify that was one well AFE, a one well

AFE. He just admitted in his closing statement, it's going to take two...two wells to get the 250 production that his application, which is sworn to and he testified from, will produce. So, this Board's path I would submit is straight forward. His application, which is what you have to base it, 250...250 production with a 417 AFE, which is not...which is about half of what it's really going to cost. You need to almost double that from his own testimony. 988 from our application verified through our expert witnesses, 528. The math is straight forward. We have the most interest in the unit. We have the biggest interest holder coming in and saying, please we want GeoMet. We have the lower cost per mcf of production when you take into account their own testimony of two wells per unit. I would ask the Board to please consider granting operatorship to GeoMet.

TOM MULLINS: Thank you, Mr. Mullins.

JIM KAISER: Mr. Chairman, that was more than two minutes. I'd like to have a couple of minutes.

TOM MULLINS: I object. I object.

JIM KAISER: I don't care what you do.

(Laughs.)

BUTCH LAMBERT: I didn't set a time limit, Mr. Kaiser.

JIM KAISER: Oh, okay. Well, let's get some facts

straight. The application that we filed...the five applications that we filed were for one well. The 250 represents the reserves of one well. 417 an estimate of reserves in one well. The 417 represents the cost of one well, okay.

BUTCH LAMBERT: I think we all understood that.

JIM KAISER: Okay. They've got estimates and projection and voodoo science. We've got facts. We've got proven production and proven facts and proven costs. That's all I'll say.

BUTCH LAMBERT: Thank you, Mr. Kaiser. Any questions from the Board of the final closing arguments?

(No audible response.)

BUTCH LAMBERT: I just have one question, Mr. Mullins. If you can't answer this, please ask you engineer or anyone that can come down and answer it for us. Is anywhere down the road the GeoMet would propose to come back and drill a second well in the unit or are you proposing one well in the unit and that's all we're going to do?

TOM MULLINS: Our proposal is one well will produce the 988. I can't tell you...I can't predict the future. I have no knowledge of any intent to drill a second well in any of these five units. Our petroleum engineer is sort of squirming. He may know the answer.

BUTCH LAMBERT: I think he's still under oath if you to bring him down and answer that question. Do you remember the question, John?

JOHN SHEFFIELD: I need to pull out my voodoo engineering here.

(Laughs.)

BUTCH LAMBERT: May I call you, John?

JOHN SHEFFIELD: Yeah, you certainly may. That's right.

(Laughs.)

JOHN SHEFFIELD: You know, I think it goes to say, if I can direct you to Exhibit 5 of the information that I presented to you. Those seven wells were the foundation of the forecast that I created. The type of curve of expectation or expected production out of this subjected area, which is relevant to Exhibit 7, which is the base type of curve. At this point in time, without having a well drilled there, the yellow curve in here is based off of actual production times zero production off of those seven wells. I've tried to go through and create a based curve that goes through the existing production from start running up to a peak and then declining and really out, you know, past eighty-four months. So, that curve that I've project... that based curve that I projected there averages

out to be about 905 million cubic feet of gas. So, at this point, I think our standpoint is that this well should be able to cum that amount of gas with only one well. So---.

BUTCH LAMBERT: Okay. So, I don't think I heard an answer to my question. Do you propose at anytime or do you perceive at anytime to come back before the Board with a petition for another well?

JOHN SHEFFIELD: At this time today based off that I've seen, no, I don't.

BUTCH LAMBERT: Okay. Any other questions?

(No audible response.)

BUTCH LAMBERT: Again, do I have a motion?

(No audible response.)

BUTCH LAMBERT: Does the Board need further...feel as though they need further information before we get make a motion?

(No audible response.)

BRUCE PRATHER: Well, I'll make a motion that we go with Frank Henderson's group.

BUTCH LAMBERT: Mr. Prather, is your motion that we approve the application from Appalachian Energy?

BRUCE PRATHER: Yeah. It's mostly based on protocol of how we've done this in the past. It seems that whoever is the first in line to do it seems to get

the...that's a poor way to do it, but that's what we've been doing in the past.

TOM MULLINS: Mr. Chairman, we filed on the same day. So, it was purely arbitrary who got on the docket numbered first.

BUTCH LAMBERT: Mr. Asbury, can you confirm when the applications were filed?

DAVID ASBURY: I'll attempt to.

BUTCH LAMBERT: While Mr. Asbury is looking, let me just open it for discussion since I wasn't here if this situation has occurred and we went on whoever filed first, you know. As Chairman, I'm not comfortable doing that way at this time.

BRUCE PRATHER: I'm not either.

BUTCH LAMBERT: I know Mr. Prather has the motion on the table, but I think that we probably...that from my prospective we need to go on the testimony that we have heard and how we can weigh each side of that testimony. For discussion, from my viewpoint and the point that I made a couple of times is the information that we was provided from GeoMet basing their production on wells located three or five miles away. I'm not so sure how much weight that I can put on that based...versus information from wells that are drilled adjacent to the area. So, that's my prospective and

I open that up for discussion for the Board, if there is any. Mr. Asbury, was you able---?

DAVID ASBURY: Based on what my information is, Mr. Chairman, is they could have been filed on the same day. By docket number, they are in order as received.

BUTCH LAMBERT: Okay. So, I have a motion on the table from Mr. Prather. Do I have a second?

TOM MULLINS: We had to have docket numbers reissued for ours because there was an error in the issuance of the docket numbers.

DAVID ASBURY: The number itself.

TOM MULLINS: The number itself.

DAVID ASBURY: That's possible.

BUTCH LAMBERT: Okay. Hearing no second on Mr. Prather's motion, that motion has failed. Do I have another motion?

KATIE DYE: Mr. Chairman, based on the evidence, I make the motion that we award these units to GeoMet, the experts and the testimony that we've heard.

PEGGY BARBER: Second.

BUTCH LAMBERT: I have a motion and a second to approve the GeoMet applications. Is there any further discussion?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying  
yes.

(Katie Dye, Peggy Barber and Bill Harris say yes.)

BUTCH LAMBERT: How many did I have, three?

PEGGY BARBER: Uh-huh.

BUTCH LAMBERT: Could you poll the Board, Madam  
Reporter?

COURT REPORTER: Mary Quillen.

MARY QUILLEN: No.

COURT REPORTER: Peggy Barber.

PEGGY BARBER: Yes.

COURT REPORTER: Bill Harris.

BILL HARRIS: Yes.

COURT REPORTER: Katie Dye.

KATIE DYE: Yes.

COURT REPORTER: Butch Lambert.

BUTCH LAMBERT: No.

COURT REPORTER: Donnie Ratliff.

DONNIE RATLIFF: I abstain.

COURT REPORTER: Bruce Prather.

BRUCE PRATHER: No.

COURT REPORTER: We have two no and we have one  
abstain and we have three that are yes.

JIM KAISER: No, we have three nos and three yes

and one abstention.

BUTCH LAMBERT: We're tied.

COURT REPORTER: Right. I was getting to that.

JIM KAISER: Okay.

BUTCH LAMBERT: I think we're tied.

DONNIE RATLIFF: And let me explain. I just learned recently with the Nicewonder acquisition, we acquired some leases from Appalachian Energy. I was unaware of that before. Just to prevent that from becoming an issue.

BUTCH LAMBERT: Okay.

FRANK HENDERSON: Okay.

BUTCH LAMBERT: Okay, gentlemen, we're deadlock at three to three with one abstention. Is there any further questions from the Board that would help us resolve this issue?

