

VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY

VIRGINIA GAS AND OIL BOARD HEARING

Tuesday, June 17, 2014

Lebanon, Virginia

BOARD MEMBERS:

Bruce Prather—Gas & Oil Industry Representative

Donald Ratliff—Coal Industry Representative

Donnie Rife—Public Member

Mary Quillen—Public Member

Rita Surratt—Public Member

APPEARANCES:

Bradley Lambert—Chairman of the Virginia Gas & Oil Board

Rick Cooper—Director of the Division of Gas & Oil and
Principal Executive to the Staff of the Board

Matthew Gooch—Assistant Attorney General

Diane Davis—Staff Member of the Division of Gas & Oil

Sarah Gilmer—Staff Member of the Division of Gas & Oil

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1 **Bradley Lambert**: Good morning, ladies and gentlemen. It's now after 9:00 and it's time to
2 begin our proceedings this morning. Before we get started, I would ask the board members to
3 please introduce themselves, beginning with Ms. Surratt.

4 **Rita Surratt**: I'm Rita Surratt, public member from Dickenson County.

5 **Matt Gooch**: I'm Matt Gooch, with the office of the Attorney General, counsel to the Board.

6 **Bradley Lambert**: And I'm Butch Lambert, the Deputy Director for the Department of Mines,
7 Minerals and Energy.

8 **Donnie Ratliff**: I'm Donnie Ratliff, representing coal from Alpha Natural Resources.

9 **Donnie Rife**: I'm Donnie Rife, Governor appointee from Dickenson County.

10 **Bruce Prather**: I'm Bruce Prather. I represent the oil and gas industry on the Board.

11 **Mary Quillen**: Mary Quillen, public member.

12 **Items Number 1 and 2**

13 **Bradley Lambert**: Thank you, ladies and gentlemen. At this time, we will receive public
14 comments and we have no one signed up for public comment, so we will move to item number
15 two on the docket. The First Bank and Trust escrow agent for the Virginia Gas and Oil Board
16 will now address the Board for our quarterly report. Good morning.

17 **Debbie Davis**: Good morning. I'm Debbie Davis. I'm with the First Bank and Trust Company.
18 It's been a while since I've seen you all, so.....

19 **Bradley Lambert**: It has been a while.

20 **Debbie Davis**: So, we've got a little catch-up to do. We'll start out.... I included a summary of
21 first quarter 2014 and then I also went ahead and did a year-to-date summary as of 5/31/14 so
22 that you could kind of have some current numbers. You can see our beginning balance as of
23 12/31/13 was \$28,397,605.64. Year-to-date deposits total \$1,099,036.09. Interest earned
24 through money market and CDARS total \$33,416.64. Our fees-to-date have been \$11,968.92.
25 Distributions total \$258,483.56. We have had no audit expenses. There were a few adjustments
26 and I've went ahead and made explanations to those. When we were doing our reconciliation,
27 we noticed that there was a deposit that was made in January....excuse me....that was made in
28 November but, for whatever reason, it was omitted from the spreadsheet. So, I found that
29 mistake at the end of the year and put it on the January's. The second one is an adjustment of
30 \$355.27, which was made in March of 2014. The \$355.27 was incorrectly posted to VGOB
31 number 0781 and should have been to 0871. The correction was posted properly but, when put
32 on the spreadsheet, I added instead of subtracted. So, I had to catch it up and fix it the next

1 month. And, on the third one, \$488.46 was refunded to 0161 due to prior overpayments. So, I
2 didn't want to put that in just the regular deposit column since it was a reimbursement. I wanted
3 to put that in the adjustment column to show that one. If there's any questions.....

4 The next is just a break-out, as of May 31, showing the balances of each well and also the
5 unfunded units that we have at the moment,

6 **Mary Quillen**: There's only three of the unfunded units? Is that right?

7 **Debbie Davis**: There's two pages. It's the very end.

8 **Mary Quillen**: Oh...okay.

9 **Debbie Davis**: Which, a lot of these have been cleaned up. The staff has been working on those
10 that...where the orders have expired to get those taken off.

11 **Bradley Lambert**: Mr. Cooper, how are we doing on...?

12 **Rick Cooper**: We're doing good. We did have a report we were going to report this month, but
13 we're trying to get a few more. We'll try to report out on those next month...try to get some of
14 those...have the Board approve closing some of those accounts.

15 **Debbie Davis**: Then, under the next tab, of course, is the outstanding check list. It's our normal
16 ones that have been on here for a number of months now. And, I did go online and research with
17 the State of Virginia and our escheatment period is five years.

18 **Bradley Lambert**: Okay.

19 **Debbie Davis**: I know that was a question before and we have verified that with the State of
20 Virginia and, as to the banking industry serving as escrow, we are required to wait the five years.

21 **Bradley Lambert**: Okay.

22 **Donnie Ratliff**: So, Mr. Chairman...

23 **Bradley Lambert**: Mr. Ratliff.

24 **Donnie Ratliff**: So, if people write "Void" on the check and return it and it sits there five years,
25 it's going to escheat back to the State?

26 **Debbie Davis**: Yes. Because, during the initial order, I was ordered to pay those and, so those
27 monies are due to those people. So, at that point it would be escheated to the State and, at that
28 time, they can work through the State to get their monies, if they would like.

29 **Donnie Rife**: Are the people aware of this?

30 **Debbie Davis**: Yes. It is on the website. And I have stated that any of....

1 **Donnie Rife**: You've got a lot of people that don't have a website, though. They don't have any
2 way of accessing the website.

3 **Debbie Davis**: Right

4 **Donnie Rife**: Do they do a hard copy notification?

5 **Rick Cooper**: Pardon?

6 **Donnie Rife**: Do they do a hard copy notification?

7 **Rick Cooper**: Meaning what?

8 **Donnie Rife**: That, if they write "Void" on the check and send it back, it goes back to the State.
9 Are the people fully aware that they may run a risk of losing their money?

10 **Diane Davis**: I think the majority of them are aware that, by returning it....they were told, I think
11 several times, by our prior AG, if I'm not mistaken, that you know, you were paid out and, as far
12 as the Board is concerned, this money should have been disbursed to you and I think most of
13 them have been returned because they changed their mind and didn't want to take the money.

14 **Debbie Davis**: And I have stated at any time, if any of these will contact me, I can re-issue the
15 checks with current dates because a lot of times the banks won't accept them because they are
16 stale-dated. I can work and void the current checks out and have those re-issued.

17 **Diane Davis**: And we have had phone calls about those and we have told the people that have
18 called us that the Board paid you out and you need to contact, if you really want your money or
19 it's going to be escheated in a period of time. At that time, we didn't state what period because I
20 think it was still in confusion. So, yes, the majority of these people should very much be aware
21 that their money is being escheated after....

22 **Donnie Rife**: Well, I'm not worried about the majority as much as I'm worried about the few.

23 **Diane Davis**: I don't....you know...

24 **Donnie Rife**: They just don't have a clue.

25 **Diane Davis**: I can't say for certain on all of them. I can just say that a large portion of them...

26 **Shea Cook**: Mr. Lambert, would you accept a comment from the public?

27 **Bradley Lambert**: No, sir. We have passed the public comment period. Mr. Rife, just for
28 information to the Board, working with our public relations manager, we are considering some
29 kind of a press announcement through one of the local TV stations or other news media to get a
30 word out that we are still holding funds, but we haven't reached the point where we're prepared
31 to do that, yet. Anything else, Ms. Davis?

1 **Debbie Davis**: No. If there's nothing further there, we'll move on to the investments. As of the
2 end of May, in our money market fund, we had \$3,270,256.26. I have kind of switched out
3 where we were laddering to get the most for the money to do the 30 basis points and doing the
4 annual CDARS and currently we have \$25,990,000 invested in those...your CDARS program.
5 And, I pretty much have monies coming due every month and they are available if I should need
6 to pull out additional funds with no penalties.

7 **Donnie Ratliff**: Mr. Chairman.

8 **Bradley Lambert**: Mr. Ratliff.

9 **Donnie Ratliff**: What if the money that could be returned to the State because the five year limit
10 is involved in our investment accounts?

11 **Debbie Davis**: Those monies...

12 **Donnie Ratliff**: They're not assigned to....

13 **Debbie Davis**: No.

14 **Donnie Ratliff**: Okay.

15 **Debbie Davis**: When it's already been taken out, per se, and it's just sitting per se in our
16 checkbook waiting for that to clear, just as you....

17 **Donnie Ratliff**: Well, we've got enough cash in it...

18 **Debbie Davis**: If your personal check....you write a check...that money's still sitting there, but
19 it's not. Does that make sense?

20 **Bradley Lambert**: Uh huh....

21 **Debbie Davis**: And you will note that the total dollar amount of outstanding is only \$8,382.60.

22 **Bruce Prather**: How many accounts have turned down the checks? How many of these are we
23 talking about?

24 **Debbie Davis**: 32 people.

25 **Bruce Prather**: 32?

26 **Mary Quillen**: Some of them have several.

27 **Debbie Davis**: Yes.

28 **Mary Quillen**: So, it looks like there's more than there actually....

1 **Debbie Davis**: Right.

2 **Mary Quillen**: Individual people because...

3 **Debbie Davis**: Yes.

4 **Mary Quillen**: There are several of them that...

5 **Debbie Davis**: Like the one gentleman that returned his because he was upset with the dollar
6 amounts. His total is \$39.03. He wasn't happy getting a \$.10 check, but I issued what I was told
7 to. And, on the last page, I have included current treasury bond rates. You'll notice they're
8 still...the short-term...they're still on the flat side. Next month, C.J. Carter will be coming with
9 me and, hopefully, to maybe have some ideas on the investments...on what maybe we could do
10 to make sure we're getting the most for your money.

11 **Bradley Lambert**: Yeah, we'd appreciate that. If he could come and give us an update on
12 return rates. Any other questions for Ms. Davis from the Board?

13 **Donnie Ratliff**: Mr. Chairman.

14 **Bradley Lambert**: Mr. Ratliff

15 **Donnie Ratliff**: I'd just like to tell her we appreciate the accuracy, the dedication, the time. It's
16 the most complete report that we've...constantly receive from you guys that gives us all a comfort
17 feeling, knowing that the account has been managed well and we appreciate the work you've put
18 into it. I know you take it personally and we appreciate that, too.

19 **Debbie Davis**: I do.

20 **Mary Quillen**: And I think that goes for the whole Board, in what Mr. Ratliff just said. I mean,
21 you have no idea what a comfort it is to us to know that this is being managed and managed well.

22 **Debbie Davis**: Right. And, that's just how we feel about our clients. You know, we treat it as it
23 is our own.

24 **Mary Quillen**: And that's what happens when you do business with people who are from
25 around here.

26 **Debbie Davis**: Yes.

27 **Bradley Lambert**: And the Board probably doesn't know it as well as I do that Ms. Davis has
28 really been very, very helpful in setting up and managing our escrow spreadsheets and how our
29 Division interacts with the bank. We certainly appreciate that work, too, that probably goes
30 above and beyond a little bit and we appreciate it.

31 **Debbie Davis**: Well, I appreciate everyone and I enjoy working with everyone, as well.

1 **Bradley Lambert**: Thank you, Ms. Davis.

2 **Debbie Davis**: Thank you.

3 **Item Number 3**

4 **Bradley Lambert**: Now, we're calling Item Number 3 on the docket, a petition from EQT
5 Production Company, for the disbursement of funds and authorization for direct payment on
6 behalf of the known owners of tracts 2, 4, 5, 6, 7, 8 and 9. This is Docket Number VGOB...I'm
7 sorry. This is continued from VGOB 97-05-20-0586 and Docket Number VGOB-97-520-0586-
8 1. All parties wishing to testify, please come forward.

9 **Jim Kaiser**: Mr. Chairman, Board Members, Jim Kaiser and Rita Barrett on behalf of EQT
10 Production.

11 **Bradley Lambert**: Good morning.

12 **Jim Kaiser**: Good morning.

13 **Sarah Gilmer**: Do you swear or affirm that your testimony is the truth the whole truth and
14 nothing but the truth?

15 **Rita Barrett**: Yes ma'am.

16 **Bradley Lambert**: You may proceed, Mr. Kaiser.

17 **Jim Kaiser**: Mr. Chairman, this first item.... We're going to ask that it be continued again until
18 the August Docket.

19 **Rita Barrett**: I'll explain that. We had a gentleman...his mother, Sharon Callan, who appears on
20 these exhibits... He is an estate attorney in Richmond. He contacted Mr. Kaiser and, initially I
21 talked to him. He said that some of the parties on these exhibits are deceased. And he is going
22 to get us the Affidavits of Descent and the W-9's and he has not done that, yet. So, I'm
23 contacting him later on to see where he is on that.

24 **Bradley Lambert**: Okay. Thank you. Then, Item Number 3 will be continued until August.

25 **Item Number 4**

26 **Bradley Lambert**: We're calling Item Number 4, a petition from EQT Company for the
27 disbursement of funds and authorization for direct payment on behalf of the known owners of
28 Tracts 1, 2, 3, 4, and 6 in Well VC-504637, Docket Number VGOB-01-1016-0968-05.

29 **Jim Kaiser**: Mr. Chairman, again Jim Kaiser and Rita Barrett on behalf of EQT Production.

1 **Bradley Lambert**: You may proceed Mr. Kaiser.

2 **Jim Kaiser**: Ms. Barrett, this is a disbursement request filed by EQT on behalf of the parties
3 seeking disbursement?

