

IN THE COUNTY OF WASHINGTON

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VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY

VIRGINIA GAS AND OIL BOARD

June 17, 2008

APPEARANCES:

BOARD MEMBERS:

MARY QUILLEN - PUBLIC MEMBER

BILL HARRIS - PUBLIC MEMBER

KATIE DYE - PUBLIC MEMBER

BRUCE PRATHER - OIL & GAS REPRESENTATIVE

CHAIRMAN:

BENNY WAMPLER - DEPUTY DIRECTOR OF THE DMME AND CHAIRMAN

DAVID ASBURY - ACTING DIRECTOR OF THE DIVISION OF GAS & OIL
AND PRINCIPAL EXECUTIVE TO THE STAFF OF THE BOARD

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BENNY WAMPLER: 1 My name is Benny Wampler. I'm Deputy Director for the Department of Mines, Minerals and Energy and Chairman of the Gas and Oil Board. I'll ask the Board members to introduce themselves starting Ms. Quillen.

MARY QUILLEN: My name is Mary Quillen. I'm the Director of Graduate Programs for the University of Virginia here at the Higher Education Center. I'm a public member.

KATIE DYE: My name is Katie Dye and I'm a public member from Buchanan County.

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

BILL HARRIS: I'm Bill Harris, a public member from Big Stone Gap. I'm on the faculty at Mountain Empire Community College and I'm a public member.

BRUCE PRATHER: I'm Bruce Prather. I represent the Oil and Gas Industry on the Board.

DAVID ASBURY: Good morning. I'm David E. Asbury, acting Director of the Division of Gas and Oil and Principal Executive to the Staff of the Board.

BENNY WAMPLER: Thank you very much. The first item on today's agenda is a miscellaneous petition from Oryn Treadway Sheffield, Jr. Trust. This is docket number VGOB-08-0520-2219. We'd ask all parties that wish to address the Board in this matter to come forward at this time.

PETER GLUBIACK: 1 Good morning, Mr. Chairman. My name is Peter Glubiack. I'm an attorney representing Mr. John Sheffield, who is the petitioner here under the terms of this miscellaneous petition. We were here last week, I'll let Mr. Swartz get settled...last month, I'm sorry. There was an issue about legibility. The issue arose as to a letter that had been inserted in the file and present at the Gas and Oil Board with regard to the legibility issue and the Director Mr. Wilson, who I'm glad to see is to my left here...Mr. Swartz can certainly make comments, but I want to make some comments after the opening. But I think we're here today on that issue. Mr. Sheffield contends that he made a timely election and probably the principle discussion point is the timeliness of the election, the given Mr. Wilson's comments and reported letter with regard to the illegibility of the first notice.

BENNY WAMPLER: Okay. If we're going to have witnesses let's get them sworn.

(John Sheffield, Bob Wilson and Leslie K. Arrington are duly sworn.)

BENNY WAMPLER: Mr. Swartz.

MARK SWARTZ: Mark Swartz and Les Arrington.

BENNY WAMPLER: Do you have any opening remarks?

MARK SWARTZ: I'm not sure we ever go to these

cases on the docket last month. I think they were---.

PETER GLUBIACK: We didn't get to the other one. We got to this one. There was a discussion, the Board agreed to continue it and hear testimony from Mr. Wilson. The AFE miscellaneous petition we did not get to.

MARK SWARTZ: If you're asking where I'm coming from before we get to him...before we get to his case, I would contend that the exhibit, which was submitted by the applicant last month, is readable. I mean, you know, its legible. We can all read it today. So, the election period began to run from the date that they signed for that. That was my position last month. I would also indicate with regard to this docket item and the next one that I do have a concern with regard to notice. That the only people that or were party that was noticed was the operator. And, you know, it seemed odd to me that you would seek to be allowed to participate out of time and you would ignore a huge number of other people in the unit. I'm not saying they're right but I think, you know, you might want to notify the other people that were pooled. And so I think there's a notice issue here. But those were the two points that I, you know, would...one of which I made last month and the additional one that I would make today with regard to the first docket item. We've got the same notice issue with the

second item, but---. 1

BENNY WAMPLER: Mr. Glubiack.

PETER GLUBIACK: Mr. Chairman, Mr. Sheffield handed out these packages to the Board members that were here last month. Does anybody...Mr. Prather do you have a copy of it?

BRUCE PRATHER: Yeah, I've got one.

PETER GLUBIACK: I think the issue, cutting to the chase. The issue really involves a letter that was addressed to Mr. Sheffield dated May 16, 2008 and to that end I'd like to ask if I can request some comments from Mr. Wilson with regard to that letter and maybe let him say his piece. If we have questions we can ask him questions later. He is reasonably familiar with the Board. I think he can---.

BOB WILSON: Mr. Chairman, I am Bob Wilson. I am, contrary to some speculation last month, still the Director of the Division of Gas and Oil, and will be for a few more weeks. And there were...I went through the transcript of what occurred last month and can see that there are a number of things that need to be clarified from my point of view. And if you don't mind, I would like to follow the procedure Mr. Glubiack just suggested and make some comments and then I'll be glad to entertain questions.

BENNY WAMPLER: We'll be pleased to hear from you.

BOB WILSON: First of all, I would like to say that I think there are a few facts that need to be pointed out relative to the mailing that is in question here. Again, looking at the transcript, I think there are several things that were not brought out.

So, let me kind of review what actually happened from DGO's perspective when this mailing went out. Prior to the mailing of the order, our office was contacted by CNX Gas Company to ask if it would be acceptable to reduce the order to two pages per 8 1/2 x 11 sheet, in other words a 50% reduction, and mail that out in order to save paper, postage costs and that sort of thing. We requested that they send us a copy of that so we could look at it. We saw that, made the decision that would be an acceptable form of mailing, a 50% reduction. We communicated it back to CNX. The next thing that we heard from it was when I was contacted by Mr. Sheffield, who said that he had just signed for it and opened his mail. He had gotten a document that was reduced to 25% of the original, i.e. four sheets to the page, and that it was...could be read and used as a document only with difficulty. Again, I asked Mr. Sheffield to send us...to fax us a copy of what he had received. He did so. And at that point in time, I contacted CNX. Now, in testimony last week, Anita Duty testified that I told her to

re-mail and that she'd re-mailed because I told her to do so. I have no doubt that Ms. Duty and I had conversations about that. We have...we had conversations almost daily about Board matters and so at some point in time I'm sure that we did discuss that. However, my initial contact regarding that mailing was with Mr. Arrington. I called Mr. Arrington and told him what I had seen, what we had gotten and I told him that I did not consider that to be acceptable representation of the Board order and that it needed to be re-mailed. Mr. Arrington agreed that that was not supposed to happen. He said that there was a miscommunication somewhere in his organization, that they had been told they could reduce by 50% to two pages per 8 1/2 x 11 and that somehow or another it was miscommunicated and that was not supposed to happen and that they would re-mail. Now, we did not discuss deadlines or anything like that, but I did specifically state that I did not consider that to be a proper representation of the Board order. Insofar as the letter that got so much attention last month, obviously I somehow or another really blew my explanation there. The purpose of that letter which, was written on the 15th of May, was to give Mr. Sheffield something to bring before the Board to indicate my original intention in that matter because I knew I was going to be here. That was the sole

purpose of that letter written on the 15th or written on December 15th or whatever. I didn't understand exactly why there was great concern about that. It was written on Division of Gas and Oil letterhead. It was written in the Division of Gas and Oil office. It was written on the Division of Gas and Oil equipment. The suggestion there was something improper about that eludes me. However, I don't want to leave here with a reputation for according to the transcript being "ultravarious". And I don't know what that means.

BENNY WAMPLER: Is that contagious?

BOB WILSON: Huh?

BENNY WAMPLER: Is it contagious?

BOB WILSON: I don't know. I assume it's a legal term because Ms. Pigeon used it and Mr. Swartz agreed with it. So, I don't know what that makes me, but at any rate, on the 15th of May I was an employee of the Division of Gas and Oil. I was and still am officially the Director of the Division of Gas and Oil and I think you can dispense with that as some sort of vague impropriety---

BENNY WAMPLER: I will affirm that. That Mr. Wilson is the Director of the Division of Gas and Oil and until the end of July and Mr. Asbury is in a minoring position as acting Director and will be Director effective

August the 1st. You may continue on.

BOB WILSON: Okay. Thank you. Let me explain a bit of the reasoning that I used and I think I communicated this to all parties at the time and have in conversation since I think been pretty consistent with the fact that in my view the material that is sent out from the Board should not be something that requires any kind of extra effort to decipher, read or handle. It has nothing to do with who's getting it. It has nothing to do with who's sending it. But at some point in time there have to be decisions made on many of these things. And I would ask that when the Board is considering this that you keep a couple of things in mind. Number one, the Division of Gas and Oil is constantly barraged with questions about procedure, questions about what the Board has done, questions about what the Board is doing, questions from operators, questions from citizens. We answer those questions to the best of our ability and using our experience and our collaboration with each other we handle these things as staff of the Board. Now, you all realize that the only staff that the Board has or the only place that that Board's staff is mentioned is in the law where it says that the Director of Division of Gas and Oil will be the principal executive to the staff of the Board. The only staff you've got is the Division of Gas and

Oil staff and that is generally the Director. So, when these questions come up somebody has to answer them. And the answers that we try to give are based on what we consider to be in the best interest of everybody involved, the best representation for the Board, for our Department and for our law regulations and values that we have in the Department. Yes, the four page reduction is legible. You can probably reduce it to one-eighth or one-sixteenth and find somebody who could read it without aid. But does that make it a good document to send out?

And that brings me to the second thing I'd like for you to consider. The Board requires that all operators who come before it, be it CNX or Equitable, Range Resources, Appalachian Energy, whoever, these operators must mail out these orders to all respondents who are affected by the order. It's a requirement of the Board. But what they're mailing out, they're not mailing CNX orders or Equitable orders or Range Resource orders. They are mailing out Board orders. These orders are signed by the Chairman of the Board. They are signed by the principal executive, they are notarized. They are recorded in the Courthouse as Virginia Gas and Oil Board orders. So, yeah, there is the occasional decision to be made as to what constitutes a good representation when this stuff is sent out. Now, obviously,

the Board always has the authority to overrule any decision that the Director has made in this regard. But I would also like to point out again that if you don't want the Director and the Director's staff making these decisions then you're probably going to have to schedule yourself several days at the Board meetings every month because they're going to get brought to you. Whether that...that doesn't mean that the decisions that we make are always correct. They are always subject to question, but they should be questioned at the time they're made not when somebody raises an issue later down the road.

Recapping, we had agreed that CNX was allowed to reduce by 50% to mail. CNX reduced to 25% of original size and mailed. They were told that did not, in my opinion... my...that was 100% mine, did not constitute proper representation of the Board order, that they had to re-mail it, that I considered that to be...that second mailing to be the first notice that the respondents had gotten of that particular order. I'd be glad to take questions.

BENNY WAMPLER: Questions from members of the Board of Mr. Wilson?

MARY QUILLEN: Mr. Wilson, the copy of this signed delivery notice, there are two, one on 8/6. I'm assuming that that was the first packet that was received and signed

for on 8/6. Then there's a second receipt...delivery receipt signed for on 8/21. And I'm assuming that's the second packet?

BOB WILSON: Somebody else will have to speak to that. I don't have that information with me.

MARK SWARTZ: I think the testimony at the last hearing was what you've just said.

MARY QUILLEN: I just wanted to clarify that. Thank you, sir.

BENNY WAMPLER: Other questions or comments?

(No audible response.)

BENNY WAMPLER: You may continue, Mr. Glubiack.

PETER GLUBIACK: Thank you. Recapping, on August the 7th Mr. Sheffield received a document that he found not to be legible. We've heard testimony from Mr. Wilson saying that he indicated reducing two to one...four to one was acceptable. On or about August the 8th, although I don't have the exact date, Mr. Wilson apparently called, according to his testimony, Mr. Arrington and said that wasn't appropriate and you need to resend it. It was sent back out. I don't know exactly what date it was sent out for but we have a copy. In your package you have a copy of the second receipt which was received and picked up by Mr. Sheffield on August the 21st. If you use that as the

effective date for the 30 days to begin running with the election it is our contention that when he elected on September the 7th and then Mr. Arrington signed on September the 10th that was a timely notice of election and the miscellaneous petition is requesting that the Board order that the election be timely and Mr. Sheffield be permitted under those time frames to elect to participated in that unit. And that's simply the gist of our position, that the election was made in a timely fashion by Mr. Sheffield after he received notification from Mr. Wilson, that the first package was not legible and therefore would not constitute notice. Notice was properly given on the two to one form, which according to Mr. Wilson had been agreed to, and Mr. Sheffield exercised his right to elect in a timely fashion.

BENNY WAMPLER: Questions from members of the Board of Mr. Glubiack?

BILL HARRIS: Mr. Chairman---

BENNY WAMPLER: Mr. Harris.

BILL HARRIS: Let me ask you a question about the signatures on the cards. I think I heard someone say that when the card is...when that's received that that constitutes the beginning of that 30 day period. Is that what I understand?

MARK SWARTZ: Correct. That's what the order

says.

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BILL HARRIS: So, the second packet was received according to the information that we have on the 21st of August?

PETER GLUBIACK: Yes.

BILL HARRIS: So, is that your contention then Mr. Wilson that 30 day...or is it 30---?

PETER GLUBIACK: Yes.

BILL HARRIS: 30 days begins at that time?

BOB WILSON: In my scenario, yes, that would be the date that proper notice was given to the respondent.

BILL HARRIS: Because that's when we...now, was the second package sent, was that two up on a page rather than four up? Was that---?

PETER GLUBIACK: Mr. Harris, it's in your pack...the example of the second is in there, yes. Yes.

BILL HARRIS: Oh, okay, because we have the four up and then the next page has---.

PETER GLUBIACK: The four up and then the two up. And the two up was received---.

BILL HARRIS: Two up is the second mailing. Okay, thank you. Fine. Thank you.

BENNY WAMPLER: Other questions or comments?

(No audible response.)

BENNY WAMPLER: Mr. Swartz?

MARK SWARTZ: I think I heard you say, "Yes, it is legible."---

BOB WILSON: Yes.

MARK SWARTZ: ---a few moments ago. Okay, that four to a page is---?

BOB WILSON: Yeah.

MARK SWARTZ: ---is legible?

BOB WILSON: Yes.

MARK SWARTZ: And that...and when you use the word as legible that means you can read it?

BOB WILSON: Yes.

MARK SWARTZ: And you are assuming that most people can read it?

BOB WILSON: I don't make that assumption, no.

MARK SWARTZ: Okay, but you can read it?

BOB WILSON: Yes.

MARK SWARTZ: There is nothing in the Board order about the format in which the order is to be mailed, correct?

BOB WILSON: To my knowledge there is not.

MARK SWARTZ: Okay. And there is no Virginia Gas and Oil Board regulation or rule that tells operators how they're supposed to mail?

BOB WILSON: None that I'm aware of.

MARK SWARTZ: Were you aware of the fact that Mr. Sheffield had other lawyers file an appeal with regard to this very issue and this very order in the Circuit Court of Buchanan County?

BOB WILSON: I was, but I found that to be totally irrelevant to my consideration.

MARK SWARTZ: Okay, but when you reviewed the transcript of last month's hearing you I assume saw there were exhibits in that regard?

BOB WILSON: I did.

MARK SWARTZ: Okay. And would you agree that Mr. Sheffield's other set of lawyers filed an appeal claiming that the notice was illegible, does that purport with what you've reviewed from last month?

BOB WILSON: I believe that's correct.

MARK SWARTZ: Okay. And that the time should not have been...the counting should not have started with the first notice, correct?

BOB WILSON: Correct.

MARK SWARTZ: And is it also your recollection from reviewing the transcript that the lawyers that were representing Mr. Sheffield when he appealed this order and this dispute to the Circuit Court of Buchanan County

subsequently dismissed that appeal?

BOB WILSON: I believe that was what the transcript reflected, yes.

MARK SWARTZ: And if Mr. Sheffield was required to make an election within 30 days of August the 6th, the date of the first card that was signed, would you agree that his election was untimely?

BOB WILSON: Repeat, please.

MARK SWARTZ: If Mr. Sheffield was required to make an election within 30 days of August the 6th, would you agree that his election was late?

BOB WILSON: I believe that would be correct.

MARK SWARTZ: That's all I have, Mr. Chairman.

PETER GLUBIACK: Mr. Wampler, if I may.

BENNY WAMPLER: Mr. Glubiack.

PETER GLUBIACK: However, Mr. Wilson, you indicated in your testimony just a moment ago that you had a conversation with Mr. Arrington where this was discussed, Mr. Arrington agreed with you that two to one would be the format that was used?

BOB WILSON: We did agree, prior to the mailing, that a 50% reduction would be acceptable.

PETER GLUBIACK: And that was an accommodation to them to reduce postage, etcetera?

BOB WILSON: That's correct.

PETER GLUBIACK: And you've seen it, you would agree that what they sent out and more than that I think Mr. Arrington, you said admitted to you that four to one was internal error and somehow it got screwed out and went out four to one as opposed to two to one?

BOB WILSON: That's correct.

PETER GLUBIACK: And most importantly, you notified Mr. Arrington, may or may not had a conversation with Ms. Duty, but certainly notified Mr. Arrington that that was improper, he needed to re-mail it and he agreed to re-mail it?

BOB WILSON: Correct.

PETER GLUBIACK: That's all I have, sir.

BENNY WAMPLER: Questions from members of the Board?

MARY QUILLEN: Mr. Chairman---?

BENNY WAMPLER: Ms. Quillen.

MARY QUILLEN: ---I just have one question for Mr. Arrington. In this unit, how many owners are in this unit? Do you know that just off top of your head or you don't have that---?

LESLIE K. ARRINGTON: No, I don't have...to make a real accurate account, no. It was probably a hundred notice

issues.

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MARY QUILLEN: And were all of those folks participating?

LESLIE K. ARRINGTON: No, ma'am.

MARY QUILLEN: No. Do you have a general idea of how many?

LESLIE K. ARRINGTON: Zero.

MARY QUILLEN: Zero people---

LESLIE K. ARRINGTON: Other---

MARY QUILLEN: ---were participating?

LESLIE K. ARRINGTON: Other than Mr. Sheffield.

MARY QUILLEN: And he is the only...so they would basically not be affected if he were allowed to participate?

LESLIE K. ARRINGTON: I guess that would be correct.

BENNY WAMPLER: Other questions?

BRUCE PRATHER: Mr. Chairman, did any of the other people complain about the size of the document?

LESLIE K. ARRINGTON: No, sir.

BILL HARRIS: Well, let me just make a comment.

BENNY WAMPLER: Mr. Harris.

BILL HARRIS: I still think the issue is not really the illegibility. I think to me what I've heard about the agreement to send it two up and then it was sent

four up and then that was corrected, it just seems to me that would have been the appropriate move to make if that was deemed illegible by the person. I'm not sure that...because I know last month we did pass it around and say, well, yeah, I can read this, I think that to me is not the issue. Whether or not it was appropriately presented the first time out and in Mr. Wilson's mind, and I would think he would know being the Director, that that was not appropriate and to ask for it to be resent I would think that would start the clock over. That's just my take on it. Anyway, thank you.

BENNY WAMPLER: Other questions or comments?

LESLIE K. ARRINGTON

DIRECT EXAMINATION

QUESTIONS BY MARK SWARTZ:

Q. Les, did you agree to re-mail voluntarily?

A. Yes, we did.

Q. Okay. And what...why did you re-mail this?

A. Bob asked us to, so we re-mailed it.

Q. Did you acknowledge...ever acknowledge to him or indicate to him that you felt like your first mailing was insufficient?

A. No.

Q. And the reason...what was the...was there more than one reason why you sent the second mailing or was it simply because Mr. Wilson asked you to?

A. Because he requested that we do so.

MARK SWARTZ: That's all I have.

MARY QUILLEN: Mr. Chairman, I have just one more question.

BENNY WAMPLER: Ms. Quillen.

MARY QUILLEN: Did you resend, re-email the revised version to all one hundred owners---?

LESLIE K. ARRINGTON: Yes.

MARY QUILLEN: ---in that unit?

LESLIE K. ARRINGTON: Yes, ma'am.

BENNY WAMPLER: Other comments or questions?

BOB WILSON: I might add, Mr. Chairman---.

BENNY WAMPLER: Mr. Wilson.

BOB WILSON: ---that was part of the request that all that had been mailed with the reduction of 25% be re-mailed.

BENNY WAMPLER: Is there a motion?

BILL HARRIS: Mr. Chairman, I'll make a motion. I think that in my mind and in the Director's mind the date started with the second mailing. I'd like to make a motion that that be the case for the 30 days started with the

second mailing and that Mr. Sheffield be allowed to make an election based on that.

BENNY WAMPLER: Mr. Harris' motion, is there a second?

(No audible response.)

BENNY WAMPLER: Motion fails for lack of a second. Is there another motion?

PETER GLUBIACK: These people are ridiculous.

BENNY WAMPLER: What did you say, Mr. Glubiack?

PETER GLUBIACK: I didn't say a thing, Mr. Wampler. I'm disappointed.

BENNY WAMPLER: I think you said what could those people be thinking, but I may not have heard you.

BRUCE PRATHER: Mr. Chairman, I've been---

BENNY WAMPLER: Mr. Prather.

BRUCE PRATHER: ---making decisions regarding these types of elections for the last fifteen years and I don't recall in any instance that I missed one election under any circumstance. In other words, that was my responsibility when it came in, one of them we'd have 30 days the other we had 48 hours. It's a responsibility to do these things within the framework of the agreement. I mean, this is just---

PETER GLUBIACK: Mr. Prather, respectfully, if you can't rely on the Director who can you rely on.

BENNY WAMPLER: Mr. Glubiack, we're through taking comment. We've heard your last comment. Don't be interrupting the Board members. Go ahead, Mr. Prather.

BRUCE PRATHER: I mean that's the only history I have regarding something like this.

BENNY WAMPLER: Let the record show Mr. Glubiack and Mr. Sheffield walk out before the Board renders a decision.

JOHN SHEFFIELD: Oh, I thought the Board was done, sir. I'm sorry.

PETER GLUBIACK: There was no motion indicating---

BENNY WAMPLER: No, you go right ahead if you want to walk out on the Board before the Board makes a decision. That's up to you.

JOHN SHEFFIELD: No, sir. I'm sorry, sir. I was getting out of your hair. I thought we were done. I'm sorry. There was no (inaudible). I'm sorry, sir.

BENNY WAMPLER: Carry on Mr. Prather.

BRUCE PRATHER: Well, I mean, that's my experience with this type of an agreement is, you know, you always make sure that these things are signed within the proper

framework.

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BENNY WAMPLER: So, do you have a motion?

(No audible response.)

BENNY WAMPLER: The Board needs to decide this up or down one way or the other. Mr. Sheffield is stuck in limbo otherwise.

(No audible response.)

BRUCE PRATHER: I'll make a motion that we dismiss the petition.

BENNY WAMPLER: Motion. Is there a second?

(No audible response.)

BENNY WAMPLER: That motion dies for lack of a second.

BILL HARRIS: What do we do?

BENNY WAMPLER: Entertain another motion. Is there a motion?

(No audible response.)

BILL HARRIS: Mr. Chairman, let me...may I ask a question about this date, this 30 days, is that upon receipt of the signed agreement? In other words, not just the, what am I trying to say, not the..in other words, if it was signed on September the 7th and then mailed is that then ineligible? It's signed within the 30 day window?

BENNY WAMPLER: It's from receipt. It's not when

I sign it.

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BILL HARRIS: So, it's when they receive it?

BENNY WAMPLER: Yes.

MARY QUILLEN: Mr. Chairman, I have just one question.

BENNY WAMPLER: Ms. Quillen.

MARY QUILLEN: If this second packet was received on the 21st of August and I guess the date of expiration for participation was September the 6th, what concerns me is that this was not returned in a timely manner if they knew that the date of expiration was September the 6th when they received this on the 21st of August. That's my concern.

BRUCE PRATHER: Mr. Chairman.

BENNY WAMPLER: Mr. Prather.

BRUCE PRATHER: There may be a problem...if this 30 days falls on a weekend, then you get a couple of extra days so, you know, if you know what the day is it may be extended another couple of days.

BENNY WAMPLER: But what you're saying is he still received it within the window, am I interpreting you correctly?

MARY QUILLEN: Yes.

BENNY WAMPLER: To have made a decision?

MARY QUILLEN: Right. I mean, that's my concern

is that he received it within that window. Now, I'm not sure what day of the week the 6th of September was.

BILL HARRIS: But, again, back to the date and Mr. Wilson, I would think that if, and I can't speak for Mr. Sheffield, we may want to ask him if he thought that the 30 days started over when he got the second mailing. If that were the case, then the 7th would be known as the absolute deadline. And I'm not saying, I don't know what may have been in his mind. But I'm just saying that to me if I had gotten a second mailing I would think oh this is...the clock started over. And that's why I made the motion that I did.

BENNY WAMPLER: Is there a different motion?

DAVID ASBURY: Ms. Quillen, in answer to your question, September the 6th was on a Thursday.

MARY QUILLEN: It was on a Thursday?

DAVID ASBURY: Yes.

MARY QUILLEN: So, there was not a weekend involved there. That's a sixteen day interval.

BENNY WAMPLER: Is there another motion? That's the last time I'll request that.

(No audible response.)

BENNY WAMPLER: The petition dies for lack of a motion. Thank you. Next is a petition from CNX Gas Company for pooling of coalbed methane unit A-16. This is docket

VGOB-08-0520-2221. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MARK SWARTZ: Mark Swartz and Les Arrington.

BENNY WAMPLER: Let the record show there are no others. You may proceed.

MARK SWARTZ: Mr. Chairman, this was continued last month because we had some notice issues and in the meantime there was one person that we had missed and in the meantime I believe we filed an amended notice of hearing and we have mailed to that person. That was why it was continued. We also thought that we had the same issue in the next item. I'm not suggesting you call it now, but the conventional well, it turns out we did not have a notice issue but that was continued as well and we'll take that up in due course.

LESLIE K. ARRINGTON

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

DIRECT EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Mr. Arrington, you're still under oath. You need to state your name for us please.

A. Leslie K. Arrington.

Q. Who do you work for?

A. CNX Gas Company, LLC.

Q. And what do you do for them?

A. I'm Director of environmental and permitting.

Q. And in the course of your duties for CNX, did you participate in the preparation of the notice of hearing, the application and the related exhibits and either do them yourself or supervise the folks who did those?

A. Yes, I did.

Q. Okay. And did you, in fact, sign the amended notice, the original notice and the application?

A. Yes, I did.

Q. And did you personally do the well cost estimates and sign those?

A. Yes, I did.

Q. And do you have a summary with regard to the exhibits today?

A. We do.

Q. Why don't you pass that out to the Board?

(Leslie K. Arrington passes out exhibits.)

Q. Who is the applicant?

A. CNX Gas Company, LLC.

Q. And if the application should be granted by the Board who is the applicant requesting to be appointed the unit operator?

A. CNX Gas Company.

Q. Is CNX Gas Company, LLC a Virginia limited liability company?

A. Yes, it is.

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

A. Yes, it is.

Q. Okay. Has that company registered with the Department of Mines, Minerals and Energy?

A. Yes, it is.

Q. Has it filed a blanket bond as is required by law?

A. Yes.

Q. What kind of a unit is this?

A. It's an Oakwood makeup unit consisting of 107 acres.

Q. Okay. And how many wells are proposed?

A. Two...one at this time.

Q. Okay. And where is the well that you are proposing at this time located in relation with the window?

A. Within the drilling window.

Q. What did you do to notify people that we were going to have a hearing today?

A. We mailed by certified mail, return receipt on May 30, 2008 and we published in the Bluefield Daily Telegraph on April 26, 2008.

Q. Okay. When you published in the newspaper what appeared in the newspaper?

A. A notice of hearing and location exhibits.

Q. Okay. And that's the map that's sort of got the unit blacked out?

A. Yes, it is.

Q. Okay. And have you filed certificates... with regard to your certificate of publication and your certificates with regard to mailing with the Director?

A. Yes, we have.

Q. The acting Director, I should say.

A. Yes.

Q. Okay. And what interests have you been able to acquire and what interests are you seeking to pool in this unit?

A. We've acquired 58.7805% of the coal, oil and gas owner's claim to coalbed methane, seeking to pool 41.2195% of the coal, oil and gas ownership for CBM.

Q. And have you provided a cost estimate?

A. Yes, we have. It's \$274,881.37 to a depth of 2,511 feet.

Q. And you already have a permit for this well?

A. Yes, we do.

Q. Okay. And what's the permit number?

A. 9380.

Q. Has it been drilled?

A. I'm not sure.

Q. Okay. At least as of your knowledge right now it's probably not?

A. No.

Q. Okay. Is there an escrow requirement?

A. No.

Q. Is the intention that this be a frac well?

A. Yes.

Q. And it's proposed to produce coalbed methane gas?

A. Yes.

Q. And is it your opinion that drilling one frac well in the window of this 107 acre unit is a reasonable way to begin producing coalbed methane from that unit?

A. Yes, it is.

Q. Is it your intention ultimately to drill a second well in this unit if you can?

A. Yes, we sure will.

Q. Is it your opinion also that if you combine the leasing and acquisition efforts that you've been successful with, which has gotten you to roughly 58% of the unit, with a pooling order pooling the respondents that are named in the amended notice of hearing and the amended Exhibit B-3, that the rights and the claims of all people interested in coalbed methane will be protected either by lease or by order?

A. Yes.

MARK SWARTZ: That's all I have, Mr. Chairman. I'm sorry, I left something out.

Q. What are the lease terms that you have offered to the folks that you have been able to reach an agreement?

A. The standard lease terms for a coalbed methane well is a dollar per acre per year, five year pay up term and a one-eighth royalty.

Q. Would you recommend those same terms to the Board in the event the application is approved as the payment terms under the order for people who are deemed to have been leased?

A. Yes, we would.

MARK SWARTZ: With that, Your Honor, I am done.

BENNY WAMPLER: Questions from members of the Board?

BILL HARRIS: Mr. Chairman?

BENNY WAMPLER: Mr. Harris.

BILL HARRIS: I have a question about your plat, this...I see the CBM A-16 on...and there's one right at the top CBM A-16CV, I think that's our next item.

LESLIE K. ARRINGTON: Yes, sir.

BILL HARRIS: Now, is that...that's in that window---?

LESLIE K. ARRINGTON: It is.

BILL HARRIS: ---of this---?

LESLIE K. ARRINGTON: It's that's our conventional well and they put CBM on it and it should not have been CBM on that.

BILL HARRIS: So---.

MARK SWARTZ: Well, actually they did both. They put CV which is conventional---

LESLIE K. ARRINGTON: Yes, they did.

MARK SWARTZ: ---at the end and they put CBM. But that is a conventional well Mr. Harris.

BILL HARRIS: Do you have any idea where...I'm

sorry.

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MARK SWARTZ: Then that's the next item, yes.

BILL HARRIS: Okay, yes. I noticed that. So, do you know where your second well might go?

LESLIE K. ARRINGTON: It certainly would have to be in the southwestern area, but presently we haven't found a location down there for it.