BILL HARRIS: Mr. Chairman, if I might make a comment.

BUTCH LAMBERT: Mr. Harris.

BILL HARRIS: This is, of course, not an easy decision to make, you know, when you start pitting one against the other. But, one of the things, I think...one of the reasons that I voted yes for the GeoMet petitions here is that...of course, the information...of course, we're

always guessing as to what's going to be produced. So, we can't say a 100% that that's going to be the case. But, I think the thing that for me is the LBR Holdings folks for them to come forward and say that, you know...and for us to realize that they are the majority interest holder and that they have a preference in this matter. When you start weighing all of the things, I think that to me made that fall over to the GeoMet side. So, that was why I voted yes on that. So, I just wanted to throw that in for discussion, if necessary or whatever.

KATIE DYE: Well, for clarification, I based my yes decision pretty much on that same thing.

PEGGY BARBER: So did I.

KATIE DYE: I think we have to consider what these folks want.

PEGGY BARBER: Exactly.

BUTCH LAMBERT: Thank you.

PEGGY BARBER: And that should be the priority really. Of all the good evidence that we heard from the reservoir engineer, I thought that was an excellent overview. The LBR Holdings and the Rogers Group to me was kind of the time breaker that that's where we need to lean that way.

KATIE DYE: Because we are protecting their

correlative rights.

BUTCH LAMBERT: Okay.

BRUCE PRATHER: Me. Well, one of the problems I have is that, if I'm right or wrong about this we can't discuss it, but who has the right to stimulate after you drill the well. I think that has a lot to do with it. We obviously can't discuss it. It's...it means you either wait until they can...somebody come up with the right or you hold this thing in abeyance until such time as somebody comes up with it.

BUTCH LAMBERT: Thank you, Mr. Prather. Ms. Quillen.

MARY QUILLEN: I have the same concerns is the right to stimulate plus the fact that we have do have wells producing adjacent to these. It has been proven and we have seen it over and over and over again, the Board in other cases that we look to see what kind of production is in that area to based decisions on drilling in areas a second well or in an adjacent area. It's based on the production in that area. Since there's no other wells in that area, we have to look at what...the wells that have been drilled and what they are producing.

TOM MULLINS: Mr. Chairman, in light of those statements, I need to make a motion to have Mr. Prather and

Ms. Quillen recused. They're basing their vote on evidence that's not admissible. In fact, if that evidence was going to come in, I would have had Mr. Ertel Whitt testify that there would have been not location that he would have allowed on behalf of LBR to drill a well based on the 2500 foot rule within any of these units. They have stated they base...they are basing their rational on evidence not of record. That requires them to recuse themselves. I ask for a retally of the vote.

BRUCE PRATHER: He said he had the right to stimulate, right?

TOM MULLINS: It was excluded.

BRUCE PRATHER: I mean, once it's in the record, I don't see why we would be excluded since he already said he had the right to stimulate.

GEORGE MASON: We objected and I think Mr. Chairman you excluded it, didn't you?

BUTCH LAMBERT: No. No, I don't recall there was an objection to that particular...it was in his summary.

FRANK HENDERSON: In the summary, I stated it. At the end of the day, for clarification that's what we're here for. That's what it's all about. There's three units here that GeoMet has had operatorship of for two years that we have acreage in that are sterilized---

TOM MULLINS: Objection to this addition evidence.  
Objection.

BUTCH LAMBERT: Yeah. We're done here. We're done  
with that.

JIM KAISER: You're done with him to then.

BUTCH LAMBERT: Yeah, we're done, gentlemen. The  
Board---

TOM MULLINS: But if you want to consider that, Mr.  
Ertel Whitt needs to testify about the 2500 foot rule  
objection to that. Appalachian will not get a well on any  
of these five units if that's going to be the basis of the  
Board members decisions.

BUTCH LAMBERT: Okay. Any discussion of the Board  
for a recall vote?

(No audible response.)

BUTCH LAMBERT: Okay, gentleman, with a deadlock  
vote I don't think we can issue any of these today. You'll  
have to come back and redo them again one day. Thank you  
for your time.

GEORGE MASON: Thank you for your time.

TOM MULLINS: Thank you, Mr. Chairman.

JIM KAISER: Thank you for your patience.

FRANK HENDERSON: Thank you.

TOM MULLINS: Mr. Chairman, for some housekeeping.

PEGGY BARBER: Mr. Chairman, we have a---.

BILL HARRIS: Is there a reason why we didn't re...didn't have another motion and revote? I mean, I know that it was tied, but I---.

BUTCH LAMBERT: Did you have another motion, Mr. Harris?

SHARON PIGEON: He asked for a motion twice.

BILL HARRIS: Oh, I didn't hear the request for...I mean, I just...oh, I'm sorry. Well---.

BUTCH LAMBERT: Hold tight.

BILL HARRIS: Okay. Well, I'm sorry then because I thought that someone...I thought since she had made the motion that it would be remade.

SHARON PIGEON: That motion was voted on.

BUTCH LAMBERT: Yes, we voted on Ms. Dye.

BILL HARRIS: Okay. I'll make the motion then...well, anyway. I'll make the motion then and for the reason given earlier. I think we have a very good presentations by both groups. But, I really feel that the folks who are greatly impacted, the folks who own the minerals, the LBR Holdings folks, I think have made their wishes known in terms of, you know, since they are the majority interest holder. For that reason, I feel that we should award the approvals to the GeoMet projects for these

five items because of that. So, I'll make that motion then.

BUTCH LAMBERT: I think we just voted on that motion.

BILL HARRIS: Oh, okay. Is that...so---?

BILL HARRIS: No, but I thought---.

SHARON PIGEON: That was---.

BILL HARRIS: ---is that when they were tied...if the motion was tied...I know that we have asked about not including people in the vote. Does that...I don't about Roberts Rules. You cannot...that motion cannot surface again. I guess, obviously, not then.

BUTCH LAMBERT: I called for another one.

BILL HARRIS: Okay.

BUTCH LAMBERT: And I didn't get any.

BILL HARRIS: Well, I don't know that I have another one. So, I'll withdraw that one then.

BUTCH LAMBERT: Okay. Mr. Mullins, did you have some housekeeping?

TOM MULLINS: I do. With permission of the Board, which one do we need to withdraw?

PEBBLES DEEL: This one.

TOM MULLINS: We're going to withdraw agenda item number sixteen. That's a voluntary unit now.

BUTCH LAMBERT: Okay. Item sixteen will be

withdrawn.

TOM MULLINS: Item seventeen, eighteen, nineteen, twenty, twenty-one and twenty-two, it's my understanding that the GeoMet folks are talking with the Equitable folks and that we would ask that that be continued.

BUTCH LAMBERT: Until?

TOM MULLINS: Next month.

BUTCH LAMBERT: Okay.

JIM KAISER: What numbers were those?

SHARON PIGEON: Seventeen through twenty-two?

TOM MULLINS: Yes. We have the additional information...last month we were here and the Board asked us to submit some revised exhibits for agenda item number ten. We have those exhibits. I think Mr. Swartz had a question about it. We made that insertion and we're ready to file that with the Board and ask the Board to grant us the relief requested last month. It's number ten, unit E-37.

(Butch Lambert and Donnie Ratliff confer.)

DAVID ASBURY: Mr. Chairman, before you go on, I need a little clarification for docketing, please, of what just happened as far as the units. A no motion had failed. If they...are they...the parties to redocketed these items or are they...they're not a continued item because we had a tie vote with no motion, right? They have to be redocketed

at a future time, is that my understanding?