4 **Rita Barrett**: That's correct.

5 **Jim Kaiser**: And have all parties been notified as required by statute?

6 **Rita Barrett**: Yes.

7 **Jim Kaiser**: What unit is affected here?

8 **Rita Barrett**: This unit is VC-504637.

9 **Jim Kaiser**: And we're disbursing from Tracts 1, 4, and 6 in that unit?

10 **Rita Barrett**: That's correct.

11 **Jim Kaiser**: Is this a partial or full disbursement?

12 **Rita Barrett**: This is 100% disbursement.

13 **Jim Kaiser**: And, when you say 100%, you mean 100% of these tracts are being disbursed and
14 that should close out the account for the unit also?

15 **Rita Barrett**: Yes.

16 **Jim Kaiser**: Okay. And the reason for the disbursement?

17 **Rita Barrett**: We have letters dated January 2014, wherein Range relinquished their claim to
18 the coalbed methane on various units, including this one.

19 **Jim Kaiser**: And have the...

20 **Rita Barrett**: The coalbed methane royalties...my apologies.

21 **Jim Kaiser**: Have the figures been reconciled between the bank and EQT?

22 **Rita Barrett**: Yes, as of December 11, 2013.

23 **Jim Kaiser**: And, for purposes of disbursement, should the Board use the percentages as
24 represented in the next to last column on the right in Table 1 that was submitted with the petition
25 for disbursement?

26 **Rita Barrett**: Yes.

1 **Jim Kaiser**: And the folks who are listed as the owners for Tracts 1, 4, and 6 on that Table 1,
2 are they the folks who should receive the disbursements in that amount?

3 **Rita Barrett**: Yes.

4 **Jim Kaiser**: And have you provided the Board with Exhibits E and EE to reflect the facts of this
5 disbursement?

6 **Rita Barrett**: Yes.

7 **Jim Kaiser**: And would you ask that the order provide that any royalty being due these parties
8 be paid directly to them going forward?

9 **Rita Barrett**: Yes, sir.

10 **Jim Kaiser**: Nothing further of this witness at this time, Mr. Chairman.

11 **Bradley Lambert**: Do I have any questions from the Board?

12 **Mary Quillen**: Mr. Chairman, we need to just make a little correction. When you call this Item
13 you included 2 and 3, which is on the agenda, but Tracts 2 and 3 are not included in this. It's 1,
14 4, and 6.

15 **Bradley Lambert**: You're correct, Ms. Quillen. We'll make that correction.

16 **Mary Quillen**: Thank you.

17 **Bradley Lambert**: Any other questions from the Board? [No response] Anything further, Mr.
18 Kaiser?

19 **Jim Kaiser**: We'd ask that the petition be approved as submitted, Mr. Chairman.

20 **Bradley Lambert**: Do I have a motion?

21 **Mary Quillen**: Motion to approve.

22 **Bruce Prather**: Second.

23 **Bradley Lambert**: I have a motion and a second. Any further discussion? [No response] All
24 in favor signify by saying yes.

25 **Board**: Yes.

26 **Bradley Lambert**: Opposed, no.

27 **Donnie Ratliff**: I'll abstain, Mr. Chairman.

28 **Bradley Lambert**: One abstention: Mr. Ratliff. Thank you, Mr. Kaiser.

1 **Jim Kaiser/Rita Barrett:** Thank you.

2 **Item Number 5**

3 **Bradley Lambert:** We are calling Docket Item Number 5. A petition from EQT Production
4 Company, for the disbursement of funds and authorization for direct payment on behalf of
5 Stephen Mullins as to Tracts 3 and 4 in Well VC-537113. This is Docket Number VGOB-07-
6 0515-1934-03. All parties wishing to testify, please come forward.

7 **Jim Kaiser:** Mr. Chairman, again, Jim Kaiser and Rita Barrett.

8 **Bradley Lambert:** You may proceed, Mr. Kaiser.

9 **Jim Kaiser:** Ms. Barrett, again, is this a disbursement request filed by EQT on the behalf of
10 Stephen Mullins?

11 **Rita Barrett:** Yes.

12 **Jim Kaiser:** And have all parties been notified as required by statute?

13 **Rita Barrett:** Yes.

14 **Jim Kaiser:** And what unit are we disbursing from?

15 **Rita Barrett:** Unit VC-537113.

16 **Jim Kaiser:** And, which Tracts?

17 **Rita Barrett:** Tracts 3 and 4.

18 **Jim Kaiser:** Is this a partial or full disbursement?

19 **Rita Barrett:** This is a partial.

20 **Jim Kaiser:** And the reason for the disbursement?

21 **Rita Barrett:** We have a letter dated September 25, 2013, wherein Range releases or
22 relinquishes their claim to the coalbed methane royalty for this unit.

23 **Jim Kaiser:** And have the figures been reconciled between EQT and the bank?

24 **Rita Barrett:** Yes, as of February 11th of this year.

25 **Jim Kaiser:** And, for disbursement purposes, the Board should direct themselves to the next to
26 last column on the right in Table 1?

27 **Rita Barrett:** Yes.

1 **Jim Kaiser**: For their percentage?

2 **Rita Barrett**: Yes.

3 **Jim Kaiser**: And Table 1 will also direct whom to make that disbursement to?

4 **Rita Barrett**: That's correct.

5 **Jim Kaiser**: And our petition provided them with Exhibits E and EE to reflect the facts of the
6 unit after this disbursement?

7 **Rita Barrett**: Yes.

8 **Jim Kaiser**: And would you ask that any order pay the royalty to this party directly going
9 forward?

10 **Rita Barrett**: Yes.

11 **Jim Kaiser**: Nothing further of this witness at this time, Mr. Chairman.

12 **Bradley Lambert**: Mr. Kaiser, did you testify as to when the reconciliation was done?

13 **Rita Barrett**: Yes. It's February 11, 2014.

14 **Bradley Lambert**: Thank you. Any questions from the Board? [No response] Anything
15 further, Mr. Kaiser?

16 **Jim Kaiser**: We'd ask that the petition be approved and submitted, sir.

17 **Bradley Lambert**: Do I have a motion?

18 **Donnie Rife**: Motion made.

19 **Bruce Prather**: Second.

20 **Bradley Lambert**: I have a motion and a second. Any further discussion? [No response] All
21 in favor, signify by saying yes.

22 **Board**: Yes.

23 **Bradley Lambert**: Opposed, no.

24 **Donnie Ratliff**: I'll abstain, Mr. Chairman.

25 **Bradley Lambert**: One abstention: Mr. Ratliff. Thank you, Mr. Kaiser.

26 **Jim Kaiser/Rita Barrett**: Thank you.

1 **Item Number 6**

2 **Bradley Lambert:** We are calling Docket Item Number 6. A petition from EQT Production
3 Company, for the disbursement of funds and authorization for direct payment on behalf of
4 Stephen Mullins as to Tracts 1 and 2 in Well VC-537108. It's Docket Number VGOB-09-0421-
5 2515-04. All parties wishing to testify, please come forward.

6 **Jim Kaiser:** Jim Kaiser and Rita Barrett. Ms. Barrett, again, this is a disbursement request EQT
7 filed on behalf of Stephen Mullins?

8 **Rita Barrett:** Yes.

9 **Jim Kaiser:** Have all parties been notified, as required by statute?

10 **Rita Barrett:** They have.

11 **Jim Kaiser:** What unit are we disbursing from?

12 **Rita Barrett:** VC-537108.

13 **Jim Kaiser:** Which Tract or Tracts?

14 **Rita Barrett:** Tracts 1 and 2.

15 **Jim Kaiser:** Partial or full disbursement?

16 **Rita Barrett:** This will be a partial.

17 **Jim Kaiser:** The reason for the disbursement?

18 **Rita Barrett:** Again, we have a letter dated September 25, 2013, wherein Range Resources
19 relinquishes their claim to the coalbed methane royalty.

20 **Jim Kaiser:** And have the figures been reconciled between EQT and the bank and, if so, as of
21 what date?

22 **Rita Barrett:** Yes, as of February 11, 2014.

23 **Jim Kaiser:** Okay. And, again we direct the Board to the column next to last on the right on
24 Table 1 as for the percentage to use for disbursement purposes and as to the parties to disburse
25 to?

26 **Rita Barrett:** Yes.

27 **Jim Kaiser:** And, have we provided the Board with Exhibits E and EE to reflect the status of
28 this unit after this disbursement?

1 **Rita Barrett**: We did.

2 **Jim Kaiser**: And would we ask that any order direct that royalties be paid to Mr. Mullins
3 directly, going forward?

4 **Rita Barrett**: Yes.

5 **Jim Kaiser**: Nothing further for this witness at this time, Mr. Chairman.

6 **Bradley Lambert**: Questions from the Board? [No response] Anything further Mr. Kaiser?

7 **Jim Kaiser**: We would ask that the petition be approved and submitted.

8 **Bradley Lambert**: Do I have a motion?

9 **Donnie Rife**: Motion made, Mr. Chairman.

10 **Bruce Prather**: Second.

11 **Bradley Lambert**: I have a motion and a second. Any further discussion? [No response] All
12 in favor signify by saying yes.

13 **Board**: Yes

14 **Bradley Lambert**: Opposed, no.

15 **Donnie Ratliff**: I'll abstain, Mr. Chairman.

16 **Bradley Lambert**: One abstention: Mr. Ratliff. Thank you, folks. That one is approved.

17 **Item Number 7**

18 **Bradley Lambert**: Calling Docket Item Number 7. A petition from EQT Production Company,
19 for the disbursement of funds and authorization for direct payment on behalf of the known
20 owners of Tracts 1, 2, and 3 in Well VC-702966, Docket Number VGOB-94-0816-0467-03.
21 You may proceed.

22 **Jim Kaiser**: Jim Kaiser and Rita Barrett again on behalf of EQT Production. Ms. Barrett, again
23 this is a disbursement request filed by EQT on behalf of quite a few of the known owners in
24 Tracts 2 and 3. Is that correct?

25 **Rita Barrett**: Yes, sir.

26 **Jim Kaiser**: And have all parties been notified?

27 **Rita Barrett**: They have.

1 **Jim Kaiser**: And, what unit are we disbursing from here?

2 **Rita Barrett**: Unit VC-702966

3 **Jim Kaiser**: And, which Tracts?

4 **Rita Barrett**: Tracts 2 and 3.

5 **Jim Kaiser**: And this is a partial disbursement?

6 **Rita Barrett**: Actually, this is 100%.

7 **Jim Kaiser**: So, it's 100% of the tracts and it will close out the unit?

8 **Rita Barrett**: Yes.

9 **Jim Kaiser**: Very good. And have the figures been reconciled between the bank and EQT and,
10 if so, as of what date?

11 **Rita Barrett**: Yes as of January 10, 2014.

12 **Jim Kaiser**: And would we direct the Board to the next to last column on the right of Table 1
13 provided with the petition to give them the percentage of funds to be disbursed to each individual
14 party listed as the owner in Tracts 2 and 3?

15 **Rita Barrett**: Yes.

16 **Jim Kaiser**: And we have provided the Board with Exhibits E and EE to reflect the status of this
17 unit after the disbursement?

18 **Rita Barrett**: Yes.

19 **Jim Kaiser**: And we would ask that any order by the Board direct royalties to be paid to these
20 parties directly going forward?

21 **Rita Barrett**: Yes.

22 **Jim Kaiser**: No further questions at this time.

23 **Bradley Lambert**: Thank you, Mr. Kaiser. I think, as Ms. Quillen pointed out earlier, I read
24 into the record that this also included Tract 1 and it does not, so we need to strike Tract 1 from
25 the record.

26 **Jim Kaiser**: Ms. Barrett, if I could just go back to one more question...

27 **Bradley Lambert**: Sure.

28 **Jim Kaiser**: What is the reason for this disbursement?

1 **Rita Barrett**: We have a letter dated January 14, 2014, from Range Resources to EQT
2 Production Company wherein they relinquish their claim to the coalbed methane royalties on this
3 unit.

4 **Jim Kaiser**: Thank you. Nothing further of this witness at this time, Mr. Chairman.

5 **Bradley Lambert**: Any other questions from the Board? [No response] Anything further, Mr.
6 Kaiser?

7 **Jim Kaiser**: We would ask that the petition be approved as submitted.

8 **Bradley Lambert**: Do I have a motion?

9 **Rick Cooper**: Mr. Chairman, we've got one question on the table if I could ask that.

10 **Bradley Lambert**: Mr. Cooper, go ahead.

11 **Rick Cooper**: On Tract 3 there is a Florence Kaiser shown on there. Under percent, it shows
12 000. Could you just let us know what that means?

13 **Rita Barrett**: Certainly. I'm sorry we didn't catch that. I'm assuming that that's showing her life
14 estate as zero and the other parties are her remaindermen. I'll verify that.

15 **Rick Cooper**: Okay.

16 **Diane Davis**: Just want to make sure.

17 **Rita Barrett**: I understand.

18 **Bradley Lambert**: So, is there any issues presented...

19 **Rick Cooper**: Just the verification is all we need to process that because you're saying that this
20 is an estate, her estate. Is that what you're saying?

21 **Rita Barrett**: Yeah. It looks like, since she's zeroed out, that she would have retained a life
22 estate and the other parties in this Tract 3 are her remaindermen.

23 **Rick Cooper**: Okay. Thanks for the clarification, we can process that.

24 **Rita Barrett**: Certainly.