BILL HARRIS: Okay, thank you. No further---

BENNY WAMPLER: Other questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

MARK SWARTZ: No, I do not.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BRUCE PRATHER: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes, but Katie Dye.)

BENNY WAMPLER: Opposed, say no.

(No audible response.)

BENNY WAMPLER: You have approval.

KATIE DYE: Abstain.

BENNY WAMPLER: One abstention, Ms. Dye.

SHARON PIGEON: Mr. Swartz, could you get us a corrected plat?

MARK SWARTZ: You guys need to file a plat to clean up that reference to the second well.

SHARON PIGEON: Thank you.

MARK SWARTZ: We'll do that.

BENNY WAMPLER: Next is a petition from CNX Gas Company for creation of a drilling unit and pooling of conventional gas unit A16CV, docket number VGOB-08-0520-2222. We would ask parties that wish to address the Board in this matter to come forward at this time.

MARK SWARTZ: Mark Swartz and Les Arrington.

BENNY WAMPLER: Let the record show there are no others. You may proceed.

(Leslie K. Arrington and Mark Swartz confer.)

MARK SWARTZ: Also, if you could have Anita put under oath because I think she might testify with regard to the modifications.

(Anita Duty is duly sworn.)

BENNY WAMPLER: Let the record show there are no others. You may proceed.

MARK SWARTZ: Mr. Chairman, if I could incorporate Mr. Arrington's testimony with regard to the applicant, operator, his employment and standard lease terms, I'd appreciate it.

BENNY WAMPLER: That will be incorporated.

MARK SWARTZ: Thank you.

LESLIE K. ARRINGTON

DIRECT EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Les, you need to state your name again.

A. Leslie K. Arrington.

Q. Once, again, the applicant and the proposed operator are CNX Gas Company, right?

A. That's correct.

Q. Did you with regard to A-16CV either prepare yourself or supervise the preparation of the Notice, application and the related exhibits?

A. Yes, we did.

Q. And did you in fact...yourself personally sign the Notice of Hearing, the application and the cost estimate?

A. Yes.

Q. What did you do to advise people that there

would be a hearing on this unit today?

A. This was mailed by certified mail on April 18, 2008 and published Bluefield Daily Telegraph on April 28, 2008.

Q. I was thinking it was April the 26th.

A. April the 26th, I'm sorry.

Q. Okay. In that regard, have you filed with the acting Director your certificates with regard to mailing and the newspaper certificate of publication?

A. Yes, we have.

Q. When you published in the newspaper, what was printed in the paper?

A. It was the Notice and the attached location exhibit.

Q. What kind of unit is this going to be?

A. This is a 112.69 acre unit based on the 1250 foot radius.

Q. Basically the map shows that there's a well in the center of a circle that has a radius of 1250 feet?

A. Yes.

Q. And that works out to 112.69 acres?

A. Yes, it does.

Q. Is this a unit proposed to be created under the statewide spacing rules and the statutes?

A. Yes, sir.]

Q. And to the best of your knowledge this is not in an area where there are existing field rules that would conflict with that?

A. That's correct.

Q. What is the proposed depth of this well?

A. 6,795 feet.

Q. And have you provided a cost estimate?

A. Yes, \$467,606.38.

Q. Would that include frac?

A. Yes.

Q. Okay. What interests have you been able to acquire in this proposed drilling unit?

A. We've acquired 36.3815% of the oil and gas interest and we're seeking to pool 63.6185% of the oil and gas interest.

Q. Okay. This well does not have a permit as yet?

A. No.

Q. So, it wouldn't have been drilled either?

A. No.

Q. Okay.

BENNY WAMPLER: Let me stop you on that. The information that I have that Anita just handed me has

different percentages than you said.

LESLIE K. ARRINGTON: From what I'm looking at it---

ANITA DUTY: That looks like the original notice. You've got the original there.

MARK SWARTZ: You're looking at the original, which is 39% and the revised that you got from Anita today the last page should be 36.3815.

BENNY WAMPLER: You're correct.

MARK SWARTZ: As long as we're on---

BENNY WAMPLER: My mistake.

ANITA DUTY

DIRECT EXAMINATION

QUESTIONS BY MARK SWARTZ:

Q. No, as long as we're on that, Anita, have other some revised exhibits that you've prepared for today?

A. Yes.

Q. Okay. First of all, who do you work for?

A. CNX Gas.

Q. Okay, is one of your duties dealing with all of the spreadsheets and percentages?

A. Yes.

Q. Okay. Did you do some further work with

regard to the ownership interests in this unit between the time it was filed and today?

A. Yes.

Q. And have you provided the Board today with some further modified exhibits which have a revision date down at the lower right hand corner of 5-13-08?

A. Yes.

Q. What changes did you make with regard to B-3?

A. In the original filing we left out...I left out Tract 2.

Q. Okay, so you added that.

A. And they were some leases...we had notified Equitable as a lessor and they don't...from what we can tell their leases are expired in that tract.

Q. So, you made that change.

A. So, we removed them too.

Q. Okay. And then in addition we've submitted a revised tract identification?

A. Yes.

Q. And would that reflect the Equitable change in---

A. Yes---.

Q. ---terms of what was leased?

A. Yeah, in Tract two we removed their lease interest.

Q. Okay. And then lastly with regard to Exhibit A, page 2, did those percentages change?

A. Yes.

Q. And are these the correct percentages as of today?

A. Yes.

Q. Did they change because of further leasing?

A. Yes.

Q. Okay.

BENNY WAMPLER: But they went down.

MARK SWARTZ: Because if you lease more...oh, you're right.

Q. What's the explanation for---?

A. At one point we didn't recognize them in the leases from Chesapeake and there was a lot of...we had to switch around. I had all the interests wrong the first time. So, we corrected everything and everything should be good now. It's the Tract 2 that was the problem.

Q. And adding Tract 2 probably would have caused the percentage to decrease?

A. Yes. We notified them in the original notification because it's a conventional unit. We notified

them, but I left it off of Exhibit B-3.

Q. So, they got noticed?

A. Yes.

Q. Gotcha.

LESLIE K. ARRINGTON

DIRECT EXAMINATION RESUMES

QUESTIONS BY MR. SWARTZ:

Q. Les, I'm going to turn back to you for a moment now. With regard to this unit, what is the target formation, if you know?

A. Basically the Lower Huron and Berea.

Q. Is it your opinion that drilling a frac well in the center of this statewide spacing unit is a reasonable way to produce the conventional gas from this unit?

A. It is.

Q. Is it also your testimony that you will not be fracing into coal seams with this well?

A. No, sir.

Q. Okay, and you, in fact, will be casing through them?

A. Yes, we will.

Q. So, even though this is located in the CBM unit that we just talked about it will not be interfering

with that production? 1

A. No.

Q. Is it your further opinion that if you combine the leasing activities and acquisition activities that the applicant has been successful in with a pooling order pooling the respondents identified in the revised exhibit B-3 that the correlative rights and interests of all persons and claimants will be protected?

A. Yes they will.

MARK SWARTZ: That's all I have, Mr. Chairman.

BENNY WAMPLER: I'd like for you to go back to Item 9 of your application and just clean up the formation to be produced discussion.

LESLIE K. ARRINGTON: Yeah, the Ravencliff, the Big Lime, Berea, Gordon and the Devonian Shales. Sorry.

BENNY WAMPLER: Questions from members of the Board?

BILL HARRIS: Mr. Chairman?

BENNY WAMPLER: Mr. Harris.

BILL HARRIS: Mr. Arrington, another question about your map there. Well A-16 is shown on that map, is that designated correctly? I know the other one---?

LESLIE K. ARRINGTON: Let me get to it. The conventional well, yes.

BILL HARRIS: No, no.

LESLIE K. ARRINGTON: The conventional well, yes.
Are you speaking to the---?

BILL HARRIS: Well, I'm sorry---

LESLIE K. ARRINGTON: ---convention or the CBM?

BILL HARRIS: No...no. The CBM that just says
well.

LESLIE K. ARRINGTON: We're going to get that
naming convention correct aren't we?

BILL HARRIS: So, that should have the---?

LESLIE K. ARRINGTON: Consistent. We will get
that consistent.

BILL HARRIS: CBM, okay.

LESLIE K. ARRINGTON: We'll correct that, yes,
sir.

BENNY WAMPLER: So, you also have a revised plat?

LESLIE K. ARRINGTON: Yes, sir.

BILL HARRIS: Okay, thank you.

BENNY WAMPLER: Other questions or comments?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

MARK SWARTZ: No, I do not.

BENNY WAMPLER: Is there a motion?

DAVID ASBURY: Motion for approval.

MARY QUILLEN: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes, but Katie
Dye.)

BENNY WAMPLER: Opposed, say no.

KATIE DYE: Abstain.

BENNY WAMPLER: One abstention, Ms. Dye. You have
approval. Next is a petition from the Oryn Treadway
Sheffield, Jr. Trust requesting a reduction of the allowable
costs for participating unit VP8-SGU3, docket number VGOB-
08-0520-2226. We'd ask the parties that wish to address the
Board in this matter to come forward at this time.

PETER GUBLICAK: Good morning, Mr. Chairman.
Peter Glubiack, attorney for Mr. John Sheffield the
petitioner under this miscellaneous petition.

BENNY WAMPLER: Mr. Swartz.

MARK SWARTZ: Mark Swartz and Les Arrington.

BENNY WAMPLER: You may proceed, Mr. Glubiak.

PETER GLUBIACK: Thank you, Mr. Chairman.
Previously, we're going to hand out...Mr. Sheffield is going
to hand out some documents that which we didn't get to last

month, but I'm going to let him talk a minute about this. But the gist of this miscellaneous petition is...Mr. Sheffield's position is as a owner of gas under I think about seven tracts in this particular unit he objects to the allowable costs for the installation of these wells. Mr. Sheffield, when you get a chance here.

JOHN SHEFFIELD

DIRECT EXAMINATION

QUESTIONS BY MR. GLUBIACK:

Q. If you would tell the Board what your principal objection with regard to the allowable costs for these wells is? Well, why are you objecting to this allowable cost?

A. Well, I'm objecting because the wells were of previous 80 acre units that there are no new wells as I'm to understand in the gob unit and these wells have already been paid for.

Q. At the back of your packet of information under well production January '93 through December '05, is that a characterization of all the wells that have

previously been drilled in this particular gob unit?

A. Yes, it is.

Q. And how many wells is that?

A. It's 288.

Q. How many wells are they asking to be allowed to permit and get allowable costs for the well?

A. It appears on their Exhibit G on the very front page, 26 gob wells.

Q. And cost per well?

A. \$172,706.20.

Q. For a total of?

A. \$4,490,361.20.

Q. And referring to your next page, why don't you explain that for a second, total number of wells, etcetera.

A. Yes, sir. What I did was I went into the...I went to the State and gathered the information of when some of the first wells started in the gob unit and that---.

Q. And this was not a gob unit at the time?

A. No, no. This is pre-gob, sorry, in January 1993 to December 2005. What I did is I gathered the total production of all the wells and the total production of all the wells for that time period that was from the information

from the Virginia Division of Gas and Oil was \$56,320,623 mcf.

Q. Out of the 288?

A. There was 288 gob wells and the asterisk there, those are the total wells both producing and non-producing. So, we put them all in there.

Q. Now, some of the further numbers, why don't you talk about average gas price January '93 through December '05 where did you get that number?

A. I got that number from the pricing that was from U.S. Energy Information Administration.

Q. A copy of that sheet is in your packet, right?

A. Yes, its in the packet for the...I've got the Virginia Gate and the City Gate and the West Virginia City Gate of both wells.

Q. And you averaged those out?

A. Yes.

Q. And you came up with \$5.32 per mcf.

A. Yes, sir. In 1999, the monthly pricing here.

Q. And using that average you determined the gross average income per well was how much?

A. It appeared to be \$1,040,363.24.

Q. And let's go ahead and finish that page?

A. You averaged the well cost based on what they said the well cost was?

A. \$172,706.20 and then less the owners one-eighth whether it be in escrow or royalty or whatever leased was \$130,045.40 per well and the average income for well \$727,611.16.

Q. So, is it your contention in essence that they have made an average of \$737 on the 288 wells which have previously been installed?

A. Under the pri...yes, under the pricing that was shown by the city gate pricing.

Q. And turning to your first sheet of these 26 gob wells, these are not new wells at to your understanding?

A. To my understanding, they are not new wells. I don't believe they were drilled...new wells were drilled into the gob unit when it was formed.

Q. So, in essence you're saying they are asking to be reimbursed \$4,490,361 for wells that have previously installed and have been paid for?

A. Yes.

Q. And you think that that should not be allowed?

A. Correct.

PETER GLUBIACK: Thank you, Mr. Chairman. That's our testimony.

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Mr. Swartz?

CROSS EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Do you know how many wells are producing from this sealed gob area currently?

A. No, sir, I do not.

Q. Would it surprise you to know that it's 191 wells?

A. Yes, sir. I don't know if that would surprise me or not.

Q. If it was 191 wells...how many wells have you assumed were producing from this area, 26?

A. Well, Mr. Swartz, that front page is your page. That's your Exhibit G, it says 26 wells.

Q. My question was how many wells are you assuming are producing from this unit?

A. I believe the explanation that you gave in March of '06 was that any 26 wells could operate at any one time.

Q. Okay. My question for the third time and if you don't understand it---

PETER GLUBIACK: I believe, Mr. Chairman, that question has been answered to the best of his knowledge.

MARK SWARTZ: No, I don't think it has.

A. Oh, I'm sorry. If---

BENNY WAMPLER: I'll ask you to clarify the question if he needs clarification.

Q. How many question...how many wells do you think are currently producing from the VP-8 sealed gob unit 3?

A. Well, I would hope all 288, but you tell me.

Q. How many?

A. I would hope all of them would be producing.

Q. How many?

A. How many do I think are?

Q. Right.

A. All of them.

Q. And how many is all?

A. 288 is what I counted up Mr. Swartz.

Q. Okay. So, you think there are 288 wells producing from the sealed gob area in the VP8-3 area, is

that your testimony? 1

A. Yes, sir.

Q. And if you divide 288 into four million how much per well is that?

A. Not very much.

Q. So, the operator...if you're right and there are 288 wells producing from that unit they are seeking to apply the costs of less than 10% of the wells that they're using to produce the royalty revenue they're paying to you, is that true?

A. No, sir. Let me (inaudible). I'm going with your 26 gob wells that you've made testimony. That's what I believe that's operating at any one time in that well. I believe I stated that.

Q. Okay. So, now we're not at 288 anymore, we're 26?

PETER GLUBIACK: He stated 26 originally, Mr. Swartz. That was his testimony using your documents. He's answered the question.

Q. So, you're now changing from 288 to 26?

PETER GLUBIACK: No, he's not changing. He was on a 26 using your information.

BENNY WAMPLER: Mr. Glubiack, I'm not going to let you guys go back and forth. If you address it to me you can

object, I'll deal with it.] Mr. Swartz.

PETER GLUBIACK: Objection Asked and answered, Mr. Wampler.

BENNY WAMPLER: Sustained.

Q. Do you think there are more wells than 26 producing from this area today?

A. I would have to say at any one time I don't know.

Q. Did you appear at the hearing when this unit was created?

A. Yes, I did.

Q. Did you complain about the well costs when you appeared at the hearing when this unit was created?

A. No, sir, I didn't. My attorney had written a letter on my behalf to the Board concerning VP8-SGU3. He wasn't able to be here.

Q. So---?

A. So, I could not speak because my representation had already spoken for me.

Q. So, you came to the hearing. You had an attorney. When was that hearing?

A. I believe it was March of 2006. And he asked for a continuance on VP8-SGU3 and you said you had a lot of gas to pump out of the ground.

Q. And my question is when you were at the hearing you didn't complain about anything, is that your testimony?

PETER GLUBIACK: Objection. Mr. Chairman, he has already answered that. He attempted to complain and he was instructed by Ms. Pigeon---

JOHN SHEFFIELD: You were not here to speak for me.

PETER GLUBIACK: Right.

BENNY WAMPLER: Abstain.

Q. Did you file an appeal from that order?

A. An appeal from the final order?

Q. From the order that created this VP8 sealed gob unit 3?

A. I believe I did on property issues.

Q. So, the answer is, yes, you've filed an appeal?

A. Yes.

Q. And you filed that appeal from the order we are talking about today to the Circuit Court of Buchanan County, right?

A. Yes, I did.

Q. And in that appeal would you agree that you did not argue that the cost were good, bad or indifferent?

A. I don't know. Do you have the paperwork?

Q. Here you go.

A. Thank you.

(John Sheffield reviews the document.)

Q. No. No, sir.

Q. And would you agree that your lawyers then subsequently dismissed that appeal to the Circuit Court with regard to this order?

A. Yes, based on a technical error.

MARK SWARTZ: That's all I have.

REDIRECT EXAMINATION

QUESTIONS BY MR. GLUBIACK:

Q. Mr. Sheffield, you do have an opportunity now and that's why you're filing a miscellaneous petition objecting these costs because there was a re-pooling application outstanding, is that correct?

A. Correct.

Q. In fact, that petition is...we don't know what happened to that petition?

A. Not at this time.

Q. It was not accepted or objected last month by the Board?

A. Correct.

Q. But at the time you filed this miscellaneous petition there was an open application to repool?

A. Yes.

Q. Permitting you...it was your understanding, permitting you to challenge the allowable costs?

A. Correct.

Q. And you were instructed to file a miscellaneous petition if you object?

A. Yes, sir.

Q. And you did so?

A. Yes, sir.

Q. And to the best of your knowledge, your contention is that CNX is asking to be reimbursed for costs expended on wells that are previously been paid for.

A. Correct.

PETER GLUBIACK: That's all I have. Thank you.

LESLIE K. ARRINGTON

DIRECT EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Mr. Arrington, I'll just remind you that you've been sworn.

A. Yes, sir.

Q. Okay. How many wells are producing CBM gas

from this sealed gob area within the VP8 mine known as sealed gob unit 3?

A. As of May 19th when I put my information together there was 191 wells producing out of that sealed gob unit.

Q. And if we applied the same cost that was used to allocate costs for participation purposes to 26 wells to the 198 what would the total dollars be that could have been allocated to this unit?

A. Well, I went through and done some actuals and it would be well over \$25 million dollars.

Q. That you have invested in wells that you're producing from in that unit?

A. Yes, and that's only from the wells. There are other costs that we incur that we are presently reviewing whether to try to start bringing those costs in also as part of sealed gob units.

Q. But those do not involve mine seals or anything, this is just the well costs?

A. This is just well costs. It has nothing to do with the seal costs, the mining costs that creates the large fractures.

Q. And the request that you made when this unit was pooled was to allocate \$4,490,361.20?

A. Yes. 1

Q. As opposed to 20, 25 or 30 million dollars?

A. It was. And you know we were...for years now we have constantly come in saying we'll produce one well per longwall panel and as we are actively reviewing the situation we are going to have to start increasing the number of wells in sealed gob units that we're requesting the costs for.

Q. With regard to the 191 wells that were producing from this sealed gob unit as of...May the 19th, was it?

A. Yes, it was.

Q. Who paid for those wells?

A. We actually paid all the invoices for them.

Q. Has anyone participated in this unit that we could say well somebody else participated and paid part of those costs?

A. No, sir.

Q. So, that's money out of the pocket of CNX Gas?

A. Yes.

Q. And some of these wells were vertical ventilation holes, correct?

A. Mark, I believe all of these were and I may

be wrong but I think all of these wells were drilled as CBM wells.

Q. So they're the gas side costs?

A. Yes.

MARK SWARTZ: That's all I have, Mr. Chairman.

BENNY WAMPLER: Would you explain to the Board why you incurred the additional costs?

LESLIE K. ARRINGTON: The additional costs?

BENNY WAMPLER: For the gob wells versus the CBM. The challenge was you already got money the first time where you had one gob and five the second time around.

LESLIE K. ARRINGTON: Okay, sure. You know, to produce this gas we have to do one of the two things, plug all of the CBM wells that was drilled for the mining or...and re-drill new wells. So, we choose to just keep the existing wells versus spending the money to plug the wells and continue producing out of the existing wells. I mean it would just be an additional costs that noone needs to incur.

BENNY WAMPLER: Mr. Glubiack?

CROSS EXAMINATION

QUESTIONS BY MR. GLUBIACK:

Q. Mr. Arrington, let me refer you to the second page of Mr. Sheffield's exhibit if you would hand

that over to your attorney, there. The total production on the second page, VP8-SGU3, before sealing the unit January '93 through December '05, \$56,320,000 mcf. Is that...those are your numbers, those are correct to the best of your knowledge?

A. Since I didn't put them---

Q. You don't have any idea?

A. I have no idea of productions.

Q. Is it fair to say that there was substantial production from those 288 wells over a period of twelve years?

A. In particular during mining, they were all drilled for mine safety.

Q. But there were gas wells producing gas that was sold by CNX?

A. It was.

Q. And then the unit was sealed and the principle behind that is moving around, sucking gas out of whatever the maximum number of wells you could get it out of, that's the gob unit principle?

A. Removing the coalbed methane, yes.

Q. Now, when you filed that, this 26 gob wells, that was your plan at that time?

A. The plan was to request costs for 26 wells,

one per longwall panel. That was the average that we've been using for years.

Q. The bottom line is these 26 wells and now you're saying you're pumping out of 191 wells, these are not new wells? These are wells that were there? You just told your attorney in answer to a question that these were gas wells?

A. They are.

Q. And they're not new wells?

A. They are not new wells.

Q. And you're asking at this point...you asked for \$4.49 million dollars for wells that were producing gas, selling gas, and have been according to the numbers and obviously these are numbers Mr. Sheffield took he says from your production records, an average of a million or a little more than a million dollars per well that you've already grossed from these wells and now you're asking for more money and I guess my question is...my final question is what's different, you're not putting new wells in, you're plugging a well, you're opening a well, you're plugging another well, you're opening another well but these are wells that are there and you're asking for 4.5 and you just said your costs may be 25 million. What's the new cost?

A. Again, as I spoke, you can pay for plugging

the wells and drilling new ones or you can allocate this cost to them.

Q. What is your new cost though, that's what I'm trying to get at? Plugging the well means shutting it off and opening up another one, closing that one out and open up another one. What's...where's the \$172,000 per well costs...where's the costs?

A. Again, as I said, we can do one of the two things, we can plug all of these wells and reallocate new costs for plugging and drilling new wells or we can produce out of these.

Q. But you're producing out of existing wells?

A. We are.

Q. What does it cost to plug...you're not plugging the well, I mean shutting it down? You're not closing it down permanently are you?

A. Yes.

Q. What's your cost to plug a well?

A. \$10,000 to \$20,000.

Q. Not \$172,000?

A. Drilling a new well was going to be far more than that.

Q. You're asking for \$172,000 per well and you're plugging them and you just said your cost is 10,000

or 20,000.

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A. To plug the existing wells.

PETER GLUBIACK: That's all the questions I have,
Mr. Chairman.

REDIRECT EXAMINATION

QUESTIONS BY MARK SWARTZ:

Q. You were asked an interesting question, what's different? Okay, and let me ask you this question, is the what's different here that people got a second chance to participate in the production from these wells?

A. Yes, they did.

Q. When these wells were first drilled on 80 acre units, did people have a chance to participate?

A. Yes.

Q. Okay. Did anyone participate in any of these wells?

A. Not to my knowledge. I mean, there's so many 80 acre units there but to my knowledge---

Q. As you sit here today?

A. ---there are none.

Q. Okay. And so everyone in these wells, these 191 wells that are currently producing, those folks got a chance to participate in those wells when they were 80

acre units, correct? 1

A. They did.

Q. And when we came back to the Board and said we want to produce gob gas they got a second chance to buy into a different deal, right?

A. Correct, they have.

Q. And that's what we're talking about here?

A. Yes.

Q. They got a second chance to get into a deal?

A. Yes.

MARK SWARTZ: That's all I have.

PETER GLUBIACK: Mr. Wampler, if I may ask one more question.

BENNY WAMPLER: You may. Go ahead Mr. Glubiack.

JOHN SHEFFIELD

DIRECT EXAMINATION RESUMES

QUESTIONS BY MR. GLUBIACK:

Q. Mr. Sheffield, did you attempt to participate in this unit?

A. In the VP8-SGU3?

Q. Yes.

A. Yes, I did.

Q. Did you file a petition?

A. Yes.

Q. What happened?

A. At this point I'm not able to participate and as to any other participation previous before gob where the 80 acre units fell my properties were leased. The gob unit now entails other acreages that aren't leased. So, I didn't get an opportunity to participate previously before gob because all my units were under lease.

Q. Did you attempt to...in fact, is it your understanding the Board actually ordered CNX to re-pool these units?

A. Yes.

Q. And what has happened with that?

A. I believe the motion died I think last month.

BENNY WAMPLER: Mr. Harris.

PETER GLUBIACK: I'm sorry, Mr. Harris.

BILL HARRIS: That's okay. Let me ask a question, I...it's...I've had two tenures on the Board and some time in between and you know how time gets in remembering things. I remember talking about this before and one of my concerns at that time was that the wells were already drilled. Were they not vertical ventilation holes for the mining in

advance of mining or during mining, I mean was that not the case?

LESLIE K. ARRINGTON: They were drilled for mining, yes.

BILL HARRIS: So, who paid for those---

LESLIE K. ARRINGTON: And to remove the gas.

BILL HARRIS: And my question years ago is the same is it is now, who paid for those then and what was that amount and, you know, we're coming now saying, okay, we want to pay for those holes. Well, if they've already been paid for I'm missing something here. Well, I've asked three questions. Okay. When a VVH is drilled, who usually pays for that? Is that the coal?

LESLIE K. ARRINGTON: If it's the VVH, the coal site pays for that.

BENNY WAMPLER: It's not a producing well.

BILL HARRIS: So, it's not producing----

LESLIE K. ARRINGTON: It's not producing.

BILL HARRIS: It's just venting the gas.

LESLIE K. ARRINGTON: Right.

BILL HARRIS: So, that's one of the things that State of Virginia said, hey, you know, this is gas that should be used. But once it's converted...see I asked this question then and I really don't remember the answer but

once its converted how do you go about charging for that?

LESLIE K. ARRINGTON: Okay. On all the wells within this sealed unit we paid the invoices. CNX Gas paid those.

BILL HARRIS: So, that was during the time they were...now when you say paid for those---?

LESLIE K. ARRINGTON: Yes.

BILL HARRIS: ---then they were not all drilled at the same time?

LESLIE K. ARRINGTON: No, it's been drilled---.

BILL HARRIS: Years?

LESLIE K. ARRINGTON: ---in the last seven or eight years. And to the time frame I'm not sure where the exact time frame

MARK SWARTZ: You need to tell them that none of these were ever vertical ventilation holes.

LESLIE K. ARRINGTON: No, none of the wells---.

BILL HARRIS: None of these are VVH---.

MARK SWARTZ: In this...in VP8 sealed gob 3, wherever...he's telling you they were drilled as coalbed methane wells to degas the coal rather than drilled as vertical ventilation holes by the coal company. Now, that's the distinction and you can certainly feel free to ask him more questions about that, but that's the distinction that

he's drawing with regard to this. With regard to Beatrice, which I'm pretty sure was on your first tenure---

BILL HARRIS: Yeah.

MARK SWARTZ: That was an Island Creek vertical ventilation hole issue---

BILL HARRIS: That's probably where my memory is coming from about converting the VVH to producing wells. Because I think I asked about the cost to convert that. So, these were actually drilled with a spacing in mind---

LESLIE K. ARRINGTON: Yes, a spacing based on mining.

BILL HARRIS: Okay, and you're going to have to refresh my memory, were the panels already...because I remember we did the longwall panels and we were dividing looking at how the panels fell and doing percentages there. Is this---

LESLIE K. ARRINGTON: In VP8 our normal spacing was a 500 foot spacing and we generally...and, again, without maps in front of me I don't know the exact number, basically 20 to 25 wells per pan...longwall panel. There's 26 longwall panels within this unit and some of them were a little bit shorter.

BILL HARRIS: Okay. So, I'm not sure what my question is now, but I guess I'm just a little confused

about the charges, I guess, and if...I guess I do have a question about it, may be a problem with it, they were paid for earlier. Are you recovering money of this...what happens with this latest amount? I mean, I'm not sure. Like I said, I've confused myself by asking so many questions but----.

LESLIE K. ARRINGTON: Economically and environmentally there's really no sense in us going out re-drilling new wells. And if we were to do that you would incur the plugging costs and then the re-drilling of a new well cost to remove the gas once we seal this unit. Now, certainly we're not going to go back out and plug all of these wells and drill new wells. It makes more economic sense to just use the existing wells. And when I come in and request only 26 wells, one per longwall panel, I feel like that we're being more than fair about the cost we are requesting. I could have come in and asked for the cost of...I think when I came in there wasn't...I think Mr. Sheffield stated 288, but something tells me there was 296 but I could have come in and asked for 296 wells at \$172,000. I didn't. I only asked for the cost of one well per longwall panel trying to justify making the economic sense for folks that would want to participate. And as I've said, we stated here earlier, we've reviewed that cost and

in the future the cost that we come in and request may be substantially more because we are incurring more and more cost here.

BILL HARRIS: Well, but these have....have these not already been---.

BENNY WAMPLER: Let me see if---

BILL HARRIS: It looks like they've already been paid for and now we're...we're---

BENNY WAMPLER: Let me see if I can help the Board on understanding. Let's pretend that this law book here is a chocolate cake with white icing and cherries on top, and we cut it long ways down this way, and we're going to make six slices down this way all the way down and those have become longwall panels, okay, when they're first mining. And if we come back this way to cut the pieces of cake and put a cherry in each one that will represent a well in each one of those panels that they were going to mine to. And just correct me any of you if I'm wrong. Now, each one of these little segments here has a well in it that they drilled to produce ahead of the long wall mining and degas the coal, okay, versus venting it to the atmosphere. Let me just go through and then you can ask me anything. And then let's pretend we just take out four of these right here and then we seal that off, that's a sealed gob unit. Now

they've paid for these wells going in initially, okay, CNX did, not the coal company. They're asking now that they're taking this sealed gob and leaving maybe two out of those four we took, just as an example. They are asking for charges again because now you have a chance to go see how much that that well is producing. Initially, you didn't know how much it would produce or if it would produce. Now, you've got a chance to go see what its producing and you get a bite of the apple by participating into that and buying in. That's what they're asking. They are asking for charges again.

BILL HARRIS: So, they paid for the well initially---?

BENNY WAMPLER: Just for clarification.

BILL HARRIS: ---and they're asking to recover money from that?

MARK SWARTZ: If you want in. I mean, it's a second opportunity. Those people in Mr. Wampler's example, in the first square they had a chance to buy in to that production from a frac well.

BILL HARRIS: The first time through they did?

MARK SWARTZ: Yes, they did. And Les' recollection at this point is that he doesn't remember anybody doing that but...in this area, but they had a shot at the frac

production.

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BILL HARRIS: The first time through they did.