SHARON PIGEON: That is correct.

DAVID ASBURY: Okay. Thank you very much. New petitions.

SHARON PIGEON: Either these parties or different parties.

DAVID ASBURY: Right. But new petitions.

SHARON PIGEON: It's a start over, right.

DAVID ASBURY: Right. Thank you very much.

(Off record discussion.)

BUTCH LAMBERT: Mr. Asbury, could you look at docket item number six. Just for clarification, is that one of the ones that we just heard, F-3? Is there a typo there is that a different---?

DAVID ASBURY: It was F-36.

BRUCE PRATHER: F-36.

TOM MULLINS: Five, six, seven, eight, nine.

BUTCH LAMBERT: Well, we have two F-33s then.

TOM MULLINS: It should be F-36.

BRUCE PRATHER: Yeah. Yeah.

BUTCH LAMBERT: It should be F-36?

TOM MULLINS: Yes.

ERTIL L. WHITT, JR.: There's also a typo over on fourteen. It should be F-36 instead of E-36.

TOM MULLINS: It says E-36. It's supposed to say F-36.

DAVID ASBURY: On fourteen?

TOM MULLINS: Yes, sir. I believe that's correct.

DAVID ASBURY: Okay. Thank you. Mr. Chairman, the application is F-36. That was a typo.

BUTCH LAMBERT: 36. Okay, thank you.

DAVID ASBURY: Yes, sir.

(Off record discussion.)

BUTCH LAMBERT: Okay. We're calling the petition from GeoMet Operating Company, Inc. for pooling of coalbed methane unit...is that E-37 or is that supposed to be---?

TOM MULLINS: I think it's E-37.

BUTCH LAMBERT: E-37. Rogers well 426, docket number VGOB-09-0120-2447. All parties wishing to testify, please come forward.

MARY QUILLEN: What item number is that?

BUTCH LAMBERT: Number ten.

COURT REPORTER: Ten.

TOM MULLINS: And, Mr. Chairman, Tom Mullins on behalf of GeoMet. I'd like to incorporate the testimony that we gave at the last hearing. As I recall, the Board asked us to come back with a revised set of exhibits, which we have done. We submit those to the Board for its

consideration. That was the only question that I remember the Board had for that application and we would like to ask the Board to consider our application with the revised exhibits.

GEORGE MASON: And, Mr. Chairman, for appearances, George Mason on behalf of LBR Holdings, LLC.

BUTCH LAMBERT: Okay. Thank you, Mr. Mason. Do I have a motion from the Board?

DONNIE RATLIFF: So moved, Mr. Chairman.

BUTCH LAMBERT: Do I have a second?

PEGGY BARBER: Second.

BUTCH LAMBERT: All in favor, signify by saying yes.

(All Board members signify by saying yes.)

BUTCH LAMBERT: Opposed, no.

(No audible response.)

BUTCH LAMBERT: Thank you, Mr. Mullins.

TOM MULLINS: Thank you. I think that does me for the day, Mr. Chairman.

BUTCH LAMBERT: Okay, ladies and gentlemen, we're going to kind of shuffle the docket around since we're this late in the day. We really need to get to the disbursement orders. They need to be our next order of business. So, I'm calling at this time, item twenty-three. A petition

from CNX Gas Company, LLC for disbursement of funds from escrow and authorization for direct payments of royalties in Tracts 1B and 1C, unit AA-8. This is docket number VGOB-90-1010-0032-05. All parties wishing to testify, please come forward.

MARK SWARTZ: Mark Swartz and Anita Duty. To move things along a little bit. There's an issue in this unit that is also in the other disbursement for BB-8. If you could call, we could maybe deal with the same issue that arises.

BUTCH LAMBERT: What was the docket number?

SHARON PIGEON: Twenty-five.

MARK SWARTZ: It would be number twenty-five, Mr. Chairman. So, you would be calling twenty-three, which you just called, and twenty-five.

BUTCH LAMBERT: Item number twenty-five, a petition from CNX Gas Company, LLC for a disbursement of funds from escrow and authorization for direct payment of royalties in Tracts 2B and 2C in unit BB-8, docket number VGOB-90-1010-0033-05. All parties wishing to testify, please come forward.

MARK SWARTZ: Mark Swartz and Anita Duty.

BUTCH LAMBERT: You may proceed, Mr. Swartz.

MARK SWARTZ: Could you---?

(Anita Duty is duly sworn.)

ANITA DUTY

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

DIRECT EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Anita, who do you work for?

A. CNX Gas Company.

Q. And with regard to the miscellaneous petitions for disbursements that we have before the Board today, what do you do for CNX in regard to that?

A. I took the deposits that were sent to escrow and make sure that they are accounted for in the escrow account.

Q. Okay. Do you have access then to the bank's escrow records?

A. Yes.

Q. And do you actually compare the bank's records to your own internal royalty payment records?

A. Yes.

Q. And did you do that with regard to the tracts that you're requesting disbursements from escrow in both of these miscellaneous petitions?

A. Yes.

Q. And when you compared the bank's records to the operator's records, did...were you able to determine whether or not the bank accounted for or received all of the royalty payments that were made?

A. Yes.

Q. And when you looked at the amounts, were you able to balance the payments in?

A. Yes.

Q. And then in each instance, did you try to reconcile the account through a date ascertain?

A. December 31, 2008.

Q. Okay. And there's an exhibit, which is the last page of both of these applications that is sort of a spreadsheet, correct?

A. Yes.

Q. And that, at the very top of it, says, "Account Balances as of 12/31/08", correct?

A. Yes.

Q. With the account balances, they probably have more money in them at the present time?

A. Yes.

Q. Okay. So, when we're dealing with this as we get down to the end here in terms of what recommendation

to the Board might be, are you recommending that the escrow agent percentages payments as opposed to dollar payments?

A. Yes.

Q. And because the percentage payment would solve the changing balance problem?

A. Yes.

Q. Okay. What is the slightly particular issue in these two units that we need to have a special provision in the Board order for?

A. For AA-8 on Tract 1C, James Ball and Janice Ball have divided this property according to their divorce decree. After that, Ms. Ball actually purchased the entire property from him. So, after this disbursement, he doesn't...he doesn't receive any more payments.

Q. So, with regard to...and what is the tract in BB-8 that this problem arises in as well?

A. 2B.

Q. 2B. And did we research the divorce festivities so that we could back into a date that would be relevant to the Division of their interest?

A. Yes.

Q. Okay. The deed, which actually the Commissioner recorded to divide or to transfer Mr. Ball's interest to Mrs. Ball was recorded when?

A. March the 9th, 2009.

Q. Okay. And are we proposing to the Board that they use that date to instruct the escrow agent as to how to make the Division?

A. Yes.

Q. And so would the recommendation with regard to the payment out of escrow to Mr. and Mrs. Ball be as follows: That the percentage on the spreadsheets be used, but that the half interest payable to Mr. Ball be in the following ratio: From first production to March the 9th compared to the total time from first production to the time of disbursement?

A. Yes.

Q. And that would be the ratio that would be applied to his percentage coming out of escrow and the balance remaining would also...would go to Ms. Ball in addition to her half?

A. Yes.

Q. Other than that, have you stated the percentages that would be...other than that wrinkle with regard to Mr. and Mrs...the former Mr. and Mrs. Ball, have you stated the percentages in the exhibits to both of the miscellaneous applications appropriately as to who should receive the stated percentage of the funds on deposit in

escrow at the time the escrow disbursement is made?