25 **Jim Kaiser**: It's just how she actually owns the property. She's not entitled to any of the
26 royalties.

27 **Rick Cooper**: Okay.

28 **Bradley Lambert**: Okay. Any other questions? [No response] Do I have a motion?

- 1 **Mary Quillen**: Motion to approve.
- 2 **Bruce Prather**: Second.
- 3 **Bradley Lambert**: I have a motion and a second. Any further discussion? [No response] All in
4 favor signify by saying yes.
- 5 **Board**: Yes.
- 6 **Bradley Lambert**: Opposed, no.
- 7 **Donnie Ratliff**: I'll abstain, Mr. Chairman.
- 8 **Bradley Lambert**: One abstention Mr. Ratliff.

9 **Item Number 8**

- 10 **Bradley Lambert**: We are calling Docket Item Number 8. A petition from EQT Production
11 Company, for the disbursement of funds and authorization for direct payment on behalf of the
12 known owners in Tracts 3, 4, 9 and 10 in Well VC-503042. Docket Number VGOB-04-1214-
13 1373-05. All parties who wish to testify please come forward.
- 14 **Rita Barrett**: Mr. Chairman, there are some folks here today and they've showed me some
15 Deeds that I believe will cause us to continue this well to August, so that we can review the Title
16 and get copies of their Deeds.
- 17 **Bradley Lambert**: Thank you, Ms. Barrett. We'll continue that one until August.
- 18 **Rita Barrett**: Thank you.

19 **Item Number 9**

- 20 **Bradley Lambert**: We're calling Docket Item Number 9. A petition from EQT Production
21 Company, for the disbursement of funds and authorization for direct payment on behalf of all
22 known owners as to Tract 5 in Well VC-2975. This is Docket Number VGOB-97-0715-0593-
23 03. All parties wishing to testify, please come forward.
- 24 **Jim Kaiser**: Jim Kaiser, Rita Barrett again for EQT. Ms. Barrett, again this is a disbursement
25 request filed on behalf of the parties by EQT?
- 26 **Rita Barrett**: That's correct.
- 27 **Jim Kaiser**: And, have all parties been notified?
- 28 **Rita Barrett**: Yes, sir.

1 **Jim Kaiser**: What unit are we disbursing from?

2 **Rita Barrett**: Unit VC-2975.

3 **Jim Kaiser**: And, which Tract or Tracts?

4 **Rita Barrett**: Tract 5.

5 **Jim Kaiser**: And the reason for the disbursement?

6 **Rita Barrett**: We, again, have a letter dated March 21, 2014, from Range Resources to
7 Equitable (EQT) Production Company wherein they relinquish their claim to the coalbed
8 methane royalty in this unit.

9 **Jim Kaiser**: And, is this a partial or full disbursement?

10 **Rita Barrett**: This will be 100%.

11 **Jim Kaiser**: And, when you say 100% that means not only of Tract 5, but of the unit?

12 **Rita Barrett**: Yes.

13 **Jim Kaiser**: Okay. And, have the figures been reconciled between the bank and EQT and, if so,
14 as of what date?

15 **Rita Barrett**: They have as of February 11, 2014.

16 **Jim Kaiser**: And, would we again direct the Board to the next to last column on Table 1, to the
17 right, for the percentage of funds to be disbursed and the parties to which they should be
18 disbursed?

19 **Rita Barrett**: Yes, sir.

20 **Jim Kaiser**: And, have we provided the Board with Exhibits E and EE to reflect the current
21 status of the unit?

22 **Rita Barrett**: Yes, sir.

23 **Jim Kaiser**: And, would we ask that any order direct that the royalty be paid directly to these
24 parties going forward?

25 **Rita Barrett**: Yes.

26 **Jim Kaiser**: Nothing further of this witness at this time, Mr. Chairman.

27 **Bradley Lambert**: Questions from the Board? [No response] Anything further Mr. Kaiser?

28 **Jim Kaiser**: We would ask that the application be approved as submitted.

1 **Bradley Lambert**: Do I have a motion?

2 **Donnie Rife**: Motion made, Mr. Chairman.

3 **Bruce Prather**: Second.

4 **Bradley Lambert**: I have a motion and a second. Any further discussion? [No response] All
5 in favor signify by saying yes.

6 **Board**: Yes

7 **Bradley Lambert**: Opposed, no? [No response] Thank you, Mr. Kaiser.

8 **Rita Barrett**: Thank you.

9 **Item Number 10**

10 **Bradley Lambert**: We are calling Docket Item Number 10. A petition from EQT Production
11 Company, for the disbursement of funds and authorization for direct payment on behalf of Lois
12 Phillips, Virginia Turner, James A. Counts, Marvin Counts, Glenda Sue Taylor and Hancle
13 Counts as to Tract Number 4 in Well VC-702835. Docket Number VGOB-98-0324-0642-04.
14 All parties wishing to testify, please come forward.

15 **Jim Kaiser**: Jim Kaiser, Rita Barrett for EQT Production.

16 **Bradley Lambert**: You may proceed, Mr. Kaiser.

17 **Jim Kaiser**: Ms. Barrett, this is a disbursement request filed by EQT on behalf of the royalty
18 owners?

19 **Rita Barrett**: Yes, sir.

20 **Jim Kaiser**: And, have all parties been notified as required by statute?

21 **Rita Barrett**: They have.

22 **Jim Kaiser**: Which unit are we disbursing from?

23 **Rita Barrett**: Well VC-2835.

24 **Jim Kaiser**: And which Tract or Tracts?

25 **Rita Barrett**: Tract Number 4

26 **Jim Kaiser**: And, is this a partial or full disbursement?

27 **Rita Barrett**: This will be a partial.

1 **Jim Kaiser**: And the reason for the disbursement?

2 **Rita Barrett**: We have a letter dated.... There are various letters dated June 2013, wherein
3 Range Resources relinquished its claim to the coalbed methane royalty in this well, on this Tract.

4 **Jim Kaiser**: And have the figures been reconciled between the bank and EQT and, if so, as of
5 what date?

6 **Rita Barrett**: They have. As of February 11, 2014.

7 **Jim Kaiser**: And would we direct the Board, again, to the next to last column on the right of
8 Table 1 for the percentages of funds to be disbursed and the parties to whom they should be
9 disbursed?

10 **Rita Barrett**: Yes, sir.

11 **Jim Kaiser**: And have we provided the Board with Exhibits E and EE to reflect the status of this
12 unit after the disbursement?

13 **Rita Barrett**: Yes, we have.

14 **Jim Kaiser**: And would we ask that any order direct that the parties be paid their royalty
15 directly going forward?

16 **Rita Barrett**: Yes, sir.

17 **Jim Kaiser**: Nothing further of this witness at this time, Mr. Chairman.

18 **Bradley Lambert**: Any questions from the Board? [No response] Anything further Mr.
19 Kaiser?

20 **Jim Kaiser**: We would ask that application be approved as submitted.

21 **Bradley Lambert**: Do I have a motion?

22 **Donnie Rife**: Motion made, Mr. Chairman.

23 **Bruce Prather**: Second.

24 **Bradley Lambert**: I have a motion and a second. Any further discussion? [No response] All
25 in favor signify by saying yes.

26 **Board**: Yes.

27 **Bradley Lambert**: Opposed, no.

28 **Donnie Ratliff**: I'll abstain, Mr. Chairman.

1 **Bradley Lambert**: One abstention: Mr. Ratliff
2 **Donnie Ratliff**: Mr. Chairman, I was late getting my....my iPad is working slow. I need to
3 abstain from the previous one, too, because there was some....
4 **Bradley Lambert**: Okay. Mr. Ratliff abstains from the previous Docket Item.
5 **Donnie Ratliff**: Thank you, Mr. Chairman.

6 **Item Number 11**

7 **Bradley Lambert**: We're calling Docket Item Number 11. A petition from EQT Production
8 Company, for the disbursement of funds and authorization for direct payment on behalf of the
9 known owners in Tracts 2 and 3 in Well VC-704511. Docket Number VGOB-00-0620-0813-03.
10 All parties wishing to testify please come forward.

11 **Jim Kaiser**: Jim Kaiser, Rita Barrett for EQT.

12 **Bradley Lambert**: You may proceed, Mr. Kaiser.

13 **Jim Kaiser**: This is a disbursement request filed by EQT on behalf of the parties?

14 **Rita Barrett**: Yes, sir.

15 **Jim Kaiser**: Have all parties been notified?

16 **Rita Barrett**: They have.

17 **Jim Kaiser**: Which unit are we disbursing from here?

18 **Rita Barrett**: Unit VC-704511.

19 **Jim Kaiser**: And which Tract or Tracts?

20 **Rita Barrett**: Tract 1 and 2

21 **Jim Kaiser**: And, is this a partial or full disbursement?

22 **Rita Barrett**: This will be 100%.

23 **Jim Kaiser**: So, again, this will not only close out the escrow for these tracts, but also for the
24 entire unit?

25 **Rita Barrett**: That's correct.

26 **Jim Kaiser**: And the reason for the disbursement?

1 **Rita Barrett**: We have a letter dated January 14, 2014, from Range to EQT Production
2 Company, wherein Range Resources relinquish their claim to the coalbed methane royalty in this
3 unit.

4 **Jim Kaiser**: And, have the figures be reconciled between the bank and EQT and, if so, as of
5 what date?

6 **Rita Barrett**: Yes, as of September 12, 2012.

7 **Jim Kaiser**: And, would we direct the Board to the next to last column on the right of Table 1
8 for the percentages of funds to be escrowed and which parties are disbursed and which parties it
9 should be disbursed to?

10 **Rita Barrett**: That's correct.

11 **Jim Kaiser**: And have we provided the Board with Exhibits E and EE to reflect the status of this
12 unit after this disbursement?

13 **Rita Barrett**: Yes.

14 **Jim Kaiser**: And would we ask that any order by the Board direct that the royalties be paid to
15 these owners directly going forward?

16 **Rita Barrett**: Yes.

17 **Jim Kaiser**: Nothing further of this witness at this time, Mr. Chairman.

18 **Bradley Lambert**: Ms. Barrett, I think you testified that this was for Tracts 1 and 2?

19 **Rita Barrett**: Yes, sir.

20 **Bradley Lambert**: And, is that correct?

21 **Rita Barrett**: Yes.

22 **Bradley Lambert**: Our exhibit shows 2 and 3.

23 **Rita Barrett**: Your Table shows 2 and 3?

24 **Bradley Lambert**: Yes.

25 **Rita Barrett**: I guess we need to... I'll give you mine. It's corrected as to 1 and 2 on our
26 exhibits.

27 **Diane Davis**: Mine says 3 and 2.

28 **Rita Barrett**: I'm sorry?

1 **Rick Cooper**: We've got 2 and 3 on your record.

2 **Rita Barrett**: It should be 1 and 2. Here's the corrected.

3 **Mary Quillen**: Which one of these is which?

4 **Rita Barrett**: I'm sorry?

5 **Mary Quillen**: The one that we have as 3 should be 1?

6 **Rita Barrett**: It should be Tracts 1 and 2.

7 **Jim Kaiser**: Should be 1 and 2.

8 **Mary Quillen**: But, who is the...?

9 **Rick Cooper**: What she is asking, I guess, is what is now....what officially is one, is showing as
10 three on our table.

11 **Rita Barrett**: It should be shown as Tract 1 and 2.

12 **Jim Kaiser**: The petition says 1 and 2.

13 **Diane Davis**: But, the table did not. When they built the table, they put in 3 and 2.

14 **Rita Barrett**: Apparently, they corrected it before then, but they didn't..... So, is it acceptable if
15 we....?

16 **Bradley Lambert**: Yes, if you could just submit that corrected exhibit.

17 **Rick Cooper**: Yes. We need that in by Friday.

18 **Rita Barrett**: And EQT needs to submit it.

19 **Rick Cooper**: You'll contact them. Correct?

20 **Rita Barrett**: Yes, sir.

21 **Diane Davis**: Actually, they'll have to go back and delete and re-do...

22 **Rick Cooper**: Have to re-do that table, won't they?

23 **Rita Barrett**: Okay. I'll tell them they need to.

24 **Diane Davis**: Almost the whole thing.

25 **Mary Quillen**: Okay. You have accepted all of that so we do not need to make any
26 additional...?

1 **Rick Cooper**: I don't think the people change, do they? It's just the Tract number is incorrect.
2 Is that correct? So, the people and the percentages are the same. We just have the incorrect
3 Tract number on this table. Is that right?

4 **Rita Barrett**: That's correct because....let me see something here.

5 **Mary Quillen**: And you gave him the correct table.

6 **Rita Barrett**: Tract 3 on this unit has been previously disbursed.

7 **Mary Quillen**: Okay. Good.

8 **Rita Barrett**: So, Tracts 1 and 2 are the correct Tracts for this particular disbursement.

9 **Rick Cooper**: And, for clarity, what is shown on our Disbursement Table as 3 should be 1.

10 **Rita Barrett**: Correct.

11 **Diane Davis**: And we did send them a note back when I first looked at this and said they needed
12 to correct it, but the Tract numbers were wrong. I've got that note at the bottom of the petition.
13 And I never did get anything back, so I....

14 **Rita Barrett**: Okay. Well, they corrected it on ours, so I'll make sure they do that

15 **Diane Davis**: I guess they just didn't realize that they needed to correct mine.

16 **Rita Barrett**: Okay.

17 **Bradley Lambert**: Okay. So, anything further, Mr. Kaiser?