MARK SWARTZ: Yes, they did. And Les' recollection at this point is that he doesn't remember anybody doing that. But they had a short at the frac production. Now, when we came back on the sealed gob production they had an opportunity to participate in the sealed gob production, which that opportunity didn't exist, you know, the first time around. And the point is that the same investment, the same well that permitted royalties to be paid for frac production and gave people an opportunity to participate in a frac well, that same investment by CNX has now produced an opportunity to collect the gob gas and instead of saying you had your shot the first time, you know, it's all a piece of cloth. Instead of saying you could have participated in an 80 acre unit, you didn't, you're zeroed out on the sealed gob, you know, they're getting a second bite from a slightly different apple using the same infrastructure, which CNX paid for. I mean, and I guess there's a disconnecting and I mean everybody is entitled to an opinion. It's an election year too, you know, so we know how to dispute things. That doesn't strike me as unfair. And I sense you're struggling with it because it must strike you as somewhat unfair. And I---.

BILL HARRIS: And I'm not trying to deny---

MARK SWARTZ: No, it's okay. But I just---
for you want to recover the money that you've invested in
them.

BENNY WAMPLER: Let me just go back to one thing.
Mr. Sheffield, through Mr. Glubiack has asked that these
cost...that they have a cost reduction. Do you have
anything in mind of what is fair and reasonable? The Board
has to consider that as to what is reasonable.

PETER GLUBIACK: I do, Mr. Wampler. I need to
return to your cherry cake here.

BENNY WAMPLER: Right.

PETER GLUBIACK: The bottom line is, and I haven't
heard anything differently, Mr. Harris you've asked and I
think it has been answered in a sort of convoluted fashion.
The bottom line is these were installed as producing frac
gas wells in units of 80 acre units, a standard procedure
over the course of twelve years. Our contention is they
paid the money. They got the money back, the \$172,000 per
288 wells. In our document, they were amply repaid. In
fact, it is our contention they netted \$737,000 on each of
those 288 wells. Now, they have sealed the unit off to make
it more productive. That's a whole another story but that's
what the story is now. And they have admitted...it is

simple. They have admitted that these are the same wells that are going to produce a whole bunch more gas and make a whole bunch more money. But why should my client and all of your clients who were the claimants under the escrow fund have to pay them again? They've been paid. They've been paid well. They're asking to be paid again because indeed they are going to make a whole lot more money on the VP8-SGU3. They are making a whole bunch more money. But the bottom line is quite simple, they paid the money, they reimbursed themselves before they paid the royalty and now they're asking to reimburse themselves again. And they have the temerity to say, hey, we're giving you a heck of a deal, it should be 25 million not 4.9 million. It's quite simple. And Mr. Wampler, in answer to your question, I have a simple solution and that's zero. They don't need to be paid again. They got paid for these wells, each and every blessed one of them. They don't need any more money. And that's our position.

MARK SWARTZ: I hear some really amazing stuff when I come here. I just heard Mr. Glubiack say that we deducted our costs of development before we paid royalty. It is complete balderdash. We didn't. Our investment of 25 million dollars in these wells has never reduced the royalty. It's not a deduct against royalty. That's just

bologna. I mean, in his example what does he mean somebody paid CNX and we got our money back? Nobody has paid or bought in to any of these wells. We've got an investment out there that we're continuing to earn money on. Nobody else owns that investment. Is he suggesting that if we drill a frac well and we recover enough gross proceeds to cover the costs of drilling the well its no longer the company's well that drilled? I mean, this is just ridiculous. Absolutely ridiculous. We made an investment of at least 25 million...at least 25 million dollars out there and we are selling gas, using that 25 million dollar investment and no one has bought into the deal in spite of the fact that they've had two chances. This is just ridiculous. I mean, and to be here talking about a changing costs for Mr. Sheffield when it's clear based on every other petition that we've heard in the last two months he's not going to have a participation right, we're talking about something that is going to have no affect on him. The unit wasn't repooled last month. His opportunity to participate again because he hadn't blown his time limit just went by the wayside. I mean, so, why are we even talking about this. No one else has participated. This affects no one else. And he has no right to participate at this point. I'm done.

PETER GLUBIACK: 1 One more comment.

BENNY WAMPLER: Yes, sir.

PETER GLUBIACK: I respectfully disagree. They have made...according to these...their numbers, and this is Mr. Sheffield saying it, but he's saying it's their numbers, they have produced 56 million mcf out of these wells. They have recovered their costs. And when they pay the one-eighth royalty and when they file as they file hundreds of force pooling applications they deduct for the costs of the well. They do not have to start paying until they pay for the well. They have paid for the well. Each and every one of these wells has been paid for in spades. They have had a substantial return. They're going back for a double dip. They want to be paid for what they've already been paid for. It does affect Mr. Sheffield. He does get money put into royalty. The costs their deducting obviously affects his royalty. He is an impacted party along with the thousands of other people that they're paying into royalty for. So, you know, call it...it certainly affects Mr. Sheffield, but it affects everyone.

BENNY WAMPLER: I would, just for clarification, on the royalty issue ask Ms. Pigeon to clarify the Virginia Law.

SHARON PIGEON: Well, our order...there's not a

lot of Virginia Law on this because this isn't a big gas producing State obviously with a lot of history. But what the order itself says is that costs will be actual and reasonable. Those are the two words. And that's pretty much the majority rule in any state. Actual costs are generally deemed to be reasonable unless there's proof to the contrary. Now, the question becomes before this Board is what you have before you is that evidence of an actual cost. I think it's clear that the operator has the right to be paid for the use of their infrastructure. How much is that worth however? Do you look at the original construction, is that a reasonable costs or do you go to his depreciated value or whatever? I don't know the answer to that. That is the Board's responsibility at this point.

MARK SWARTZ: I hate to sort of step on Ms. Pigeon's toes but---

SHARON PIGEON: I'm shocked.

MARK SWARTZ: ---but 9.2 of this order and every order that you all have issued, which deals with people who are going to receive a royalty, it says that a royalty is calculated based on actual proceeds received less post production costs, which means the cost to produce the gas to get it out of the ground which includes drilling, fracing and all of that are not to be deducted. You know, so...and

every operator in this room would tell you that that's what they do. Mr. Glubiack's argument that people are deducting the costs of production before they pay royalty, if true, would be a gross and extreme violation of every order that I'm aware of that you all have ever issued with regard to royalty. You do not deduct what it costs you to drill the well when you pay people royalty. You never do that. And your orders recognize that. I mean, they say that you can only deduct post production costs incurred downstream of the wellhead. So, once the gas gets to the surface to the well head then the cost consideration begins consistent with your order. But it is an absolute untruth to suggest that this Board allows operators in this state to deduct production costs in the sense of drilling wells, fracing wells and so forth before they pay royalty. Your orders absolutely do not say that and the operators in this state, not just my client but other operators, don't do that.

SHARON PIGEON: But we are talking about costs of people participating.

MARK SWARTZ: Then that...that's a completely different cost. I mean that a---.

SHARON PIGEON: That's what I was---.

MARK SWARTZ: Right.

PETER GLUBIACK: Then, why...if I might, Mr.

Wampler.

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BENNY WAMPLER: Mr. Glubiack.

PETER GLUBIACK: Then why does each and every force pooling application have to have a provision and an exhibit detailing the exact projected costs of the well. It should be irrelevant. It's not irrelevant because it is factored into the costs of the well. It's in every force pooling application and its there for a reason.

SHARON PIGEON: For participating---

MARK SWARTZ: And the reason is paragraph 9.1, in addition to getting an option to be leased you get an option to be a partner. And the partner paragraph says if you want to be a partner take your percentage in the unit times the allocable costs and that's your buy in. That's why those costs are relevant. There are three options under every order that tell people you've got a right to do these things. You can become a partner and if you want to these are the costs that are up for grabs and to buy in and you apply your percentage, you can be leased or you can be carried. There are three options. You've got three choices. And the costs of the development, a person who has an ownership interest in a unit has a royalty interest that they're going to receive no matter what they do. They also have a potential to be a partner. There are other options

in the order which say if you want to be a partner this is what you need to do. If you just want to receive your royalty interest you really don't have to do anything because you're going to get that. And so, the costs are pertinent to people who want to write a check and say I'm buying into this deal or people who said I want to write a check but I want into the deal, I want to be carried and those costs are pertinent to both of those options.

BENNY WAMPLER: Okay, other questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Is there a motion?

(No audible response.)

BENNY WAMPLER: Is there a motion?

(No audible response.)

BENNY WAMPLER: I'll ask a third time if there's a motion and then upon that if there's no motion the petition fails. Is there a motion?

(No audible response.)

BENNY WAMPLER: The petition fails. The...Mr. Swartz, before you leave do you have any housekeeping on your others in case we have people waiting here for that? I'm going to take a break.

MARK SWARTZ: I think Katherine Jewell may have a

motion, but I don't see her. I think she wants a continuance and I think there was a request for a continuance but they're not here so that doesn't matter probably. There she is.

BENNY WAMPLER: Go ahead and ask her.

MARK SWARTZ: Katherine, do you have a motion today? They're offering you an opportunity to out of order.

KATHERINE JEWELL: (Inaudible).

MARK SWARTZ: Okay. Do you want to...maybe want to---?

BENNY WAMPLER: I'm not going to take the case, but I understand they're asking for a continuance.

MARK SWARTZ: If that's...if that's true, then I want to accommodate them. Folks, if you will stay quiet. We're still in session here. We're going to take a break in just a minute. I'm not hearing the case understand. I understand that you wanted to make a motion for a continuance.

STEVE MINOR: My name is Steve Minor. I'm a lawyer from Bristol, Virginia. I spoke with Ms. Jewell for the first time on Friday. One of the issues that's raised by her appeal is the availability of alternative sites and the position of the coal lessee, Jewell Smokeless, as to where the wells can be located. I'd like the opportunity to

contact them directly to develop the facts related to that. So, I'm asking that this matter be continued to allow me to do that.

BENNY WAMPLER: Which one of these cases is it?

STEVE MINOR: Number ten.

BENNY WAMPLER: Ten. Okay, and I'm going to go ahead, that's the petition of Catherine Jewell on behalf of Buck Jewell Resources. That's docket number VGOB-08-0617-2237. We have a request for a continuance until June, is that adequate?

MARK SWARTZ: Until July.

BENNY WAMPLER: July, I'm sorry.

STEVE MINOR: June doesn't sound too good.

BENNY WAMPLER: I'm sorry about that. To July, is there any objection?

MARK SWARTZ: As long as it happens in July, we're good to go with that.

STEVE MINOR: What is that date?

BENNY WAMPLER: Is there any objections?

SHARON PIGEON: He needs a date, third Tuesday.

BENNY WAMPLER: The third Tuesday.

STEVE MINOR: Third Tuesday, that will be fine.

BENNY WAMPLER: Okay, of July.

STEVE MINOR: Thank you, sir. Continued. We're

going to take a break, ten minutes.

(Break.)

BENNY WAMPLER: Okay, folks, I need you to come to order. I don't have a gavel. So, I don't want to have to yell. No, I don't want a gavel either, by the way just for clarification. Okay, we're going to continue. The next item on the Board's agenda is the discussion of post production cost that are allowed by pooling orders and deducted from royalty payments for pooled parties, this was continued from April to May to distribute the public comments that were received. Has that occurred?

DAVID ASBURY: Yes, sir, it did. Comments that were received by the Division of Gas and Oil between April Board meeting and May the 15th were prepared and distributed to the Board at the May meeting. There has also been additional, if you want to open up additional time period we have also received three sets of comments since May the 15th through May the 30th. It's up to the Board if they choose to receive those. I do have copies.

BENNY WAMPLER: Any problem with receiving those, Board members?

(No audible response.)

BENNY WAMPLER: And today what I thought we'd do is just an open discussion, don't plan to take more public

comment. We've received the written comment and we've had that opportunity. We're at a point not that if the Board wants to have a discussion, the one thing that's been suggested that might be a way to deal with this is form a committee of the Board and let two or three people that want...that would like to do that take these...rather than take time today take these comments and condense them down into a discussion at a future date of the Board when the committee is ready to do that. What's your pleasure?

BILL HARRIS: Are you asking should we form a committee? Would that be...can we talk some first and then decide?

BENNY WAMPLER: Sure, both. I thought we'd have some discussion and then just...I was just laying that on the table formally since it had been raised as a possibility of having a committee of the Board to look further into this matter. So, I'm open for discussion right now.

MARY QUILLEN: Mr. Chairman, I believe---

BENNY WAMPLER: Ms. Quillen.

MARY QUILLEN: ---that a committee probably would be a very good idea to have an opportunity to discuss and review these additional exhibits.

BENNY WAMPLER: Other comments?

BRUCE PRATHER: How much time do you think would

be involved in this? How many of them are there?

BENNY WAMPLER: How many comments?

BRUCE PRATHER: No, no. How many items are we going to have to discuss among the committee here or whatever? I mean, what's the time period it's going to take to do this?

BENNY WAMPLER: Well, that would be up to the committee to come back before the Board and tell us when they were ready. You know, if you want to set a time we could set a time but I mean if you know to me when you do that it would probably good for the committee to have time to look into whatever they want to. If they wanted to call for records or anything additional records or anything to study and then come back before the Board, if you go that route.

BRUCE PRATHER: What I thought was when you might want to have a meeting as to the next meeting and so how much work have we got to do here?

BENNY WAMPLER: Well, you probably wouldn't have time before July. I mean, August maybe at the earliest, August or September, if you do that because you'd need time because people take vacations and everything else. But I'd rather...if we go that route I'd rather leave it to the committee to say when they're ready to come back before the

Board. Any other discussion?

BILL HARRIS: Are you talking about his whole thing?

BENNY WAMPLER: Yes.

BILL HARRIS: I think one thing that I noticed in a lot of the responses was that when the company started doing...I'm not saying this is and this is not accusatory by any means, but a lot of this language showed up when the companies were doing the orders rather than the Attorney General's office. Is that a fair statement?

BENNY WAMPLER: No, because companies are not doing the orders---

BILL HARRIS: Well, I mean---

BENNY WAMPLER: The Attorney General's office was doing the orders and two years...a little over...well, it's probably three now, I lose track of time, three years ago they quit doing them and we...the staff, actually Bob Wilson at that time and David now had to start doing them. And we had...the Board approved a form order, okay, and that's what we've asked the companies to put their petitions on, that form order, but that's not what goes out necessarily.

BILL HARRIS: Well, I knew the orders officially had to come from the Division of Gas and Oil.

BENNY WAMPLER: Right. But the Board approved a

form order that has all the components. You heard Mr. Swartz, for example, refer to the Section 9(A), for example.

BILL HARRIS; Yes. Yeah. I guess the content...because some of these refer to...some of these talk about at some point instead of just one-eighth royalty it's now adjusted. So, did that language come about...I guess this is for my information, did that come about from the Board or, you know, when did that surface because it's obviously it's in there?

BENNY WAMPLER: When did the one-eighth royalty come about?

BILL HARRIS: The one-eighth, yeah.

BENNY WAMPLER: That's in law.

BILL HARRIS: Yeah, I understand that. But I mean the deductions from the royalty, I guess, what's allowable. I mean, that language, when did that...did that come about from day one also?

BENNY WAMPLER: No, I think that and I'm not going to try to quote a date, but I believe somewhere in the 90s.

SHARON PIGEON: It's in tab A, it has got some of the---

BENNY WAMPLER: Right. Right. But I was just you know just saying there was a point in time that that language did change as the Board's form of order came about.

And I think that you do have a pretty good history spelled out in the information that Mr. Asbury provided and some of the others. But that's part of what needs to be looked into in my opinion. Any other thoughts?

(No audible response.)

BENNY WAMPLER: Did you want to form a committee to look into it or what's your pleasure? And, of course, if you do I'm going to ask for volunteers and reserve the right to appoint.

BILL HARRIS: Well, Mr. Chairman, I think a committee probably is appropriate and I would be one of the volunteers to serve on it.

BENNY WAMPLER: Ms. Quillen, did you volunteer? I'm just asking, you mentioned it.

MARY QUILLEN: Yes, I'll serve on the Board.

BENNY WAMPLER: Do you want to be on it?

MARY QUILLEN: I mean, on the committee.

KATIE DYE: I will.

BENNY WAMPLER: Ms. Dye will be on it. Mr. Prather, do you want to be on it?

BRUCE PRATHER: I can be on it, yeah.

BENNY WAMPLER: I'll volunteer Mr. Asbury to be assistant to the committee. We can ask those that are not here today if they would like to be on it. Mr. Asbury if

you would call them this week and ask them, Peggy Barbar and Donnie Ratliff, if they would like to be on the committee.

DAVID ASBURY: I'll do so, Mr. Chairman.

BENNY WAMPLER: And let that be voluntary. And then I'll ask the committee to pick someone in the group to chair it and to let Mr. Asbury know when you want to come back on the docket. Is that fair?

(No audible response.)

BENNY WAMPLER: All right.

BILL HARRIS: Do you want to give the committee a charge? Just to review?

BENNY WAMPLER: The charge would be to review and come back either with a recommendation...well a recommendation of what we do, either stay with what we have or any changes that you recommend.

AUDIENCE MEMBER: Sir, could there be any ex-official members of that committee?

BENNY WAMPLER: No, sir. I appreciate that, but we're not going to do that. That could be never ending. The next item...okay, so we have the committee. All the members here present today have volunteered to be on that committee and Mr. Asbury will poll the other two members to see if they wish to do that. Next is a petition from Equitable Production Company for repooling of coalbed

methane unit VC-537113. This is docket number VGOB-07-0515-1934 continued from April. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

JIM KAISER: Mr. Chairman, Jim Kaiser and Don Hall on behalf of Equitable Production Company. While he passes out the revised set of exhibit, I do have some housekeeping if you want me to get to that.

BENNY WAMPLER: Okay, I was going to ask you that.

JIM KAISER: Starting with number seven, item seven on the docket, we wish to withdraw that application. That well is going to be converted to a horizontal well and I believe we have filed for that on the July docket.

BENNY WAMPLER: Okay, that docket number VGOB-08-0415-2199, that application or petition has been withdrawn. Go ahead.

JIM KAISER: And then number eight. Item number 2206, which was continued from April. I'm not really sure, eight and nine we're going to ask to withdraw both of those because you actually see them again. I don't know how they got on the docket twice, but you actually...number eight is going to be now number nineteen. So, we're going to withdraw eight and you'll hear eight through nineteen. And number nine is now actually number twenty-one. So, we'll

withdraw nine and hear it as twenty-one. I'm not sure how that happened, but there you have that. And then item twenty-eight, which is docket number 2252, we'll ask that that be continued until the July docket. Do you want one month on that, Don? One month's okay? He asks that that be continued to July.

BENNY WAMPLER: Okay. That's docket number VGOB-08-0617-2252, it's continued until July.

JIM KAISER: I think that's all the housekeeping I've got.

BENNY WAMPLER: All right. Get your witness sworn.

(Don Hall is duly sworn.)

BENNY WAMPLER: Let the record show there are no others. You may proceed.

DON HALL

DIRECT EXAMINATION

QUESTIONS BY MARK SWARTZ:

Q. All right. Mr. Hall, if you'll state your name who you're employed by and in what capacity?

A. My name is Don Hall. I'm employed by

Equitable Production Company as district landman.

Q. To refresh everybody's memory, explain why we continued this last month.

A. Well, this well was initially force pooled in May of '07 and subsequent title work determined that a tract that we thought was owned by Pine Mountain turned out to be owned by the S. J. Tiller heirs and that's the reason this thing is now sixty pages thick rather than six because there's probably close to two hundred of them and we've spent a great deal time trying to tack those down and leased as many as possible and actually I think the original application for the repooling was around the first of the year and its been continued a couple of times as we try to get as many of these people located as we can. And we're at a point now that we're ready to pursue it.

Q. Okay, so before we get into what I'll call our standard testimony that the revised exhibits that you just passed out represent our best and final effort to identify all the interest owners within this unit. It represents, I guess, a completely different Tract 4 than the other exhibits that we filed and it adds Tracts 6, 7 and 8, is that correct?

A. Yeah, that's correct. We also, in this title work, discovered that there was three other tracts

that were owned differently than what we thought and those are now part of the exhibit as well.

JIM KAISER: Okay. Any questions on the sixty-five page exhibit?

(No audible response.)

Q. All right. Mr. Hall, then you're familiar with the application that we filed seeking to pool any unleased interest in the unit for EPC well number VC-537113, which was filed last month?

A. Yes.

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

A. We do.

Q. And prior to filing of the application were efforts made to contact each of the respondents owning an interest in the unit and an attempt made to work out a voluntary lease agreement with each?

A. Yes.

Q. And what is the interest under lease to Equitable within the gas estate in this unit?

A. We currently have 86.803824% leased.

Q. And what percent of the coal estate is under lease to Equitable?

A. 100%.

Q. And all unleased parties are set out in revised exhibit B-3?

A. Yes.

Q. So, that means that 13.196176% of the gas estate remains unleased?

A. That's correct.

Q. And do we have any unknown parties in this unit?

A. We do.

Q. And were reasonable and diligent efforts and sources checked to attempt to locate and identify these unknown persons?

A. Yes.

Q. In your professional opinion, was due diligence exercised to locate each person named in Exhibit B?

A. Yes.

Q. Are the addresses set out in Exhibit B to the application the last known addresses for the respondents?

A. Yes.

Q. Are you requesting this Board to force pool all unleased interests listed at revised 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.

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

A. We pay five dollars an acre on a five year term with a one-eighth royalty.

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

A. Yes.

Q. Now, as to the respondents who remain unleased, do you agree that they be allowed the following statutory options with respect to their ownership interests within the unit: 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/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 their 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 elections by the respondents be in writing and sent to the applicant at Equitable Production Company, Land Administration, P. O. Box 23536, Pittsburgh, Pennsylvania 15222, Attention: Nicole Atkinson, Regulatory?

A. Yes.

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

A. Yes.

Q. Do you recommend that if no written election is properly made by a respondent then such respondent should be deemed to have elected the cash option in lieu of any participation?

A. Yes.

Q. Should the unleased respondents be given 30

days from the date that they receive the 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. We do.

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 delay rental or cash bonus 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 their election be treated as being withdrawn and void and they be treated as if no election were made, in other words, deemed to have leased?

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 the actual wells costs any cash moneys due the respondent by the operator be paid to that respondent within 60 days after that respondent should have paid their actual well costs?

A. Yes.

Q. Do you recommend that the Board establish an escrow account?

A. Yes.

Q. And that is represented in the revised Exhibit E?

A. Yes.

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

A. Equitable Production Company.

Q. What's the total depth of the proposed well and the plan of development?

A. It's 1,412 feet.

Q. Estimated reserves for the life of the unit?

A. 200 mcf.

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

A. Yes. 1

Q. And in your opinion does it represent a reasonable estimate of well costs?

A. Yes.

Q. Could you state for the Board what the dry hole and completed hole cost for this well?

A. The dry hole cost is \$103,337. Completed well cost is \$283,909.

Q. Do these costs anticipate a multiple completion?

A. 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 be in the best interest of conservation, prevention of waste and protection of correlative rights?

A. Yes.

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

BENNY WAMPLER: Questions from members of the Board? Could you just stipulate the tracts that are going into the escrow account for the record please?

DON HALL: Tract 13, 4, 6 and 7.

BENNY WAMPLER: Thank you. Other questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

JIM KAISER: Mr. Chairman, we'd ask that the application be approved with the revised set of exhibits.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

KATIE DYE: Second.

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

(All members signify by saying yes.)

BENNY WAMPLER: Opposed, say no.

(No audible response.)

BENNY WAMPLER: You have approval. Okay, we go to number nine on the Board's docket...I'm sorry that one was continued---

JIM KAISER: We go all the way to eleven, I think.

BENNY WAMPLER: ---we go to eleven. It's a petition from CNX.

JIM KAISER: Mr. Chairman, I take it you all will break for lunch?

BENNY WAMPLER: Yes, we will break for lunch.

We'll break at twelve and come back around one o'clock. It may vary depending on when we get to the next case or three. So, I'm going to go ahead and call the petition from CNX Gas Company, LLC for pooling of coalbed methane unit A-17, docket number VGOB-08-0617-2238. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MARK SWARTZ: Mark Swartz and Les Arrington.

BENNY WAMPLER: Let the record show there are no others. You may proceed. Did you have any housekeeping by the way of any nature?

MARK SWARTZ: Yeah, Mr. Street..Ben Street and I agreed that, if it's all right with you all, he had wanted a continuance on U-20, which is docket item thirteen until next month and that's okay with us. I would like to accommodate him. Is he has already left.

BENNY WAMPLER: This is docket number VGOB-08-0617-2240, and that will be continued until July.

MARK SWARTZ: Other than that I think that's it.

BENNY WAMPLER: All right. Proceed.

MARK SWARTZ: If I could incorporate Mr. Arrington's testimony with regard to the applicant and operator, his employment and the standard CBM lease terms, I would like to do that.

BENNY WAMPLER: That will be incorporated.

LESLIE K. ARRINGTON

DIRECT EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Les, you need to state your name for us again.

A. Leslie K. Arrington.

Q. Can I remind you that you are still under oath?

A. Yes, sir.

Q. Who do you work for?

A. CNX Gas Company, LLC.

Q. Okay. And this docket item eleven involves unit A-17, is that correct?

A. Yes, it does.

Q. What kind of unit is this?

A. It's an Oakwood field unit consisting of 107.06 acres. It's a makeup unit between it and Nora.

Q. And how many wells are proposed for this unit?

A. Two.

Q. And where are they located in relation to the drilling window?

A. Within the window.

Q. What did you do to notify people that we would be having a hearing today?

A. We mailed by certified mail on May 16, 2008 and published Bluefield Daily Telegraph on May 24, 2008.

Q. In that regard, have you filed certificates with regard to mailing and proof of publication with the acting Director?

A. Yes, we have.

Q. Do you want to add any respondents today or dismiss any?

A. No.

Q. What interests have you acquired in this unit and what are you seeking to pool?

A. We've acquired 99.8973% of the coal, oil and gas owner's claim to coalbed methane. We're seeking to pool 0.1027% of the coal, oil and gas owner's claim to coalbed methane.

Q. Have you provided a well cost estimate for the two wells?

A. We have. For well A-17, it's \$276,503.61. A-17A is \$266,118.09.

Q. Okay, is the total of those two numbers \$542,621.70?

A. Yes. Okay, yes it is.

Q. And what are the depths of those wells?

A. The depth of A-17 is 2574 and 17-A is 2490.

Permit number A-17 is 9354 and 17-A is 9346.

Q. There is no escrow requirement?

A. No.

Q. Is it your opinion that drilling two frac wells in the window of this makeup unit is a reasonable way to produce the coalbed methane from within and under the unit?

A. Yes, it is.

Q. Is it your opinion that if you combine the 99, you know, plus percent that you've acquired by lease or otherwise with a pooling order that deals with the outstanding tenth of a percent that the correlative rights of all owners, claimants and parties interested in the coalbed methane in this unit would be protected?

A. Yes, they would.

MARK SWARTZ: That's all I have, Mr. Chairman.

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BRUCE PRATHER: §second.

BENNY WAMPLER: Any further discussion?

(No audible response.)

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

(All members signify by saying yes, but Katie
Dye.)

BENNY WAMPLER: Opposed, say no.

(No audible response.)

BENNY WAMPLER: You have approval.

KATIE KYE: Abstain.

BENNY WAMPLER: One abstention, Ms. Dye. Which
case is the gentleman that's having to sit over here...what
case does he have?

AUDIENCE MEMBER: Twenty-two.

BENNY WAMPLER: Twenty-two is that yours? Oh,
shoot I shouldn't have. Well, if you want to take him out,
we'll get that right after lunch.

AUDIENCE MEMBER: Well, you can skip to it now,
can't you?

BENNY WAMPLER: Well, they're not here.

AUDIENCE MEMBER: Oh, did they leave?

BENNY WAMPLER: They left or I would.

AUDIENCE MEMBER: Oh, I'm sorry. I meant to do

that and just...after we finished...had the break. I forgot. So, he won't have to stay, we'll do that first thing after lunch. So, if you want to take him to lunch now or do something like that, we'll be back about one o'clock. Next is a petition from CNX Gas Company LLC for pooling coalbed methane unit N (-1). This is docket number VGOB-08-0617-2239. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MARK SWARTZ: Mark Swartz and Les Arrington.

BENNY WAMPLER: Let the record show there are no others. You may proceed.

LESLIE K. ARRINGTON

DIRECT EXAMINATION

QUESTIONS BY MARK SWARTZ:

Q. Les, you need to state your name again, please.

A. Leslie K. Arrington.

Q. Who do you work for?

A. CNX Gas Company, LLC.

Q. Okay. What kind of unit is this?

A. This is an Oakwood 80.

MARK SWARTZ: Okay. Mr. Chairman, if I could, I'd like to incorporate Les' entire testimony with regard to the applicant and the operator, with regard to his employment and the standard CBM lease terms.

BENNY WAMPLER: That will be incorporated.

Q. With regard to the two wells that are proposed here, they are both in the window?

A. Yes, sir.

Q. Okay. And have you provided the Board with cost information concerning those wells?

A. Yes. N (-1) is \$265,275.21. N (-1A) is \$265,481.57. The total is \$530,756.78.

Q. And what are the depths of those two wells?

A. N (-1) is 2509 and N (-1A) is 2516.

Q. And it looks like you do not have...I guess since filing you've got permits...you got permit numbers?

A. Yes.

Q. What are those?

A. No, no.

Q. No wait, no you don't. You don't have permits for these wells. Okay. And what is the interest that you've acquired in this unit and what is it that you're seeking to pool?

A. We've acquired 88.7937% of the coal, oil

and gas owner's claim to coalbed methane. We're seeking to pool 11.2063% of the coal, oil and gas owners claim to coalbed methane.

Q. And in that regard there's no escrow requirement, you can pay the people you're seeking to pool directly?

A. Correct.

Q. What did you do to notify the folks that you've listed in the notice of hearing and Exhibit B-3 that we were going to have a hearing today?

A. We mailed by certified mail, return receipt on May 16, 2008 and published Bluefield Daily Telegraph May 27, 2008.

Q. And in that regard have you filed your certificates with regard to mailing and the proof of publication with the acting Director?

A. Yes, we have.

ANITA DUTY

DIRECT EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. In that regard, Anita, I'm going to remind you you're still under oath. Could you state your name again?

A. Anita Duty.

Q. And who do you work for?

A. CNX Gas Company.

Q. Do we have some revised exhibits today?

A. Yes.

Q. Did you prepare those?

A. Yes.

Q. Okay. We have an Exhibit B-2?

A. Yes.

Q. Because?

A. To dismiss some of the owners that we have leased since we filed the application.

Q. So, some of the folks listed in the notice of hearing as respondents and the original B-3 you've obtained leases from?

A. Yes.

Q. Right. And you list those people in B-2 and indicate leased in the farthest column to the right?

A. Yes.

Q. Okay. And if we do, in fact, dismiss the folks that we've obtained leases from then we've got to change Exhibit B-3, which is the next revised exhibit, correct?

A. Yes.

Q. And have you made those changes to extract the people that we've leased from the people that we need to pool?

A. Yes.

Q. Okay. And then does that change the interests that need to be pooled and is the revised Exhibit A, page 2, consistent with what Les just told us?

A. Yes.

LESLIE K. ARRINGTON

DIRECT EXAMINATION RESUMES

QUESTIONS BY MR. SWARTZ:

Q. Les, is it your opinion that drilling two frac wells in the window of this Oakwood unit is a reasonable way to produce the coalbed methane from within and under the unit?

A. Yes, it is.

Q. Is it your opinion that if we combine a pooling order with the acquisition and lease activities that the applicant has been successful with the interests and claims of all owners and claimants to the CBM in this unit would be protected?