A. Yes.

Q. Okay. Are you also asking the Board in the event that it approves these disbursements from these two escrow accounts with regard to these two tracts in each, that the Board on a going forward basis authorize the operator to pay the people directly rather than continuing to escrow their funds?

A. Yes, with the exception of James Ball.

Q. Correct. And will the escrow account need to be maintained? Let's start with AA-8. Will the escrow account for AA-8 need to be maintained after these disbursements?

A. Yes.

Q. Okay. And with regard to BB-8, will the escrow account need to be maintained after these disbursements?

A. Yes.

SHARON PIGEON: If I could ask you, are any of the tracts completely finished with this disbursement?

ANITA DUTY: Yes. For AA-8, Tract 1C will no longer be escrowed. On BB-8, Tract 2B will no longer be escrowed. Just a portion of what the Arms Heirs own on both units.

SHARON PIGEON: Thank you.

MARK SWARTZ: I think that's all I have, Mr. Chairman.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do I have a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS AND PEGGY BARBAR: Second.

BUTCH LAMBERT: I have a motion to approve and a second. Any further discussion?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying yes.

(All Board members signify by saying yes, but Katie Dye.)

BUTCH LAMBERT: Opposed, no.

KATIE DYE: Abstain.

BUTCH LAMBERT: One abstention, Mrs. Dye.

MARK SWARTZ: Just from a procedure standpoint since this is a little weird, if we could maybe see that language in the order to make sure that we're cool with it on the allocation and (inaudible). Thank you.

DAVID ASBURY: Sure. Mr. Swartz, I will use your language that you just gave.

MARK SWARTZ: Okay, great. Cool.

BUTCH LAMBERT: Okay, the next item on the agenda is a petition from CNX Gas Company, LLC for disbursement of funds from escrow and authorization for direct payment of royalties in Tract 2C of unit AA-9. This is docket number VGOB-91-0430-0116-04. All parties wishing to testify, please come forward.

MARK SWARTZ: Mark Swartz and Anita Duty.

BUTCH LAMBERT: You may proceed, Mr. Swartz.

ANITA DUTY

DIRECT EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Anita, who do you work for?

A. CNX Gas Company.

Q. And what does your job entail with regard to these miscellaneous petitions? What did you do with regard to this?

A. I made sure that the deposits that we sent to the escrow agent were properly accounted for.

Q. Okay. When you say properly accounted for, you make sure that the escrow agent received everyone of them?

A. Yes.

Q. And then you looked at the amounts and made sure that the amounts that the escrow agent was crediting into the account were the same as what you sent them?

A. Yes.

Q. And when you made that comparison can I assume those records agreed?

A. Yes.

Q. Okay. What tract or tracts are we talking about here?

A. 2C.

Q. And it's just a portion of 2C?

A. Yes.

Q. So, this escrow account with regard to the balance of 2C would be required to be maintained?

A. Yes.

Q. Okay. And have you...did you do this accounting through a date ascertain?

A. December 31.

Q. The same date as we saw in the other two units?

A. Yes.

Q. Okay. Have...have you indicated the percentages that should be applied by the escrow agent when

the disbursement is made to the balance then on hand?

A. Yes.

Q. Okay. Has there been a previous disbursement from this escrow account?

A. Yes.

Q. And was the math on that disbursement incorrect?

A. Yes.

Q. Okay. And was there actually...was the disbursement out more money than should have come out?

A. Yes.

Q. And what was the amount that came out that should have stayed in?

A. It was a total of \$877.23.

Q. Okay. Before we make the next disbursement, do we need to fix that?

A. Yes.

Q. Okay. So, are you requesting that this order allow the operator to put \$877.23 principal back into this account?

A. Yes.

Q. Plus...we've looked sort of at the interest rate that the escrow agent has been paying, plus 2.6% interest?

A. Yes.

Q. And that that deposit be made before the disbursement is made so that the right amount of money is on hand to apply these percentages?

A. Yes.

Q. Okay. Do you have a chart...I mean, have you actually calculated the amount of money that the people that received the prior disbursements were overpaid?

A. Actually, that was David.

Q. Okay.

A. And we agreed.

Q. Okay. And is it your intention to recoup the overpayment from them out of the future payments that you as operator make to them but we don't need to involve the escrow agent in that?

A. Yes.

Q. Okay. With regard to this request, are all of the...the AA-9. Are all of the folks who are highlighted in yellow on the last exhibit, are those the people that are going to be receiving the disbursement?

A. Yes.

Q. What about Harrison Wyatt?

A. He will receive the sum of the owners that...the oil and gas owners that are being disbursed.

Q. Okay. So, for the total of the percentages being disbursed to the people highlighted in yellow, the oil and gas claimants, that total percentage will disburse out to Harrison Wyatt?

A. Yes.

Q. Okay. And there will be money left, because he is not...Harrison Wyatt has not resolved by a split agreement the differences with the Arms Heirs?

A. Yes.

Q. Do we need to add anything else other than a request to be allowed to pay these additional folks who are receiving disbursements directly rather than escrowing their funds?

A. No.

MARK SWARTZ: Okay. That's all I have, Mr. Chairman.

BUTCH LAMBERT: Mr. Swartz, do we have a copy of the exhibit that you're using?

MARK SWARTZ: I hope.

ANITA DUTY: Well, that was...it's not highlighted in yellow. But, these are the only...it's kind of narrowed down to only the people that---

BUTCH LAMBERT: Oh, you're going to pass it out, okay.

MARK SWARTZ: Okay.

ANITA DUTY: Yeah.

SHARON PIGEON: We like to get that before you testify.

DAVID ASBURY: Mr. Chairman, as it's going around, I'd like to make a comment, please.

BUTCH LAMBERT: Mr. Asbury.

DAVID ASBURY: We certainly appreciate Anita and CNX and the extra work that they're done internally to correct some of these disbursements. As you know, it's our focus this year to emphasis disbursements out of our escrowed funds. So, we certainly appreciate their cooperation, as well as the other gas owners, in getting these moneys corrected and disbursed.

Q. The imaginary yellow on what you've just received would start with and include Sue Edwards and go down through and include Gerald Dean O'Quinn, right?

A. Yes.

Q. Okay.

BUTCH LAMBERT: Do I have a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion and a second. Are there any further discussion?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying yes.

(All Board members signify by saying yes, but Katie Dye.)

BUTCH LAMBERT: Opposed, no.

KATIE DYE: Abstain.

BUTCH LAMBERT: One abstention, Mrs. Dye.

DONNIE RATLIFF: Mr. Chairman.

BUTCH LAMBERT: Mr. Ratliff.

DONNIE RATLIFF: The ones that were overpaid, they're not going to get a negative check, are they?

MARK SWARTZ: Well, they would never...that would mean would be asking them for money? No.

DONNIE RATLIFF: We had people that a check that was in the negative and brought to the hearing.

MARK SWARTZ: No. It would zero until it caught up. We're talking \$6 a...I mean, we're talking about---

DONNIE RATLIFF: Okay.

MARK SWARTZ: ---peanuts. It's spread over---

DONNIE RATLIFF: Okay.

MARK SWARTZ: ---quite a few people. It's not going to---

DONNIE RATLIFF: Right.

MARK SWARTZ: Somebody is not going to have a heart attack when they get their check.

DONNIE RATLIFF: Okay.

MARK SWARTZ: Okay. At least I hope not. From the way you called these cases, I have a feeling that you're going to get the hook and tell us to leave on the poolings so you can call more disbursements.