18 **Jim Kaiser**: We would ask that the petition be approved with the condition that we provide Mr.
19 Cooper and Ms. Davis with the corrected table on it.

20 **Bradley Lambert**: And, in electronic...

21 **Jim Kaiser**: In electronic form. Right.

22 **Rick Cooper**: In electronic format. And, we need that by the end of the week, really.

23 **Rita Barrett**: Okay.

24 **Rick Cooper**: We can't process without it.

25 **Rita Barrett**: Okay.

26 **Bradley Lambert**: So, do I have a motion?

1 **Mary Quillen**: Motion to approve, with the stipulation that the Board office will receive the
2 corrected tract numbers....table, with the corrected tract numbers.

3 **Bruce Prather**: Second.

4 **Bradley Lambert**: And, in electronic format.

5 **Mary Quillen**: In electronic format.

6 **Bradley Lambert**: Do I have a second?

7 **Bruce Prather**: Second.

8 **Bradley Lambert**: I have a motion and a second. Any further discussion? [No response] All
9 in favor signify by saying yes.

10 **Board**: Yes.

11 **Bradley Lambert**: Opposed, no.

12 **Donnie Ratliff**: I'll abstain, Mr. Chairman.

13 **Bradley Lambert**: One abstention: Mr. Ratliff.

14 **Item Number 12**

15 **Bradley Lambert**: Okay. We're calling Docket Item Number 12. A petition from EQT
16 Production Company, for the disbursement of funds and authorization for direct payment on
17 behalf of known owners in Tracts 1 and 3 in Well VC-505241. Docket Number VGOB-04-
18 0817-1325-04. All parties wishing to testify, please come forward.

19 **Jim Kaiser**: Jim Kaiser and Rita Barrett for EQT.

20 **Bradley Lambert**: You may proceed, Mr. Kaiser.

21 **Jim Kaiser**: Ms. Barrett, again, this is a disbursement request filed by EQT?

22 **Rita Barrett**: Yes, sir.

23 **Jim Kaiser**: And, have all parties been notified?

24 **Rita Barrett**: Yes.

25 **Jim Kaiser**: What unit are we disbursing from?

26 **Rita Barrett**: Unit VC-505241.

1 **Jim Kaiser**: Which Tract or Tracts?

2 **Rita Barrett**: Tract number 3.

3 **Jim Kaiser**: Is this a partial or full disbursement?

4 **Rita Barrett**: This is a partial.

5 **Jim Kaiser**: Reason for the disbursement?

6 **Rita Barrett**: Again, we have a letter dated January 14, 2014, from Range to EQT Production
7 Company wherein Range Resources relinquished their claim to the coalbed methane royalty on
8 this unit.

9 **Jim Kaiser**: Have the figures been reconciled between the bank and EQT and, if so, as of what
10 date?

11 **Rita Barrett**: They have as of January 10, 2014.

12 **Jim Kaiser**: Thank you. And we have provided the Board with Table 1, which provides them in
13 the next to last column on the right, a percentage figure to use for the disbursement of funds and
14 the names of all the parties who are to receive these funds?

15 **Rita Barrett**: Yes, sir.

16 **Jim Kaiser**: And have we provided the Board with Exhibits E and EE to reflect the status of the
17 unit after this disbursement?

18 **Rita Barrett**: We have.

19 **Jim Kaiser**: And, would we ask that any order from the Board provide that these parties be paid
20 their royalties directly going forward?

21 **Rita Barrett**: Yes, sir.

22 **Jim Kaiser**: Nothing further of this witness at this time, Mr. Chairman.

23 **Bradley Lambert**: I also need to correct for the record. I think I read into the record that this
24 included Tract 1, but it only includes Tract 3. Any other questions from the Board? [No
25 response] Anything further Mr. Kaiser?

26 **Jim Kaiser**: We would ask that the petition be approved, Mr. Chairman.

27 **Bradley Lambert**: Do I have a motion?

28 **Donnie Rife**: Motion made, Mr. Chairman.

1 **Bruce Prather**: Second.

2 **Bradley Lambert**: I have a motion and a second. Any further discussion? [No response] All
3 in favor signify by saying yes.

4 **Board**: Yes.

5 **Bradley Lambert**: Opposed, no.

6 **Donnie Ratliff**: I'll abstain, Mr. Chairman.

7 **Bradley Lambert**: One abstention Mr. Ratliff. Thank you, folks. That's approved.

8 **Jim Kaiser**: Thank you.

9 **Rita Barrett**: Thank you.

10 **Jim Kaiser**: And thank you to Diane. Congratulations on your retirement.

11 **Diane Davis**: Thank you.

12 **Rita Barrett**: It's been great working with Diane over the years. Everybody has learned a lot
13 from her and always got our questions answered in a timely manner and was always willing to
14 help, take time out of her busy day to help us.

15 **Bradley Lambert**: Well, we were going to do that at the end and kind of do a little celebration
16 for Diane, but since you've let it out of the bag...

17 **Rita Barrett**: Sorry.

18 **Jim Kaiser**: I've got to leave, so I wanted to at least tell her that. We've worked together, she
19 and I...I guess, what....21 years.

20 **Diane Davis**: Long time. We were young when we started.

21 **Bradley Lambert**: In case the Board members don't know by now, Diane will be retiring at the
22 end of July.

23 **Diane Davis**: Right.

24 **Donnie Rife**: Mr. Chairman, I would like to file an objection. I didn't know anything about this.

25 **Rita Barrett**: Oh, we tried already, but it didn't work.

26 **Bradley Lambert**: So, I guess since we're already on that one, we'll say from the Board....
27 Diane, we certainly appreciate all that you have done, not only for this Board, but for the

1 Division of Gas and Oil and the Department of Mines, Minerals and Energy. We're certainly
2 going to miss you, but we wish you well in your retirement.

3 **Diane Davis**: It's been a pleasure. I've enjoyed and learned a lot not only from everyone here,
4 but from citizens, from lawyers, from company officials and it's been a lovely experience.

5 **Rita Barrett**: She always kept us on our toes.

6 **Bradley Lambert**: Well, Diane has been our historian. A lot of us are not as familiar with the
7 process or haven't been around as long as Diane has, so it has been a lot of help. Diane, I didn't
8 mean that in a bad way.

9 **Jim Kaiser**: My retirement advice to you would be get a new phone number.

10 **Diane Davis**: Thank you.

11 **Bradley Lambert**: Thank you, folks.

12 **Rita Barrett**: Thank you.

13 **Item Number 13**

14 **Bradley Lambert**: Now, we're calling Docket Item Number 13. A petition on behalf of T. Shea
15 Cook, Attorney for Link Smith, appealing the decision of the Director issued on June 22, 2014.
16 This is IFFH 227 regarding an application from CNX Gas Company, for proposed well TA-131
17 with the pipeline. This is Docket Number VGOB-14-0318-0436. All parties wishing to testify
18 please come forward.

19 **Rick Cooper**: Mr. Chairman, I guess I need to ask the Board's direction on this. Mr. Cook did
20 drop off an item for me to read. He said he is unable to attend, but I would like to point this out.
21 And, I can read this, if directed to do so, but this has been postponed once already due to a
22 scheduling conflict with Mr. Cook. Mr. Cook was aware of this date 30 days prior to this
23 hearing and he had actually requested to move the docket around and I had.... We had
24 conversations on that and I told him if he got Mr. Swartz and Mr. Kaiser's approval to put him at
25 the first of the docket, we would do so and he did send me back an email.... which said "That's
26 okay. We'll go with the way it is." But, with that, I can read his statement on record and we can
27 proceed or the Board can make a decision, if you like. It's a bit unusual.

28 **Bradley Lambert**: Well, we can't hear testimony from Mr. Smith without his attorney present.

29 **Mary Quillen**: Yes. That concerns me.

30 **Rick Cooper**: So, that's the reason I'm asking for direction, but I can read the three paragraphs
31 or four, if you would like, but I guess the Board needs to direct me on that. Do we need to

1 proceed? But, again, we have postponed this once already. It's the Board...the Board needs to
2 make a decision on proceeding with this.

3 **Bradley Lambert**: Go ahead, Mr. Cooper. Would you please read that into the record?

4 **Rick Cooper**: "To the Virginia Gas and Oil Board. Appeals of Informal Fact Finding Hearing
5 227 and 228. I had previously been retained to represent Link Smith relative to the above matter.
6 Unfortunately, while I was able to participate fully in the Informal Fact Finding Conference, due
7 to my schedule and the unwillingness of the Board to have these matters heard first, I will not be
8 present as a result of a previously-scheduled hearing in Tazewell County. As a result, Mr. Smith
9 will be speaking to the Board on his own behalf. However, I did want to provide a brief
10 summary of our position and concerns that we have with the relief requested by the petitioner, as
11 also articulated to Rick Cooper during the Informal Conference.

12 First, it is our contention that the severance deed underlying these properties conveyed only the
13 coal and mineral and not the gas, which remains owned by Mr. Smith. We believe that this is an
14 appropriate interpretation of the deed, based upon the lack of ancillary rights beyond the
15 conveyance of coal or mineral that would speak to the extraction of gas. For example, rights to
16 put in wells, derricks, pipelines, etc. Moreover, because gas was not specifically mentioned and
17 it had no marketable value at the time of the severance deed, it is not reasonable to interpret the
18 severance deed to have included gas as a component of mineral.

19 Both tracts which are the subject of this appeal, contain a common severance deed dated July 12,
20 1904, found in Deed Book 67, Page 468, conveying, inter alia, the tract in question from Faraday
21 Coal and Coke Company to Leroy Rhea, with the exception and reservation of all coal and other
22 minerals, together with the right to take to entire body or bodies of coal and other minerals
23 without leaving any support or overlying strata and without liability for any injuries relating to
24 such operations. Whether or not the reservation of coal and mineral contain gas is based upon an
25 analysis of the ambiguous term mineral. It is appropriate to assume that the grantor (Faraday)
26 intended to convey the largest estate that it could with any uncertainty being construed in favor
27 the grantee Smith's predecessor in title." I'm almost complete. "Prior to 1904, gas was
28 commonly referred to as a separate component of value in the land, as evidenced by a summary
29 of mineral severance deeds to be found in Tazewell County, Russell County and Buchanan
30 County. Based upon the foregoing, it is reasonable to interpret this severance deed to have not
31 reserved the gas and therefore, Link Smith continues to own the gas, not CNX, by lease or
32 otherwise. Secondly, Link Smith believes that the relief requested by CNX will involve and
33 constitute an unreasonable disturbance of the surface, substantially interfering with his
34 enjoyment of the same. Specifically, his ability to timber the property on a more or less
35 permanent basis or to develop the surface in any meaningful way whether for commercial or
36 residents use. Based upon the reasons said above, it is requested that the Board deny the relief
37 requested by CNX, protect the rights of Link Smith and his gas estate as well as the quiet and
38 peaceful enjoyment of his surface. With best regards I remain most sincerely, Terrence Shea

1 Cook." And, he does have a "P.S." he has written in here. "I also feel the Board has the implied
2 right and power to make ownership determination in order to determine whether information in
3 petitions is correct. TSC"

4 **Mary Quillen**: Mr. Chairman, I read the transcripts of this Fact-Finding Hearing and it was my
5 understanding of it was that Mr. Smith....he is the surface owner and all of this other stuff was
6 not addressed in the Fact Finding Hearing. I mean, am I missing something?

7 **Rick Cooper**: I guess, if we proceed, the objection was unreasonable use of the...infringement
8 of the property. But, I guess the hearing did try to go into other areas but, as far as the ruling, it
9 was based upon the surface ownership.

10 **Mary Quillen**: On the surface ownership?

11 **Rick Cooper**: Yes.

12 **Mary Quillen**: Okay. Thank you.

13 **Link Smith**: Surface ownership and the mineral ownership.

14 **Mary Quillen**: It doesn't state that, sir. It states that it's the surface.

15 **Link Smith**: Well, how...

16 **Bradley Lambert**: Where? We can't.... Excuse me, sir. We can't let you testify without your
17 attorney present, so we're going to take about a ten minute recess and then we'll come back in
18 about ten minutes.

19 (RECESS)

20 **Bradley Lambert**: Ladies and gentlemen, it's time to go back on the record. We're still hearing
21 Docket Item Number 12....Number 13. I'm sorry. Mr. Smith...

22 **Link Smith**: Yes, sir.

23 **Bradley Lambert**: Are you willing to waive your rights to have your attorney present?

24 **Link Smith**: Yes, I am.

25 **Matt Gooch**: You want to go forward today, without your attorney?

26 **Link Smith**: Yes, I do.

27 **Matt Gooch**: Okay.

28 **Link Smith**: I want to hear what the Board....

1 **Bradley Lambert**: Mr. Swartz, are you okay with that?

2 **Mark Swartz**: You can do that. Yes. I mean, a client can do that. Yes.

3 **Bradley Lambert**: Okay. Before the Board today we have the case of.... Let Mr. Cooper
4 describe what we're here...