A. Yes, they would be.

MARK SWARTZ: That's all I have, Mr. Chairman.

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes, but Katie Dye.)

BENNY WAMPLER: Opposed, say no.

KATIE DYE: Abstain.

BENNY WAMPLER: You have approval with one abstention, Ms. Dye. Next is, number fourteen, Board, a petition from CNX Gas Company LLC for pooling of coalbed methane unit BL-108, docket number VGOB-08-0617-2241. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MARK SWARTZ: Mark Swartz and Les Arrington.

BENNY WAMPLER: Let the record show there are no others. You may proceed.

LESLIE K. ARRINGTON

DIRECT EXAMINATION

QUESTIONS BY MARK SWARTZ:

Q. Les, you need to state your name, again.

A. Leslie K. Arrington.

Q. Who do you work for?

A. CNX Gas Company, LLC.

MARK SWARTZ: I'd like to incorporate Mr. Arrington's testimony from the prior hearings, if I could, with regard to the applicant and operator, his employment and standard CBM lease terms.

BENNY WAMPLER: That will be incorporated.

Q. Les, what did you do to advise people that we were going to be having a hearing today?

A. We mailed certified return receipt May 16, 2008 and published in the Bluefield Daily Telegraph May 28, 2008.

Q. And in that respect have you filed certificates with regard to mailing and proof of publication with the acting Director?

A. Yes, we are.

Q. Do you want to add any people as respondents today or dismiss any? Just say yes.

A. I don't have that. Yes.

Q. Okay. And we can talk to Anita about that?

A. Anita will have that, yes.

Q. How many wells are proposed for this unit?

A. Two.

Q. And this is what kind of a unit?

A. This is a Middle Ridge unit.

Q. And how many acres does it contain?

A. 58.74.

Q. And these two wells, are they both intended to be frac wells?

A. Yes, they are.

Q. Have you provided cost information to the Board with regard to these wells?

A. Yes, we have. BL-108A is \$278,959.96. BL-108 is \$273,708.01. The total is \$552,667.97.

Q. And the depths of these two proposed wells?

A. 108A is 2819 and 108 is 2894.

Q. And it looks like you don't have permits?

A. No.

MARK SWARTZ: What interests have you been...well, I'm going to cover that with Anita actually.

ANITA DUTY

CROSS EXAMINATION

QUESTIONS BY MR. SWARTZ: 1

Q. Anita, do you have the revised exhibits handy?

A. Yes.

Q. Okay. Could you state your name for us again?

A. Anita Duty.

Q. Who do you work for?

A. CNX Gas Company.

Q. And you've prepared and filed some revised exhibits with regard to this unit, is that correct?

A. Yes.

Q. We have a B-2 again?

A. Yes.

Q. And why do we have a B-2?

A. There are some parties that have leased and then we also found there was an additional interest that we didn't have divided correctly.

Q. So, B-2 actually lists folks that you've leased from and also I'm thinking it's Tract 3 that straightens that out?

A. Yes.

Q. Okay. Have you revised Exhibit B-3 accordingly?

A. Yes. 1

Q. And are you requesting that the Board dismiss the folks that you've listed as leased on B-2 and then have you corrected B-3 to delete them and straighten out Tract 3?

A. Yes.

Q. And as a consequence of the dismissals, did the percentages change in terms of what you've got leased and what you're seeking to pool?

A. Yes, they did.

Q. And are the accurate percentages as of at least 6/12/08 reflected on the last page of the revised exhibits today?

A. Yes.

Q. And what are those percentages?

A. The unleased coal interest is 90.9176 and the oil and gas interest as well. And the leased coal...I said that wrong, it was backwards.

Q. Well, start over then.

A. I don't usually do this.

Q. I know.

A. Okay. The interest we have leased from the coal, oil and gas owner is 90.9176% and the unleased from the coal, oil and gas owner is 9.0824%.

Q. And that, I think, let me check to make sure but I'm thinking that that percentage has, that we need to pool, has decreased. It was like 12%----

A. Yeah.

Q. ---roughly to begin with, is that correct?

A. Yes.

LESLIE K. ARRINGTON

DIRECT EXAMINATION RESUMES

QUESTIONS BY MR. SWARTZ:

Q. Les, is it your opinion that drilling two frac wells in the window of this Middle Ridge unit is a reasonable way to produce the coalbed methane from within and under that unit?

A. Yes, sir, it is.

Q. And is it your further opinion that if you combine a pooling order with a leasing and acquisition efforts that the applicant has succeeded in entering into the correlative rights of all owner's and claimant's will be protected?

A. Yes, it will.

MARK SWARTZ: That's all I have, Mr. Chairman.

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

BENNY WAMPLER: All in favor, signify by saying
yes?

(All members signify by saying yes, Katie Dye.)

BENNY WAMPLER: Opposed, say no.

KATIE DYE: Abstain.

BENNY WAMPLER: You have approval with one
abstention, Ms. Dye.

MARK SWARTZ: I need to do one other housekeeping
for Ms. Pigeon. There are some unknowns and locateables. I
think in Tracts 1 and 3. We didn't do any today for some
reason or other, but we probably need to do that for
purposes in the order to know that there's an escrow
requirement. Les or Anita, you need to confirm that that's
the case.

LESLIE K. ARRINGTON: We'll do so.

MARK SWARTZ: Okay.

SHARON PIGEON: Could you repeat the tracts?

MARK SWARTZ: Okay, it's 1 and 3. There's an

unknown and locateable. It's the same potential person in both of those with that, that would require escrow.

SHARON PIGEON: Thank you.

MARK SWARTZ: I'm sorry I didn't cover that initially.

BENNY WAMPLER: And you will file an Exhibit E?

MARK SWARTZ: Yes, they will.

LESLIE K. ARRINGTON: Uh-huh.

BENNY WAMPLER: Next is a petition from CNX Gas Company, LLC for pooling coalbed methane unit TA-133. This is docket number VGOB-08-0617-2242. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MARK SWARTZ: Mark Swartz and Les Arrington.

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

LESLIE K. ARRINGTON

DIRECT EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Les, you need to state your name for us.

A. Leslie K. Arrington.

Q. Who do you work for?

A. CNX Gas Company, LLC.

MARK SWARTZ: 1 I'd like to incorporate Mr. Arrington's testimony concerning applicant and operator, his employment and standard CBM lease terms.

BENNY WAMPLER: That will be incorporated.

Q. What did you do to notify the folks that you've listed as respondents that we were going to have a hearing today?

A. We mailed by certified mail, return receipt on May 16, 2008 and published in the Bluefield Daily Telegraph on May 28, 2008.

Q. In that regard, have you filed your certificates with regard to mailing and your proof of publication both with the acting Director's office?

A. Yes, we have.

Q. This is a...is what kind of unit?

A. It's a statewide spacing unit consisting of 40.57 acres.

Q. And it's a statewide spacing CBM unit?

A. Yes, it is.

Q. And the unit is a circle with a radius of how---

A. 750.

Q. And that's how we get to the 40.57 acres, correct?

A. Yes. 1

Q. Is it your understanding that this proposed coalbed methane unit is not within any area where we already have coalbed methane field rules?

A. It is not.

Q. It's not?

A. It's not.

Q. So it's eligible to be pooled...created and pooled under the statewide rules?

A. Yes.

Q. How many wells are proposed?

A. One.

Q. And the plat shows that that one well would be in the very center of the circle?

A. Yes, sir.

Q. Have you provided a cost estimate for that well?

A. Yes, we have. \$247,482.01 to a depth of 1397. Our permit number is 9450.

Q. And what interests have you acquired in this proposed unit and what are you seeking to pool?

A. We've acquired 98.6936% of the coal, oil and gas owner's claim to coalbed methane. We're seeking to pool 1.3064% of the coal, oil and gas owner's claim to

coalbed methane.

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Q. It looks like there's an escrow requirement?

A. In Tract 3.

Q. Okay, and it's because of a conflict between the oil, gas and coal?

A. Yes.

Q. Okay. And is that the only escrow requirement?

A. Yes.

Q. Is it your opinion that...is this intended to be a frac well?

A. Yes, sir.

Q. Okay. IS it your opinion that drilling a frac well in the center of this statewide spacing unit is a reasonable way to develop the coalbed methane from the unit?

A. Yes, it is.

Q. And is it your further opinion that combining a pooling order with the acquisition efforts in leasing and otherwise in which the applicant has been successful will protect the correlative rights of all owners and claimants to the CBM?

A. Yes, it will.

MARK SWARTZ: That's all I have.

BENNY WAMPLER: 1 Questions from members of the Board? BILL HARRIS: Mr, Chairman.

BENNY WAMPLER: Mr. Harris.

BILL HARRIS: Let me just ask a question about some of the adjacent wells.

LESLIE K. ARRINGTON: Yes.

BILL HARRIS: Now, those are on statewide spacing also, is that---?

LESLIE K. ARRINGTON: I believe they are. I just need to go look at the plat.

BILL HARRIS: There are several shown in your plat.

LESLIE K. ARRINGTON: Okay, I just need to look back. You can generally tell the statewide spacing wells. Our company will have them listed over in this area as TA wells. If its an Oakwood unit of course it will have the Oakwood designation to it.

BILL HARRIS: So, those are for the surrounding---?

LESLIE K. ARRINGTON: All of those are state...yes.

BENNY WAMPLER: Other questions?

(No audible response.)

LESLIE K. ARRINGTON: Do you have anything

further?

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MARK SWARTZ: No, I do not.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: And second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes, but Katie Dye.)

BENNY WAMPLER: Opposed, say no.

KATIE DYE: Abstain.

BENNY WAMPLER: You have approval. One abstention, Ms. Dye. That's it folks until one o'clock.

(Lunch break.)

BENNY WAMPLER: I understand you want to address the Board.

PHIL HORN: Yes. Phil Horn, land manager of Range Resources of Pine Mountain, Inc. We had number thirty-six on the docket for force pooling and we've located many additional heirs and we needed some more time to go ahead and try to get this resolved and we'd like to continue until

July.

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BENNY WAMPLER: Okay. That's docket number VGOB-08-0617-2258 is continued until July. All right, thank you.

PHIL HORN: Thank you.

BENNY WAMPLER: Are you ready?

JIM KAISER: I don't see Don. I would be if he was here.

BENNY WAMPLER: I had told CNX that we were going to skip to twenty-two, but I understand those folks didn't want to...they were coming back next month.

JIM KAISER: How far did you get?

MARY QUILLEN: So, twenty-two was continued?

BENNY WAMPLER: No, they want to hear it. They just didn't want to hear this part. They wanted the force pooling, which is next month.

MARY QUILLEN: Oh.

JIM KAISER: So, it's still them?

BENNY WAMPLER: There's Don.

SHARON PIGEON: Tada.

JIM KAISER: So, you're saying we can jump ahead since they're not here.

SHARON PIGEON: They're not here.

JIM KAISER: Yeah.

MARY QUILLEN: Did he say that twenty-two was

continued?

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SHARON PIGEON: No. He continued---

JIM KAISER: I believe it would be nineteen if we're going to skip ahead.

SHARON PIGEON: He just continued the one.

MARY QUILLEN: Oh, just the thirty-six?

BENNY WAMPLER: I might let them finish up when you finish one. But you can go now. We don't waste time. We're going to nineteen on the Board's agenda right now. I'm calling the petition from Equitable Production Company for establishment of 320-acre provisional horizontal drilling unit. This is docket number VGOB-08-0617-2243. We'd ask the parties that wish to address the Board in this matter to come forward at this time. Jim, you had a...did you already talk to him about moving thirty-four and thirty-five up?

RITA BARRETT: I did, yes.

BENNY WAMPLER: We'll do those two next and then maybe if they're back we'll switch back to them.

JIM KAISER: Okay, Mr. Chairman. It will Jim Kaiser, Rita Barrett and Luke Shankin on behalf of Equitable Production Company. And the nineteen, twenty, twenty-one and twenty-two are all petitions to establish a 320-acre provisional drilling unit for horizontal wells. What we'd

like to do is probably take the first one and go through it and then Mr. Shankin's exhibits that he has passed out for his testimony are going to be generic for all four of them except for he has included individual plats or surveys of each well at the end of the exhibits. And so what we'll do is probably...I guess, we'll take the most efficient way to do that since we've been talking about improving in efficiency I guess would be to take Ms. Barrett's testimony regarding the land issues on the first one and then we go through Mr. Shankin's testimony and then on the next three we can just take her land testimony and then any questions that the Board members may have from his presentation on the first one if that makes any sense.

BENNY WAMPLER: That make sense. The record will show there are no others. You may proceed.

JIM KAISER: They both need to be sworn in.

(Rita Barrett and Luke Shankin are duly sworn.)

JIM KAISER: Okay. We'll stat with Ms. Barrett.

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Ms. Barrett, the first one we're looking at is number nineteen which is---

A. 6926.

Q. 59...6926?

A. Yes.

Q. Okay, 6926. Now, in this unit, does Equitable have either a 100% of the unit under voluntary lease...we're just establishing the unit, it doesn't matter. Have we notified everybody that owns an interest in the coal, oil and gas within the 320-acre provisional unit that we're seeking?

A. Yes.

MARK SWARTZ: No further questions of this witness, Mr. Chairman.

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Call your next witness.

LUKE SHANKIN

DIRECT EXAMINATION

QUESTIONS BY JIM KAISER:

Q. Mr. Shankin, you need to state your name for the Board, who you're employed by and in what capacity?

A. Luke Shankin, Equitable Production Company as a geologist.

Q. And you've testified before the Board on previous occasions as to, I think, both the establishment of these horizontal units and I think on some increased density applications?

A. Yes, sir.

Q. Could you go through Equitable's proposal for the establishment of these units including, you know, why we want to provisionally establish them as 320-acre units and in addition maybe talk a little bit about what Equitable has done in this area up to this point?

A. Sure. If you'll look at Exhibit I labeled as AA, this just goes through the proposal for the unit. It's a 320-acre unit with the dimensions as you can see, 3733 x 3733. There would be a 300 foot interior window with a 600 foot standoff from adjacent grid horizontal well bores. We should be able to drill the surface location outside the unit as long as we are within the producing formation by the time we're within the 300 foot setback window. There will be a minimum distance of 600 feet between the horizontal wellbore and any vertical well producing from that same horizon. This unit will allow for multiple wells or laterals within the same unit to

effectively drain the formation. And in some cases two or more wells may actually be used from the same pad due to train restrictions. The next Exhibit BB, it just shows the unit, the dimensions and the lateral length across. CC it just shows some of the benefits of horizontal drilling. (Inaudible) coal mining and less surface disturbance. We can more effectively extract the resource. Laterals can reach into areas otherwise inaccessible by vertical bore holes. Higher depletion rates with shorter lives to the wells get the resource out faster. This will also encourage future development of the resource in Virginia. DD-1, it just goes DD-1 to DD-4 being for the four units that we have on here for today, it just shows the map shot of the unit 46926 with the existing wells that are around here, all of which are Equitable wells. And it just has the unit plat next to it on the side there. I guess on a side note, we've testified in the past as to the communication on one of the horizontals that we had. We have done the changes that we discussed in the testimony and refraced it and an additional horizontal that we drilled with no communications in the offsets. The well hasn't been turned and mined yet but initial flow backs show it's probably going to be a pretty decent well. So---

BILL HARRIS: And we were...what was just now was

this about the---?

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A. This was just letting you guys know from the past stuff where we talked about communication with the wells, as we've drilled an additional horizontal since then we did the cement job up through the Berea that we talked about---.

BILL HARRIS: So, this is the packing that---?

JIM KAISER: The double packer system.

A. The double packer with cement up through the Berea---and.

BILL HARRIS: Okay, so that is...yes.

A. ---and it works fine. We didn't see any communication with any of the offset wells.

Q. Okay. So we are asking that the order allow us to drill more than one well if necessary in the unit, correct?

A. Yeah, if necessary.

Q. And then it looks to me like from Exhibit A to the application there appears to be one existing conventional well maybe within the 320 and that is a well that is owned by Equitable, correct?

A. Yes, sir.

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

BENNY WAMPLER: Questions from members of the Board?

BRUCE PRATHER: I have a question.

BENNY WAMPLER: Mr. Prather.

BRUCE PRATHER: Are these Roaring Fork wells? I think they are.

RITA BARRETT: I think they might be, Mr. Prather. I'm not sure.

BRUCE PRATHER: I'll have to recuse myself if they are.

LUKE SHANKIN: This one I believe is down in the High Knob area, but I---

RITA BARRETT: I think so. I think---

LUKE SHANKIN: I think there's a couple others that---

BRUCE PRATHER: Okay. Well, then it's...it's on a Forest acreage?

RITA BARRETT: No, this is actually...the intended location for this well in on Vernon J. Peters & Associates, LLC. I'm seeing some T2 lease numbers which indicates that those might be some old A & R lease numbers. So, you may have to recuse yourself.

BRUCE PRATHER: Well, I'll just recuse myself because some of these well numbers look kind of familiar.

BENNY WAMPLER: Questions...any other questions of this witness?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

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

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes, but Bruce Prather.)

BENNY WAMPLER: Opposed, say no.

(No audible response.)

BENNY WAMPLER: You have approval.

BRUCE PRATHER: Abstain.

BENNY WAMPLER: One abstention, Mr. Prather. Keep your other maps please, that D-2, 3, and 4.

JIM KAISER: Do you want us to go ahead and finish these and then before we go back?

BENNY WAMPLER: Yeah, I'm going to go ahead and

finish these---.

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JIM KAISER: Okay.

BENNY WAMPLER: ---and then also the thirty-four and thirty-five.

JIM KAISER: Okay.

BENNY WAMPLER: Next is a petition from Equitable Production Company for establishment of a 320-acre provisional horizontal drilling unit served by well VH-536020, docket number VGOB-08-0617-2244. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

JIM KAISER: Mr. Chairman, again Jim Kaiser, Rita Barrett and Luke Shankin.

BENNY WAMPLER: Let the record show no others. You may proceed.

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Ms. Barrett, again would it be your testimony that everybody is entitled to statutory notice in this 320-acre has been noticed to this hearing?

A. That's correct.

JIM KAISER: Nothing further of this witness, Mr.

Chairman.

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BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Call your next witness.

JIM KAISER: Mr. Shakin...we'd like to for purposes of efficiency, we'd like to incorporate Mr. Shankin's testimony taken in the previous item docket number 2243.

LUKE SHANKIN

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. And then certainly we'd again we're seeking, Mr. Shankin, the ability to drill more than one well in the unit if necessary?

A. Yes.

Q. And again any of the wells shown in Exhibit A, the conventional wells, shown in Exhibit A such as 536021 and 505253, which doesn't look like it's drilled---

A. No, that's actually just a location.

Q. ---they would all be owned by Equitable Production Company?

A. Yes, sir.

Q. And then obviously---

BENNY WAMPLER: That testimony will be incorporated by way of prior testimony.

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. And then, obviously, and I can't remember because even though we just did them Friday, but I assume in looking at this plat and this is for Ms. Barrett, I assume in looking at this plat we do see quite a few unleased tracts. I assume that we'll be coming in behind this application next month and force pooling the unleased interests?

A. Yes, sir, on the July docket for pooling and we're still continuing to attempt to lease everyone in the unit.

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

BENNY WAMPLER: Questions from members of the Board?

MARY QUILLEN: Mr. Chairman, I have just one question.

BENNY WAMPLER: Ms. Quillen.

MARY QUILLEN: Now, is the map that we have DD-2?

BENNY WAMPLER: That's the exhibit for this well,
correct?

MARY QUILLEN: Is this the exhibit for this well?

BENNY WAMPLER: Yes. This application.

MARY QUILLEN: Okay, is that 536021?

JIM KAISER: No, it should be 536020, shouldn't
it?

LUKE SHANKIN: Yeah. The 2...the 6021 is an
already drilled Equitable well and then the 20 is in the
northeast corner of that grid.

MARY QUILLEN: Okay. Okay.

JIM KAISER: Have you got this big one in your
packet? You should. Not in your handout but it should be
in the application that we filed.

BILL HARRIS: Can I ask a question also?

BENNY WAMPLER: Mr. Harris.

BILL HARRIS: One of the things, well this wasn't
suggested. But, I guess, maybe some kind of designation to
show horizontal wells, I guess, but I don't know what we
might do there. But let me ask you about the one in the
lower right corner.

LUKE SHANKIN: Yeah, that's actually just a plan

location that was just a filler there.

BENNY WAMPLER: It's not a well.

LUKE SHANKIN: Yeah, that's not a well right now.
That's just a filler.

BILL HARRIS: Okay, because it doesn't have the
little starburst.

JIM KAISER: It will have the wagon wheel if it's
drilled.

BILL HARRIS: Is that what it's called, a wagon
wheel?

JIM KAISER: That's what I call it. I don't know
what it's called.

BILL HARRIS: Okay.

BENNY WAMPLER: Okay, a change in the (inaudible)
here.

BILL HARRIS: It would be differently represented.
Thank you.

BENNY WAMPLER: Other questions?

(No audible response.)

BENNY WAMPLER: Did we get you, Ms. Quillen?

MARY QUILLEN: Yes. Yes.

BENNY WAMPLER: I just want to reconfirm DD-2 does
go with this application and that's your exhibit, correct?

JIM KAISER: Yes.

BENNY WAMPLER: Just getting that into record. Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes.)

BENNY WAMPLER: Opposed, say no.

BRUCE PRATHER: Abstain.

BENNY WAMPLER: One abstention, Mr. Prather. You have approval. Next is a petition from Equitable Production Company for establishment of a 320-acre provisional horizontal unit served by wells VH-539904 and VH-539905. This is docket number VGOB-08-0617-2245. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

JIM KAISER: Again, Mr. Chairman, Jim Kaiser, Rita Barrett and Luke Shankin.

BENNY WAMPLER: The record will show no others. You may proceed.

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY JIM KAISER: 1

Q. Now, Ms. Barrett, again, when you take a look at our Exhibit B to the application that we filed would it be your testimony that everyone that we could locate was an unknown has been notified of this application to form this provisional unit?

A. That's correct.

Q. And what efforts did you make on these unknown parties to attempt to locate and identify them?

A. We advertised it.

Q. And did you also as you do in the case of force pooling applications make a reasonable and diligent efforts through secondary sources such as telephone books, family and friends, internet?

A. Yes.

JIM KAISER: That's all I have of this witness, Mr. Chairman.

BENNY WAMPLER: Questions from members of the Board?

BILL HARRIS: Mr. Chairman, I'm---.

BENNY WAMPLER: Mr. Harris.

BILL HARRIS: ---a little confused about the exhibits. After the well plan it says exhibit and I'm not sure what this is showing.

JIM KAISER: It's everybody we noticed, everyone who has an interest in the unit and we can identify that's entitled to statutory notice.

BENNY WAMPLER: See, they're not trying to pool it or anything right now.

BILL HARRIS: Fine, thank you. So we don't need to be these---?

BENNY WAMPLER: Not yet.

BILL HARRIS: Sorry. It's just the beginning to be a long day. Okay. Thank you. Sorry.

LUKE SHANKIN

DIRECT EXAMINATION RESUMES

QUESTIONS BY MR. KAISER:

Q. So, now, Mr. Shankin, again, in this case the application and the order that may be forthcoming would allow us to drill more than one well if necessary, is that correct?

A. Yes.

Q. And---

BENNY WAMPLER: Do you want his previous testimony in record?

JIM KAISER: Yes, sir, if we could, we'd like to

incorporate his previous testimony as to the reasons Equitable wishes to perform these provisional units.

BENNY WAMPLER: That will be incorporated.

Q. And I can't find my map of this one...but are all of the, if there are any, existing wells in the unit they all are owned and operated by Equitable, is that correct?

A. Yes.

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

BENNY WAMPLER: That's Exhibit DD-3?

JIM KAISER: DD-3.

RITA BARRETT: Yes.

LUKE SHANKIN: Yes, sir.

BENNY WAMPLER: Questions from members of the Board?

BILL HARRIS: Mr. Chairman, we're asking for two wells here, is that what I'm reading?

LUKE SHANKIN: Well, there might be multiple wells in this unit, but just for the unit is what we're trying to get.

JIM KAISER: Yeah, there has been some question as to whether or not when we're establishing these units that we should even identify any well numbers and I think for

internal purposes its easier to track them if we do. I mean, I don't think that probably in this particularly case... obviously, in a case for force pooling, we need to identify a well number. But I think in the situation here where we're just seeking to establish provisional unit we could probably do it without doing that but...and some of my other clients do do it that way but for internal purposes Equitable has decided to go ahead and assign some well numbers to these units.

RITA BARRETT: I would say that on our August applications for these units we will not have well numbers on those.

BENNY WAMPLER: Other questions?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

JIM KAISER: We'd ask that the application be approved as submitted, Mr. Chairman.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

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

(All members signify, by saying yes, but Bruce Prather.)

BENNY WAMPLER: Opposed, say no.

BRUCE PRATHER: Abstain.

BENNY WAMPLER: You have approval. One abstention, Mr. Prather. Next is a petition from Equitable Production Company for establishment of a 320-acre provisional horizontal drilling unit served by VH-536025, docket number VGOB-08-0617-2246. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

JIM KAISER: Again, Mr. Chairman, Jim Kaiser, Rita Barrett and Luke Shankin.

BENNY WAMPLER: Let the record show there are no others. You may proceed.

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Ms. Barrett, would it be your testimony that our exhibit to the application, other than the survey, which is Exhibit A that is attached to the application would adequately show that we have provided a notice to all parties entitled to statutory notice within this 320-acre

unit?

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A. Yes.

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

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Call your next witness.

JIM KAISER: We would, again, like to incorporate Mr. Shankin's testimony taken earlier in item 2243 and then I would again for clarification purposes ask that...or clarify that the order...any order would provide that we would be able to drill multiple wells within the 320-acre unit if necessary to efficiently extract the resource and, in addition, in this particular 320 unit there are not any existing conventional wells, is that true?

LUKE SHANKIN: Yes.

BENNY WAMPLER: That will be incorporated.

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

BENNY WAMPLER: This is DD-4---

JIM KAISER: DD-4.

BENNY WAMPLER: ---exhibit for this application?

LUKE SHANKIN: Yes.

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

JIM KAISER: We'd ask that the application be approved as submitted.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Any further discussion?

(No audible response.)

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

(All members signify by saying yes, but Bruce Prather.)

BENNY WAMPLER: Opposed, say no.

BRUCE PRATHER: Abstain.

BENNY WAMPLER: You have approval with one abstention, Mr. Prather. Do you want to go to thirty-four?

JIM KAISER: Sure.

BENNY WAMPLER: Thirty-four is a petition from Equitable Production Company for modification of a Nora Coalbed Gas Field Rules to allow for drilling of an additional well in units BS-4 and BT-42...I'm sorry, it's

BS-41 and BT-42. This is docket number VGOB-89-0126-0009-29. We'd ask the parties that wish to address the Board in these matters to come forward at this time.

JIM KAISER: Again, Mr. Chairman, Jim Kaiser, Rita Barrett and Luke Shankin for Equitable.

BENNY WAMPLER: Let the record show there are no others. You may proceed. We're doing thirty-four and thirty-five right now, folks. And, then, I'm really going to confuse you and go all the way back to sixteen.

(Rita Barrett passes out exhibits.)

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Okay. Ms. Barrett, we'll start with you. In the case of BS-41 and BT-42, which are the two units involved in this request for increased density wells, would it be accurate to say that they're 100% owned by Standard Banner and under lease...all of it's under lease to Equitable?

A. That's correct.

Q. And the additional well...the increased density well in the case of BS-41 will be inside the interior window?

A. That's correct.

Q. In the case of BT-42, it will be outside the interior window, but when we do our little correlative rights test everything is still Standard Banner. So, there's no correlative rights issues, is that correct?

A. That's correct.

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

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Call your next witness.

LUKE SHANKIN

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Now, Mr. Shankin, along with your handout, could you go through your standard testimony on why these...why we want to do these increase density wells and sort of what we've seen to date with them?

A. Okay, Exhibit AA, just shows the two grids that we're applying for here darkened in grey with the other grids around it. On Exhibit BB, the map on the next page, it just shows kind of a further back grid. The three in

green are the three we are asking for today. These two are the ones in Middle Fork and the next one is on the next docket there. It says in the legend May 2008, that should actually say June 2008 at the bottom. Exhibit CC, is just some basic information about our increased density drilling. We've drilled sixty-three so far with a total CUM production of 1,204 mmcf and a current rate increase of 3.7 mmcf per day. And then you can see from Exhibit DD, the increase in production we've gotten from our end field wells in these grids. The green line would be the original wells that were in these sixty-three grids that we've drilled and the red would be the total production with the infill wells added in to the original wells. So, we're still pretty happy with this program.

Q. So, in your opinion, it continues to be a good use of the company's capital and not only is it advantageous in that sense, but the royalty owners are happy because they get more royalty quicker?

A. Yes.

Q. And, of course, the localities are benefitting from the additional severance tax?

A. Yes.

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

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

JIM KAISER: We'd ask that the application be approved as submitted, Mr. Chairman.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes.)

BENNY WAMPLER: Opposed, say no. You have approval. Next is a petition from Equitable Production Company for modification of a Nora Coalbed Gas Field Rules to allow for drilling of an additional unit in DT-57. This is docket number VGOB-89-0126-0009-30. We'd ask the parties that wish to address the Board in this matter to come forward.

JIM KAISER: Mr. Chairman, again, Jim Kaiser, Rita Barrett and Luke Shankin.

BENNY WAMPLER: David, do you have the original of

that in file?

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DAVID ASBURY: She gave me the original right then, yes, sir.

RITA BARRETT: I just gave him a copy.

BENNY WAMPLER: Okay. I just want to make sure because that copy wouldn't suffice.

RITA BARRETT: I know that's poor quality. I apologize for that.

BENNY WAMPLER: That's okay. Go ahead.

RITA BARRETT: The toner was low yesterday.

BENNY WAMPLER: Okay.

RITA BARRETT

DIRECT EXAMINATION

QUESTIONS BY JIM KAISER:

Q. Ms. Barrett, in the case of BT-57, would it be accurate to state that 100% of the acreage in that unit is owned by Lambert Land, LLC and under lease to Equitable Production Company?

A. That's correct.

Q. And would it also be accurate to say that this increased density well should it be approved would be drilled outside the window, but again as referenced on the plats that you provided Mr. Asbury, all the acreage at risk

so to speak would also be owned by Lambert Land, so there would not be any correlative rights issues?

A. That's correct.

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

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Call your next witness.

LUKE SHANKIN

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Mr. Shankin, if you would go back through your testimony...or, I guess, we can probably incorporate most of it. Again, it would be your opinion that to date this has been a successful use of Equitable's capital and has also provided the additional benefits that we talked about earlier to both the royalty owners and the localities?

A. Yes.

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

BENNY WAMPLER: Questions from members of the Board?

(No audible respønse.)

BENNY WAMPLER: One additional well, correct?

JIM KAISER: One additional well.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Further discussion?

(No audible response.)

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

(All members signify by saying yes.)

BENNY WAMPLER: Opposed, say no.

(No audible response.)

BENNY WAMPLER: You have approval. Thank you.

RITA BARRETT: Thank you.

JIM KAISER: Thanks.