BUTCH LAMBERT: We're only calling disbursements, that's true.

MARK SWARTZ: Okay. Thank you.

BUTCH LAMBERT: Thank you, Mr. Swartz.

SHARON PIGEON: Your punishment for seeking for reimbursement for \$877.23---

MARK SWARTZ: No, no, we're paying it.

SHARON PIGEON: You're going back after it. So, for that reason step aside.

MARK SWARTZ: It's called recoup...it's called recoup.

SHARON PIGEON: Step aside.

MARK SWARTZ: It's not reimbursement.

BUTCH LAMBERT: If I'm following correctly, number forty is the next one. The next item is a petition from Equitable Production Company for disbursement of funds from escrow and authorization for direct payment of royalties on

Tract 3, well VC-4511. This is docket number VGOB-00-0620-0813-01. All parties wishing to testify, please come forward. It's item number forty. Mr. Kaiser.

JIM KAISER: If I might ask, I had left the room momentarily to go outside and get some fresh air.

What...the disposition of those five contested applications, do we...are those now expunged and we refile them? Have them be carried forward? What happened to them?

BUTCH LAMBERT: They can be refiled.

JIM KAISER: Refiled?

BUTCH LAMBERT: Yes.

JIM KAISER: As early as next month, I guess.

BRUCE PRATHER: Maybe.

JIM KAISER: It be...huh.

BRUCE PRATHER: Maybe.

SHARON PIGEON: They're going to be a whole bunch on the docket ahead of you for next time. You might want to rethink that.

RITA BARRETTT: Maybe they can do that on Saturday.

JIM KAISER: What one are on?

BUTCH LAMBERT: We're on---.

RITA BARRETTT: 4511.

BRUCE PRATHER: Forty.

RITA BARRETTT: Forty.

JIM KAISER: Mr. Chairman, Jim Kaiser and Rita Barrett on behalf of Equitable Production Company.

(Rita Barrett is duly sworn.)

BUTCH LAMBERT: You may proceed, Mr. Kaiser.

JIM KAISER: Where is the copies that I needed to hand out?

RITA BARRETTT: I don't have any copies on that one.

JIM KAISER: Okay. This was the one that...we've tried to disburse this a couple of times, haven't we?

RITA BARRETTT: Uh-huh.

JIM KAISER: We got an email from Mr. Asbury with some questions that he had. Apparently, we overpaid \$60 on the last disbursement. Is that correct? All we needed to do was kind of get the correct interest and one of the tracts corrected so that would take care of that.

RITA BARRETTT: Yes. When we initially pooled this well, we showed East Tennessee Natural Gas owning 44.29% of the unit. Then the permit and final plat showed East Tennessee owning 26.50...56% and May Smith Rowlette owning the remaining 17.73. That was based on title after we pooled...we discovered that she owned part of that tract. We added that tract as Tract 2 on the exhibits. I think that Nikki provided Mr. Asbury's office with the exhibits---

DAVID ASBURY: Yes.

RITA BARRETTT: ---as of yesterday. So, it is just an overpayment that we're trying to correct.

MARY QUILLEN: Just a question. Did you say Tract 2? We have Tract 3 in ours.

RITA BARRETTT: Yeah. Tract---

JIM KAISER: It should be Tract 3.

RITA BARRETTT: ---2 was split into Tracts 2 and 3---

JIM KAISER: 3.

MARY QUILLEN: Okay. And so---

RITA BARRETTT: ---to reflect her owning that 17%.

MARY QUILLEN: ---Ms. Rowlette is in Tract 3?

RITA BARRETTT: Right.

MARY QUILLEN: I gotcha.

BUTCH LAMBERT: Mr. Asbury, I need you to address the documents that you were submitted...that were submitted to you from Mr. Kaiser that he just mentioned.

DAVID ASBURY: I don't have those with me, but they had...we had worked together to come up with what the corrections were and what began was there were six tracts that were later added that went to seven. The tracts were renamed. The first two or three tracts as far as acreage

stayed the same. When a disbursement happened, this one tract was not paid adequately and they've made that correction and are asking the Board to approve the payment at this time.

BUTCH LAMBERT: And you can verify that you received those yesterday?

DAVID ASBURY: I can verify that and I can also verify that they worked through the exhibits with us and made this correction with those exhibits.

BUTCH LAMBERT: Thank you.

RITA BARRETTT: And I do have a copy of the revised exhibit.

BUTCH LAMBERT: Oh.

RITA BARRETTT: I just have one if you guys want it.

BUTCH LAMBERT: Okay.

MARY QUILLEN: Does he have---?

RITA BARRETTT: He has got it.

JIM KAISER: David's got one.

MARY QUILLEN: He has got it?

RITA BARRETTT: Yes.

MARY QUILLEN: Oh, okay.

BUTCH LAMBERT: Anything further?

JIM KAISER: We'd ask that the application for

disbursement...corrected disbursement be approved and that Ms. Rowlette be paid directly going forward.

BUTCH LAMBERT: Any questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do I have a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion and a second. Are there any further discussions?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying yes.

(All Board members signify by saying yes.)

BUTCH LAMBERT: Opposed, no.

(No audible response.)

BUTCH LAMBERT: Thank you, Mr. Kaiser. It's approved.

RITA BARRETTT: Thank you.

BUTCH LAMBERT: The next item is a petition from Equitable Production Company for disbursement of funds from escrow and authorization for direct payment of royalties on a portion of Tract 5. This well VC-501853, docket number VGOB-00-0516-0815-03. All parties wishing to testify, please come forward.

JIM KAISER: Mr. Chairman, again, Jim Kaiser and Rita Barrett on behalf of Equitable Production Company. Now, we're here seeking the disbursement of escrowed funds from Tract 5 in this unit on behalf of Range Resources-Pine Mountain. One, two, three, four...six different Counts own undivided interest within that Tract 5.

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Ms. Barrett, did we notify everybody of this hearing for disbursement?

A. We did.

Q. And have you reviewed the application that we filed for disbursement along with the exhibits?

A. I have.

Q. And would it be your testimony that the spreadsheet that we have provided showing the escrowed amounts and owner's percentage of escrow and the owner's amount in escrow as of 12/31/08 are accurate and comply with Wachovia's numbers?

A. They do.

Q. And you would ask the Board to disburse any moneys attributable to these parties that are in agreement

in accordance with the owner's percentage in escrow for whatever is in the account as of the time of disbursement and then going forward to disburse directly to them?

A. Yes.

JIM KAISER: Nothing further of this witness, Mr. Chairman.

RITA BARRETTT: And I do have W-9s.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do I have a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion and a second. Are there any further discussions?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying yes.

(All Board members signify by saying yes.)

BUTCH LAMBERT: Opposed, no.

(No audible response.)

BUTCH LAMBERT: Thank you, Mr. Kaiser. It's approved. The next item is a petition from Equitable Production Company for disbursement of funds from escrow and authorization for direct payment of royalties on a portion

of Tract 5, well VC-536070. It's docket number VGOB-04-0921-1337-03. All parties wishing to testify, please come forward.

JIM KAISER: Jim Kaiser and Rita Barrett, again, on behalf of Equitable Production Company.

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Ms. Barrett, was everybody notified of this hearing as required by statute?

A. They were.

Q. And, again, we're here on behalf of both Range Resources-Pine Mountain and the exact same six people that we just previously asked for disbursement on, just a different well?