5 **Rick Cooper**: What we received at the Division of Gas and Oil on September 20, 2011, was an
6 objection from Shea Cook on behalf of Mr. Link Smith. And, I'll read that so everyone will be
7 aware. "I am filing on behalf of Link and Rose Smith, whose objection to the above referenced
8 permits." They reference the hearings we're having today, 227 and 228. "Smith objects based
9 upon the fact that it characterizes him as owning only the surface. He believes and is in the
10 process of completing a mineral abstract that will show that he owns the gas, as well. Smith
11 objects to the location of the proposed well and pipeline based upon the fact that the location will
12 unreasonably infringe on his surface. There are alternate sites and routes available on the tract."
13 So, we had the hearing on December 10, 2013, and under the conditions that the location of the
14 coalbed methane well or coalbed methane well pipeline will unreasonably infringe on the surface
15 owner's use of the surface, provided that a reasonable alternative site is available within the unit
16 and granting the objection will not materially impair any right contained in the agreement valid
17 at the time of the objection between the surface owner and the operator or their predecessors or
18 successors in title. During the hearing, there were no alternative locations given. It could be
19 stated that location of a coalbed methane well or coalbed methane pipeline will infringe on the
20 surface owner, but the objecting party's testimony did not make a good, sound case for
21 unreasonable infringement. They did not give alternative locations or sites for the well or the
22 pipeline. But, my decision was the permit applicant has rights to use the surface owner's
23 property to access their mineral state. If this is in dispute, it must be contested in a court of
24 proper jurisdiction. While it can be argued that any adverse use of the property is an
25 infringement, 451-361.35 only allows consideration of unreasonable infringement. The surface
26 owner's testimony did not make a sound case for unreasonable infringement. The placement of
27 proposed surface disturbances and lack of demonstrating infringement on current or planned land
28 use appeared to be negative invocation of unreasonable infringement. So, my decision was to
29 approve the permit and the appeal came within the reasonable period, a ten-day period to appeal
30 my decision to the Board. That's where we stand now.

31 **Bradley Lambert**: Okay, Mr. Smith, we'll hear from you at this time. What this Board will be
32 considering is your objection to the location of the well. I know that it's been raised in the
33 Informal Fact Finding Hearing that you are the gas owner?

34 **Link Smith**: Yes, sir.

35 **Bradley Lambert**: This Board will not hear that case. Any claims that you are the gas owner,
36 as Mr. Cooper has stated, that's for you to seek other remedies other than before this Board. This

1 Board does not have the jurisdiction to make those calls on your deeds. So, at this time you may
2 proceed.

3 **Link Smith**: Okay. If you don't have the authority to make that statement, then I request you to
4 deny these applications then. Because if you grant these applications, you're saying that they're
5 the gas owner. It's just that plain and simple. If you can't argue and you can't say who's the
6 ownership in it, then why are you giving them the right to come in and trespass, which they have
7 already trespassed to come in and put these wells down without a permit. What they're trying to
8 do is get you to issue them a permit so they won't get hit with fines for trespassing...is exactly
9 what it is. If you can't make that decision, whether they're the gas owner or I'm the gas owner
10 then you should deny that permit then because I'm saying I'm the gas owner. They've already
11 trespassed on private property and done damages to private property, even without a permit.
12 And, now you're going to give them the okay to do that. Am I correct in what you just told me
13 or am I wrong?

14 **Bradley Lambert**: No, sir. What we're saying to you is your conflict of gas ownership needs to
15 be taken somewhere else other than before this Board.

16 **Link Smith**: Well, how come then that they're applying for a permit for their gas, then on my
17 property? You are the one determining that they own the gas, then. Am I correct?

18 **Bradley Lambert**: No, sir.

19 **Link Smith**: Well, why are you issuing the permit, then?

20 **Bradley Lambert**: No, sir. That's not correct. If you knew this permit's co-owners are in
21 conflict with you and CNX, as far as gas ownership, you should not even be before this Board.
22 Long before you should have worked out those claims in other jurisdictions, not this Board.

23 **Link Smith**: Well, why did they apply for the permit, then?

24 **Bradley Lambert**: Well, I'm assuming that they thought that they had...that they own the gas.

25 **Link Smith**: Okay. And you're going to go along with them and say that they own the gas and
26 issue the permit, correct?

27 **Bradley Lambert**: No, sir.

28 **Link Smith**: Well, if you issued the permit, you're saying they're the owner, because I've been
29 objecting to it before this Board. And I want the Board to either tell me that they're the owner or
30 I'm the owner.

31 **Bradley Lambert**: We don't have the jurisdiction to be able to do that.

1 **Link Smith**: Well, if you issue the permit then you're taking that authority right there. If they're
2 saying they own it and I say I own it and you favor them and issue a permit, you're saying they
3 own it. Am I correct?

4 **Bradley Lambert**: Okay. Thank you for your comments. Mr. Swartz. Do you have anything?

5 **Mark Swartz**: I have two things that I would like to address. First of all, with regard to TA-
6 131, just to kind of give you a sense of where the property lies. If you look at the plats that are in
7 your packet, I show it as Page 17 of 46 in the PDF that you all have. The well location, with
8 regard to TA-131 isn't even on Mr. Smith's property, period. So, I mean if we were arguing that
9 it was fee or mineral or coal or whatever, the well is not located on his property. So, in terms of
10 is there....in terms of looking at Mr. Cooper's decision as to whether or not the development
11 interferes with the use of his property, the well's not on his property. So, you don't assume that
12 it's located there. The plat clearly shows it's not. His property, his tract, is 2B. The well is on a
13 tract identified as 2A. And I believe the maps also show that the pipelines and other
14 infrastructure actually miss the corner of his property, as well. So, with regard to TA-131, there
15 really isn't anything on his surface, which I think contributed to... I'm assuming contributed to
16 Mr. Cooper's decision that there was no interference with his use of his property, whether you
17 call it a surface protract or whatever. The second point that I would like to make and...

18 **Matt Gooch**: Mr. Swartz, can I interrupt you? What is the actual...? What interference would
19 there be on the surface of his property?

20 **Mark Swartz**: Well, there isn't any.

21 **Matt Gooch**: There's zero.

22 **Mark Swartz**: Right. I mean, the well is not on his property.

23 **Matt Gooch**: The well's.... Is it a road or a...?

24 **Mark Swartz**: And the...I believe... and I'm sure Mr. Cooper has been out there and could
25 probably share that with us, but I think the road and the pipeline also miss the corner of his tract.
26 I think they come past and turn after it crosses his tract, but you've been out there.

27 **Rick Cooper**: I think a portion of the road may cut across the edge of his property on the TA-
28 131.

29 **Mark Swartz**: Okay.

30 **Mary Quillen**: Which tract is his property on?

31 **Mark Swartz**: It's the 2B tract on Page 17.

32 **Mary Quillen**: Okay.

1 **Bruce Prather**: Did you pay surface damages to somebody if the surface was disturbed? Did
2 you pay some surface owners damages for that location?

3 **Mark Swartz**: As usual, we couldn't possibly agree on a number with him.

4 **Bruce Prather**: Well, I mean, if it's not on his property....

5 **Mark Swartz**: Oh, we have an agreement with the person that we put the well on.

6 **Bruce Prather**: Okay.

7 **Mark Swartz**: Right. I mean, we try to do that because...

8 **Mary Quillen**: The well isn't on his property.

9 **Mark Swartz**: Correct. It is not and the plat shows that.

10 **Rick Cooper**: And, for the record, just to let you know, there has been no disturbance on this
11 permit at all. There has been no activity.

12 **Mary Quillen**: Okay. And the only...according to this it's only the road and the pipeline on the
13 surface disturbance that is on the corner in Tract 2A. Is that right?

14 **Link Smith**: 131 was where me and you walked down to, correct?

15 **Rick Cooper**: Down the hill. You are correct.

16 **Link Smith**: Okay. That is my property.

17 **Rick Cooper**: Mr. Smith is shown as owning 2B if you look at your plat. I think I have the 2A
18 area highlighted and 2B would be to the right of that.

19 **Mary Quillen**: But your lease does provide for any surface damage.

20 **Mark Swartz**: No, we don't have a lease with him that allows us.... At least, I don't think we
21 have a lease with him. We have an agreement with the people that we are drilling the well on
22 their property.

23 **Mary Quillen**: Oh, okay. That's the.... Okay.

24 **Mark Swartz**: And the well is not on his property.

25 **Mary Quillen**: Okay.

26 **Mark Swartz**: The reason he was noticed of this permit application was a piece of the road and
27 pipeline catches the corner of his tract as it turns. If you're looking at the well plat, the well is
28 within...there's a narrow strip of land 2A that comes down between Tracts 1 and Tract 2B and the

1 well is located on that 2A Tract. You'll see the red line which is the road and the pipeline will
2 follow that.

3 **Mary Quillen:** Right.

4 **Mark Swartz:** It comes down. It sort of heads to the southeast and then it takes a bend south
5 and then it sort of starts to cut back to the east. Where it intersects that radius that is where it
6 possibly catches the corner of his tract. So, a small piece of the road that we propose and the
7 pipeline may cross his surface tract in that corner.

8 **Mary Quillen:** And he is listed as surface owner on 2B only.

9 **Mark Swartz:** Correct. And he's arguing that he has more of an interest than that, but in terms
10 of if we proceed to construct under this permit, what impact would it have on his use of the
11 surface? That is the only impact it would have on the use of his surface. And, as Mr. Cooper
12 pointed out, there was no contention at the hearing, no evidence offered... And he was
13 represented by Mr. Cook at the hearing....no evidence offered that this piece of the road and
14 piece of the pipeline that we propose to have on his surface would have any unreasonable impact
15 on anything he planned to do with that surface. I mean, there was no evidence offered..."I'm
16 going to do this. I'm going to do that. It's going to have this impact. It's going to have that
17 impact. It's unreasonable. It could be somewhere else." There was nothing offered at all. So,
18 essentially, what Mr. Cooper said in his decision was, "You gave me nothing to work with. You
19 had the burden of proof to demonstrate that this permit would unreasonably interfere with the
20 plans that you have for your property and you offered me nothing to support that contention, so I
21 am denying that objection." That's what he determined. With regard to the...and this is the
22 second issue I wanted to talk to you briefly about... With regard to the question of whether or
23 not Mr. Cooper could decide what severance deeds meant...he just punted that. He
24 acknowledged that the issue was raised but that he wasn't going to go there.

25 **Matt Gooch:** Assuming...let's just assume that counsel is correct that we quoted the letter from.
26 Can you put on the record if you have a good faith belief or basis. What is your good faith basis
27 for ownership of the gas?

28 **Mark Swartz:** We don't contend that we own the gas. When you file a permit, and it's in here.
29 You are required when you file a permit, to certify that you believe you have contractual rights
30 or ownership rights that allow you to do the proposed activities.

31 **Matt Gooch:** Right.

32 **Mark Swartz:** That is required. It's part of the permit application. Let me see if I can find that
33 page. And, basically, what Mr. Cooper said also in his decision was that certification was
34 made...that the operator certified that.... let me find it here. I'll tell you what page it's on. If you
35 look at page.... I've got a PDF here and I think it's 15 of 46, if I've got the same PDF you have

1 and I think I do. If you look at page 15 of 46 in what was uploaded to your forms, it's called an
2 Application Certification. Do you see that? And "Phillip Lowe representing CNX Gas
3 Company certifies that all persons required to be notified have been notified. Proof of notice is
4 included." And then it says...and this is the question you have asked...."I hereby state that the
5 applicant named above has the right to conduct operations as set forth in the application and the
6 operations plan." And we offered two Deeds at this hearing just to demonstrate that we had
7 made that certification in good faith that had mining rights in the Deeds on the Tracts that we
8 were going to be on and our position was when we certified we had rights, we were relying on
9 these Deeds. Not that we own anything, but that we had a good faith basis to certify that we had
10 the right to conduct operations. And that's all you need to do to get a permit. You don't need to
11 prove you own it. You don't need to resolve ownership. The whole point of escrow is we don't
12 need to know who owns stuff to drill wells. And he doesn't need to know who owns stuff to
13 approve a permit. You simply need to certify that you have a good faith basis to say, "We have a
14 right to be there and do what we're proposing to do."

15 **Matt Gooch**: Sure. And you've got a lease where the drill site is. You've got that lease and you
16 certainly have the....

17 **Mark Swartz**: No, no. We're talking about a severance deed under his property.

18 **Matt Gooch**: Right.

19 **Mark Swartz**: Okay. So, if we have...it's not a lease. We have deeded rights.

20 **Matt Gooch**: Right. Two different things. So, with respect to his rights and his property, you
21 have a lease of coal and other minerals.

22 **Bruce Prather**: The coal company does.

23 **Mark Swartz**: Yes, they give us mining rights because of their severance deeds. Correct.

24 **Link Smith**: May I ask a question? Are you doing any mining? You just said mining gives you
25 mining rights. Are you doing any mining?

26 **Mark Swartz**: The extraction of gas is mining.

27 **Link Smith**: No, extraction of gas is drilling.

28 **Mark Swartz**: I hear you.

29 **Link Smith**: Are you doing any mining?

30 **Mark Swartz**: Yes. Extracting gas comes within mining rights and the Severance Deeds are in
31 the record.

1 **Link Smith**: When did mining become oil and gas drilling? You answer me that. Mining and
2 oil and gas drilling is two different things and you're trying to make it one and the same and
3 you're trying to convince this Board it's one and the same.

4 **Mark Swartz**: All I'm saying is we have certified that the severance deeds underlying the tracts
5 that we have lease rights on, which affect his surface, granted the right to do the operations we
6 proposed and Mr. Lowe certified that. And we tendered the deeds at the hearing to show that.

7 **Matt Gooch**: To crystallize the legal theory, you've got the right to put a road in the forced pool
8 area, where his land is in the forced pool area...