BENNY WAMPLER: CNX. I'm going to number sixteen,
folks. Number sixteen is a petition from CNX Gas Company,
LLC for modification of the Beatrice mine sealed gob order
to allow production from CBM well P-25 and this is docket
number VGOB-96-0618-0545. We'd ask the parties that wish to
address the Board in this matter to come forward at this
time.

MARK SWARTZ: Mark Swartz and Les Arrington.

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

LESLIE K. ARRINGTON

DIRECT EXAMINATION

QUESTIONS BY MARK SWARTZ:

Q. Les, could you state your name for us, please?

A. Leslie K. Arrington.

Q. Who do you work for?

A. CNX Gas Company, LLC.

MARK SWARTZ: I would like to incorporate Mr. Arrington's testimony, if I could, with regard to the applicant and operator and his employment.

BENNY WAMPLER: That will be incorporated. Both witnesses have previously been sworn.

Q. This...just to get everybody focused, this is a modification, an application to modify the Beatrice mine sealed gob order and I've given you a map of a portion of the Beatrice mine. And the P-25 well is shown actually kind of in the middle of the page of what you've got just to get you located. It's not in the middle, but it's close.

And you're...the Beatrice mine is enormous, but you're seeing just a bit of it. To the north of that location of P-25, Les would it be true that the drawings are pillars and entries in the mine?

A. Yes, it is.

Q. Okay. And there's one entry below or south of the P-25 well location?

A. Yes, it is.

Q. And what is the white areas, the large white areas where, for example, where the P2-5 well is located and to the south of that, what does that represent?

A. That's the unmined portion of where they stopped mining.

Q. Okay, so that would be unmined Pocahontas 3 coal in the mine?

A. Yes, it is.

Q. And the hashmark lines which are further to the north and are hashmarks running through what appears to be white areas, what do those represent?

A. That represents an area that has actually been completely mined out by the operations.

Q. Okay. And the type of mining used in the hashmark area?

A. Longwall mining.

Q. Okay. And then if we look at the...there are some potential areas that could have been developed for long wall right above P-25 between entries because that is just white without hashmarks, does that indicate that that was not mined?

A. That's correct, it was not.

Q. Okay, tell the Board the development on top of this sealed gob area just to sort of get them oriented.

A. Okay, well in the sealed mine area in that vicinity we have actually started a program to where we found that we can develop the upper seam gas and we've been going in and actually drilling and producing the upper seam frac gas within this area. In the area of P-25, as...since that area wasn't mined we drilled on down and went on down deeper to get the remaining coal in there.

Q. So---.

BENNY WAMPLER: Excuse me, when you're saying upper seam gas you're talking about above the Pocahontas 3?

A. Yes, sir.

Q. So, for example, over areas where we've got, and this is just theoretically, I'm not going to..I'm not asking you to say this has actually occurred in this specific area, I'm using this as an example----?

A. Right.

Q. ---but as an example have you drilled additional wells to produce from seams above the Beatrice mine over areas that have been gobbed out?

A. We've drilled numerous wells over top of the Beatrice gob area.

Q. Okay. And those wells where the gob area was mined do not enter the Beatrice sealed gob unit?

A. No, it does not.

Q. Okay, in this particular instance with regard to P-25, does that well stop short of the coal, the solid block of coal in the mine or does it actually go into that?

A. It actually went through the coal block.

Q. In the mine?

A. Yes, it did.

Q. Okay. And did you frac that well?

A. Yes, we did.

Q. Can you tell the Board, based on what happened with the frac whether or not...well, what your opinion would be as to whether or not the P-25 well is in communication with the gob?

A. It is not in communication with the gob.

Q. What about the frac job would tell you that?

A. We would, during the frac procedure we would have lost our frac into the mine.

Q. We would have los...essentially you would have lost your pressure?

A. Right.

Q. And I take it they keep records---?

A. They do.

Q. ---and know for a fact that that did not happen?

A. It did not.

Q. And why are we here today?

A. Due to the fact that when the guys done their frac procedure in the field they did frac the P-25 P-3 seam and should not have. They did. That's the reason we're here today so we can just go ahead since it is fraced and be able to produce that gas as a frac well.

BENNY WAMPLER: When you did not lose your pressure that told you that you were in a solid block of coal?

A. Yes, sir.

BRUCE PRATHER: I assume you have some pressure on this well, too?

A. I'm sorry?

BRUCE PRATHER: You would have some build up

pressure from the gas that's in that block at the top?

LESLIE K. ARRINGTON: We may have I...that part I just can't answer it yet.

BRUCE PRATHER: You should have.

MARY QUILLEN: Mr. Chairman, I just have---.

BENNY WAMPLER: Ms. Quillen.

MARY QUILLEN: ---one question. You're saying that this...you had not intended to frac this well?

LESLIE K. ARRINGTON: No, we didn't intend to frac the 3 seam.

MARY QUILLEN: And it was...if this was a side event that---?

LESLIE K. ARRINGTON: Yes, ma'am.

MARY QUILLEN: Okay.

MARK SWARTZ: She said well...you did intend to frac the well---?

LESLIE K. ARRINGTON: The well, but not the 3 seam.

MARY QUILLEN: But not...not...yeah.

LESLIE K. ARRINGTON: I'm sorry.

BRUCE PRATHER: Did you actually drill this well below the Poca 3 seam?

LESLIE K. ARRINGTON: We did it. I'm sure they had some rat holes down through the 3 seams, yes.

BRUCE PRATHER: Did you treat a zone down below the Poca 3?

LESLIE K. ARRINGTON: You know, I didn't... actually, I do have that with me.

BENNY WAMPLER: Mr. Swartz, I didn't hear you cover notice, you might want to.

MARK SWARTZ: I'll go deal with that. I'm sorry. Yes.

LESLIE K. ARRINGTON: Yes, sir, we did. We treated the Pocahontas Number 1 seam.

BRUCE PRATHER: Okay.

LESLIE K. ARRINGTON

DIRECT EXAMINATION RESUMES

QUESTIONS BY MARK SWARTZ:

Q. Les, did you provide notice of this hearing today?

A. Yes, sir, we did.

Q. And in that regard, what did you do?

A. We mailed by certified mail return receipt...on May 16, 2008 we mailed by certified mail and then it was published in the Bluefield Daily Telegraph on---

Q. While we're looking for date of publication, if you go into the Q row just below here and the boundary of the Beatrice sealed gob I assume is this solid line on an Oakwood 80 boundary just above the Q-25 unit, correct?

A. Yes.

Q. Are these coalbed methane wells in Q-25?

A. Yes, they are. Yes they are.

Q. And are they completed and fraced into the P3?

A. They should have been, yes.

Q. So, essentially the only difference between the Q row and the P row here is this one entry below the well?

A. Yes, it is.

Q. Other than that it is solid coal?

A. Yes.

SHARON PIGEON: Mark, on this handout you gave us earlier it says your publication date was 5/28.

A. We got the original right there. Yeah, okay, it was May 28.

Q. And did you file your certificates with regard to mailing?

A. We did. 1

Q. And your proof of publication with Mr. Asbury?

A. We have.

MARK SWARTZ: That's it.

BENNY WAMPLER: Other questions from members of the Board?

MARY QUILLEN: Mr. Chairman.

BENNY WAMPLER: Ms. Quillen.

MARY QUILLEN: I'd like to ask Mr. Arrington one more question about this area, this block, this solid block that's in where the P-25 is, and you said this was left. Is there an expectation that that will be mined or with new technology or whatever...I mean would this be a possibility that at some point?

LESLIE K. ARRINGTON: Due to the fact that I'm not in coal operations anymore I'd rather not speculate on that myself.

MARY QUILLEN: Okay. But it is a possibility?

LESLIE K. ARRINGTON: It could be yeah, but, again, I'm not in coal operations.

MARY QUILLEN: Okay.

BRUCK PRATHER: Some of these old mines fill up with water so it may or may not be.

BENNY WAMPLER: Other questions?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

MARK SWARTZ: Mr. Swartz, do you have anything further?

MARK SWARTZ: Actually, yes.

LESLIE K. ARRINGTON

DIRECT EXAMINATION RESUMES

QUESTIONS BY MR. SWARTZ:

Q. When you look at mine plans that have stopped short of...obviously this mine plan intended further mining---

A. It did.

Q. I mean you can tell just by looking at the map.

A. It did.

Q. And you can see off to the east you've got some entries which weren't even completed and you've got evidence here that mining stopped for some reason. And has it been your experience when you with the mining company that mining usually there was a reason?

A. That's correct. There was a reason---

Q. Okay. There's all kinds of stuff that can

happen underground, but you just don't know the reason---?

A. No.

Q. ---as we sit here today? Other than it looks like they had plans and they quit for some reason that you are not aware of?

A. Correct.

MARK SWARTZ: That's all I have.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes, but Katie Dye.)

BENNY WAMPLER: Opposed, say no.

(No audible response.)

BENNY WAMPLER: You have approval.

KATIE DYE: Abstain.

BENNY WAMPLER: One abstention, Ms. Dye. Next is a petition from CNX Gas Company, LLC for a modification for the Oakwood I Field Rules to allow for drilling for more than one coalbed gas well within Exhibit A-1, map number

one. This is docket number VGOB-93-0216-0325-15. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

MARK SWARTZ: Mark Swartz and Les Arrington.

BENNY WAMPLER: The record will show no others.

You may proceed.

AUDIENCE MEMBER: I just need to ask a question.

BENNY WAMPLER: I need you to come down. We're recording. So, they can't---

AUDIENCE MEMBER: okay.

BENNY WAMPLER: It would probably be best to sit over here by this mic. I just wanted to come closer so that I can hear because I was sent this letter, okay?

BENNY WAMPLER: Sure, that's fine. If you choose----

AUDIENCE MEMBER: And it's my first meeting.

BENNY WAMPLER: That's fine. If you choose to have anything to say, we just need you to identify yourself for the record otherwise you may sit there. You may proceed, Mr. Swartz.

LESLIE K. ARRINGTON

DIRECT EXAMINATION

QUESTIONS BY MARK SWARTZ: 1

Q. Les, I just need you to state your name again.

A. Leslie K. Arrington.

Q. Who do you work for?

A. CNX Gas Company, LLC.

Q. And you brought some...a map or some maps that would be helpful to the Board in understanding what we're doing here?

A. Yes. I just need to make sure...it is.

Q. Why don't you turn that around so the Board can see it and then we can turn it back so...actually, before you show it to the Board why don't you tell our new friend here what areas you are talking about.

A. This application is in regards to three different areas. It's this green area here, this blue area and this purple area. These three, I'm sorry. I'm going to have to get Anita to start doing that. She is the one that puts it together.

AUDIENCE MEMBER: Green, purple and blue.

ANITA DUTY

DIRECT EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Anita, since you're under oath, I want you to confirm since you did the map, what are the areas, okay, that we are talking about?

A. The green area.

Q. The green area to the east?

A. Yes. The pink area?

Q. To the south.

A. And the baby blue area.

Q. Sort of in the middle?

A. Yes.

LESLIE K. ARRINGTON

DIRECT EXAMINATION RESUMES

QUESTIONS BY MR. SWARTZ:

Q. And Les, when you look at the application we have given in the caption of the application---

A. The units.

Q. ---the individual units in each of those three areas?

A. We did.

Q. Okay. And when...you have quite a list of respondents---

A. We did. 1

Q. ---in your notice. For the people on the list of respondents that you had addresses for, what did you do?

A. We mailed that by certified mail, return receipt, and published also, and mailed it on May 16, 2008 and published in the Bluefield Daily Telegraph May the 29th.

Q. And have you filed your certificates with regard to mailing, green cards and so forth as well as the proof of...or the certificate of publication that you got from the newspaper with Mr. Asbury's office?

A. Yes, we have.

Q. Do you want to add any respondents as we sit here today?

A. No.

Q. Do you want to dismiss any?

A. No.

Q. And with regard to this map, are there other areas that this Board has...adjacent areas to the three that we're talking about today that this Board has previously approved infill drilling?

A. Yes. All of the areas that's colored on here, other than the three that we're depicted, have previously been approved by the Board for infill drilling.

Q. And just to remind the Board and to alert people who may not have been here before, when you're talking about infill drilling, what are you talking about?

A. Presently, the Gas and Oil Oakwood Field Rules say we can only drill one well per eighty acre unit in the areas that's not previously approved. What we are requesting is to be able to drill an additional well within the drilling window in the eighty acre Oakwood Field.

Q. And the orders historically for the areas that the Board has previously approved for infill drilling, is there a distance that you need to maintain...in addition to staying within the window, but is there a distance that you need to maintain between the wells?

A. A minimum of 600 feet.

Q. Okay. And that would be your request, again, with regard to these---

A. Yes, it is.

Q. ---three areas?

A. Yes.

Q. And, again, although the Board has heard this testimony many times, just to sort of refresh everybody and get people up to speed, why...you know, is it about infill drilling that is beneficial? What's the...what's the theory behind it that...why are we here to do this?

A. Well, first of all when we drill the infill...the second well in there, we have been seeing an increase in production in the original well. Now, it makes economic sense to drill the second well for the royalty owners, the severance tax issues and---

Q. The production of the second well compared to the production of the first well, how does that compare when you do infill drilling?

A. In some cases, it is greater than.

Q. It starts out quicker?

A. It starts out quicker, yes.

Q. Have you also, as required, given a metes and bounds description using the state plain coordinates within your application?

A. Yes, we did.

Q. Okay. So, we've got the maps that we shared with the Board which tract to some extent the Oakwood Field and then we've got the units scheduled in the caption and we also have a state plain coordinates?

A. Yes, we do.

MARK SWARTZ: Okay. I think that's all I have.

BENNY WAMPLER: Is that map going to be a part of the official file?

LESLIE K. ARRINGTON: It will be, yes.

BENNY WAMPLER: What exhibit number are we going to make that?

MARK SWARTZ: You tell us what you want and we'll go for it.

BENNY WAMPLER: AA? AA. And if you will, go through each of those for map Exhibit A-1, Map 1, what color is it?

LESLIE K. ARRINGTON: Okay. A-1 is the green area.

BENNY WAMPLER: A-1, Map 1---?

LESLIE K. ARRINGTON: Yes.

BENNY WAMPLER: ---is green?

LESLIE K. ARRINGTON: Yes.

MARK SWARTZ: And you've written that on the map?

LESLIE K. ARRINGTON: I have.

MARK SWARTZ: Okay.

BENNY WAMPLER: A-1, Map 2?

MARK SWARTZ: And what color is that, Les?

LESLIE K. ARRINGTON: Pink, I'll call it.

MARK SWARTZ: Okay. And you've labeled it as well?

LESLIE K. ARRINGTON: I'm labeling it, yes.

MARK SWARTZ: Okay.

LESLIE K. ARRINGTON: And then the blue area is

map---.

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BENNY WAMPLER: Is A-1, Map 3?

LESLIE K. ARRINGTON: Yes.

MARK SWARTZ: Why don't you turn the map around and show the Board.

LESLIE K. ARRINGTON: It will be Map 1, 2 and 3.

BENNY WAMPLER: Okay. In your application, and then I'll let the Board ask questions, your testimony here is you're changing your application somewhat to clarify that you mean one more well and not more than one well?

LESLIE K. ARRINGTON: One additional well.

BENNY WAMPLER: One additional well?

LESLIE K. ARRINGTON: Yes, sir.

BENNY WAMPLER: Okay. Because the application talks about wells plural in cases and then more than one well. So, I just wanted to clarify that. We're talking about one more well...one additional well that they're approving.

LESLIE K. ARRINGTON: Okay.

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Any further discussion?

(No audible response.)

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

(All members signify by saying yes, but Katie
Dye.)

BENNY WAMPLER: Opposed, say no.

(No audible response.)

BENNY WAMPLER: You have approval.

KATIE DYE: Abstain.

BENNY WAMPLER: One abstention, Mrs. Dye. Next is
a petition from CNX Gas Company, LLC for modification of
previous Board orders creating CNX for its own area number 5
to extract Oakwood unit CC-38. This is docket number VGOB-
04-0921-1341-04. I'm sorry, did you have any questions or
anything?

SARA GENTRY: No, no, I'm fine. Thank you. I
just could not hear.

BENNY WAMPLER: That's fine.

COURT REPORTER: What was your name, again?

SARA GENTRY: Sara Gentry.

BENNY WAMPLER: Okay. The record will show no
others. You may proceed, Mr. Swartz.

LESLIE K. ARRINGTON

DIRECT EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Les, you're still under oath.

A. Yes, sir.

Q. You need to state your name for us, again?

A. Leslie K. Arrington.

Q. And who do you work for?

A. CNX Gas Company, LLC.

Q. You always pause on those two hard questions. I was thinking has he forgotten his name, you know.

(Laughs.)

SHARON PIGEON: It happens.

Q. Okay. We were here probably back in '04, judging from the docket---

A. Yes.

Q. ---and we got the authority to drill horizontal wells in this area that we created.

A. We did.

Q. Okay. Tell the Board what has happened with regard to the wells in CC and what it is you're asking to do today.

A. Yes. We began the drilling process on this set of access well and production hole. We completed the access hole...I mean, the production hole and then we began drilling our access hole. To be quite honest with you, after we got past the production hole with the drilling of the horizontal, sometimes you have those miserable failures and this was one of them. So, what we're requesting to do is just to plug the access hole and convert the CC-38A well into a frac well.

BENNY WAMPLER: The 38A?

A. Yes, sir. I think it's...I'd have to look back and make, but I think it's...yeah.

Q. Essentially, you're looking to salvage half of your investment, in theory?

A. No...no, not even that.

Q. Not even that.

A. No.

Q. Okay, okay. Now, did you give the folks that would be affected by this application notice that we were going to have hearing today?

A. Yes, we did.

Q. Okay. And, again, you've got a list of people in your notice of hearing?

A. Yes.

Q. What did you do to advise them that we were going to be here?

A. We mailed by certified mail on May the 16th and published in the Bluefield Daily Telegraph on May the 30th, 2008.

Q. And have you filed your certificates with regard to mailing and proof of publication that we got from the newspaper with Mr. Asbury?

A. We have.

Q. Okay. Do you want to add anybody to that list today of respondents?

A. No. No.

Q. I assume that you don't want to subtract anything?

A. No.

Q. Okay. And are you proposing to...literally when you extract the CC-38 unit from the number 5 created unit, you would then be paying that on an Oakwood 80 basis, I take it?

A. Yes, sir, we would.

MARK SWARTZ: I think that's all I have.

BENNY WAMPLER: I have a couple of questions. You refer to CC-38B. So, you're going A and B? It's not just 38 or is there a 38A and B.

LESLIE K. ARRINGTON: There actually is a CC-38 well---.

BENNY WAMPLER: Okay, right.

LESLIE K. ARRINGTON: ---frac well. Then, we drilled CC-38B as the access well and CC-38A as the production hole. Then like I say, we just...we lost everything in that hole.

BENNY WAMPLER: So, you're going to...all you're going to have in here in the Oakwood 80 is CC-38A---?

LESLIE K. ARRINGTON: A---.

BENNY WAMPLER: ---as a frac well?

LESLIE K. ARRINGTON: And CC-38.

BENNY WAMPLER: And 38, okay.

LESLIE K. ARRINGTON: Okay.

BRUCE PRATHER: I have a question.

BENNY WAMPLER: Mr. Prather.

BRUCE PRATHER: Are you going to plug off the horizontal well by setting a permanent plug in there?

LESLIE K. ARRINGTON: It has already been plugged.

BRUCE PRATHER: Okay. Good.

BENNY WAMPLER: Did you have anyone participate in this well?

LESLIE K. ARRINGTON: No, sir.

BENNY WAMPLER: Okay. Questions from members of

the Board?

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DAVID ASBURY: Mr. Chairman.

BENNY WAMPLER: Mr. Rasnake.

DAVID ASBURY: As far as record keeping, the Board docket should be 1341-05 rather than 04. We have a 04 in our listing.

BENNY WAMPLER: All right.

DAVID ASBURY: So, this should be changed to 05.

BENNY WAMPLER: We'll make that correction. Other questions?

(No audible response.)

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes, but Katie Dye.)

BENNY WAMPLER: Opposed, say no.

(No audible response.)

BENNY WAMPLER: You have approval.

KATIE DYE: Abstain.

BENNY WAMPLER: 1 One abstention, Mrs. Dye. Okay. We're going to twenty-three, Equitable Production Company. It's a petition from Equitable Production Company for pooling of coalbed methane unit VC-539280. This is docket number VGOB-08-0617-2247. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

BENNY WAMPLER: The record will show no others. You may proceed.

JIM KAISER: Mr. Chairman, Jim Kaiser and Don Hall on behalf of Equitable Production Company. Mr. Hall has been previously sworn.

DON HALL

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. If you'd state your name for the record, who you're employed by and in what capacity?

A. My name is Don Hall. I'm employed by Equitable Production Company as District Landman.

Q. And you're familiar with the application that we filed seeking to pool any unleased interest in this unit dated May the 16th, 2008?

A. Yes.

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

A. Yes.

Q. Prior to the filing of the application were efforts made to contact each of the respondents and an attempt made to work out a voluntary lease agreement with each?

A. Yes.

Q. What is the interest under lease to Equitable within the gas estate in the unit?

A. We current have 71.698333% of the gas leased.

Q. And what's the percentage under lease in the coal estate?

A. A 100%.

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

A. Yes.

Q. At this point, 28.301667% of the gas estate remains unleased?

A. That's correct.

Q. Okay. In this particular unit, I do believe we have one...at least one unknown?

A. We have two unknowns.

Q. Two unknowns. Did you make reasonable and diligent efforts to locate these unknowns?

A. Yes.

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

A. Yes.

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

A. We are.

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

A. Yes.

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

A. We pay a five dollar rental on a five year term with a one-eighth royalty.

Q. In your opinion, do the terms that you just testified to represent the fair and reasonable compensation to be paid for drilling rights in this unit?

A. They do.

JIM KAISER: Mr. Chairman, we'd ask that the testimony taken previously in item six on the docket, which was VGOB number 1934 earlier this morning regarding the

statutory election options of four different unleased parties be incorporated for purposes of this hearing.

BENNY WAMPLER: That will be incorporated.

Q. Mr. Hall, we do need to establish...the Board does need to establish an escrow account for this unit, is that correct?

A. That's correct.

Q. And that would be proceeds attributable to Tracts 5, 6, 8 and 11?

A. That's correct.

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

A. Equitable Production Company.

Q. And what's the depth of the proposed well?

A. It's 3,093 feet.

Q. The estimated reserves for the unit?

A. 200 million cubic feet.

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

A. Yes.

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

A. It does.

Q. Would you state both dry hole costs and

completed well costs for this well?

A. The dry hole costs is \$171,856 and the completed well costs is \$392,841.

Q. Do these costs anticipate a multiple completion?

A. 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 be in the best interest of conservation, the prevention of waste and the protection of correlative rights?

A. Yes.

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

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

JIM KAISER: We'd ask that the application be approved as submitted, Mr. Chairman.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BRUCE PRATHER: §second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes.)

BENNY WAMPLER: Opposed, say no.

(No audible response.)

BENNY WAMPLER: You have approval. Next is a
petition from Equitable Production Company for pooling of
coalbed methane unit VC-537058. This is docket number VGOB-
08-0617-2248. We'd ask...we'd ask the parties that wish to
address the Board in this matter to come forward at this
time.

JIM KAISER: Again, Mr. Chairman, Jim Kaiser and
Don Hall.

BENNY WAMPLER: The record will show no others.
You may proceed.

DON HALL

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Mr. Hall, I guess at this point, we know
you name and who you work for. So, are you familiar with

the application that we filed seeking to pool any unleased interest in the unit for VC-537058, which was dated May the 16th, 2008?

A. Yes.

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

A. We do.

Q. Prior to the filing of the application were efforts made to contact each of the respondents and an attempt made to work out a voluntary lease agreement with each?

A. Yes.

Q. What is the interest under lease to Equitable in the gas estate within this unit?

A. We have 32.47% of the gas estate leased.

Q. Okay. And we'll get back to that. And what's the interest under lease in the coal estate to Equitable?

A. A 100%.

Q. And all unleased parties are set out at B-3?

A. Yes.

Q. So, that means 67.53% of the gas estate remains unleased?

A. That's correct.

Q. Could you explain why that is?

A. Again, this is a tract that we've drilled quite a few wells on in the past and have force pooled each one. This is a...the tract that we're force pooling is a Yellow Poplar Lumber Company tract that the ownership went into Trusteeship in the early nineteen hundreds and we haven't been able to find any...we done extensive research trying to find the current stockholders and have never been able to come up with anything.

BENNY WAMPLER: I believe that's my company.

(Laughs.)

BENNY WAMPLER: I'm teasing, for the record.

(Laughs.)

JIM KAISER: That would be good wouldn't it?

DON HALL: Is your last name named Poplar?

JIM KAISER: That's eventually going to be a pretty nice thing for the state, isn't it?

Q. Okay. So, you've testified to the efforts you've made to locate any successors to that interest, correct?

A. Yes.

Q. And are you requesting the Board to force pool all unleased interest listed at Exhibit B-3?

A. Yes. 1

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

A. Yes.

Q. Again, advise the Board as to what those are?

A. We pay five dollars an acre on a five year term with a one-eighth royalty.

Q. In your opinion, do the terms that you just 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.

JIM KAISER: Again, Mr. Chairman, we'd ask to be able to incorporate the testimony taken earlier in 1934 regarding the statutory election options afforded any unleased parties.

BENNY WAMPLER: That will be incorporated.

Q. Mr. Hall, in this particular case, the Board needs to establish an escrow account for any proceeds attributable to Tract 1, is that correct?

A. Yes.

Q. And who should be named operator under any

force pooling order? 1

A. Equitable Production Company.

Q. And the total depth of this proposed well?

A. It's 1909 feet.

Q. Estimated reserves for the life of the unit?

A. 230 million cubic feet.

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

A. Yes.

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

A. Yes.

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

A. The dry hole costs is \$136,710 and the completed well costs is \$338,436.

Q. Do these costs anticipate a multiple completion?

A. Yes.

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

A. Yes.

Q. In your opinion, would the granting of this

application be in the best interest of conservation, the prevention of waste and the protection of correlative rights?

A. Yes.

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

BENNY WAMPLER: Questions from members of the Board?

BILL HARRIS: Mr. Chairman---

MARY QUILLEN: Mr. Chairman.

BILL HARRIS: Sorry. Ladies, first.

MARY QUILLEN: I just have one question. I must of missed this when you...what was the depth of that?

JIM KAISER: 1909.

MARY QUILLEN: Thanks.

BENNY WAMPLER: Mr. Harris.

BILL HARRIS: Just a quick question about the plat. This has that 750 circle---

BENNY WAMPLER: Radius.

BILL HARRIS: ---...radius. Was there...I will wait until he gets to it. Was there a significance to that? I mean, this is---

DON HALL: Yes, 750...you have to consent to stimulate and the coal owners are within 750 of the well.

We've recently asked to start putting that...start putting that circle on there.

BILL HARRIS: To indicate that area there?

DON HALL: To indicate the area in which we need a consent.

BILL HARRIS: Okay. Fine. Thank you.

BENNY WAMPLER: Other questions?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

JIM KAISER: We'd ask that the application be approved as submitted, Mr. Chairman.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes.)

BENNY WAMPLER: Opposed, say no.

(No audible response.)

BENNY WAMPLER: You have approval. Next is a petition from Equitable Production Company for pooling coalbed methane unit VC-537875, docket number VGOB-08-0617-

2249. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

JIM KAISER: Again, Mr. Chairman, Jim Kaiser and Don Hall.

BENNY WAMPLER: The record will show no others. You may proceed.

DON HALL

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Mr. Hall, are you familiar with the application that we filed here seeking to pool any unleased interest within the unit for EPC well VC-537875 dated May the 16th?

A. Yes.

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

A. We do.

Q. Prior to the filing of the application were efforts made to contact each of the respondents and an attempt made to work out a voluntary lease agreement with each?

A. Yes.

Q. What is the interest under lease to Equitable within the gas estate in this unit?

A. We have 96.09%.

Q. And the interest under lease to Equitable within the coal estate?

A. A 100%.

Q. All unleased parties are set out at B-3?

A. Yes.

Q. So, that leaves us with 3.91% of the gas estate that's unleased, is that correct?

A. That's correct.

Q. There's no unknowns in this unit?

A. No.

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

A. Yes.

Q. Again, advise the Board as to what the fair market value of drilling rights of this unit would be?

A. We pay a five dollar bonus on a five year term with a one-eighth royalty.

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

A. They do.

JIM KAISER: Again, Mr. Chairman, we'd request

that the testimony taken earlier in 1934 regarding the statutory election options afforded unleased parties be incorporated for purposes of this hearing.

BENNY WAMPLER: That will be incorporated.

Q. Now, Mr. Hall, the Board does need to establish an escrow account for this unit and it would be for any proceeds attributable to Tracts 1 and 4?

A. That's correct.

Q. And who should be named operator under the order?

A. Equitable Production Company.

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

A. It's 2152 feet.

Q. Estimated reserves over the life of the unit?

A. 330 million cubic feet.

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

A. Yes.

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

A. Yes.

Q. Would you state both the dry hole costs and

completed well costs for this well?

A. The dry hole costs is \$144,006 and the completed well costs is \$345,365.

Q. Do these costs anticipate a multiple completion?

A. 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 be in the best interest of conservation, the prevention of waste and the protection of correlative rights?

A. Yes.

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

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

JIM KAISER: We'd ask that the application be approved as submitted, Mr. Chairman.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Any further discussion?

(No audible response.)

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

(All members signify by saying yes.)

BENNY WAMPLER: Opposed, say no.

(No audible response.)

BENNY WAMPLER: You have approval. Next is a
petition from Equitable Production Company for pooling
coalbed methane unit VC-537876. This is docket number VGOB-
08-0617-2250. We'd ask the parties that wish to address the
Board in this matter to come forward at this time.

JIM KAISER: Mr. Chairman, Jim Kaiser and Don
Hall.

BENNY WAMPLER: The record will show no others.
You may proceed.

DON HALL

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Mr. Hall, are you familiar with the
application that we filed seeking to pool any unleased
interest in the unit for EPC well VC-537876 dated May the

16th?

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A. Yes.

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

A. We do.

Q. And prior to the filing of the application, were efforts made to contact each of the respondents and an attempt made to work out a voluntary lease agreement with each?

A. Yes.

Q. At this time, what is the interest under lease to Equitable within the gas estate in this unit?

A. We have 72.12% leased.

Q. And the coal estate?

A. 100%.

Q. Are all unleased parties set out at B-3?

A. Yes.

Q. So, that means 27.88% of the gas estate remains unleased?

A. That's correct.

Q. No unknowns in the unit?

A. No.

Q. Are you requesting this Board to force pool all unleased interest---

A. Yes. 1

Q. ---as listed at Exhibit B-3?

A. Yes.

Q. Again, advise the Board as to what the fair market value of drilling rights are here?

A. We pay five dollars per acre on a five year term with a one-eighth royalty.

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

A. They do.

JIM KAISER: Mr. Chairman, again, we'd ask to incorporate the election testimony taken in 1934.

BENNY WAMPLER: That will be incorporated.

Q. Mr. Hall, the Board does need to establish an escrow account for this unit, correct?

A. Yes.

Q. And that will be for Tracts 1, 2, 3 and 4?

A. Yes.

Q. And what's the total depth of this proposed well?

A. It's 2187 feet.

Q. The total reserves over the life of the

unit or estimated reserves?