A. That's correct.

Q. It's even the same tract number, isn't it, Tract 5?

A. Tract 5.

Q. And it's a 75/25 split again?

A. It is.

Q. And you've reviewed the exhibits that we filed with the application?

A. I have.

Q. And you are in agreement with those as of owner's percentage in escrow...those numbers?

A. I am.

Q. And we have represented the figures as of 12/31/08 and you're in agreement with those?

A. That's correct.

Q. And we've provided the Board with a true up on Equitable's numbers and the bank's numbers?

A. That's correct.

Q. And we would be asking that the Board approve disbursement of the owner's percentage in escrow for owner is listed and then as to type certain in the escrow account and then again pay these people directly going forward?

A. Correct.

JIM KAISER: Nothing further of this witness, Mr. Chairman.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do I have a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion and a second. Is

there any further discussion?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying  
yes.

(All Board members signify by saying yes.)

BUTCH LAMBERT: Opposed, no.

(No audible response.)

BUTCH LAMBERT: Thank you, Mr. Kaiser. It's  
approved.

RITA BARRETTT: Thank you.

BUTCH LAMBERT: The next item is a petition from  
Equitable Production Company for disbursement of funds from  
escrow and authorization for direct payment of royalties on  
a portion of Tract 3, well VC-551315, docket number VGOB-06-  
0620-1653-01. All parties wishing to testify, please come  
forward.

(All Board members signify by saying yes.)

BUTCH LAMBERT: Mr. Chairman, again, Jim Kaiser and  
Rita Barrett on behalf of Equitable Production Company.

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Rita, we have the same seven parties again,  
right---?

A. We do.

Q. ---that we've had in the two previous  
disbursements?

A. We do.

Q. A different well. This time it's Tract 3.  
It's, again, a 75/25 split. Have all parties been notified  
as required by statute?

A. They have.

Q. And have you reviewed the exhibits that we  
attached to our application?

A. I have.

Q. Including our spreadsheet?

A. Correct.

Q. And we've provided the Board with a true up  
between Equitable and Wachovia?

A. That's correct.

Q. And is it your testimony that the owner's  
percent in escrow, the all important next to the last right  
hand column, figures are accurate?

A. They are.

Q. And we have provided the information as of  
12/31/08, but we ask that the Board use the owner percentage

in escrow to disburse whatever is in there at the time of disbursement and then disburse to these people directly going forward in accordance with their percentages, is that correct?

A. That's correct.

JIM KAISER: Nothing further of this witness, Mr. Chairman.

BUTCH LAMBERT: Questions from the Board?

SHARON PIGEON: The only place I see 12/31/08 is at the bottom of this first column on the first page. Is that the only place we place we have---?

RITA BARRETTT: It's on the spreadsheet too.

JIM KAISER: It's on the spreadsheet.

RITA BARRETTT: On the application.

JIM KAISER: It was with the application.

SHARON PIGEON: The original application. Sorry.

JIM KAISER: Have they got this?

RITA BARRETTT: We should have it on the applications.

SHARON PIGEON: Maybe I didn't---.

MARY QUILLEN: Right there it is.

JIM KAISER: Yeah.

MARY QUILLEN: It's just right at the very front.

DAVID ASBURY: Five pages in.

MARY QUILLEN: Uh-huh.

BUTCH LAMBERT: Any further questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do I have a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion and a second. Is there any further discussions?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying yes.

(All Board members signify by saying yes.)

BUTCH LAMBERT: Opposed, no.

(No audible response.)

BUTCH LAMBERT: Thank you, Mr. Kaiser. It's approved.

RITA BARRETTT: Thank you.

BUTCH LAMBERT: The next item is a petition from Equitable Production Company for disbursement of funds from escrow and authorization for direct payment of royalties on a portion of Tract well...or Tract 4, well VC-2835, docket number VGOB-98-0324-0642-01. All parties wishing to testify, please come forward.

JIM KAISER: Mr. Chairman, Jim Kaiser and Rita Barrett again on behalf of Equitable Production Company.

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Rita, have all parties been notified as required by statute of this hearing?

A. They have. It's the same people that we've been discussing on previous disbursements.

Q. And in this particular one we worked with David on, there was a few questions and things that had to be cleared up, is that correct?

A. It was the acreage totals.

Q. And can you confirm that Tract 4 is the only tract to be disbursed?

A. Yes.

Q. Okay. And did we get everything to Mr. Asbury that he requested?

A. Yesterday.

DAVID ASBURY: Yes. Thank you very much.

Q. We'll direct the Board to our spreadsheet. As that's represented, do you...have you reviewed these exhibits and these spreadsheets?

A. I have.

Q. And it would be your testimony that the owner percentage in escrow in the next to the last right hand column is what we direct the Board to?

A. That's correct.

Q. And in your opinion, that's accurate?

A. It is.

Q. And this is, again, a 75/25 split?

A. It is.

Q. And we're asking the Board to...using that last to right hand column percentage to disburse whatever is currently in escrow under that basis and then on a going forward basis to disburse directly to those parties---?

A. Yes.

Q. ---or allow us to disburse directly to those parties?

A. Right.

Q. Is that correct?

A. To allow Equitable to disburse directly to the parties after this hearing.

Q. Yes.

A. If it's approved, yes.

JIM KAISER: Nothing further.

BUTCH LAMBERT: Mr. Asbury, can you confirm that

you did receive those documents?

DAVID ASBURY: Yes, sir.

BUTCH LAMBERT: Thank you.

RITA BARRETTT: Ms. Pigeon, do you need a copy of what we sent Mr. Asbury yesterday?

SHARON PIGEON: I would like to have a copy of what you sent him yesterday. Thank you.

RITA BARRETTT: You're welcome.

BUTCH LAMBERT: Any further questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do I have a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion and a second. Are there any further discussions?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying yes.

(All Board members signify by saying yes.)

BUTCH LAMBERT: Opposed, no.

(No audible response.)

BUTCH LAMBERT: Thank you, Mr. Kaiser. It's approved.

RITA BARRETTT: Thank you.

BUTCH LAMBERT: The next item is a petition from Equitable Production Company for disbursement of funds from escrow and authorization for direct payment of royalties on Tract 2. This is well VC-537101, docket number VGOB-06-1219-1834-01. All parties wishing to testify, please come forward.

JIM KAISER: Mr. Chairman, again, Jim Kaiser and Rita Barrett on behalf of Equitable Production.

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Rita, we've got a few different people in this application. Was everybody notified as required by statute?

A. They were.

Q. And this, again, is a 75/25 split with Pine Mountain and these undivided interest owners in Tract 2?

A. Yes, with Range Resources-Pine Mountain, Inc.

Q. What did I say?

A. I don't know.

Q. Oh. And if memory serves me correct, this

would...we would be able to close the escrow account on this unit. Tract 2 is the last account being held in escrow?

A. That's correct...that's correct.

Q. That's always good to hear. Based upon our spreadsheet and the exhibits that we attached to our application, I direct you to the next to the last column on the right, which is owner's percentage in escrow. Based upon your review that, would that be correct?

A. It is.

Q. And would we be asking the Board to disburse based upon that percentage, whatever is in the account at the time of escrow and then direct Equitable to pay royalty in those proportionate amounts to these royalty owners on a going forward basis?

A. Yes.

JIM KAISER: Nothing further of this witness, Mr. Chairman.

BUTCH LAMBERT: Questions from the Board?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying yes.

(No audible response.)

BUTCH LAMBERT: I'm sorry.

MARY QUILLEN: You've got to have a motion.