9 **Mark Swartz**: Well, the forced pooling is a completely different animal. To crystallize the
10 issue, Mr. Lowe certified that we had acquired rights by lease or ownership that allowed us to
11 perform the operations the permit would contemplate, if granted. So, the permit contemplated
12 drilling a well. So, we had an agreement that would allow us to do that we were representing.
13 The permit would allow us to construct a road, pipelines and Mr. Lowe was saying, "We have
14 agreements that we're relying on in good faith to certify that we can do the operations if this
15 permit is granted, that we are saying we would undertake to do." It has nothing to do with the
16 pooling. The unit's completely different.

17 **Matt Gooch**: Sure. But your legal basis for putting the road across his land is the deed of
18 severance conveying coal and minerals.

19 **Mark Swartz**: Correct. If you were to sue us for trespass in court, our defense would be, "Look
20 at these severance deeds. Look at these agreements. We have a right to be there."

21 **Bruce Prather**: Do you have an abstract?

22 **Mark Swartz**: Excuse me?

23 **Bruce Prather**: Do you have an Abstract of Title?

24 **Mark Swartz**: Oh, yes. Absolutely.

25 **Bruce Prather**: That says what you are referring to?

26 **Mary Quillen**: And this is because the well is not on his property, you're working with the
27 people that owns the property where the well is.

28 **Mark Swartz**: Normally, we very rarely put wells on property that we have disagreements with
29 people because it gets ugly quickly.

30 **Mary Quillen**: Right.

1 **Mark Swartz**: Okay. So, we have an agreement with these.... I didn't really research that, but I
2 mean our general practice is we drill wells where we have agreements with people so that we're
3 not in front of...in his office or in front of you all arguing about mining rights to locate a well.

4 **Mary Quillen**: Sure. And, so the reason that this hearing was about the surface, only surface
5 disturbance by a road or pipeline, not anything else...

6 **Mark Swartz**: Correct.

7 **Mary Quillen**: Okay. Gotcha.

8 **Mark Swartz**: And, I want to address.....the second point I wanted to make was to give you
9 some documents with regard to the issue that Mr. Cook and Mr. Smith raise with regard to the
10 alleged ability of the Division or this Board to make decisions with regard to Title. So, I've got a
11 series of things I want to tender to you. There's not a long discussion, but I want to make sure it
12 gets in the record if this goes further.

13 **Bradley Lambert**: Okay.

14 **Rick Cooper**: Let me give a copy to everybody.

15 **Mark Swartz**: That should be enough for everybody. Let me give Mr. Smith one. The first
16 couple things that I'm tendering to you.... you actually have some administrative rules...the Board
17 does with regard to appeals from decisions made by the Director and I have given you a copy of
18 the Virginia Code of Regulations. There's 25.160.130 which is Appeals, which is a one page
19 document. Appeals of Directors' Decisions. And, then, I've also given you 25.160.30 which
20 deals with administrative provisions. And I give these to you for two reasons. One is there is no
21 current form on your e-forms for appeals and you need to be aware of that. And, Mr. Cooper and
22 I have talked about that. Mr. Cook didn't really file an appeal that followed your rules. If you
23 want to see what an appeal looks like that follows your rules, the next case you're going to call
24 with Attorney Gray.... he filed a formal Petition for Appeal, following your rules and just note
25 that you probably need to address that. Your tech people need to address that for the future. A
26 couple of things that are important about these rules is and, obviously you guys can read so I'm
27 not going to cover them in any detail. But, the rules contemplate that people who appeal say,
28 "This is what I'm upset about," so that you know very concretely.... I raised twenty issues at the
29 hearing in front of Mr. Cooper but I'm really only complaining about the following or I'm
30 complaining about all of them. And, it's very important that people tell you what they're going to
31 be here complaining about...tell him so that he can defend himself and tell the parties so we
32 know what we're going to be talking about. So, I think the rules are important that you continue,
33 but you do need a form to deal with that. There is also an Administrative Process Act....
34 Actually, let me talk about the objection process for a minute, too. I think you guys are familiar
35 with this, but in the Virginia Code there is a section on objections to permits and what can you
36 object to and it's of interest here because, for example, 361.35 Objections to Permits. If you go to

1 B, "the only objections to permits or permit modifications that may be raised by surface owners
2 are..." And, there's a short list. And one of those objections is not, "My deed is better than
3 yours." Okay. There's no construction of contracts or deeds or anything like that. That's not a
4 basis to object. The same is true under "C." The only objections to permits or permit
5 modifications are going to be raised by royalty owners, so Mr. Smith is here saying, "I'm a
6 royalty owner. You got it wrong. I don't just own surface." But two says that this Board or the
7 Director cannot address contractual rights. C2 says that you can object to something that
8 threatens to violate your property or statutory rights, aside from your contractual rights. So, if
9 you're arguing that your deed is better than someone else's deed or your contracts or agreements,
10 that is not a basis for and objection for a royalty owner either. This kind of issue comes up all
11 the time. We have....and I think we sometimes lose sight of this...there are some things that are
12 peculiar about America and our Federal and State governments. We have three branches of
13 government. We have an Executive Branch. We have a Judicial Branch and we have a
14 Legislative Branch. There's a lot of cases and statutes that try to keep the interference...so they're
15 not interfering with each other's jobs. Okay? And the problem here is, at least from my
16 standpoint, is that this Board, which is not a court, which is not part of the judiciary, is being
17 asked to perform a judicial function. Okay? To decide what a severance deed may or may not
18 mean. And we have a ton of cases in the Commonwealth and in every State and in the United
19 States courts as well a ton of cases with regard to the question of, "What can governmental
20 bodies such as this Board decide?" Under the Constitution and under basic law, what's the scope
21 of your authority to make decisions? And, I'm going to share a case with you which is an
22 example of a Virginia case that addressed this kind of problem. It's something you can look at
23 eventually, but I just thought I would summarize it with you. In this case, which has been
24 cited...the reason I picked this case...it's one of the leading cases. It may be from 1974, but it
25 gets cited a lot and it's a pretty interesting discussion of the interplay between the judiciary and
26 administrative bodies. In this case, it was kind of the flip-side of what you're hearing, but I think
27 it illustrates what I'm talking about. In this case, a customer of the power company sued the
28 power company in Circuit Court and said, "You promised to give me service, to install a service
29 line to my property and you didn't perform. You breached your contract and I'm suing you for
30 damages." And the defense of the power company was, "We're a monopoly. The Corporation
31 Commission regulates us and they have exclusive jurisdiction. You need to make your claim in
32 front of the Commission." Okay? Not in court. And the judge felt that courts were probably
33 better places for contract and damage claims and the judge proceeded and the case sort of found
34 its way to the Supreme Court of Virginia. And the Supreme Court talked about the issue of
35 whether or not an administrative board should be deciding contract claims and claims for
36 damages. And the Court said on page six of the decision...and I have highlighted some of this
37 stuff for you all.... "These arguments do not persuade us that the Commission had exclusive
38 jurisdiction to adjudicate the cause of action stated in Walker's Bill of Complaint," his breach of
39 contract claim. "Unless ousted," and this is a very important point that's repeated many, many
40 times in the case.... "Unless ousted of jurisdiction by law, Circuit Courts have jurisdiction over

1 common law contract claims. We now...." So, that was on exclusive jurisdiction and then the
2 court says in the next column, "We now consider whether the Commission had any jurisdiction
3 to adjudicate Walker's Common Law Contract Claim." And, on the next page they say, "We
4 have said that Constitutional provisions in implementing statutes quoted were not intended to
5 confer upon the Commission jurisdiction to hear and determine cases against such corporations
6 in which the matters in controversy relate primarily to injuries to private property rights and only
7 affect the public incidentally." And the case goes on into page eight. "While it is true that the
8 Commission has been clothed with legislative, judicial and executive powers, yet nowhere in the
9 organic law is the Corporation Commission empowered to pass on the validity of a private
10 contract or to enforce the provisions of such a contract. This is a power entrusted exclusively to
11 the courts." Next page.... "The question whether a contract has been breached is for the courts to
12 determine. We will not break the chain now." And, I will represent to you all that this is just an
13 example of the kind of argument that has occurred many, many times and the answer that the
14 Virginia Supreme Court has given pretty consistently is courts decide these kinds of things.
15 And, if an administrative body wants to decide them, they need to be able to point to something
16 in the statute that created the body or in the Constitution that says, "You can decide these kinds
17 of claims." The Administrative Process Act which applies to you all and applies to Mr. Cooper
18 has provisions that sort of incorporate the case law that I have just discussed with you. And,
19 what Mr. Cooper is giving you now is a provision from the Administrative Process Act of the
20 Commonwealth 2.2-4020. And, it deals with formal hearings and litigated issues. I have
21 highlighted a couple of pieces here that pertain directly to what I'm talking about in terms of
22 jurisdiction. In the first instance, it says that "the agency can take evidence upon relevant fact
23 issues in any case in which the basic laws"...that would be the statutes..."provide expressly for
24 decisions." So, the Administrative Process Act says if a government agency is going to make a
25 decision, you need to have express authority in the statutes to do that. B says that when you're
26 going to have a hearing, one of the things you need to tell people about the issues that you're
27 prepared to address are the basic law under which the agency contemplates its possible exercise
28 of authority. And, essentially Mr. Cooper said, "I do not have the authority to make this
29 decision." He said that in his decision. I mean, he provided that note as to why he wasn't doing
30 that. The last thing that I would bring to your attention is Chairman Lambert sort of anticipated
31 the problem that I would be having with you all today, potentially, and asked the Attorney
32 General of this State a few years ago the precise question that we're talking about and got the
33 answer that I'm sort of illustrating. Although, I get there a little differently because I'm looking
34 at the Case Law, but the question that was posed to the Office of the Attorney General and got a
35 decision June 24, 2010, was.... You asked whether the Virginia Gas and Oil Board is authorized
36 to render decisions and issue orders to determine property rights based on the interpretation of
37 deeds and contracts. That was the Attorney General's summary of the question that Chairman
38 Lambert put to him. And the response is the next piece of it and then there's quite a discussion
39 with regard to how the...what caused the AG to give that answer. So, in terms of...in case this
40 goes further, I just wanted to make sure that I had made a record here that it was my position that

1 the courts have exclusive jurisdiction to determine these kinds of court and contract claims...that
2 there is no express grant of authority to either the Director or the Board to do that. So, I guess
3 I'm saying that when Mr. Cooper decided that it was something he was not in power to address,
4 he was right. So, that would be my two points. One, there was a complete failure of the burden
5 of proof with regard to unreasonable interference and Mr. Cooper made the right decision in that
6 regard. And, then the cases and the statutes were in agreement with the decision he made when
7 he decided not to address the meaning of deeds and contracts. That's all I have.

8 **Bradley Lambert**: Mr. Smith, you have heard the arguments from Mr. Swartz?

9 **Link Smith**: Yes, sir. I want to go back. Mr. Swartz talked about this TA-131. I would like to
10 ask Mr. Swartz to comment on TA-144. Whose property is that on? And, how are you going to
11 get the pipeline from 144 to 131? I own both tracts of land. You have to go across them.

12 **Rick Cooper**: Mr. Chairman, that is the next objection.

13 **Bradley Lambert**: We'll hear that one next, Mr. Smith, after we finish with this one.

14 **Link Smith**: Okay. Going back to TA-131. The pipeline comes from 144 across my property
15 to TA-131 and TA-144 is where they've already pushed off for the well pad. And they're going
16 to come from one section of my property across the other section of my property to get to TA-
17 131. So, they're coming in the back door to get a permit on this TA-131 which is almost sitting
18 right on my property line, but you're going to give a permit for 131 and give them the right to
19 come all the way across that tract of land to TA-144. Which, the well has already been pushed
20 off. It's solely on my property. And they don't have a permit for either one of them yet.

21 **Bradley Lambert**: Okay. We'll hear 144 in just a minute when we finish out with this issue of
22 131.

23 **Link Smith**: I'm objecting to that because putting the pipeline across there would limit my
24 ability to use that property.

25 **Bradley Lambert**: Well, let's get to that one just in a minute. Let's try to stay on 131 if we can.
26 You've heard testimony from Mr. Swartz and I would like to hear your response to Mr. Swartz.

27 **Link Smith**: Okay. He said you all don't have the rights and the decisions to make decisions on
28 the ownership of the oil and gas. Then, I'd like to ask you to turn down this permit because if
29 you grant this permit, you're saying they have the right to come in there and drill and take that
30 gas. So, his argument supports my argument. He don't own the oil and gas and, if that's so, then
31 I have no right to even be here if they own all this.

32 **Bradley Lambert**: Mr. Smith, do you agree that 131 is not on your property?

33 **Link Smith**: Within about 15 foot of my property.

1 **Bradley Lambert**: So, it's not on your property?

2 **Link Smith**: The hole itself, no sir. But, the pad, yes. Part of the pad, yes.

3 **Bradley Lambert**: Mr. Cooper, how big is this well pad?

4 **Rick Cooper**: Well, it's not developed, but generally a well pad is between 100 and 150 by 100
5 or so...150 x 150...in that general size.

6 **Bradley Lambert**: This is an inch to a 400 scale map?

7 **Rick Cooper**: That's correct.

8 **Bradley Lambert**: And, it's been certified by Richard C. Murphy. So, I'm looking at our map
9 that we have in our Exhibit. Inch to inch equals 400. That's probably a little bit further than 15
10 feet from your property line, Mr. Smith...looking at the map.