A. About 330 million cubic feet.

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

A. Yes.

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

A. Yes.

Q. Would you state the dry hole costs and completed well costs for this well?

A. The dry hole costs is \$143,241 and the completed well costs is \$339,214.

Q. Do these costs anticipate a multiple completion?

A. Yes.

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

A. Yes.

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

A. Yes.

JIM KAISER: Nothing further of this witness at

this time, Mr. Chairman. 1

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes.)

BENNY WAMPLER: Opposed, say no.

(No audible response.)

BENNY WAMPLER: You have approval. Next is a petition from Equitable Production Company for pooling coalbed methane unit VC-537839. This is docket number VGOB-08-0617-2251. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

JIM KAISER: Jim Kaiser and Don Hall, Mr. Chairman.

BENNY WAMPLER: The record will show no others. You may proceed.

DON HALL

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Mr. Hall, are you familiar with the application that we filed seeking to pool any unleased interest in the unit for EPC well number VC-537839, which was dated May the 16th?

A. Yes.

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

A. We do.

Q. Prior to the filing of the application were efforts made to contact each of the respondents and an attempt made to work out a voluntary lease agreement?

A. Yes.

Q. What's the interest under lease to Equitable within the gas estate?

A. We have 99.44% leased.

Q. And what's the interest under lease in the coal estate?

A. 100%.

Q. Were all unleased parties set out at

Exhibit B-3 to the application?

A. They are.

Q. So, 0.56% remains unleased in the gas estate?

A. That's correct.

Q. Again, we don't have any unlocateables or unknowns in this unit, correct?

A. That's correct.

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

A. Yes.

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

A. Yes.

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

A. We pay five dollars per acre on a five year term with a one-eighth royalty.

Q. In your opinion, do the terms that you just 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.

JIM KAISER: Again, Mr. Chairman, we'd ask to incorporate the statutory election options afforded any unleased parties first taken in item 1934.

BENNY WAMPLER: That will be incorporated.

Q. Mr. Hall, the Board does need to establish an escrow account here for this unit?

A. Yes.

Q. And it would be for proceeds attributable to Tracts 4 and 5?

A. That's correct.

Q. Okay. And what's the proposed depth of this well?

A. It's 2,037 feet.

Q. And the estimated reserves over the life of the unit?

A. It's 330 million cubic feet.

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

A. Yes.

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

A. It does.

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

A. The dry hole costs is \$148,483 and the completed well costs is \$352,503.

Q. Do these costs anticipate a multiple completion?

A. Yes.

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

A. Yes.

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

A. Yes.

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

BENNY WAMPLER: Questions from members of the Board?

BILL HARRIS: A quick question, Mr. Chairman.

BENNY WAMPLER: Mr. Harris.

BILL HARRIS: If you would look at the plat, at the very upper right corner, did you tell me about that CBM VC-I or VC-1, I guess?

DON HALL: It must...it's proposed, I guess. It shouldn't be on the plat because it's not...it's not

drilled. It's evidently a proposed one that we had.

JIM KAISER: It looks like a proposed increased density well.

DON HALL: Yeah, right.

BILL HARRIS: For...okay.

DON HALL: I don't know why...how it ended up on the plat. It shouldn't be on there.

BENNY WAMPLER: We'll need a revised plat.

DON HALL: Okay.

BENNY WAMPLER: In fact, I had the same question.

Other questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Any further discussion?

(No audible response.)

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

(All members signify by saying yes.)

BENNY WAMPLER: Opposed, say no.

(No audible response.)

BENNY WAMPLER: You have approval. We'll go to twenty-nine next, Board.

JIM KAISER: Right.

BENNY WAMPLER: Next is a petition from Equitable Production Company for pooling of a 320-acre provisional horizontal drilling units served by well VH-536926 and this is docket number VGOB-08-0617-2253. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

JIM KAISER: Mr. Chairman, Jim Kaiser and Don Hall, again. We've got a new set of exhibits for you.

(Don Hall passes out revised Exhibits.)

LYLIE GAYLA CLINE: Mr. Chairman, may I come down too?

BENNY WAMPLER: Yes, ma'am.

LYLIE GAYLA CLINE: I want to ask a few questions.

BENNY WAMPLER: If you don't mind, sit over in that corner where the microphone is and tell us who you are.

LYLIE GAYLA CLINE: My name is Lylie Gayla Cline.

DON HALL: Can you me your name, again?

LYLIE GAYLA CLINE: Lylie Gayla Cline.

BENNY WAMPLER: What we do is we'll have them to go forward and anytime you have a question after they finish testifying we'll entertain your questions. We'll make sure we get it answered.

LYLIE GAYLA CLINE: Thank you.

BENNY WAMPLER: You may proceed, Mr. Kaiser.

DON HALL

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Mr. Hall, before we get into your standard testimony, the only reason that we have these revised exhibits, we didn't pick up any new leases and there's not really changes other than some corrected addresses, right?

A. That's correct.

Q. Okay. And you're familiar with the application that we filed seeking to pool any unleased interest in this provisional unit for EPC well number VH-536926 again dated May the 16th?

A. Yes.

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

A. We do.

Q. And prior to the filing of the application were efforts made to contact each of the respondents and an attempt made to work out a voluntary lease agreement?

A. Yes.

Q. So, what is the interest under lease to Equitable in the unit?

A. We have. I have an overlap in this unit between two tracts. Depending on how the ownership turns out, we either have 93.238666% or we have 93.310999% leased as depicted in Exhibit B.

Q. And then also, I guess, we've gone ahead in Exhibit E and escrowed that tract?

A. Yes.

Q. Asked for escrow on that tract because this is a title question, I guess?

A. Yes.

Q. Okay. And are all unleased parties set out at Exhibit B-3?

A. Yes.

Q. So, the interest that remains unleased in the unit is either 6.761333 or 6.689000?

A. That's correct.

Q. Okay. We do have some unknowns in the unit, correct?

A. Yes.

Q. Were reasonable and diligent efforts made to locate and identify these unknown owners?

A. Yes.

Q. Including primary and secondary sources?

A. Yes.

Q. In your¹ opinion, was due diligence exercised to locate each of the respondents named in the application?

A. It was.

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

A. Yes.

Q. Again, are you familiar with the fair market value of drilling rights in this unit?

A. Yes.

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

A. We pay five dollars an acre with a one-eighth royalty and five year term.

Q. In your opinion, do the terms that you've just 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.

JIM KAISER: Again, Mr. Chairman, we'd ask that the testimony regarding the statutory election options afforded any unleased parties be incorporated for purposes of this hearing.

BENNY WAMPLER: That will be incorporated.

Q. Mr. Hall, the escrow in this case, again we talked about, will have to be...I believe it's Tracts 16 and 17, is that correct?

A. Yes.

Q. We've got unknowns in 16 and 17 is the overlap?

A. That's correct.

Q. Okay. And who should be named operator under the force pooling order?

A. Equitable Production Company.

Q. And what's the total depth of this proposed well?

A. It's 4700 feet vertically and then with a lateral of 3,027 feet for a total depth of 7727.

Q. As such, now, that is inconsistent with the application. The application says a 4640 lateral. That's incorrect. It should be 3027, which keeps the lateral inside the interior window.

A. Right.

SHARON PIGEON: What was the depth again?

JIM KAISER: They will go down to 4700 feet before they make their turn and then the lateral will go out 3,027 feet.

Q. And the estimated reserves over the life of

this unit?

1

A. 980 million cubic feet.

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

A. Yes.

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

A. It does.

Q. Would you state the dry hole costs and completed well costs for this well?

A. The dry hole costs is \$743,080 and the completed well costs is \$1,674,854.

Q. Do these costs anticipate a multiple completion?

A. Yes.

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

A. Yes.

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

A. Yes.

JIM KAISER: Nothing further at this time from

this witness, Mr. Chairman,

BENNY WAMPLER: Ms. Cline, did they answer any questions...do you have any questions?

LYLIE GAYLA CLINE: I do have some questions.

BENNY WAMPLER: Go ahead.

LYLIE GAYLA CLINE: I'm wondering how they go back pooling...I represent the Lays family. There's a 110 acres. I think they're offering lease the whole 110 for a \$100 a person, which seems like an incredibly low amount to me. But more than that, only 7 acres of what is...what the Lays have in mineral rights is included in this particular pool. I'm wondering why not more of it? Why can't we have a whole lot in there instead of just only 7 acres?

JIM KAISER: Mr. Hall?

BENNY WAMPLER: We'll let Mr. Hall explain that.

DON HALL: Well, I think earlier today we established the drilling unit for this particular well. The way the unit was established, this is a copy of the plat, which you should have, where the unit was established was...that's how much the Lay Estate fell within the unit. There's perimeters on where we could put the 320-acre unit. These are square units. So, if we drill wells...let's see, you're in the...down in here.

JIM KAISER: They're on the western boundary.

DON HALL: Yeah. So, if we drill the well on the west or the south, it's going to take in more of your property in another unit. So, the units---

LYLIE GAYLA CLINE: And has not up until now?

DON HALL: Not for a horizontal unit, no. I think you may...I think the last stages involved in a vertical well, they have an---

JIM KAISER: Those are circular units.

DON HALL: Circular---

JIM KAISER: It's 550 radius.

BENNY WAMPLER: It's like a checkerboard, Ms. Cline.

LYLIE GAYLA CLINE: I beg your pardon.

BENNY WAMPLER: It's like a checkerboard that we have. The purpose of that is so that you don't have people that have interest left out. If you go by circles, you have interests that are left out. If you...the reason the Board set up spacing is...the way we did, you would have these people left out if you did circles and when you're---

LYLIE GAYLA CLINE: I see.

BENNY WAMPLER: ---doing like a checkerboard with the squares, then no one gets left out. If they're drilling...if this is your unit and your acreage, if they're drilling in here and your acreage only comes to this, but

your acreage is really over in here when they get to this unit is when they get more of your acreage. Does that make sense to you?

LYLIE GAYLA CLINE: It does make sense, but they've been drilling on...I got my first notification from Equitable twenty years ago or something like that and it seems as though...at one time or another we might have been among the big recipients of your...whatever your profits. That's one of the things I was wondering about how you determine---

BENNY WAMPLER: Right. So, do you now understand that this unit that you're in only a portion of your acreage, according to their testimony, is within this unit?

LYLIE GAYLA CLINE: I do understand that. You can tell it by looking at the plat map.

BENNY WAMPLER: Okay.

LYLIE GAYLA CLINE: But my question really was why isn't...why didn't you move it down?

BENNY WAMPLER: Why don't you---

BILL HARRIS: Yeah.

BENNY WAMPLER: Do you have plans, Mr. Hall...I'll ask for you. Do you have plans to do a horizontal in the acreage that Ms. Cline has interest in?

DON HALL: I don't know that we have anything

currently in that area, but I'm sure if this is a good well we'll probably...I'm sure we will be looking at that area.

LYLIE GAYLA CLINE: One of the things that I think that...somewhere along the line you were asked to approve was the \$100 leasing...I think it's the whole 110 acres, isn't it, from each of us? They're about thirty of us.

DON HALL: Well---.

LYLIE GAYLA CLINE: For a hundred dollars.

DON HALL: Well, our normal payment for delay rental for a lease is five dollars an acre. Sometimes you get into such small interests that five dollars an acre may not be five dollars. I mean, you may not own an acre. So, we pay...we have a minimum payment of a hundred dollars for these very small interests.

JIM KAISER: Per interest.

DON HALL: Per interest.

LYLIE GAYLA CLINE: Oh, so that's really generous then?

DON HALL: Yeah, compared to what we normally pay.

(Laughs.)

LYLIE GAYLA CLINE: I was just thinking \$2900 for a 110 acres and then all of that gas you take out of there--
-.

JIM KAISER: Well, you're going to get...you'll

get a one-eighth on that. 1

DON HALL: You'll get a royalty too.

JIM KAISER: That's what you've been getting all of these years.

LYLIE GAYLA CLINE: What is one-eighth? Now, I know I'm not going to one-eighth of all of the royalties. What does one-eighth mean?

JIM KAISER: No, you'll get your pro-rata share of one-eighth. You'll get your pro-rata share of one-eighth.

LYLIE GAYLA CLINE: Oh, one-eighth.

JIM KAISER: So, whatever percentage of that 320-acres you and your family own, you'll get that share of the one-eighth. In other words, if it was 40 acres it would be an eighth of eighth.

LYLIE GAYLA CLINE: In other words, the people who have the mineral rights get one-eighth of the proceeds from that piece of property?

DON HALL: Right.

JIM KAISER: 12 and a 1/2%.

DON HALL: And then in relation to what proportion they own that's divided among them.

LYLIE GAYLA CLINE: Yes.

DON HALL: If there's five of them, they get a fifth each.

LYLIE GAYLA CLINE: And if there are thirty of them---.

BENNY WAMPLER: Here again, it's your percentage within that unit times one-eighth.

LYLIE GAYLA CLINE: I understand.

BENNY WAMPLER: Okay.

LYLIE GAYLA CLINE: I understand that.

JIM KAISER: So, maybe the next one the percentage might be---.

BENNY WAMPLER: Okay. I was making sure.

LYLIE GAYLA CLINE: Okay. I think I have other...one other question. I'm sorry. I have a cousin who sent me some other questions. I'm wondering if...maybe I shouldn't even be asking the Board, I don't know. But if we...if we can get some kind of documentation about what portion of portions of the property that we have mineral rights on have been used over the years or in what ways or, you know, that kind of thing, do you think we can get that information because several has questions? It's mostly those who aren't leased because we've never signed anything because we were never sure that...that it was in best interest to do it.

DON HALL: Well, I'm not sure exactly what you're asking for. But you should have gotten---.

LYLIE GAYLA CLINE: Well, we would just like to know---.

JIM KAISER: I think she wants a history of how the minerals on that property have been developed.

LYLIE GAYLA CLINE: Thank you. That's what I wanted.

DON HALL: I'd have to do some research.

LYLIE GAYLA CLINE: Okay.

DON HALL: I can give you my phone number. If you'll call me later we'll look at that.

LYLIE GAYLA CLINE: All right.

DON HALL: He can go back and take a look at where your property is on their maps and see what wells have been drilled and when they were drilled and what percentage you should be entitled...have been entitled to.

BENNY WAMPLER: You might want to write that down and hand it to her rather than putting it in the record. You'll be on permanent record with your phone number.

(Laughs.)

LYLIE GAYLA CLINE: And what is your phone number? Do you have a card?

BENNY WAMPLER: Just as a reminder.

SHARON PIGEON: We'll all be calling you.

DON HALL: I'll be changing my number.

MARY QUILLEN: Uplisted.

(Ms. Cline and Mr. Hall confer.)

LYLIE GAYLA CLINE: I thank all of you.

BENNY WAMPLER: You're welcome. Thank you. Do you have anything further, Mr. Kaiser?

JIM KAISER: No, sir. We'd ask that the application be approved as submitted with the new set of exhibits.

BENNY WAMPLER: Questions from members of the Board?

BRUCE PRATHER: I have a question.

BENNY WAMPLER: Mr. Prather.

BRUCE PRATHER: Don, is this a Roaring Fork well?

DON HALL: Yeah.

BENNY WAMPLER: Other questions?

(No audible response.)

BENNY WAMPLER: Is there a motion?

BILL HARRIS: Motion for approval.

BENNY WAMPLER: Is there a second?

KATIE DYE: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes, but Bruce Prather.)

BENNY WAMPLER: Opposed, say no.

BRUCE PRATHER: Abstain.

BENNY WAMPLER: One abstention, Mr. Prather. Next is a petition from Equitable Production Company for pooling of conventional gas unit V-502739 and this is docket number VGOB-08-0617-2254. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

JIM KAISER: Jim Kaiser and Don Hall. We do have a new set of exhibits here too.

(Don Hall passes out revised exhibits.)

BENNY WAMPLER: The record will show no others. You may proceed.

DON HALL

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Don, this is a little bit of a different one here too. What...what was the purpose of the revised set of exhibits here?

A. Tract 17 was...we leased the remainderment. Francis Greer has a life estate. She was unleased and the remainderment in that life estate was also unleased. We've

since leased the remainderment, but haven't leased the life estate interest yet. So, it really doesn't change the---

Q. It doesn't change the percentages of leased and unleased?

A. ---percentages any. It just changes who's leased.

Q. And you're familiar with the application that we filed seeking to...not only establish a unit in the case of a conventional well, but also pool any of the unleased interest within that unit?

A. Yes.

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

A. We do.

Q. And prior to the filing of the 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?

A. Yes.

Q. And what is the percentage of the gas estate under lease to Equitable within this unit?

A. We have 67.96% leased.

Q. And all unleased parties are set out in revised Exhibit B-3?

A. Yes. 1

Q. So, 32.04% of the unit remains unleased?

A. Yes.

Q. And we don't have any unknowns in this unit?

A. No.

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

A. Yes.

Q. Are you familiar with the fair market value of drilling rights in the unit here?

A. Yes.

Q. Please advise the Board as to what those are.

A. We pay five dollars an acre on a five year term with a one-eighth royalty.

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

A. Yes.

JIM KAISER: Mr. Chairman, we'd again ask to incorporate the statutory election option testimony first taken today in item 1934.

BENNY WAMPLER: That will be incorporated.

Q. This being a conventional unit and we don't have any unknown or unlocateables. In this particular case, the Board does not need to establish an escrow account, correct?

A. That's correct.

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

A. Equitable Production Company.

Q. And what's the proposed depth of this well?

A. I lost my place here. 5574.

Q. All right. And the estimated reserves over the life of the unit?

A. 300 million cubic feet.

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

A. Yes.

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

A. 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 \$298,606 and the completed well costs is \$556,650.

Q. Do these costs anticipate a multiple completion?

A. 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 be in the best interests of conservation, the prevention of waste and the protection of correlative rights?

A. Yes.

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

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

JIM KAISER: We'd ask that the application be approved as submitted.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: And second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes, but Bruce Prather.)

BENNY WAMPLER: Opposed, say no.

BRUCE PRATHER: Abstain.

BENNY WAMPLER: One abstention, Mr. Prather. Next is a petition from...I'm going to give you a break after this, Board, is a petition from Equitable Production Company for pooling of conventional gas unit V-536896. This is docket number VGOB-08-0617-2255. I'd ask the parties that wish to address the Board in this matter to come forward at this time.

JIM KAISER: Mr. Chairman, again, Jim Kaiser and Don Hall.

BENNY WAMPLER: The record will show no others. You may proceed.

DON HALL

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Mr. Hall, are you familiar with the application that we filed seeking to establish a unit and

pool any unleased interest in that unit for EPC well number V-536896, which was dated May the 16th?

A. Yes.

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

A. We do.

Q. Prior to the filing of the application, were efforts made to contact each of the respondents and an attempt made to work out a voluntary lease agreement with each?

A. Yes.

Q. What's the interest under lease to Equitable within this unit?

A. We have 94.64978723%.

Q. And are all of the unleased parties set out in Exhibit B-3?

A. Yes.

Q. So, the percentage of the unit that remains unleased at this time is 5.35021277%?

A. That's correct.

Q. Okay. And this unit has quite a few unknown interest owners, correct?

A. Yes.

Q. And, again, were reasonable and diligent

efforts made and sources checked to identify and locate these unknown people?

A. Yes.

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

A. Yes.

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

A. We are.

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

A. Yes.

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

A. We pay five dollars an acre on a five year term with a one-eighth royalty.

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

A. They do.

JIM KAISER: Again, Mr. Chairman, we'd ask that the statutory election option testimony be incorporated as

taken in item 1934 earlier, today.

BENNY WAMPLER: That will be incorporated.

Q. And for this particular unit, the Board does need to establish an escrow account, correct?

A. Yes.

Q. And that will be for proceeds attributable to Tract 6, 7, 8...6, 7 and 8, correct?

A. Yes.

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

A. Equitable Production Company.

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

A. It's 6,083 feet.

Q. And the estimated reserves over the life of the unit?

A. 300 million cubic feet.

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

A. Yes.

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

A. It does.

Q. Would you state for the Board both dry hole

costs and completed well costs for this well?

A. The dry hole costs is \$279,915 and the completed well costs is \$585,940.

Q. Do these costs anticipate a multiple completion?

A. 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 be in the best interests of conservation, the prevention of waste and the protection of correlative rights?

A. Yes.

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

BENNY WAMPLER: Mr. Hall, would you just tell us more about your due diligence since we have so many of these parties that are unknown?

DON HALL: Well, we've been researching this family for probably five years now. We've put a lot of...a major amount of effort into trying to find all of these people. It seems like when you think you've found them all, then six months later somebody else comes out of the

woodwork. As of right now, this is what we know.

BENNY WAMPLER: The ones that you've found, what have you done to find them?

DON HALL: Well, we've...I've done all of the normal things of...there's not a lot that you're going to find in the Courthouse because this is an heirship that's roughly a hundred years old in the Jesse family. We've...most of what we found is just from some of the locals that give us further information about the rest of the family. We've looked in genealogy records---

JIM KAISER: Internet searches.

DON HALL: ---and internet searches. You know, there's thousands of Jesses and in Southwest Virginia. It appears most of them belong to this family.

JIM KAISER: It's an evolving process, isn't it?

DON HALL: Yeah.

JIM KAISER: Yeah.

BENNY WAMPLER: Questions from members of the Board?

BILL HARRIS: Mr. Chairman, a quick question---

BENNY WAMPLER: Mr. Harris.

BILL HARRIS: ---about the plat.

DON HALL: Huh, oh.

BILL HARRIS: No, this should be an easy one. I can make it hard though.

JIM KAISER: Ah, why not?

BILL HARRIS: There is sort of a circle in the center there. I was just curious as to what that is. Is that like a contour line or maybe one or---?

DON HALL: That's a contour line, yes.

BILL HARRIS: Is that really? That's the only thing I could figure because it's irregular.

DON HALL: Yeah, it's probably a new little knob there. It's a contour line. That's a part of them...it's off the DMLR permit. Do you see the---?

BILL HARRIS: Okay, yeah, I see that notation there. Usually you don't see those free standing. So, this is apparently fairly flat and just a little rise.

DON HALL: It is. This is all mountaintop...pretty much mountaintop removal. It's flat.

BILL HARRIS: Okay.

DON HALL: It's pretty much flat.

BILL HARRIS: Okay. Thank you.

BENNY WAMPLER: Other questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

JIM KAISER: We'd ask that the application be approved as submitted, Mr. Chairman.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes, but Bruce Prather.)

BENNY WAMPLER: Opposed, say no.

BRUCE PRATHER: Abstain.

BENNY WAMPLER: One abstention, Mr. Prather. You have approval. We're going to take about a five minute break and we'll be right back.

(Break.)

BENNY WAMPLER: Next is a petition from Equitable Production Company for pooling of conventional gas unit V-536761. This is docket number VGOB-08-0617-2256. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

JIM KAISER: Jim Kaiser and Don Hall.

BENNY WAMPLER: The record will show no others.

You may proceed.

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DON HALL

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Mr. Hall, are you familiar with the application that we filed seeking to establish a unit and pool any unleased interest in that unit for EPC well number V-536761 dated May the 16th?

A. Yes.

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

A. We do.

Q. And prior to the filing of the application were efforts made to contact each of the respondents and an attempt made to work out a voluntary lease agreement with each?

A. Yes.

Q. Now, we have provided the Board with a revised set of exhibits. And in looking at that revised set of exhibits, I see we do have a B-2, which means you have picked up some additional leases since the time that the application was filed?

A. That's correct.

Q. Would you identify those for the Board?

A. Well, it was in Tract 4. It was Melanie Peters, Loretta Scarberry and Gerald Baker we leased since the last... since the application.

Q. Okay. So, what is the interest under lease to Equitable in the unit at this time?

A. We currently have 74.4403333% leased.

Q. And are all unleased parties set out at revised Exhibit B-3?

A. Yes.

Q. So, the percentage of the unit that remains unleased at this time is 25.559667?

A. Yes.

Q. Okay. There are, I believe, some unknowns in this unit?

A. Yes, a couple.

Q. Okay. Again, you've made all of your reasonable and diligent efforts and checked all sources available to you?

A. Yes.

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

A. We are.

Q. And, again, are you familiar with the fair market value of drilling rights in this unit and in the surrounding area?

A. Yes.

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

A. We pay five dollars per acre on a five year term with a one-eighth royalty.

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 in this unit?

A. They do.

JIM KAISER: As to...Mr. Chairman, as to the election options afforded the unleased parties, we'd ask that that part of the testimony taken in 1934 earlier today be incorporated for purposes of this hearing.

BENNY WAMPLER: That will be incorporated.

Q. Mr. Hall, the Board does need to establish an escrow account for this---?

A. We do.

Q. ---particular unit and that will be for proceeds attributable to Tracts 12 and 13, is that correct?

A. Yes.

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

A. Equitable Production Company.

Q. The total depth of this proposed well?

A. It's 5676 feet.

Q. The estimated reserves over the life of the unit?

A. 300 million cubic feet.

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

A. Yes.

Q. In your opinion, does it represent a reasonable estimate of wells costs?

A. Yes.

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

A. The dry hole costs is \$340,120 and the completed well costs is \$599,332.

Q. Do these costs anticipate a multiple completion?

A. 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 be in the best interests of conservation, the prevention of waste and the protection of correlative rights?

A. Yes.

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

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

JIM KAISER: We'd ask that the application be approved with the revised exhibits, Mr. Chairman.

BENNY WAMPLER: On revised Exhibit B-2, should...just a small matter, but shouldn't that say leased instead of unleased now? I know you're dismissing them, but you're dismissing them because of the lease.

DON HALL: Yeah, I probably should. We're dismissing them because they're leased.

BENNY WAMPLER: Right.

SHARON PIGEON: So, we'll need another one of those.

BENNY WAMPLER: If you'll revise that and just show that so the record will be cleaned up.

DON HALL: We'll send you---

JIM KAISER: I'm pretty sure that's the case on one of the other ones we did too, Don, because I noticed that.

DON HALL: Okay.

JIM KAISER: We'll check that. There may be two revisions.

SHARON PIGEON: He didn't catch that one.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve with the revised documents.

BILL HARRIS: Second.

BENNY WAMPLER: And seconded. Any further discussion?

(No audible response.)

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

(All members signify by saying yes, but Bruce Prather.)

BENNY WAMPLER: Opposed, say no.

BRUCE PRATHER: Abstain.

BENNY WAMPLER: One abstention, Mr. Prather. Next is a petition from Equitable Production Company for a well location exception for proposed well V-535851, docket number

VGOB-08-0617-2257. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

JIM KAISER: Mr. Chairman, again, Jim Kaiser and Don Hall.

BENNY WAMPLER: The record will show no others. You may proceed.

DON HALL

DIRECT EXAMINATION

QUESTIONS BY MR. KAISER:

Q. Mr. Hall, do your responsibilities with Equitable include the land involved here and in the surrounding area?

A. Yes.

Q. Are you familiar with the application that we filed seeking a location exception for well V-535851?

A. I am.

Q. Have all interested parties been notified as required by Section 4(B) of the Virginia Gas and Oil Board regulations?

A. Yes.

Q. Could you indicate for the Board the ownership of the oil and gas underlying this unit?

A. We have a 100% leased.

Q. Does Equitable have the right to operate reciprocal wells?

A. We do.

Q. Are there any correlative rights issues?

A. No.

Q. Explain for the Board why this location exception is being sought.

A. This is a spot that was specifically picked by the coal company to not interfere with their mining operations or their future plans in the mine operations. It's a coal spot.

Q. And that's Penn Virginia Operating Company, LLC.

A. Yes.

Q. And they have received notice of the application?

A. Yes.

Q. So, they basically picked this spot for you?

A. That's correct.

Q. In the event this location exception were not granted, could you project the estimated loss of reserves, in other words, the waste?

A. 450 million cubic feet.

Q. And what's the total depth of this proposed well?

A. It's 5190 feet.

Q. Is the applicant requesting that this location exception cover conventional gas reserves to include the designated formations as listed in the application excluding coal seams from the surface to the total depth drilled?

A. Yes.

Q. In your opinion, would the granting of this location exception be in the best interest of preventing waste, protecting correlative rights and maximizing the recovery of the gas reserves underlying the unit for V-535851?

A. Yes.

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

BENNY WAMPLER: Questions from members of the Board?

MARY QUILLEN: Mr. Chairman, I have just one question.

BENNY WAMPLER: Ms. Quillen.

MARY QUILLEN: These two wells that you're

requesting the exception from, are both of those Equitable wells?

DON HALL: Yes.

JIM KAISER: Yes.

BENNY WAMPLER: Other questions?

BILL HARRIS: Yes---.

BENNY WAMPLER: Mr. Harris.

BILL HARRIS: ---one about the plat also. I just realized this and I know we have the jagged lines indicating this maybe is not a true distance. But the V-502541 is shown as 2354 feet in terms of distance. Now, was that...that's actually outside of that circle?

DON HALL: Yes. It just...as you put it, the correct distances would be outside the scope of the plat.

BILL HARRIS: Of the plat, okay. So, it's---?

DON HALL: Yeah. The broken lines is to indicate that's the direction and distance.

BILL HARRIS: Okay. Okay. Because I was going to say, the one down at the lower left is a shorter distance, but further away. So, I guess, I'm thinking of scale in terms of the map, but the jagged lines indicate the---.

DON HALL: Right.

BILL HARRIS: Okay. Okay. He...I knew that it did, but I just...you know, when it appeared inside that

circle, I thought, well, maybe not.

DON HALL: It just had more room for that one in the southwest than we did the other one.

BILL HARRIS: Understood. Thank you.

BENNY WAMPLER: Other questions?

(No audible response.)

BENNY WAMPLER: Do you have anything further?

JIM KAISER: We'd ask that the application be approved as submitted, Mr. Chairman.

BENNY WAMPLER: Is there a motion?

MARY QUILLEN: Motion to approve.

BILL HARRIS: Second.

BENNY WAMPLER: And seconded. Any further discussion?

(No audible response.)

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

(All members signify by saying yes, but Bruce Prather.)

BENNY WAMPLER: Opposed, say no.

BRUCE PRATHER: Abstain.

BENNY WAMPLER: One abstention, Mr. Prather. You have approval.

JIM KAISER: Thank you.

BENNY WAMPLER: 1 That concludes the hearing...no, I'm just kidding.

(Laughs.)

BENNY WAMPLER: Next is petitions filed by S. T. Mullins and J. Scott Sexton on behalf of GeoMet Operating appealing a decision of the Director of the Division of Gas and Oil regarding informal fact-finding conference IFFC 20908. This is docket number VGOB-08-0617-2259. We'd ask the parties that wish to address the Board in this matter to come forward at this time.

TOM MULLINS: There is some overlap with the next two items as well, Mr. Chairman. Do you want to...there are separate appeals. But if you want to consider them altogether, that may expedite because there's some certainly duplication of evidence.

BENNY WAMPLER: Well, there's no point in hearing the arguments on that over on each one of them. I'm sure you folks don't want to present the arguments on each one. Is there any objection to doing that?

MARK SWARTZ: It doesn't matter to me.

THOMAS PRUITT: Mr. Chairman, I'm not sure exactly which different hearings Mr. Mullins is referring to. We're here on item thirty-seven on the docket.