BUTCH LAMBERT: Do I have a motion to approve?

MARY QUILLEN: Motion to approve.

BUTCH LAMBERT: I have a motion.

BRUCE PRATHER: Second.

BUTCH LAMBERT: And a second. Any further discussion?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying yes.

(All Board members signify by saying yes.)

BUTCH LAMBERT: Opposed, no.

(No audible response.)

BUTCH LAMBERT: Thank you, Mr. Kaiser. It's approved. It has been a long day.

RITA BARRETTT: It has.

JIM KAISER: I assume it has.

BUTCH LAMBERT: The next item is a petition from Equitable Production Company for disbursement of funds from escrow and authorization for direct payment of royalties on Tract 2, well VC-537095, docket number VGOB-06-1219-1835-01. All parties wishing to testify, please come forward.

JIM KAISER: Again, Mr. Chairman, Jim Kaiser and Rita Barrett for Equitable Production. This is another one that we worked with David on. We had to revise our

spreadsheet to include some additional acreage information. I think Ms. Barrett is handing that out now. I presume Mr. Asbury has had it since yesterday.

DAVID ASBURY: Thank you.

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Has everybody been notified as required by statute?

A. They have.

Q. And, again, I think this disbursement will close out the account for this unit?

A. Yes.

Q. This is the last tract in escrow in this unit, correct?

A. Yes.

Q. Okay. Again, it's a 75/20 split between Range Resources-Pine Mountain and various undivided interest owners?

A. That's correct.

Q. Again, we would direct the Board to...have you reviewed the Exhibits to our application?

A. I have.

Q. In your opinion, turning your attention to the spreadsheet, are the percentages of ownership percentage in escrow in the next to the last column to the right, are they accurate?

A. They are.

Q. Okay. Are we asking the Board to use that figure to disburse whatever proceeds are in the escrow account at the time that the disbursement order is written?

A. Yes.

Q. And are we asking that we be ordered to...Equitable Production Company be ordered to pay these royalty owners directly on a going forward basis?

A. Yes.

JIM KAISER: Nothing further of this witness, Mr. Chairman.

BUTCH LAMBERT: Questions from the Board?

MARY QUILLEN: I just have one question.

BUTCH LAMBERT: Ms. Quillen.

MARY QUILLEN: What is the date that this---?

RITA BARRETTT: The spreadsheet.

MARY QUILLEN: (Inaudible).

RITA BARRETTT: Okay.

MARY QUILLEN: I got the date on it. He was holding it.

RITA BARRETTT: It has been a long day.

DAVID ASBURY: Mr. Chairman, as that's going around can I say something?

BUTCH LAMBERT: Mr. Asbury.

DAVID ASBURY: I'd also like to compliment Ms. Barrett and Mr. Kaiser for their work on this disbursement. As you can see, there has been considerable efforts on their part. Email and communications even on the weekends. We certainly appreciate that extra effort.

RITA BARRETTT: Well, I'd like to take credit for that, but I have to credit Range Resources with their efforts to get royalty split agreements and to get those W-9s that I gave you today. So, it's a joint effort.

JIM KAISER: We'd like to empty that escrow account out.

DAVID ASBURY: That's the goal.

BUTCH LAMBERT: Do I have any questions from the Board?

(No audible response.)

BUTCH LAMBERT: Do I have a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion and a second. Are there any further discussions?

(No audible response.)

BUTCH LAMBERT: All in favor, signify by saying  
yes.

(All Board members signify by saying yes.)

BUTCH LAMBERT: Opposed, no.

(No audible response.)

BUTCH LAMBERT: Thank you, Mr. Kaiser.

JIM KAISER: Thank you.

RITA BARRETTT: Thank you.

DAVID ASBURY: Might I add something is that these  
two people sitting behind me are also instrumental in  
helping get some of the disbursements out of the way.

JIM KAISER: Who, Diane Davis?

DAVID ASBURY: Diane.

(Laughs.)

DAVID ASBURY: Instrumental, Diane and Jim both.

BUTCH LAMBERT: Members of the Board, if it pleases  
the Board I'd like to move down to item forty-eight. We're  
running kind of late. I understand. But I would really  
like to...for the Board to take up this item before the  
close of today. Item forty-eight is the Board on its own  
motion will receive and discuss a request for proposal  
relative to the expiring contract with the Board's current  
escrow funds manager, which is Wachovia Bank & Trust. At

this time, I would ask---

PEGGY BARBER: Mr. Chairman, pursuant to Section 2.2-3711(A)7 and 29 of the Code of Virginia, I move that the Virginia I move that the Virginia Gas and Oil Board convene a close session for 1) consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel; and 2) discussion of the award of a public contract involving the expenditure of public funds, namely the Board's outstanding request for proposals for an audit of the Board's escrow account.

BUTCH LAMBERT: I have---

BILL HARRIS: Does it needed to be seconded?

BUTCH LAMBERT: Yes.

BILL HARRIS: Second...I'm second that.

BUTCH LAMBERT: I have a motion and a second. All in favor, signify by saying yes.

(All Board members signify by saying yes.)

BUTCH LAMBERT: Opposed, no.

(No audible response.)

BUTCH LAMBERT: At this time, the Board will go into close session. I'll ask everyone else to please leave the room.

RITA BARRETTT: So the remaining items are continued until next month, is that correct?

BUTCH LAMBERT: Yes.

JIM KAISER: Is this the last thing you're doing?

BUTCH LAMBERT: Yes.

(Closed session.)

BUTCH LAMBERT: We're back in session at this time.

I would ask Board Member Mr. Harris to read the statement that we're back in session that we discussed only those items in closed session.

BILL HARRIS: Okay. Whereas, the Board as convened a closed meeting on this date of March the 17th pursuant to an affirmative recorded vote and in accordance of the provisions of the Virginia Freedom of Information Act; whereas, Section 2.2-3712(D) of the Virginia Code requires a certification by the Board that such closed meeting was conducted in conformity with Virginia Law. Now, therefore, the Virginia Gas and Oil Board hereby certifies that to the best of each members knowledge only public business matters lawfully exempted from open meeting requirements by Virginia Law were discussed in the closed meeting to which this certification applies and only such public business matter as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board.

BUTCH LAMBERT: I would ask the recorded to poll the Board?

COURT REPORTER: Mary Quillen.

MARY QUILLEN: Yes.

COURT REPORTER: Katie Dye.

KATIE DYE: What exactly are you polling us for?

BUTCH LAMBERT: That we discussed only...only---.

BILL HARRIS: That we discussed only the item---.

KATIE DYE: Yes. Sorry.

COURT REPORTER: Bill Harris.

BILL HARRIS: Yes.

KATIE DYE: It has been a long day.

COURT REPORTER: Bruce Prather.

BRUCE PRATHER: Yes.

COURT REPORTER: Donnie Ratliff.

DONNIE RATLIFF: Yes.

COURT REPORTER: And Butch Lambert.

BUTCH LAMBERT: Yes.

COURT REPORTER: We have all yeses.

BUTCH LAMBERT: Okay. Is there a motion on dealing with the RFP for the audit of the escrow account?

MARY QUILLEN: Mr. Chairman, I'd make the motion that we drop those proposals that were received as not meeting the guidelines and that we readvertise with a new RFP after April the 15th in order to increase the potential proposals.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion. Do I have a second?

BRUCE PRATHER: I'll second it.

BUTCH LAMBERT: Are there any discussions?