11 **Link Smith**: Yes, sir. I can fix anything on paper and on map. You go out there like he did and
12 walk the property and you'll see where it's at.

13 **Bradley Lambert**: Have you been out there Mr. Cooper?

14 **Rick Cooper**: I have been on the location.

15 **Bradley Lambert**: And, what's your opinion of how close it might be?

16 **Rick Cooper**: I think it is...I don't know the distance, but I think it's greater than 15 feet, though.
17 He owns 2B and the way it lays on 2A here is probably.... The well location itself is probably
18 200 or 300 feet away from the edge of his property. At least 200 feet...the well location itself.

19 **Bradley Lambert**: Could you see those property lines when you were out there?

20 **Rick Cooper**: I did not see the property lines when I was out there.

21 **Bradley Lambert**: But, did Mr. Smith or Mr. Cook show you where they thought the property
22 lines were?

23 **Rick Cooper**: No. They did not.

24 **Bradley Lambert**: But, you're basing your 200 feet on the mapping?

25 **Rick Cooper**: I am basing mine on the certified, professionally engineered, on this plat that was
26 submitted to the Division of Gas and Oil.

27 **Bradley Lambert**: Did we do any GPS'ing of this location while you were out there?

28 **Rick Cooper**: We have, but I don't have that data with me.

1 **Bradley Lambert**: Okay. So, this Board is tasked with the decision of making a ruling of the
2 Division Director's decision on whether or not the drilling of well TA-131 and the construction
3 of the pipeline would have any potential environmental or other impacts or land use impacts for
4 Mr. Smith. As far as his claim that he owns the gas, again, we have the Attorney General's
5 opinion that Mr. Swartz raised and I'm sure this Board is well aware of that. We cannot make
6 any decision on gas rights. That might be between the two parties. Any discussion from the
7 Board as to the impact to the usefulness of the surface from Mr. Link Smith by the construction
8 of well T-131 and the construction of the road and the pipeline? That's pretty much what this
9 Board is faced with making a decision on today. Any discussions?

10 **Bruce Prather**: Mr. Chairman.

11 **Bradley Lambert**: Mr. Prather.

12 **Bruce Prather**: Does the land owner have a right to collect for damages that's done to his
13 surface irregardless of.... I mean, if the pipeline's on him and it is something that he doesn't want
14 if he hasn't been paid for damages or some way or the other paid for it, I think he's entitled to
15 something. The damages on his surface is about the only thing I can see that he's liable for in
16 this essence. I think he is liable for damages on....

17 **Bradley Lambert**: I believe I heard Mr. Swartz testify that they had tried to work that out, but
18 was unable. Mr. Swartz.

19 **Mark Swartz**: We have not been able to reach an agreement with this gentleman.

20 **Link Smith**: So, you're just going to go ahead and do it, whether you reach an agreement or not
21 and you're asking the Board to okay it.

22 **Mark Swartz**: Well, one of the problems we have reaching agreements with people is
23 sometimes they want a bazillion dollars and we're not prepared to pay that, so...

24 **Link Smith**: I ain't asked for no million dollars.

25 **Mark Swartz**: So, we inquire of people to get a sense of whether or not we might be able to
26 reach a compromise and, if we conclude that it is unlikely that we are going to be able to
27 compromise our claim, then we don't have an agreement. And, it's not unusual to settle with
28 people and it's not unusual to not reach an agreement with people. Sometimes we're able to
29 reach an agreement. Sometimes we're not. We have not made an agreement with Mr. Smith.

30 **Donnie Rife**: Didn't you just say earlier sir that, if you couldn't reach an agreement with the land
31 owner, there's a good possibility that construction or drilling wouldn't take place?

32 **Mark Swartz**: I'm sorry. I'm a little hard of hearing.

1 **Donnie Rife**: I said, "Didn't you just say earlier that if you had a disagreement with the land
2 owner that construction or drilling probably wouldn't take place on that piece of property?"

3 **Mark Swartz**: If we...once we have a permit allowing the construction, we will proceed with
4 the construction over the objection. I mean, that's the whole point of this hearing today. I mean,
5 the question is whether or not he made a mistake when he granted the permit and overruled the
6 objection. Did he get it wrong? Is there some unreasonable interference with Mr. Smith's use of
7 his surface and he concluded that there was nothing that would cause him to reach that decision
8 and he overruled the objection and granted the permit. So, we're going to proceed. We're going
9 to be, up to some extent, on his surface with the portion of a pipeline, a portion of a road. As Mr.
10 Prather indicates, if he wants to bring a lawsuit with regard to surface damages or with regard to
11 ownership or whatever, he's going to certainly have access to the Circuit Court over that. The
12 permit doesn't defeat that claim. It just allows us to proceed.

13 **Bruce Prather**: Mr. Chairman.

14 **Bradley Lambert**: Mr. Prather.

15 **Bruce Prather**: Do any of these pipelines go adjacent to a fence? In other words, the way I've
16 always worked these things out with the property owner is if he can test the pipeline, I'll put it to
17 a place where he can live with it, which is along a fence line. And, that's the way I've always
18 worked these things out. In other words, I understand he has his surface rights and he doesn't
19 want the interior of his tract disturbed, but if you put it down a fence line.... That's what I always
20 do and it's always agreed to.

21 **Link Smith**: I'd like to point that out. You bring up a good suggestion right there.

22 **Bruce Prather**: That's the way I've always done it.

23 **Link Smith**: Okay. They can put it right beside another pipeline that goes across my property
24 and they can pay me royalties just like the other oil companies pays me royalties to come across
25 my property. I agree with you 100 percent. They can put their pipeline right beside that other
26 gas company's pipeline and they can pay me royalties for the gas coming across my property. I
27 agree with you.

28 **Bruce Prather**: They pay you damages, not royalties.

29 **Link Smith**: The other company pays me royalties. Well, if they can, why can't they?

30 **Mary Quillen**: They can only pay you royalties if you own...

31 **Link Smith**: No difference. For the gas coming across my property.

32 **Mary Quillen**: No, if you own the gas.

1 **Link Smith**: No, for the gas coming across my property, ma'am. They pay me for wells far
2 away. They're bringing gas across my property and paying me royalties for it. Then, they can do
3 the same thing, ma'am.

4 **Rick Cooper**: So, let me help the Board with what he's talking about. Cabot Gas and Oil put a
5 pipeline and they have several wells in the area. So, I'm not sure what the terms of the lease
6 agreement are, but there is a pipeline that goes for a couple of miles across Mr. Smith's property
7 and other properties in that same area that does cross this same tract or area that we're talking
8 about here. But, there is a pre-existing line in place.

9 **Bruce Prather**: There is a right of way purchased for that pipeline?

10 **Link Smith**: From that company, from....

11 **Rick Cooper**: Cabot.

12 **Link Smith**: Well, Cabot owns it now.

13 **Bruce Prather**: Yeah. Well, but it's a right of way, like fifty foot right of way.

14 **Link Smith**: No, it's not that wide.

15 **Bruce Prather**: Not that big?

16 **Link Smith**: No.

17 **Bruce Prather**: Okay. But it is a right of way. They can put their well on their right of way. I
18 don't know.

19 **Bradley Lambert**: Any other discussions from the Board?

20 **Matt Gooch**: One minor, final question. Don't want to belabor this or beat a dead horse.
21 Started out asking about forced pooling and moved away from that. At common law, right of
22 capture, you drill the well, as much gas as you can take out, you own it.

23 **Mark Swartz**: Right.

24 **Matt Gooch**: Here, we don't have the common law anywhere. You've got a forced pooling.
25 We're saying that he.....you're taking gas out from....he doesn't actually own that gas. He would
26 have...

27 **Mark Swartz**: Well, he says he does.

28 **Matt Gooch**: Nobody disputes that the drill site is not on Mr. Smith's land. Right. But you've
29 got.....let's say that you own the gas or you own the gas. That's going to be a forced pooling
30 situation for that circle. That would give you an opportunity to elect. But, let's say the road is

1 going off the circle. What does ownership of his gas get you in terms of.....if it's not his gas, in
2 other words, what he has is an opportunity to elect in a forced pooling situation. As soon as you
3 leave that circle, he would own the gas under his land or you would. Let's say you own the gas.
4 I'm not asking this very artfully, obviously. What I'm trying to get at is if you own the gas at the
5 drill site and there's a circle around it of presumptive ownership or a forced pool area and you go
6 outside of it and cross onto his land, what does your ownership of that gas get you outside? Even
7 if you own gas under his land where the road is going, if that's outside the forced pool area, what
8 does it get you?

9 **Mark Swartz**: I'm trying to figure out if this is a.....if we force pool this unit. It looks like it's a
10 circular 18-acre unit, I'm thinking. So, it must be state-wide spacing or something. If we force
11 pool this unit, and are successful, we get a right to drill the well, which we were seeking a permit
12 for...

13 **Matt Gooch**: No doubt.

14 **Mark Swartz**: And we get a right, once we get that gas to the surface, to take possession of it
15 and sell it. But it doesn't determine who owns the gas that we're authorized to sell in terms of
16 paying royalties. Okay?

17 **Matt Gooch**: Sure.

18 **Mark Swartz**: It doesn't make that determination. So, presumably, there are some people in
19 this unit that we have agreements with and we're paying them a royalty under a piece of the
20 production, okay? And, then there are some people that we would not have an agreement with.
21 He's making a claim that he owns a portion of the production from this forced pooled unit.
22 Okay?

23 **Matt Gooch**: Sure.

24 **Mark Swartz**: The piece that he claims he's entitled to, by virtue of his surface ownership
25 which he says also gives him gas ownership...that's going to go into escrow until his dispute with
26 the other owner of that tract is resolved. So, the royalty attributable to the production, the piece
27 of the production that we're selling, that's attributable to his acreage in this unit, is going to go
28 into escrow until he resolves his claim with the other claimant.

29 **Link Smith**: Which is y'all.

30 **Mark Swartz**: No. I show we have a lease from someone here. I can look at the...

31 **Link Smith**: Which is y'all.

32 **Mark Swartz**: Let's see here. Consolidation Coal Company, all coal, Consolidation Coal,
33 Reserve Coal Properties, Cabot Oil and Gas... I mean, there are other owners in this unit that we,

1 I mean, we own.... CNX Gas is not Consolidation Coal either, but there are other owners in this
2 unit that are, that would be adverse to him.

3 **Matt Gooch**: Right. It's your position if you own the gas, you've got the gas in this unit, that
4 gives you a right to build a road and a pipeline over the surface owner's land of that gas even if
5 the drill site is not on that owner's land? I'm just trying to crystallize the legal issues here.

6 **Mark Swartz**: No. Our severance deeds that we're relying on, when he certified we have a right
7 to cross his surface. Our severance deeds from people who own minerals under his surface...

8 **Matt Gooch**: Right.

9 **Mark Swartz**: Okay, so we actually have agreements with people who have deeds that they say
10 allows them to use his surface to develop the minerals. So, we are saying we have a...

11 **Matt Gooch**: To develop those...the minerals under that land?

12 **Mark Swartz**: Yes. I mean, if we didn't have an agreement with somebody who had deeded
13 rights under his land, we couldn't certify that we have the right to perform the operations we
14 propose. So, if we were missing agreements that had mining rights for Tract 2B which we cross
15 as it comes south, we wouldn't be here. I mean....

16 **Matt Gooch**: Right. I think we're sort of getting.... I asked the question poorly. Forgive me.
17 I'm not phrasing very well.

18 **Mark Swartz**: That's okay.

19 **Matt Gooch**: The issue is you're taking it across. You're doing a road and a pipeline across his
20 land for something that's being extracted away from where he lives.

21 **Mark Swartz**: Right. But, he's got a piece of the action based on what he's telling us today. He
22 is claiming....you know, he's complaining that we're crossing his land, but at the same time he's
23 saying, "I'm entitled to some royalties on some of the production you're getting out of this well."
24 He's saying that. He's not even said, "Yes." I'm just telling you. He's making a claim to some
25 of the production from this well. He's going to have to resolve that claim with the other owners,
26 the other claimants.

27 **Bruce Prather**: He has his surface rights.

28 **Mark Swartz**: But, he says he has more than surface rights.

29 **Bruce Prather**: I know he does, but...

30 **Mary Quillen**: The only thing that this though addresses is surface only. This particular item on
31 the agenda is surface only.

1 **Mark Swartz**: Correct.

2 **Mary Quillen**: Okay.

3 **Link Smith**: But I do own the surface. Or, I don't know. Do I own.... you all tell me, do I own
4 the surface? I'm not sure what I own right now.

5 **Bruce Prather**: You definitely own the surface.

6 **Link Smith**: Okay.

7 **Mark Swartz**: Well, our title work shows him as a surface owner, which is why we gave him
8 notice.

9 **Mary Quillen**: Yeah. You're listed as a surface owner.

10 **Link Smith**: Okay.

11 **Mark Swartz**: You know, this is a lot to.... it took me a long time to get this, okay? Because
12 there is an interplay but there is not necessarily an overlap. The pooling accomplishes certain
13 things and it gives you some rights, but it really doesn't address ownership. And the permitting
14 process doesn't really, you know, gives you some different rights and they don't overlap
15 necessarily. I mean, this Board does not have jurisdiction to issue permits. He doesn't have
16 jurisdiction to pool a unit. They're sort of carved out in different jobs. This Board has a right to
17 look over his shoulder, as we are doing today and say, "I think he got it wrong." I think he didn't
18 get it wrong, but that's your role in permitting, that either he fumbled the ball and made a
19 decision that he should not have made or he got it right. That's what we're talking about today.