BENNY WAMPLER: Okay. All right. We'll

just...we'll go ahead with this one at a time and we will incorporate the testimony and allow you to do that...when you're doing the arguments and testimony into the subsequent hearings.

DAVID ASBURY: Mr. Chairman, with your permission, I've got an exhibit for the Board.

BENNY WAMPLER: Yes.

(David Asbury passes out an exhibit to the Board.)

SCOTT SEXTON AND THOMAS PRUITT: Mr. Chairman.

SCOTT SEXTON: I'm sorry. We're in stereo over here. Scott Sexton on behalf of GeoMet. We have a number of parties at issue in this next item. One of them is Jewell Smokeless and then there's Island Creek Coal Corporation. Mr. Pruitt is here representing Jewell Smokeless. We've been working all day in trying to get this out. We have a coal miner who has been underground all afternoon and he comes out at 3:00. Apparently, we're on the phone with him. So, we thought we'd be able to take something off the docket.

THOMAS PRUITT: The coal miner is on his way out of the mine right now, Mr. Chairman. It concerns the notice issue to Calico, which we may be able to resolve and not put before the Board if we can speak to---.

BENNY WAMPLER: Well, maybe we could go to thirty-

eight and thirty-nine and hold thirty-seven then.

THOMAS PRUITT: That would be fine.

BENNY WAMPLER: Let's do that.

SCOTT SEXTON: With your permission, that would be our request.

BENNY WAMPLER: All of these exhibits that you gave us are regarding thirty-seven? I haven't looked at a one.

DAVID ASBURY: One exhibit involves all three. That would be---.

BENNY WAMPLER: Which one?

DAVID ASBURY: That would be the Gentry Locke.

BENNY WAMPLER: Okay.

DAVID ASBURY: That involves all three.

MARY QUILLEN: And we're going to thirty-eight?

BENNY WAMPLER: We're going to thirty-eight. I'm going to call that right now. We're going to just hold in abeyance the thirty-seven and come back to that. I'm going to go ahead and call the petition from S. T. Mullins on behalf of GeoMet Operating Company appealing the decision of the Director of the Division of Gas and Oil regarding the informal fact-finding conference IFFC 21008, docket number VGOB-08-0617-2260. We'd ask the parties that wish to address the Board in this matter to come forward at this

time. I'll ask you gentleman just to introduce yourselves and who you represent.

TOM MULLINS: My name is Tom Mullins. I'm with the Street Law Firm and I represent GeoMet Operating Company.

SCOTT SEXTON: Mr. Chairman, Scott Sexton with the law firm of Gentry, Locke, Rakes and Moore representing GeoMet.

JEFF TAYLOR: Jeff Taylor with GeoMet.

THOMAS PRUITT: Mr. Chairman, we will not be arguing this issue.

MARK SWARTZ: I'm Mark Swartz. I represent Island Creek Coal Corporation.

TIM BLACKBURN: Tim Blackburn with GeoMet.

BENNY WAMPLER: Can you hear him?

COURT REPORTER: Yes.

BENNY WAMPLER: She can hear him.

GEORGE MASON: George Mason and Ertel Whitt. George Mason, attorney, and Ertel Whitt, engineer on behalf of LBR Holdings, LLC. We're here in support of GeoMet's appeal in docket number thirty-eight.

BENNY WAMPLER: If we have a mobile chair, it's probably better for you to at least come down somewhere on the sides here.

MARY QUILLEN: There's two right here. Is there just two more people coming here...coming down? Just two of you? There's two over here.

BENNY WAMPLER: You may proceed.

TOM MULLINS: Yes, sir. Are we hearing both of these together or separately just so I can orient my---?

BENNY WAMPLER: Is there any objection to hearing them both together from anyone here?

SCOTT SEXTON: And by that---.

TOM MULLINS: The last two.

SCOTT SEXTON: ---thirty-eight and thirty---.

BENNY WAMPLER: I'm talking about thirty-eight and thirty-nine, I'm sorry. If there's not, I'll call both of them so...hearing none, I'll go ahead and call thirty-nine as well. It's a petition from Mark Swartz on behalf of Island Creek Coal Company appealing the decision of the Director of the Division of Gas and Oil regarding the informal fact-finding conference IFFC 21108, docket number VGOB-08-0617-2261. We'd ask the parties that wish to address the Board in this matter to come forward at this time. I'm sorry, but I need you to tell me who you are again.

TOM MULLINS: Tom Mullins with the Street Law Firm representing GeoMet.

SCOTT SEXTON: Scott Sexton with Gentry, Locke, Rakes and Moore representing GeoMet.

JEFF TAYLOR: Jeff Taylor with GeoMet.

TIM BLACKBURN: Tim Blackburn with GeoMet.

GEORGE MASON: George Mason and Ertel Whitt on behalf of LBR Holdings, LLC. In this matter, we're in opposition to the appeal filed by Island Creek Coal Company.

BENNY WAMPLER: Okay.

MARK SWARTZ: Mark Swartz on behalf of Island Creek Coal Company.

BOB WILSON: Bob Wilson, the Director of the Division of Gas and Oil.

BENNY WAMPLER: I'll go ahead and start with you, Mr. Wilson.

BOB WILSON: Okay. The...we've got two entirely different issues here. Since we're combining these two, the general issues that were brought before the informal hearing under docket number...informal hearing docket number 21008 had to do with a coal owner objection invoking the 2500 foot rule and the testimony that was brought before the informal hearing had to do with standing on the objecting party, Island Creek, and whether that standing had been removed by either the pooling order that the Board had entered or was removed by the terms of the original coal lease that was

signed with Island Creek. 1 As you can see from the decision, I was not convinced with either of those exceptions. I ruled that Island Creek had standing and as such the decision was to deny the permits involved based on the fact that Island Creek in my view had standing to object and Island Creek had raised the nuclear option, which is a 2500 foot rule to which they don't have to offer an explanation or reasons or anything else. They merely have to object and not reach an agreement. I believe we did solicit testimony during the informal hearing and received testimony that there would be no alternate locations considered by Island Creek. So, that left the decision, after the establishment of standing, to be a fairly easy one. Now, I will not attempt to go through the testimony and reasoning because you're going to hear it from these folks as to what they offered. There was some very interesting things put forth and some ingenious arguments as to why Island Creek did not have standing. I see no point in my going through those because you're going to hear them from the people who are making the arguments.

Under the informal fact-finding conference 21108, this is an entirely different matter here. One with...in my view, much more far reaching implications. This hearing was convened under Administrative Processes Act. The Division

of Gas and Oil received a request from GeoMet Operating Company that the permit applications for three wells, being the Rogers 201, 202 and 209, be issued as they were in our...as they existed in our files, which means without a consent to stimulate from Island Creek Coal Company. The argument was made that Island Creek Coal Company does not meet the standards as a coal operator. The statute requires that a consent to stimulate be obtained from the coal operator...any coal operator within 750 feet of the well. The argument was that...and, again, I'm not going to get into this at any depth, Island Creek was not a coal operator. Coal owner under the definition, yes, but not a coal operator because they had no permits to mine coal in that area. We actually spent a good deal of time on this. I asked and these folks very graciously accommodated me that we expand on the testimony and that they go more in depth into their reasoning for and against that concept. The reason for that is that this does not just bear on these three permit applications or this particular company or this particular longstanding feud between these two companies. This has to do with procedure as established by the Division of Gas and Oil since the law of 1990 was passed. Since that time, the Division has by practice required a consent to stimulate for any coal that's going to be stimulated from

some entity. If there's no coal operator, even though active coal operation being the point there, then the coal lessee supplies the consent to stimulate. If there is no lessee, then the coal fee owner provides that. But we have...we've chased some of our operators around fairly extensively to get consents to stimulate from all the way back to fee owners. Some of whom I didn't even know they owned coal. But we have required that throughout the history of DGO, since 1990...since the statute of 1900 was passed.

The presentation that was made to me on my liberation, for what it's worth, was pretty convincing. That we have two different definitions in the statute. The statute defines a coal owner. The statute differently defines coal operator. The statute requires a consent to stimulate from the coal operator. This has nothing to do with the 2500 foot rule or anything like that, which calls for coal owner. This specifically mentions the coal operator. Now, when I came to the conclusion that there was compelling merit in that argument that you had to meet specific requirements to become a coal operator, if you've read the decision you'll notice that I've stated in there that because this decision is contrary to years of practice at DGO it will not be instituted into general policy. If

appeals are filed and expeditiously pursued until all appeals have been heard or appeal rights had expired. DGO reserves the right to implement policy changes at any time with appropriate notice. I've also stated that while eighteen years of precedent at DGO, it's not to be ignored any possibility that that precedent was built on false interpretation of the statute must be addressed and brought to our attention.

So, that is what I went through to come to this decision. I was aware of the fact when I did it that either way I ruled there would be an appeal. Unlike you folks on the Board earlier today and last month, when something comes to me for a decision I have to render one. I don't have the objective of punting or the option of punting and not rendering a decision. So, this is the best decision that I could come up with my personal reasoning. This is why the appeal process is instituted in the law such that you don't have a situation where knot headed geologist is making legal policy for the department. So, that's all I'm going to have to say. I'll be glad to answer questions at any point in time. The arguments, I think, would be made by the folks involved.

BENNY WAMPLER: Questions of Mr. Wilson from members of the Board?

(No audible response.)

BENNY WAMPLER: Proceed.

TOM MULLINS: All right.

BENNY WAMPLER: I would ask all of you to...if there's somebody here that hasn't read it and want to hear it all fine, but that we've read the briefs and that to the extent that you can cut to the chase, I think it would help the Board members to get to a proper decision.

BOB WILSON: Mr. Chairman, let me say one other thing, if you don't mind, please. This has to do with procedure more than anything else. We actually scheduled all three of these hearings that are under appeal today at one time. We carried them in order because only one of them involved Jewell Smokeless. We had that first. But we did the same thing that has been eluded to here today. We incorporated a lot of testimony out of the first hearing into the others because basically it carries over one to the other. We managed to get ourselves confused sometimes, if you've looked at the transcripts, but I think we can out with a fair knowledge of what we were doing anyway. So, that's all I have.

THOMAS PRUITT: Mr. Chairman, I apologize for interrupting the Board here. As we've just mentioned here, we are representing Jewell Smokeless in that third case. To

the extent of the issue of standing, whether a coal lessee is a coal owner in the eyes of the Board and under the statute, that is an issue in the Jewell Smokeless case. So, procedurally, I'm wondering how the Board will be able to render a decision there without hearing our evidence. I apologize for putting the Board in that position. We didn't see that coming. We'd ask you to wait a few moments.

TOM MULLINS: Mr. Chairman, as---.

BENNY WAMPLER: Mr. Mullins.

TOM MULLINS: ---perhaps a compromise, we can handle the consent to stimulate issue first and then if there's no settlement that has been reached or...I'm not involved in those negotiations because I have a conflict of interest. They're both clients of mine. If they don't reach a settlement, then we...the Board needs to proceed on with those hearings on the 2500 foot rule. But we can grant them some extra time if we address, with the consent of Mr. Swartz, the consent to stimulate issue first.

THOMAS PRUITT: That's acceptable to us.

BOB WILSON: Mr. Chairman, I think that would actually be the best division because the other two dealt almost entirely with those issue and standing with Island Creek in both of them and with Jewell Smokeless in the one. I think that would make actually much more sense than

putting these two together and then going back to the first one.

BENNY WAMPLER: Is that acceptable, Mr. Swartz?

MARK SWARTZ: That's fine.

BENNY WAMPLER: Okay.

THOMAS PRUITT: Thank you.

BENNY WAMPLER: Proceed.

TOM MULLINS: Well, first I renew the motion that we filed with the Board with the authority that was submitted with the Board concerning the inability of Island Creek to note an appeal. In Rogers 209 unit ZZZ-71, they filed no objection at all. The statute mandates for someone to have standing to appeal a decision of the Director that they would have had to file an objection with the Director. They did not do so. This appeal must be dismissed insofar as the 209 is concerned. It exceeds that scope of the Board's authority to entertain an appeal that has been improperly noted. Since they did not object and did not file an objection in writing with the Director, they cannot come here today on the 209.

The other two wells, and inclusive of 209, there's also another reason why this matter is improperly before this Board. If the Board were to make the assumption that they are a coal owner or even a coal operator, the only

objections available to either a coal owner or a coal operator are those that are defined in 45.1-361.11 and .12. That's it. There are no other available objections that are properly heard by the Director or by this Board from either a coal owner or a coal operator. Consent to stimulate is not in either one of those code sections. They have no standing to raise the consent to stimulate issue as an objection by either entity before the Director. Because of that, this Board does not have the subject matter jurisdiction or the authority to hear an appeal on something a coal owner cannot raise or a coal operator cannot raise.

The Director has been requiring this to be filed. I think his opinions speak to the fact, if I'm not mistaken...if I'm not mis-remembering, and he can correct me if I'm wrong, he acknowledged that. It wasn't because of any objection. It was a requirement that he had previously put in place as a practice. But insofar as a proper appeal, they do not have an objection under .11 or .12 and, therefore, this is not a proper subject matter jurisdiction issue for the Board. This appeal must be dismissed. They have a remedy. The remedy is to go to Circuit Court. That's...the Board has directed many parties to go to the Circuit Court on many occasions. That is their remedy. But the remedy is not an appeal to this Board on this issue.

So, I don't know if the Board wants to entertain that first because it is a jurisdiction issue. If you don't have it, then you don't have it. It's our position that you don't. On 209, it's clear they didn't even do the first step to gain jurisdiction. I can give you statutory cites for that if that's helpful. It's under .23 what is required to have the right to note an appeal. But I think we would save some time if it's this Board's opinion, based upon the submission that we've made, that there is no jurisdiction. This matter should be disposed of by a dismissal by this Board upon the basis of lack of jurisdiction.

BENNY WAMPLER: Any other arguments...we don't need to repeat what he just said particularly, you know, where we have two attorneys who are representing the same company? You need to have a different argument, in my opinion. Not the same argument.

TOM MULLINS: As it don't conflict.

SCOTT SEXTON: We've been known to do that.

BENNY WAMPLER: Mr. Swartz, regarding the standing issue.

MARK SWARTZ: Mr. Wilson noticed this hearing on the consent to stimulate issue because under the APA, which is what he was talking about a moment ago, he felt like he was probably required as a bureaucrat in the State of

Virginia to tell somebody, if he was going to affect rights that they assumed they had under the law. So, I mean, he gave my client and me a notice saying, "I am going to address consent to stimulate at this upcoming hearing and I'm going to combine it with other hearings." That notice, I'm sure, is in the record. As he has reminded me many times over the years, although I point out to him that there should be a consent to stimulate in a permit package, he has told me repeatedly, "Well, you know, it's not really a statutory objection." But the reason that I perceive I got notice of this hearing to come on behalf of Island Creek and my client got notice of the hearing because he was about to make an APA examination of an issue and he was going to notify parties who could be affected by that outcome. That's why I came. I assume that's...because he said in the notice, I assume that's why he gave me the notice.

So, I would respond to Mr. Mullins' argument that I didn't make an objection. I was told to come to a hearing that was going to address an issue that the Director knew my client would be interested in. I wasn't, you know, required to do anything other than come or not come. So, the motion totally misses the point. This is not a statutory objection. This was an Administrative Process hearing where I got notice from an Agency that, you know, it's possible

that we might change the rules on you mid-stream and we want you to have a chance to be heard. So, that's my response to this motion. You know, if it was some kind of...you know, if I showed up at the hearing and made some statutory objection maybe we'd be having a different discussion. But consent to stimulate is an administrative decision. I think Mr. Wilson had a sense that they were going to make arguments that might cause his office to change course and he needed to let the coal company know. So, I think the motion is not well taken.

BENNY WAMPLER: Questions from members of the Board?

(No audible response.)

TOM MULLINS: Would the Chairman like me to respond to that?

BENNY WAMPLER: You may.

TOM MULLINS: Okay. I don't know what an APA hearing is. I know what a well permit application hearing is and that's what we had. We had an application before the Agency for a well work...for a well permit application. It wasn't a broad based policy making hearing at which every coal operator in the Commonwealth of Virginia and every gas operator in the Commonwealth of Virginia were invited to attend and interject their views. This was a specific well

application. I can understand trying to soft shoe around what the statute allows because the statute doesn't allow what we're talking about here today. But we are limited by what the statute says can be done. 45.1-361.23(A), "With the exception of the agreed permit applicant" GeoMet in this case, "no person shall have standing to appeal a decision of the Director to the Board concerning a new permit application unless such person has previously filed an objection with the Director pursuant to 45.1-361.35." It didn't happen in 209. Didn't do it. No appeal lies by statute. Did not expand hours of this Board beyond what the legislature granted. Two, unless that person has previously filed an objection with the Director pursuant to 35. We go back to .35, objection to permit on permit modifications may be raised by coal owner's or operator's pursuant to provisions of sections 45.1-361.11 and .12, consent to stimulate is not in either one of those. So, the standing says we have to file an objection pursuant to 35. 35 refers you back to the other two for the substance of that objection. It's not a substantive objection they can make. They don't have juris...pardon me, the Board lacks subject matter jurisdiction to entertain this appeal under these facts as much as it may want to. And I understand why it would want to, but you lack the power. If you exercise and

deny this, if you'll render it even into a greater state of flux because it is your decision void (inaudible) for lack of subject matter jurisdiction would confuse the issue even more. You don't have jurisdiction. I don't think the Board has any wiggle room. This is not something a factual finding can get you around. This is a matter of law.

MARK SWARTZ: The invitation that I got to come to this hearing that I hadn't asked for says, and it was addressed to me and my client and this is what Mr. Wilson said in the notice that he sent to me, "GeoMet contends...", and not Island Creek made an objection, okay, "GeoMet contends that a consent to stimulate from Island Creek Coal Company is not necessary and has asked that the permits be issued." Upon denial of this request, GeoMet requested an informal fact-finding conference under Virginia Code 2.2-40.19 not under 45.1-361.21. He gave me notice under the APA and he told me what the issue was. I came to the hearing. He made a decision. I didn't like it and I appealed it. And in my appeal, I said the reason for my appeal was that he erred when he determined that Island Creek Coal Company wasn't the coal operator. I didn't say he made a mistake when he issued a permit or wanted to issue a permit. I appealed the issue that he told me in the notice was on the table under the APA.

Okay, now I'd like to stay with where Mr. Mullins is headed because if he wants to go there let's go all the way. If he's saying that this consent to stimulate issue was improperly on the table when this decision was made then this decision zeros itself out and nobody has to appeal. So, either Mr. Wilson had the authority under the APA to have a hearing on the consent to stimulate issue and invite the people that should have been there or he didn't. If he had the jurisdiction and authority to do it, I have a right to come before you and complain that he made the wrong call and appeal. But if he didn't, you know, if your call is he didn't have the jurisdiction to do that or he did it wrong or whatever, I mean that decision goes away and I don't need to appeal it. I mean, but that is the ultimate point I think of this argument. If he's saying that Mr. Wilson fumbled the ball in the way he made this decision, well, fine if you want to go there and he fumbled the ball and he shouldn't have had the hearing or he didn't have jurisdiction to have the hearing, well, then his decision goes away. It's not like...you know, it's not like my appeal goes away, the decision goes away. So, that's where I think we are. And the notice, I mean if you look at the paperwork, you know I think it really kills me to have to give him any kind of pat on the back after he's just slugged

me, you know, but I think he noticed it right. He told us it was under the APA. That is not a 361 reference. But if, you know, your conclusion, based on what you're hearing from Mr. Mullins, is well you shouldn't have done anything well then it goes away, we don't have an appeal and you've got one down and two to go.

TOM MULLINS: I've got to correct some of the things that he said, Mr. Chairman. I apologize. And I'll try to do this as kindly as possible. He is attempting to try to convince this Board that somehow the Administrative Process or Procedure Act that tells you how to do hearings somehow gives you substantive jurisdiction to conduct those hearings. That is not true. You have to look to each individual agencies' enactment, what powers the legislature gave that agency to determine what powers that agency has. This Board does not have power over driver's licenses. That's because the statute that created this agency and this Board did not give you that authority. The APA is a procedural tool for every agency in the Commonwealth to use to notice hearings and conduct hearings and perform administrative reviews and not what power you inherently have. And to imply that it does, I...misrepresentation is all I can think of and I apologize for that harsh of a word. I think the APA does not empower this Board with subject

matter jurisdiction period. Any notice given by Mr. Wilson does not expand what the legislature gave you. He can't by notice write it on a piece of paper increase your authority.

Now, let's review the true facts. We had a permit application and you denied it. We have a right to request for a informal fact-finding conference, which we did. The issue on that informal fact-finding conference was do we have to submit a consent to stimulate? That was the issue. Properly noticed within the procedures of the APA, applying the subject matter of law of the agency under title 45.1-361, which is your source of authority. And he had conducted his informal hearing on that. The rights to appeal a decision of the Director are contained within 45.1-361. You must look there. The APA does not inherently grant rights of appeal if the specific enactment of the agency does that and that happened here. The legislature put in 45.1-361.23, how to appeal a director's decision. Now, I know why he's trying to wiggle around that restriction because he's out of Court today. He has to go to Circuit Court. Unfortunately the application is clean. It was a well work permit application. It wasn't an application under the APA. It was an application for a well work permit. The jurisdiction of this Board as to what powers it has on appeals is defined under title 45.1, not

2.2 which is where the APA is, 45.1-361.23 and that's it. You need look no further. And to suggest that there's another statute out there. It's easier to say the entire gives me the authority. It doesn't. But what part of the APA? There isn't one. I'm pointing out the specific statute that says what can and can't be done. And he has not rebutted that in one argument directly on point concerning 45.1-462.23. This Board is without jurisdiction.

BNENNY WAMPLER: Questions from members of the Board regarding jurisdiction of the Board?

BOB WILSON: Mr. Chairman.

BENNY WAMPLER: Mr. Wilson.

BOB WILSON: May I suggest that somebody address section 45.1-361.36, Appeals of the Director's decisions to the Board, which states that any person withstanding under provisions of 45.1-361.30, which means anybody who received notification, who is aggrieved by a decision of the Director may appeal to the Board. That's under Article III which is basically the regulation and enforcement section of the statute. I'd be interested to know how that works into this argument. Generally, we use this to allow appeals for almost anything that the Director does in his day to day operations, almost any decisions that he makes. But I would certainly like to hear that addressed.

MARK SWARTZ: And along those lines, 361.14.5-.

BENNY WAMPLER: Let me just cut you guys off on that. I think possibly the Board is going to make it's own determination, but right now the subject matter is jurisdiction based on the statute itself. It basically says, "Any party that received notice and is aggrieved by the decision of the Director." You know, you can ask for clarification. We can discuss it. You can ask for more argument if you wish, but I'll certainly speak as to me it's clear. And I think the Board needs to decide this before we go forward because we're talking about whether or not we have jurisdiction to hear.

MARK SWARTZ: And consistent with what you're talking about---

BENNY WAMPLER: Let me...I'm sorry, I'm going to cut you off until we decide. You know, if the Board wants to---

MARK SWARTZ: Well, there's a statute that says that too.

BENNY WAMPLER: But if the Board wants to hear it...hear more we'll decide that. If the Board wants to ask questions the Board can ask questions. But there's not point hearing more once we decide...if we have no jurisdiction then there's no point in hearing the case.

MARY QUILLEN: Mr. Chairman, I would like to hear Ms. Pigeon's opinion on this interpretation.

SHARON PIGEON: I think the Director has made the right decision on precisely the right statute. As unusual as it is for us to agree, he has cited to the one that would take you then to the APA's general requirements of appealing a case decision and this is the case decision and they received notice under 361.30.

MARY QUILLEN: And they do have the right to object?

SHARON PIGEON: Under my interpretation of this, they do.

BENNY WAMPLER: So, what's your pleasure, do you want to make a decision now or do you want to hear more argument? If you want to make a decision I'll entertain a motion. If you want to hear more argument all you have to do is ask for it.

TOM MULLINS: I'm sure Mark and I can both argue more given the opportunity.

BENNY WAMPLER: I'm certain you can. I'm certain they know that.

MARK SWARTZ: I don't hear an invitation yet.

BENNY WAMPLER: Yeah, we're waiting, you know that.

(No audible response.)

BENNY WAMPLER: What's your pleasure?

BILL HARRIS: I don't know, from the...of course,
I---.

BENNY WAMPLER: It's getting real dangerous here,
between lawyers practicing law.

BILL HARRIS: I mean, this----.

BENNY WAMPLER: I'm not your client.

TOM MULLINS: You've got to make that clear
nowadays.

BILL HARRIS: I just wanted to make sure I'm
reading this correctly. "Any person with standing under the
provisions of 45.1-361.320 who is aggrieved by a decision of
the Director may appeal to the Board subjected to the
limitations and posed by subsection B" and I would assume
that petition was filed within ten days...I'm sorry, "the
petition to the Board filed within ten days following the
appealed decision." Okay, so that was assumed...I assume
that was done. And subsection B which is what that
limitation is, "No petition for appeal may be raised...I'm
sorry, may raise any manner other than matters raised by the
Director or which the petitioner put in issue either by
application or by objections proposals or claims made and
specified in writing at the informal fact-finding hearing."

So,...and I'm not 1

a---

TOM MULLINS: I've not been able to---

BENNY WAMPLER: No, I'm not.

TOM MULLINS: ---respond to that one argument. I'm the only one who hasn't responded to that one statute. I have a response.

BENNY WAMPLER: I'm sorry, we've heard what we need to hear on that.

BILL HARRIS: It just seems like the Board is in a position then to consider that. I mean, based on that statute. I mean, I don't know what other route we would take.

MARY QUILLEN: Of hearing the appeal?

BILL HARRIS: Of hearing the...I mean, I just think the Board is in a position to hear the...to make a decision on the appeal. I'm not saying what that decision is, but I'm thinking the Board is in...if we need that type of motion, then I'll make a motion that based on my understanding of the statute and what information we've gotten from our representative from the Attorney General's office, based on her interpretation, then the Board does have jurisdiction in terms of making a...my motion would be that we do have jurisdiction over making a decision

concerning the appeal. Now, I'm not saying reverse or accept, but I'm saying we have the authority to do that. I don't know if we can move...have an authority, but that's---
.

BENNY WAMPLER: Well, I mean we have to decide it. That's the key.

BILL HARRIS: Yeah.

TOM MULLINS: May I proffer?

MARY QUILLEN: Based on our representative from the Attorney General's office interpretation, I second Mr. Harris' motion.

BENNY WAMPLER: We have a motion and a second. Any further discussion?

(No audible response.)

BENNY WAMPLER: You may proffer.

TOM MULLINS: Thank you. My proffer is this, to interpret the statutes, the two separate statutes, 45.1-361.36 and 45.1-361.23 in that manner, makes them inconsistent and makes the statutory scheme inconsistent. And my suggestion to you is, 45.1-361.36 is the general appeal statute .23 is specific to new permit applications. That is what it says. With the exception of an aggrieved permit application applicant, no person shall have standing to appeal a decision to the Director to the Board concerning

a new permit application. This is not a general appeal of another matter. This is a specific statute dealing with the specific issue. To read it the way the Board's motion currently stands is to say we are not going to give affect to .23. We're reading .23 as a redundancy and we're choosing .36 over .23. The proper interpretation is, I submit, .36 is the general appellate statute and when you're dealing specifically with a permit...new permit application the only statute that can apply is the one the legislature specifically addressed, which is .23. That's my proffer.

BENNY WAMPLER: Thank you. We have a motion and a second.

BOB WILSON: Mr. Chairman, may I proffer?

MARK SWARTZ: I don't think you need to, but go ahead.

BENNY WAMPLER: Motion and a second. Any further discussion of the Board?

(No audible response.)

BENNY WAMPLER: All in favor of the motion, signify by saying yes.

(All members signify by saying yes, but Katie Dye.)

BENNY WAMPLER: Opposed, say no. You have unani----.

KATIE DYE: Abstain.

BENNY WAMPLER: One abstention, Ms. Dye. Okay, we'll hear argument on stimulation. The Board has proper jurisdiction.

MARK SWARTZ: I'm going to keep this really short because I think you probably have all this stuff, at least I hope you have. If I finish and you feel like you want something else, you know, I extend the invitation, but I'll keep it short and see how it goes.

I think that from my perspective this is a statutory issue. What do these definitions in the Code mean? And there are two definitions. I've submitted in my appeal, I actually wrote down the two definitions that I think we're talking about and we're at page two sort of toward the bottom that said I don't know if you put the cover letter on my petition for appeal. So, if you find something that's got, you know, my logo at the top and then behind that is the actual petition for appeal that I filed and at the second page of that...it looks like most of you have got it, okay. At the second page of the petition for appeal sort of in the middle it says, "Reasons for the appeal." And the reason is that I believe that Mr. Wilson made a mistake when he held Island Creek Coal Company was not a coal operator. Okay, so that's the issue that I would

focus you on. And my argument is essentially a statutory argument that there are definitions of the term coal operator in the statute and there are definitions of the term coal owner in the statute. In the case that you've postponed the appeal cases that you've postponed, Mr. Wilson determined apparently that Island Creek was a coal owner but in the case that we're talking about right now he determined that Island Creek Coal Company was not a coal operator. The statutory definition is one sentence. It says, "Coal operator means, any person who has the right to operate or does operate a coal mine." I believe one of the exhibits at the hearing in front of Mr. Wilson was the Island Creek agreement with the Rogers. In other words, I think you have the coal lease in the record. If you don't I'll mark another copy but I believe it went in the record.

BENNY WAMPLER: It's in the record.

MARK SWARTZ: Okay. When I look at that coal lease and the terms of the lease, and I'm certainly not going to read it all into the record, but you know let's sort of look at this document for what it is. It starts off by saying, "this indenture of lease", and then it says, "Lessors hereby lease, let and demise unto the lessee for a period of five years", and then they talk about what are they giving them, "the sole and exclusive right and

privilege of mining." That's on the first page of the lease. "They hereby lease, let and demise unto the lessee for the period of five years the sole and exclusive right and privilege of mining and removing all of the coal." The definition of a coal operator in the statute that we just talked about is someone who has the right to operate or does operate a coal mine. This lease continues on many occasions as you read through the lease and talk about lessors also leased to the lessee the right and privilege of making such coal into coke or other products, selling the coal. The lessors have retained some rights, but they have to exercise those rights in a manner not to materially interfere with mining operations of lessee. "Lessee agrees to mine and remove all the mineable and merchantable coal. Lessee shall pay to lessors during the continuance of this lease a tonnage royalty." Okay, not rent, but a tonnage royalty. We have a simple definition that says if you have a right to mine coal you are a coal operator. We have a statute that says if you're a coal operator they have to obtain your consent. That is about as simple as my argument can be boiled down to and it is my argument. The only other two points that I would make are, when you...they have made an argument in this case that you can only have the right to mine if you have a permit. Well, if you look at the law,

now I'm talking the Code of Virginia not some case law, but if you look at what do you need to get a mining permit in the Commonwealth of Virginia. If you go to page five of my petition at the bottom, to obtain a mining permit from the Commonwealth the operator must arrive on the agencies doorstep with the right to mine. Because Virginia Code 45.1-181, which is now how do you get a mining permit, says, you have to provide with your permit application the following information which includes, and this is a direct quote, "the source of the operator's legal right to enter and conduct operations on the land converted by the permit." Well the source of the legal right to mine that you come to the agency with is you say I've got a coal lease. Okay. And so this right to mine argument is a fiction created to confuse a simple statute. To get a permit in this jurisdiction you must arrive at the agency with the right to mine. The way you get the right...because the statute says so. It says you have to identify the source of your right to enter and conduct operations on the land covered by the permit. So, what I am suggesting is that the people who drafted this definition actually probably understood how you would go about getting a mining permit. And you would need a right to mine and if you hadn't applied for a permit yet and didn't have a permit a right to mine would cause you to

be good to go as a coal operator because that's what the definition says. It's a person whose got a right to operate or does operate. So, it includes people who have coal leases but aren't mining yet and don't have permits yet and it includes people who have permits. And it is that simple. And I...and the statute that I consent to stimulate says an operator you got to get a consent from an operator.