BRUCE PRATHER: The only thing that I would have probably done it is the present RFP I never saw until a week before this meeting. I think the Board should have a review of that RFP before it's sent out. I'd like to suggest that.

BUTCH LAMBERT: Okay.

DAVID ASBURY: So, the April the 15th deadline doesn't work or her motion?

BUTCH LAMBERT: I think her motion just after---.

MARY QUILLEN: After.

BUTCH LAMBERT: ---April the 15th.

MARY QUILLEN: After April the 15th. Mr. Chairman, do I need to amend my motion to include Mr. Prather's addition to the motion?

BUTCH LAMBERT: Yes.

MARY QUILLEN: So moved.

BRUCE PRATHER: Okay.

BUTCH LAMBERT: All in favor, signify by saying yes.

(All Board members signify by saying yes.)

BUTCH LAMBERT: Opposed, no.

(No audible response.)

BUTCH LAMBERT: Thank you. That's the way we'll go. I have one other item that we need...that I need to bring up before we adjourn. This won't take but just a couple of minutes. It has been brought to my attention by Counsel that since the Division of the Gas and Oil Office is moving to Lebanon that we are required by Code to hold our Board meetings in the vicinity or in the area or in the location of our---.

SHARON PIGEON: Principal office.

BUTCH LAMBERT: ---principal office. So, I'd like to ask the Board to please consider that. I can give you the Code Section if you would like. I think it's important that as a Board we abide by the Code.

SHARON PIGEON: I second that.

MARY QUILLEN: It's going to make it difficult for me to be there at every meeting.

BUTCH LAMBERT: I'd like to have a discussion on this. I'll give you an opportunity to comment on it. But, again, I can give you the Code that I've been provided---.

MARY QUILLEN: Oh, I mean, I understand that.

BILL HARRIS: But I don't know...yeah, I don't know if we have too much choice.

SHARON PIGEON: He's following along---.

BILL HARRIS: Yeah, I don't think we have too much of a choice.

SHARON PIGEON: No.

BRUCE PRATHER: We're locked in.

BILL HARRIS: I think what's going to happen...do we have a location? Because what's going to happen, that's going to be more of a mainstream location wise for people in, you know, the Dickenson and Buchanan County. I think you'll probably see more people there. So---.

BUTCH LAMBERT: Actually, the location, Mr. Harris, will be the same place that we previously held one just a trial run.

BILL HARRIS: Yeah, I wasn't here that...I couldn't make it to that meeting.

MARY QUILLEN: I've never been in that building.

BILL HARRIS: Yeah.

KATIE DYE: I just have one comment that I heard regarding the meeting from a lot of folks that we had at Lebanon. The public could not hear what was going on in that big room.

BUTCH LAMBERT: I heard that comment as well, Mrs. Dye. They have assured us over there that they can set up microphones and they can partition off that room, which will

make it more confined and the sound will be better.

BRUCE PRATHER: Put some acoustics in the place---.

BUTCH LAMBERT: Actually, it's wired for sound in there now. We just...we didn't know that they had it when we were there the first time. So, they can connect us into sound. There's speakers all around in the walls over there.

SHARON PIGEON: I'm not trying to be mean to you all. I know this is a nice facility and I like it. That's what the venue in the statute says under the APA. That's what we're functioning under.

DONNIE RATLIFF: Well, actually, it does make it more fair for the Buchanan County folks and it's about the same drive for us.

SHARON PIGEON: If you change by agreement for one case, for instance, let's say, you know, the parties to a single case (inaudible) to have some special setting or something like that. You have to keep in mind that if you start doing that for one you're going to have everybody wanting to do it and everybody has a different place they want it to be. I think we've had a recent offer to have it in the Senior Center in Dickenson County or something like that. So, everybody has their own...I'd like for us to do it at my house so that I don't have to get up so early.

KATIE DYE: I second that.

DAVID ASBURY: I'll be there.

KATIE DYE: She's got...she's got almost a new coffee pot.

SHARON PIGEON: There you go. I've got a new coffee pot.

BUTCH LAMBERT: As a follow up to that, I don't think we need to start...really can't start this until May because we will be moving the Gas and Oil office April the 15th, which will be the same week of the Board meeting. It wouldn't be good the coordination to do that. So...again, for our folks who wants to get on the docket, they have to have a certain length of time to do that. So, we will begin this in May.

KATIE DYE: What you're saying is our first meeting will be in May?

BUTCH LAMBERT: The gas and oil Board meeting will be in Lebanon, I guess, we're at the Russell County---

MARY QUILLEN: Technology Center.

DAVID ASBURY: Conference Center.

MARY QUILLEN: And Conference Center.

BUTCH LAMBERT: The final item I have is approval of the February meetings. Has everybody---?

DONNIE RATLIFF: So moved.

BUTCH LAMBERT: Oh, I'm sorry. We do have one

other item. It probably will just take another second. Do I have a second on approval of the minutes?

KATIE DYE: Second.

BRUCE PRATHER: I'll second.

BUTCH LAMBERT: All in favor, signify by saying yes.

(All Board members signify by saying yes.)

BUTCH LAMBERT: Opposed, no.

(No audible response.)

BUTCH LAMBERT: Okay. And one final thing, Ms. Quillen the item that you brought up, on the contract with Wachovia, that is set to expire. What we would like to do at this time is have the Board's approval to extend that for six months...extend that contract for six months?

MARY QUILLEN: Well, do you...I have a question about this. Do you know if they're...with the change of ownership of Wachovia over to Wells Fargo is going to impact this or make any changes of this?

BUTCH LAMBERT: I think Mr. Asbury has been in direct contact with those folks.

DAVID ASBURY: As I understand, Patrick Dickenson in Roanoke, it will only enhance their capabilities to service the Board account. They will have east coast/west coast potential. As you see, there's a couple of sentences

changed in here to provide electronic accounting and electronic access for the Board if possible. But, again, this is your escrow account. This is a first draft of the RFP. I would like for you to have input to it. I will work diligently with your input and with Ms. Pigeon and our Chairman to make sure this RFP is sent out timely. With the approval of extension of six months from July through December with Wachovia, this will give us ample time to put things together. But, it wasn't the original intent. We were hoping to get our first audit out in January, which did not happen, and we're in March.

BRUCE PRATHER: Don't you think that it make sense to keep Wachovia for this six months because they're part of this audit that's coming up?

DAVID ASBURY: The timing works very well, yes. They have been a good (inaudible).

MARY QUILLEN: Do we need a motion to extend that?

BUTCH LAMBERT: Yes, we do.

MARY QUILLEN: I make the motion that extend our contract with Wachovia through December 31, 2009 to allow for this audit to be completed and before we transition into possibly a new contract with them or with someone else.

BILL HARRIS: Second.

BUTCH LAMBERT: I have a motion and a second. All

in favor, signify by saying yes.

(All Board members signify by saying yes.)

BUTCH LAMBERT: Opposed, no.

(No audible response.)

BUTCH LAMBERT: Thank you, ladies and gentlemen.

It has been a very long, tiring day.

MARY QUILLEN: Thank you so much.

BUTCH LAMBERT: I appreciate your time and  
patience.

MARY QUILLEN: Thank you so much.

STATE OF VIRGINIA,

COUNTY OF BUCHANAN, to-wit:

I, Sonya Michelle Brown, Court Reporter and Notary Public for the State of Virginia, do hereby certify that the foregoing hearing was recorded by me on a tape recording machine and later transcribed under my supervision.

Given under my hand and seal in this the 16th day of April, 2009.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: August 31, 2009.