The last point that I would make, by analogy...I'm just trying...I was trying to think of what is the best example that I can give you guys to illustrate to you how stupid this argument is and the best example I can give is from the Oil and Gas Code. The 1990 Act says that if you want to petition this Board to pool, it's 361.21, pooling of interests in drilling units. "The Board upon application from any gas or oil owner shall enter an order pooling all interests in the drilling unit for the development and operation thereof." In amongst the collection of arguments that GeoMet has made with regard to this appeal and the other appeals is an argument that not only is Island Creek Coal Company not a coal operator, they are not a coal owner and I gave you the definition of a coal owner as well, which is "Any person who owns or leases...", okay. So they're saying that this coal lease that we spent a little bit of time with does not make Island Creek a coal owner either.

Well, if what they're arguing in this collection of arguments to try and avoid the plain meaning of these statutes is right, they don't have standing to file a pooling application for goodness sakes. I mean, it's just ridiculous if they're... you know, if they're not...if Island Creek isn't a coal owner, CNX Gas is not a gas owner, GeoMet is not a gas owner, Equitable is not a gas owner. I mean, they are turning common sense on its head. And the hardest argument sometimes to deal with are arguments when you're looking at a house that's white and you're thinking gosh that's a beautiful white house and your opponent, of course, says that red house is really annoying. You're thinking, well, there's only one house there. And I literally, this is a white house or red house case. This is a silly argument. The statute is...these two statutes are one sentence. This lease is not a complex document that grants the right to mine and that in a nut shell is where I'm coming from and we spent probably five hours talking about this. I think I've cut it down to ten. Now, I'm sure we'll hear lots more arguments in response but I'm saying we have two simple definitions, apply them with some common sense and we'll be done.

TOM MULLINS: May I respond?

BENNY WAMPLER: Mr. Mullins.

TOM MULLINS: First I want to incorporate the memorandum of law that we filed. And my response to that is, we're dealing with Island Creek Coal Company by name. They are not a coal operator. They don't have any active coal mines. As recently as June the 6th, I believe, the Supreme Court of Virginia found as a fact that Island Creek Coal Company does not have a coal mine operation in Buchanan County, Virginia. I don't think they dispute that. They are here, not for the purpose of protecting the coal seam because of well production, they are here for CNX Gas Company as their affiliate. That's why they're here.

Now I agree with the red house/white house 110%. But what I disagree with is the right to mine. He indicated that was the issue. That's the phrase he used. Unfortunately, that's not what the statute says. The statute says, "...has the right to operate or does operate a coal mine." Not the right to mine, the right to operate a coal mine. There is a difference. To have the right to operate a coal mine, you have to have a permit and you have to have a license. 45.1-181 makes it a crime to mine coal without a permit, without a license. You have to have the right to operate a coal mine. Now, his argument concerning what you have to do when you go to the steps of the DMME office is show a right of mine...right to mine. You have to

show a right of entry to be able to mine. That doesn't give you the right to operate a mine. This statute says, "A coal operator means, any person has the right to operate or does operate a coal mine." The only way you get a right to operate a coal mine is to get a permit. It's not a silly argument. It's a silly argument to say it doesn't have force and effect to say you have to have a mining permit. That's the silly part. Further, if you incorporate the distance limitations for notice under the well permit applications that would mean you'd have to be...have to have the right to operate or do operate a coal mine within 750 feet of that wellbore not just across the Commonwealth of Virginia somewhere. You have to have that right within 750 feet of that wellbore. So, having whatever you want to call it, an indenture of lease, a profit apendra, a license to mine, whatever your right of entry to give you so you won't violate the true mineral owner's rights whatever interest you have is only one step. That does not give you the right to operate a coal mine. We submitted several items that we wish to incorporate. We also have the decision here today of the Virginia Supreme Court finding that Island Creek Coal Company does not operate coal mines and I'm going to submit that as an exhibit with the permission of the Board.

(Exhibit is passed out.)

BENNY WAMPLER: GeoMet Exhibit A?

TOM MULLINS: Yes, sir, that will be fine. I will note for the record that the Supreme Court when it analyzed the Levisa Coal lease did not call it a coal lease. It called it an agreement for mining rights which is a distinction between a vested title ownership. We'll get more into that in the other hearing. But be that as it may, we have and we can put that evidence on today if the Board would like to hear it. We have Mr. Blackburn here with the...who can testify to this Board that he has checked the DMME offices in Big Stone Gap and there is no mine permit for Island Creek Coal Company period, certainly none within 750 feet of any of these wells. We have, and I'll submit as an exhibit, a plat showing the distance from...for these wells from a reclamation activity going on by Island Creek Coal Company, not a mining activity on the VP4 mine site.

BENNY WAMPLER: This will be GeoMet Exhibit B?

TOM MULLINS: Yes, sir. And we have also here today as an exhibit the Master Cooperation and Safety Agreement as between Island Creek Coal Company, CNX Gas Company and the Consol entities where Island Creek granted blanket consent to stimulate to CNX. No matter what they got the consent. So, to assume that this is for anything other than protection of CNX, I would submit this document

evidences the purpose behind these objections. I'd submit this into the record.

BENNY WAMPLER: Let's see, GeoMet Exhibit C.

TOM MULLINS: Does the Board, I know it's of record. I have another copy of the 1962 Lease License Profit Agreement between the Rogers'. I can submit that again or if you all already have it I don't want to clutter up your---

BENNY WAMPLER: We have it.

TOM MULLINS: Okay. I won't do that to you then. But if I'm understanding where we are as far as the hearing, Mr. Swartz is not going to put on any evidence, he's merely making an argument. If that's correct I assume---

BENNY WAMPLER: That's what I've asked you to do. We've got the evidence that you put on at the informal and there's no point in repeating that. The Board has that before it and has read that.

TOM MULLINS: Then I incorporate that evidence here today. Okay, just a minute. Can Mr. Swartz make an additional...I mean---

MARK SWARTZ: Excuse me?

TOM MULLINS: ---Mr. Sexton make an additional argument?

SCOTT SEXTON: Those are fighting words seeing how

I'm already stupid and silly, I don't want to be called Swartz.

MARK SWARTZ: I really, I don't think I should be double teamed. I'm really not up to it. I've been at it all day long, he walks in at three o'clock in the afternoon--.

BENNY WAMPLER: I'm not going to let them double team you.

MARK SWARTZ: There you go. Thank you.

BENNY WAMPLER: I think I've already told them that.

SCOTT SEXTON: Well, I can tell Tom and he can say it.

MARK SWARTZ: And I'm getting real old, you know, and tired.

TOM MULLINS: This is a different issue. This is not a continuation of my argument. This is a different issue that he's arguing.

BENNY WAMPLER: Well let's see where he goes.

SCOTT SEXTON: This will be very brief. What I'd ask the Board to do is Mr. Swartz asked you all to look at page two of his appeal. If you all could turn to that, I believe it does perfectly explain the Director's decision. If you have page two in front of you, if you'll look to the

lower corner of the page, where it lists the definition of coal owner and coal operator the words are different. And what GeoMet would ask that you focus on is in coal operator the last word of the statute is coal mine. All right. Under coal owner, the last word of the statute is coal seam. Under Island Creek's arguments those terms would mean the exact same thing. He says if he has a right to enter into the coal seam then he has a right to operate a coal mine. And that is just the words are very different and I believe that that was the task given to the Director in this case was to somehow to reconcile this, the concepts are the same as interpreting a contract. In any Court of law when you put a contract or a piece of legislation before the governing body, the jury, the judge, this Board, your job is to not pretend one of them doesn't exist. You have to reconcile the two. And you can't...you cannot assume that words were placed in there for no reason. You have to assume that every word placed in there was placed in there for a reason. And if you do that you cannot say that a coal operator means some person in Buchanan County who owns one acre of coal. It is not what it means. And that is what Mr. Wilson said has always been the position of the Board, if you don't have a lessee then you have to go to the owner to get this and that's under the belief that that widow is

sitting on one acre in a hollow is somehow somebody who has a right to operate a coal mine. That was a wrong decision. That was a wrong policy decision. And it...it has now been corrected. But if you just look at this and you try to make it to where this right of entry is the actual right to operate a mine those two words explain it all. And I don't think that argument had been made yet, it's a very brief one. But those are the two words and there is no difference.

BENNY WAMPLER: Mr. Mason?

GEORGE MASON: I have no comment other than LBR Holdings is in agreement towards the arguments of Geomet offered.

BENNY WAMPLER: Mr. Swartz?

MARK SWARTZ: The reason the consent to stimulate requirement is in the Code is because the legislature wanted to protect the coal owner or the person who mined that coal and to protect their coal against damage in the process of stimulation. We've just heard an argument that an owner who hasn't leased his or her coal doesn't have a right to consent. I would disagree wholeheartedly with that. I think that if you think about and reflect back upon the 1990 Act, and I know Benny was around at that point in time, but there was great debate about whether or not stimulating a

coal seam would damage the coal and somehow impact upon its mineability and possibly sterilize it in place. And the consent to stimulate was major league issue back when this law was being negotiated in our legislature and drafted in our legislature. And I completely disagree that owners of coal who haven't leased their coal are not also protected by the consent to stimulate. If you don't have coal that's leased, you need to deal with the owner to get a consent to stimulate. You're not home free. And I, you know, that was...and I think the reason that it was so easy to make that decision and implement that decision for the Director's office then and for the Board then was because it was all fresh in our minds back in 1990 the reason for the consent to stimulate statute. And that statute was to protect coal operators and to protect coal owners. So, if you did not I could not disagree more. I mean, if you did not have...if you don't have a coal lease and somebody wants to frac your coal they have to come to you. They don't get a free ticket because the rationale behind that consent to stimulate statute was to give the person who had the economic interest in the coal the opportunity to say you're not going to go there.

The only point that I would make with regard to...this is the last point I will make, with regard to how

simple I think this is, going back to the definition of coal operator, it's a person who has the right to operate a coal mine or operates a coal mine. The first page of this lease, this coal lease says, "You have the sole and exclusive right", it's in the lease, "and privilege of mining." You know...I don't know if that doesn't get you within this statutory definition as having a right to mine I don't know what does. That's my only other comment.

BENNY WAMPLER: Mr. Mullins?

TOM MULLINS: My comment to that is, the right to operate a coal mine. There are vast differences in leases and licenses, profits that people have entered into and if the way he's reading it is it has to have that language in there to make you a coal operator, what about the other coal leases that give people the right to mine in some other fashion or form? That makes no sense. What was the purpose behind the statute? Safety is what I see that it was. That's why is said somebody who operates or has the right to operate a coal mine. If you're going to say the right to operate or does operate a coal mine, to operate a coal mine you have to have a permit. So, you're saying for half the definition you must have a permit and the other half you don't? The right to operate a coal mine in the Commonwealth of Virginia requires a license. It's a crime. The Statute

makes it a crime to mine without a permit. It's black and white. The legislature when it adopted this statute is presumed to have known what the other laws were. You don't presume they didn't know that you had to have a permit to operate a mine. The proper statutory construction is you assume the legislature knew what they were talking about when they said "a right to operate a mine". They could have said in this definition the lease rights, they have title rights, they have some document from a owner that gives them the rights. They didn't do that. They said "The right to operate a coal mine or does operate a coal mine." And, again, within 750 feet of the wellbore. That's the notice requirement. To say it's somebody who doesn't operate a coal mine, doesn't have a right to operate a coal mine, sterilizes thousands of acres of coal based upon an interpretation of coal operator that would make coal operator and coal owner the same which they are not. The right to operate a coal mine, you have to have, and it takes about a year. I think that anybody that has been involved in the permitting process knows it takes about a year to get a permit and the right to mine coal in Virginia. It's like having...I can own a car. I can have insurance on that car. I can have everything that I need to operate that car, but I don't have the right to operate the car if I don't have my

license. It's the same thing. I can own a car, but that didn't give me the right to operate or I can't operate it legally if I don't have a license. It's a requirement of statute. To have the right to mine coal you must have a permit. And, again, reading the Act as a whole, that right has to be within the 750 feet of the wellbore and they don't have that here. 1962 to date, it's not here and never been here, not here. The Rogers family, LBR Holdings, coalbed methane will be sterilized because this company, who has no plans to develop the Rogers gas but to obstruct GeoMet from developing that gas, wants to prevent its development in competition. We have a clear statutory definition. Right to operate and not right to mine coal. Right to operate a coal mine, a very specific thing. That is entirely different. The Director's decision properly analyzed that and made the distinction. I'd submit to you that's the proper decision and I'd ask that you affirm it.

MARK SWARTZ: I guess I get to go last so I'll try to keep it even shorter. I had this professor in law school, this sounds like its going to be a really long story, and his name was Jim Giardi, and he came into class one day in his suit and he had a black armband on and we're kind of looking at him. He was a character, but somebody finally had enough guts to ask him, you know, what that

might be and he said well I always wear a black armband whenever the legislature is in session. And they said well why would that be? We were just in freshman year. He said because no man's life, liberty or property are safe when the legislature is in session. And he didn't have a lot of respect for the legislature. And he imparted that to some extent to his students, but I will tell you that if the legislature thought the permit was the answer don't you think they might have said in their definition we're going to define coal operator as a person with a permit. And they didn't say that. They said something completely different. They said we're going to define a coal operator as somebody who has a right to operate a mine or does operate a mine. So, all of this talk about whether or not you have a permit or whether you've ever had a permit or whether you might have a permit tomorrow, the legislature had an opportunity when they passed this Act to say we're going to limit the term coal operator to folks who actually have a permit in hand. Well, that's not what this definition says. And I'll just leave you with that.

BENNY WAMPLER: Well, Board you've heard...Ms. Quillen?

MARY QUILLEN: I have a question for Mr. Swartz. The lease that you have referred to where is this coal

located?

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MARK SWARTZ: There's roughly five thousand acres subjected to this lease. I can picture it on a map because we've been arguing about all of these units. I mean, there was a statement that we have no plans to develop, well, we tried you know and they're trying. It's a huge area covering many units in the Oakwood Field sort of running up against the West Virginia line, I think.

MARY QUILEN: Okay.

MARK SWARTZ: If Im not terribly mistaken.

SCOTT SEXTON: Turning up toward Keen Mountain heading toward West Virginia.

MARK SWARTZ: Up against the West Virginia line.

SCOTT SEXTON: Heading toward West Virginia.

MARY QUILEN: And this lease that you have---

MARK SWARTZ: Now, this is a coal lease though.

MARY QUILEN: The coal lease that you have or that Island Creek has---

MARK SWARTZ: Well you, because I'm representing them now. I know it's confusing but---

MARY QUILEN: Right.

MARK SWARTZ: ---Island Creek this afternoon.

MARY QUILEN: Right. And they have a permit...excuse me. They have a lease on that coal?

MARK SWARTZ: They've had this leased since 1962 and they've, you know, mined under it occasionally, not a lot. But it's still in effect.

MARY QUILLEN: That was my next question. Is the lease still in effect?

MARK SWARTZ: That's what I...Mr. Mason comes over from Kentucky all the time and agrees with the GeoMet people because he wishes it wasn't. Well, it's true. So, I think his presence is an indication that it's in effect.

MARY QUILLEN: Okay. And Island Creek has mined in different areas of this---?

MARK SWARTZ: Very limited and a long time ago.

MARY QUILLEN: But---.

MARK SWARTZ: But they could mine again tomorrow if that's what you're asking because they have a coal lease.

BRUCE PRATHER: That's what I was going to ask you.

MARY QUILLEN: So, if they decided that they wanted to mine a certain area---.

MARK SWARTZ: They would file for a permit.

MARY QUILLEN: ---they would file for a permit and they would be---?

MARK SWARTZ: All things being equal, they would be mining.

MARY QUILLEN: They would be mining that coal, if they chose to do so. So, who owns the gas? Who has the---?

MARK SWARTZ: Well---.

GEORGE MASON: LBR Holdings.

MARK SWARTZ: ---you've got the cousins, you know. So...but we know who owns the gas and it's essentially George's client but there's 10, 15, 20% out there that's not leased, I think, in some tracts.

TOM MULLINS: In some tracts.

GEORGE MASON: The Rogers cousins.

MARK SWARTZ: The troublesome cousins who I've been trying to strike up a friendship with.

MARY QUILLEN: So, what you are asking is that you reserve the right to mine that coal that you have under lease?

MARK SWARTZ: Actually, we're saying in substance that we have a coal lease that would let us mine this coal and because of that we have a right to say we're a coal operator and object to stimulation. And Mr. Wilson's decision was, the way I read the statute, no one who has a coal lease has a right to insist that they consent to stimulate.

MARY QUILLEN: So, you're protecting your right? Your argument is you're protecting your right to at some

time in the future that, if you so choose is there some reason that this area hasn't been mined more?

MARK SWARTZ: I can guess, if you want a guess---.

TOM MULLINS: If we had the witness here we could probably tell you that.

MARK SWARTZ: I think the coal thins out as you go north. I mean, I'm just guessing. But I think I'm probably right. But that doesn't mean---.

MARY QUILLEN: Well, at some time in the future---
?

MARK SWARTZ: Well, the problem is, you know, if coal is \$400 a ton, you know, coal that wasn't interesting when it was \$20 a ton, you know, that's the reality.

MARY QUILLEN: Well, certainly. And with today's technology it probably would not be, but who's to say what the technology will be because what we're mining coal today that we never would have thought about mining twenty years ago---.

MARK SWARTZ: It's totally price sensitive.

MARY QUILLEN: ---what you are saying is you want to reserve that right and protect that right?

MARK SWARTZ: I mean, the reason the coal companies don't give up leases is because pricing changes, technology changes, and sometimes those coal (inaudible) to

make coal that wasn't mineable twenty years ago and mineable merchantable now. You know, the same thing is true with gas. I mean when we started this coalbed methane plate---

BENNY WAMPLER: Let me cut you off because I'm not going to let this go into other argument. So, you can respond to the Board members questions.

MARY QUILLEN: Thank you.

BENNY WAMPLER: Other questions from members of the Board?

GEORGE MASON: Mr. Chairman, may I make some comments on behalf of LBR Holdings who owns the lease we're talking about? You said in 1962 I don't think any coal has been mined on it in something like over twenty years. I think 28 years is not a permit to mine coal on it and the lease expressly reserves the right to develop the gas. It owns the coal, owns the gas and develop that gas is subjected to any type of mining operation that's set forth in the lease. So, LBR Holdings still owns a portion of the gas, gas that they do they can develop. And the coalbed methane is never going to be developed if Island Creek sits there, never develops the coal and just, you know, objects to any type of coalbed methane development. That's why we've been anxious to be on the side of GeoMet in having this developed.

BENNY WAMPLER: Did we get---?

TOM MULLINS: Final----?

BENNY WAMPLER: Absolutely not.

MARK SWARTZ: You've got me up against a wall.

BENNY WAMPLER: You can take that up at the next court. Did you get an agreement?

TOM PRUITT: We did, Your Honor.

BENNY WAMPLER: So, we're not affecting your rights here on decision making on these last two hearings.

TOM PRUITT: You are not. And the rights of my client, again, are Jewell Smokeless Coal Corporation. But representative for Calico, who is here, is also under that agreement as to this notice---

BENNY WAMPLER: And your name is?

TOM PRUITT: Thomas Pruitt.

BENNY WAMPLER: Thank you, sir. Other questions or comments from members of the Board?

(No audible response.)

BENNY WAMPLER: The question is whether or not Mr. Wilson made the decision that we want to uphold or overturn, or remand it. We could remand it for another hearing. Well, I mean, that's within the rights of the Board. I'm just talking about what your rights are, all jokes aside. Uphold, overturn or remand based on the arguments. If you

remand, you have to stipulate what you specifically...it's usually better if you stipulate something that you want more evidence on. These are combined. This will be a decision on thirty-eight and thirty-nine.

TOM MULLINS: This was just the consent to stimulate?

BENNY WAMPLER: Consent to stimulate.

TOM MULLINS: Yeah.

BENNY WAMPLER: And we're probably not going to do much more than that today for those of you who are waiting because I promised the Board I won't keep them here until..I've been threatened when I go past five o'clock.

TOM MULLINS: Is that Central Standard Time?

BENNY WAMPLER: Eastern Standard Time.

MARY QUILLEN: What my concern is...on this decision is how will this decision effect two things down the road, This is other parties who hold coal leases and also developing the gas. And it's going to affect one or the other.

BENNY WAMPLER: If the parties can't agree that's true.

MARY QUILLEN: Yeah, if the parties can't agree. And I think that whatever decision is...if we make a decision here today in favor of one or the other somewhere

down the road we're going to have other people that are going to...companies that are going to come in and want to either maintain their right to protect their coal leases or maintain their right to develop the gas.

BENNY WAMPLER: Absolutely. It's an important decision.

MARY QUILLEN: It is. It really is. And it certainly concerns me that we would make a decision that is going to set a precedence that's going to have long term consequences.

BENNY WAMPLER: And it definitely will.

MARY QUILLEN: Yes, it will.

BENNY WAMPLER: I assure you. And it's good it concerns you because it shouldn't be taken lightly.

MARY QUILLEN: No, it doesn't. It concerns me greatly because this...I mean this is a very important industry both the coal mining and the relatively new industry of CBM, not only it can economically but environmentally. And I find it very troubling to have to make this kind of decision that's going to have long term effects.

BOB WILSON: Mr. Chairman, may I make a comment to you?

BENNY WAMPLER: Yes.

BOB WILSON: This...I hope I'm not getting out of line here, but if I am I'm sure I'll---

BENNY WAMPLER: I won't let you.

BOB WILSON: ---hear about it very quickly. I think the Board needs to consider in general the same things that I have to consider when we have informal hearings. You cannot avoid the responsibility of making decisions just because they're tough decisions. That's why the appeals processes are available. Now, I tried very hard to assess all the information I'm given in these things and come up with a decision on my own without regard to whom the people are who are making the presentations or anything like that. When I first started this, I got some very good advice from the then Attorney General, Sandra Riggs, she said that you are given the responsibility to make these decisions and you make them based on your received evidence and your reasoning ability. But the reason that you shouldn't bellyache over too much is that the law provides appeal processes. So any decision that I make, any decision that I make as Director of the Division of Gas and Oil is appealable to you folks. Any decision that you make is appealable to the Board.

BENNY WAMPLER: The Court.

BOB WILSON: The Court, I'm sorry. Yeah, I just did that again didn't I. It's appealable to the Court. So,

I think you have to go with your gut and then leave it to these guys to see how far they want to pursue it. But I don't think you can put on these things just because they're difficult decisions.

BENNY WAMPLER: Other discussion from---

BRUCE PRATHER: I have something.

BENNY WAMPLER: Mr. Prather.

BRUCE PRATHER: Most of all these coal leases have got a lot of stuff in them that controls oil and gas. By the same token they are the primary document that controls what's done on these properties and the thing is if we would change this everyone of these coal leases, we'll have a problem and I'm talking about the ones that...and there's a jillion of them in effect.

MARY QUILLEN: Many of the coal...many of the coal leases were made before CBM was even in our vocabulary.

BRUCE PRATHER: That's right.

MARY QUILLEN: And that's one of the things that makes it so hard to decide where the strongest argument lies and the most benefit that's going to be derived from our decision.

BENNY WAMPLER: Just give me an opportunity to see if there are other questions or a motion just regarding stimulation, component of Mr. Wilson's decision, to uphold

or overturn.

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MARY QUILLEN: Mr. Chairman, we rely very, very carefully on the decisions that are made by the Director of the Gas and Oil Board. We depend on them to be knowledgeable and to research every aspect of every case that comes to them. And we'd rely on their expertise to guide us. And based on that belief and the fact that I do believe that they don't have an easy job and the decisions they make are, I believe, the very best of their ability based on the evidence and what they know and what their expertise is on that particular subject. So, I will make the motion that we uphold the decision of the Director.

BENNY WAMPLER: Okay, there's a motion to uphold the Director's decision. Is there a second?

BILL HARRIS: Well, I think it's probably going to end up in Court anyway, but I'll second that.

BENNY WAMPLER: Second. Any further discussion?

(No audible response.)

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

(All members signify by saying yes.)

BENNY WAMPLER: The Chair says no. You have a decision.

KATIE DYE: I abstain.

BENNY WAMPLER: One abstention, Ms. Dye.

KATIE DYE: As an explanation to you guys, that's due to litigation with CNX. I didn't want to take a vote.

TOM MULLINS: I understand.

BENNY WAMPLER: We're going to go ahead and we'll continue these until next hearing the later part of this argument and we will also continue thirty-seven until next hearing. So, thirty-seven and thirty-eight the remainder of this not to revisit this part.

TOM MULLINS: Is that next month?

BENNY WAMPLER: That's next month, July.

SCOTT SEXTON: Mr. Chairman, is it sufficient for you that Jewell Smokeless and GeoMet have announced an agreement and Calico have announced an agreement as to the objections that were raised on the---

BENNY WAMPLER: Thirty-seven? It is.

SCOTT SEXTON: Thirty-seven Okay. So, there's no need for them to return next time to state that again?

SHARON PIGEON: Let's have Mr. Pruitt come down and tell us that.

SCOTT SEXTON: He thinks he did when he said that earlier and I turned around and he said I already did.

BENNY WAMPLER: But we have to hear other arguments on thirty-sevem next time?

SCOTT SEXTON: 1 Yes, Island Creek has other arguments.

BENNY WAMPLER: It's not withdrawn. Thirty-seven, thirty-eight and thirty-nine are continued, but the Jewell Smokeless Jewell component of---

SCOTT SEXTON: Thirty-seven.

BENNY WAMPLER: Thirty-seven. Calico as I understand it you worked out an agreement and there's no need for you to be here next month, is that correct Mr. Pruitt?

TOM PRUITT: Mr. Chairman, that is correct. And, again, I represent Jewell Smokeless Coal Corporation. We will be submitting to the acting Director Asbury a stipulation agreement and a related agreement that we have worked out today concerning these wells. There will be no issue that Jewell Smokeless will raise at your next calling of this case. We also have present in the room today a representative Calico who will make those representations.

BENNY WAMPLER: State your name.

RICHARD BAILEY: Richard Bailey, an engineer for Calico.

BENNY WAMPLER: And you're authorized to negotiate for and make decision for Calico in this matter?

RICHARD BAILEY: Yes.

TOM PRUITT: I have independent knowledge of that by talking to the owner of Calico.

BENNY WAMPLER: Well, good. I just wanted to get it on the record. And Geomet agrees?

SCOTT SEXTON: Yes.

BENNY WAMPLER: Are you in agreement LBR?

GEORGE MASON: Yes.

BENNY WAMPLER: All right, thank you. See you next month. We have to do two things while we still have a quorum. The minutes were distributed to you from last month and I need a motion to approve or amend.

MARY QUILLEN: Motion to approve.

BRUCE PRATHER: Second.

BENNY WAMPLER: Any further discussion?

(No audible response.)

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

(All members signify by saying yes.)

BENNY WAMPLER: All right the minutes are approved. The other part is public comment. Mr. Sheffield reminded me of that. Is there anyone here who wants to make a public comment?

(Off record.)

JOHN SHEFFIELD: First, I...right in the beginning

I want to apologize to the Board because I earlier today I had gotten up with Mr. Glubiack and left and the reason I did that was because I thought it was over. I didn't know there was going to be another motion or a offer for motion. So, I wanted to apologize to the Board members for that first.

BENNY WAMPLER: I have a short memory, so don't worry about that.

JOHN SHEFFIELD: I was like...so, I wanted to apologize. That was my ignorance and my stupidity on that. Just real quick, last month we had a repool that I was involved with and there was no motion made and that situation died. I just kind of wanted to know, you know, where that could go as far as a repool if I may ask that from this point. Just ask the Board. There was a motion made by the Board in January for repool. There was no motion made to pass, don't know about a...don't remember if there was one---.

BENNY WAMPLER: Do you mean there was a motion but there was no election?

JOHN SHEFFIELD: There was a motion...it was asked was there a motion, do we have a motion, there was no motion.

BENNY WAMPLER: There was no motion?

JOHN SHEFFIELD: Right. So, I didn't know, you know---.

BENNY WAMPLER: So, what happened to it?

JOHN SHEFFIELD: We still have unpooled situations---?

BENNY WAMPLER: What happens in those cases just like today is you remain status quo, nothing changed. It just goes back to the way it was...I mean it stays where it was. If you didn't have...I'll get the lawyer here, but just...she is trying to hide. But just like today, you know, when you don't have an action that's complete then you stay...it's status quo, what you had before, nothing changed. You were trying to change the course today, for example, of a prior decision by getting more time, you know, in that specific---.

JOHN SHEFFIELD: Miscellaneous petition, correct.

BENNY WAMPLER: Right. And when the Board didn't act then it reverted to the fact that you don't have that right. Now, you have an appeal right to Court---.

JOHN SHEFFIELD: Okay.

BENNY WAMPLER: But you know it went back---.

JOHN SHEFFIELD: Because there was no vote, so therefore it wasn't really an appeal process at the time.

BENNY WAMPLER: That's right. So, what you were stuck with then is the decision that your time had lapsed. And I'm giving that as an example.

JOHN SHEFFIELD: Yes, sir. The tracts that were pooled were Tract 41, 45, 52 and 53. 53 out of those wasn't in the final order. So, I don't, you know---

BENNY WAMPLER: I mean I can't speak to that right off the top of my head.

JOHN SHEFFIELD: I understand.

BENNY WAMPLER: We'll have to do some research on that to see. But we'll look into that.

JOHN SHEFFIELD: Can I just send you a letter and you know give it---

BENNY WAMPLER: Yes, please.

JOHN SHEFFIELD: ---again, and show the motion of the Board and everything and you know I need just a remedy to go wherever I need to go---

BENNY WAMPLER: Sure, absolutely.

JOHN SHEFFIELD: ---as far as time too since there wasn't a vote I don't know where your time limit is because if you appeal something you've got to have something to appeal.

BENNY WAMPLER: Right. Well, on the ones...like I said, like today what happened was you know---

JOHN SHEFFIELD: Yes, sir.

BENNY WAMPLER: ---you could go to Court on that one in an appeal because with that what happens was you're stuck with the fact that your time expired.

JOHN SHEFFIELD: Yes, sir. I understand, sir. Okay. Well, I appreciate your time.

BENNY WAMPLER: Yes, sir, anytime. Thank you. This hearing is concluded now.

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 and Deidra Stacy on a tape recording machine and later transcribed under my supervision.

Given under my hand and seal on this the 3rd day of July, 2008.

NOTARY PUBLIC

My commission expires: August 31, 2009.