20 **Matt Gooch**: Right, but you would agree that the certification is reviewable. If you came in and
21 said, "Okay, we have a certification but I made up the deeds this morning. Somebody broke out
22 of a mental institution and started scribbling stuff on a paper. We certify it. You are not allowed
23 to even look at it." I mean, you would agree that you have to present some colorable claim?

24 **Mark Swartz**: Actually, no. And, I've had that discussion with this Board before. Because,
25 where do you stop? If you pull back the curtain a little bit and say, "We're going to look at these
26 deeds to see if they're fraudulent," or "We're going to look at these deeds to see if they were
27 made this morning," or "We're going to look at these deeds to see if they were made last week,"
28 or "We're going to look at these deeds to see if they're true and correct copies." As soon as you
29 pull that curtain back, aren't you becoming a circuit court?

30 **Matt Gooch**: No. Isn't there a difference between adjudicating title and looking for obvious,
31 patent fraud or defect if someone doesn't actually have the claim that they present?

32 **Mark Swartz**: Okay, and I assume if you're going to try a fraud case that you're going to have
33 people in here saying on the one hand, "this is a fraud," and people on the other hand saying,

1 "No, it's not." And so now you're adjudicating a fraud claim, as a Board that has invaded the
2 province of the circuit courts. You can't. I mean, I've been through this with him. I've been
3 through it with the Board before over the years, over twenty years. You cannot pull that curtain
4 back and start looking at the quality of the instruments and documents, period.

5 **Matt Gooch**: What if there are no instruments or documents? You just say...

6 **Mark Swartz**: Well, hopefully, we wouldn't certify. I mean, I have been to hearings where I
7 have not even put the deeds in. Okay? I guess I do that to show our good faith, that we do title.
8 Okay? We have title on every tract in every unit that we pool. We run a title. We pay for that.
9 It's very expensive. We tell him that. We tell you all that. As a result of the title that we pay
10 for, we have severance deeds. Oftentimes, I will copy them and highlight the language that we
11 believe conveys us the mining rights that our certification relies on, but I don't have to do that.
12 Somebody needs to certify that they have a right to conduct operations. There was no
13 requirement that you come forward and say, "And this is what we relied on to make that
14 certification." I know it sounds.... I know it's something that you're having troubling wrapping
15 your head around, but let me tell you what the downside is. If an operator comes in front of this
16 Board or comes in front of him and perpetrates a fraud to get a permit or perpetrates a fraud to
17 get a pooling, okay, then you have one whale of a trespass claim, punitive damage claim and the
18 whole nine yards in circuit court. Okay? So, the mechanism which hopefully causes operators
19 to pay attention to these things is there's a huge potential civil liability associated with not being
20 up front with this Board and not being up front with the Division. Before you build a pipeline or
21 a road on somebody under a permit where you're saying to the governing agency that you have
22 mining rights that allow you to do that, you better be right because it doesn't protect you from
23 Mr. Smith going to circuit court and winning a trespass claim. So, you need to pay some
24 attention as an operator when you do this cause you're not giving us a free pass in circuit court to
25 beat a trespass claim. So, your concern that people might come in front of this Board or in front
26 of...

27 **Matt Gooch**: I completely understand what you're saying that it's separately...you've still got all
28 civil remedies. This isn't a shield.

29 **Mark Swartz**: Well, which is a huge inducement to be forthright and honest and correct when
30 you're certifying this stuff because the downside of making a mistake on title is in the warrant.

31 **Bruce Prather**: Your title attorneys are bonded aren't they?

32 **Mark Swartz**: I'm sorry. I'm going to have to get hearing aids.

33 **Bruce Prather**: Your title attorneys are bonded, that bear your abstracts?

34 **Mark Swartz**: They have insurance, yes. They have insurance.

35 **Bruce Prather**: So, you can go back on them if you have a bad title.

1 **Mark Swartz**: Depending on the limits of their liability, yes. But, we're going to get pegged
2 first.

3 **Bruce Prather**: Yeah, you'll be tagged first but like I say, you have....in other words, they are
4 bonded...whoever's preparing your title abstract.

5 **Mark Swartz**: Well, except if you've read title opinions, sometimes they put enough in the
6 basket to protect themselves down the road, too. So, you don't know. In any event, the risk here
7 and the inducement to do a good job and to do it right is to avoid civil liability down the road
8 which can be extremely expensive. I mean, if you put a well on property that you don't have
9 agreements with regard to, you may have drilled someone a free well. You need to pay attention
10 as an operator, okay? In the last twenty-five years, there was a mistake with regard to a well and
11 where it was located. It was a \$350,000 mistake before you even get to the civil liability. You
12 don't want to make a lot of those mistakes. You want to be careful. You want to do title. You
13 want to have certified maps because we do not get a free pass from him when we get a permit.
14 We don't get a free pass from you all when we get a pooling order. We still have all of the torte
15 and contract obligations that we would have to people that we affect, who can take us to court.

16 **Matt Gooch**: Thanks for answering my question. I understand. It's not a shield.

17 **Bradley Lambert**: Okay. Anything further from the Board?

18 **Link Smith**: I'd like to revert to what he just said. All his deeds that he referred to specifically
19 said, "Mining." It didn't say, "Oil," and it didn't say, "Gas," and he's referring to those deeds to
20 give him a right to get a permit to drill for gas and to give him a right to come across my
21 property to put that well down.

22 **Mark Swartz**: And you and Mr. Cook have the right to go to court to argue your point.

23 **Bradley Lambert**: Anything further from the Board before I call for a vote on either to uphold
24 or to not agree with the Director's decision, informal fact-finding decision, for Docket Item
25 Number 13? We're talking about Well TA-131. Any further discussion from the Board? [No
26 response] And, do I have a motion on the Director's decision?

27 **Donnie Ratliff**: I make a motion, Mr. Chairman. I've read the transcript twice while we've been
28 discussing this and I fully understand that we can't make decisions on deeds and that's been
29 plainly put to us. I think the regulations being what they be, that we affirm the Director's
30 decision.

31 **Bradley Lambert**: Do I have a second?

32 **Bruce Prather**: I'll second.

33 **Bradley Lambert**: I have a motion and a second. Any further discussion? [No response] All
34 in favor signify by saying yes.

1 **Board**: Yes.

2 **Bradley Lambert**: Opposed, no.

3 **Donnie Rife**: No.

4 **Bradley Lambert**: Okay. The decision of the Director, will be upheld.

5

6

Item Number 14

7 **Bradley Lambert**: We're moving on to Docket Item Number 14, a petition on behalf of Shea
8 Cook, attorney for Link Smith, appealing the decision of the Director issued on January 22,
9 2014, for IFFH 228, regarding an application from CNX Gas Company for proposed well TA-
10 144 with the pipeline. This is Docket Number VGOB-14-0318-4037. All parties wishing to
11 testify please come forward.

12 **Mark Swartz**: Mark Swartz

13 **Bradley Lambert**: Mr. Smith, are you going to represent yourself?

14 **Link Smith**: Yes, sir.

15 **Bradley Lambert**: Without your attorney? Then, we will need to get him sworn in.

16 **Sarah Gilmer**: Mr. Smith, do you swear or affirm that your testimony is the truth, the whole
17 truth and nothing but the truth?

18 **Link Smith**: Yes, ma'am.

19 **Bradley Lambert**: Okay. Mr. Cooper, would you briefly summarize your decision for us
20 please?

21 **Rick Cooper**: I will. And just remember I did read Mr. Cook's statement prior to 227. On this
22 particular well TA-144, whether you can believe it, it's a bit more complex. It's the same
23 ownership. It's the same objection, word-for-word as 227 that they object to the infringement
24 and use of the property. And the decision that I had in regard to that was real similar to the other
25 one: "The objecting party's testimony did not make a sound case for unreasonable infringement.
26 Placement of proposed surface disturbances and lack of demonstrated infringement on current or
27 planned land use appeared to negate implication of unreasonable infringement." And, before we
28 get into this, the complication occurs to let everybody know surface damage. There is an
29 original permit submitted on this that did not expire. For whatever reason, the company sent in a
30 second permit on the exact same well and this was back a few years ago, the previous Director, it
31 was not caught. And the objection came in on the second permit. So, there was about two days

1 worth of surface disturbance. They did.... and, the area (I have been there) is relatively flat, very
2 little disturbance but there was some disturbance done on the original permit. But the objection
3 is on the second permit. But, the objection is still the same. So, when we get into surface
4 damage, I just wanted everybody to understand the process here. And we have put a process in
5 place that will not allow this duplication in the future. This is three or four years ago and we
6 have put electronic process in place to eliminate this so it won't happen again.

7 **Bradley Lambert**: Mr. Cooper, did you review the first permit and the second permit? Were
8 they basically the same?

9 **Rick Cooper**: I did review the first permit and the second permit and they are identical.

10 **Donnie Rife**: Regardless, the first permit would have taken precedence over the second one?

11 **Rick Cooper**: Well, they were actually identical so what happens is the company thought this
12 permit was going to expire if you don't start construction. But apparently, permitting did not talk
13 with construction because construction did start and the permit application came in. So, that is
14 what Mr. Smith objected to, was the second application for the same well, same location, same
15 owners, same everything, page for page, the same.

16 **Bruce Prather**: This is a renewal of the original.

17 **Rick Cooper**: No. It should have been a renewal, but it was a new permit and it fell through the
18 cracks through our office and I have to apologize for that, but again we have a process in place to
19 keep that from happening in the future.

20 **Link Smith**: I'd like to add that first permit, the guy that was in your position before you, wasn't
21 he handling that at the time that he stepped down? Was supposed to have got back with me on it
22 and never did?

23 **Rick Cooper**: You are correct. That was the previous Director.

24 **Link Smith**: And we had already had a hearing on that at one time?

25 **Rick Cooper**: I don't have any record of a previous hearing on this particular permit.

26 **Link Smith**: Okay.

27 **Donnie Rife**: Are you saying there is a record, sir?

28 **Rick Cooper**: I'm saying there is not a record. We have other.... I believe Mr. Asbury, the
29 previous Director, had other hearings on other wells on Mr. Smith's property, but TA-144 was
30 not one of those.

31 **Link Smith**: Isn't this the one he was supposed to have got back with me on and never did?

1 **Rick Cooper**: I apologize.

2 **Link Smith**: And he left and you took over?

3 **Rick Cooper**: I apologize. I don't know.

4 **Link Smith**: Okay.

5 **Mary Quillen**: Mr. Cooper, this pipeline from this TA-144 is a proposed and this is a buried
6 pipeline?

7 **Rick Cooper**: That is correct.

8 **Mary Quillen**: And, so you said there is some disturbance? Was that not from that well? Is
9 that the one that you said that there was some?

10 **Rick Cooper**: Yes. Previously, Mr. Smith was talking about was he going to get paid for some
11 previous surface damage.

12 **Mary Quillen**: Right.

13 **Rick Cooper**: And this is the well that he was talking about. Not the pipeline itself, but there
14 was maybe one day or two day.... A dozer was on the property and that was a breakdown in
15 communication on behalf of the parties involved.

16 **Mary Quillen**: But, if this is a buried pipeline, then that reclamation of that area, would that
17 occur as the pipeline is being built or would it all be done at the completion of the pipeline?

18 **Rick Cooper**: Well, it would be a process. But, in this situation there was no pipeline ever
19 installed. They just worked like one day or a day and a half trying to build the pad, so they did
20 not get that far along. Mr. Smith came up and shut them down.

21 **Mary Quillen**: Okay. How deep is this pipeline? Proposed?

22 **Rick Cooper**: Well, again, it's not just a pipeline issue. It's the site. Generally, the pipeline is
23 two to three feet deep. And the disturbance that occurred was on the well location itself, not the
24 pipeline location. And, so they were attempting to build a pad. It's a relatively flat area and so
25 they did actually push the sod off.

26 **Mary Quillen**: But, is this well, this 144.... is this on Mr. Smith's property?

27 **Rick Cooper**: That is what is in question, but it's right on the property line but I believe it may
28 be.

29 **Link Smith**: Yes, it is on my property.

30 **Mary Quillen**: And when would we have some idea of whether it actually is?

1 **Bruce Prather**: Is there a survey plat on this well?

2 **Rick Cooper**: There is a survey plat.

3 **Donnie Rife**: Shouldn't that determine whether that is on his property or not, sir? Mr. Cooper?

4 **Rick Cooper**: I believe the well is on his property.

5 **Bradley Lambert**: According to the certified plat that we have, it's not.

6 **Bruce Prather**: That map's not a certified plat.

7 **Mary Quillen**: No. I don't know if there is one. There may be one on it, but I don't have it.

8 **Bradley Lambert**: I'm sorry. I take that back. If the dash line is the property line?

9 **Rick Cooper**: Yes.

10 **Bradley Lambert**: It is not.

11 **Rick Cooper**: He owns 2A.

12 **Bradley Lambert**: Oh, I'm sorry. If he owns 2A, then it is on his property. I'm sorry.

13 **Rick Cooper**: I believe. I'm going to look at the Tract ID to confirm that, but I think he is the
14 2A.... he is the 2A surface owner.

15 **Bradley Lambert**: Okay. The well is shown on 2A.

16 **Mark Swartz**: No, it's not. It's to the west of 2A. The circle is just to the west of 2A.

17 **Bradley Lambert**: So, let me be clear.... is it the black dotted line or the red dotted line, the
18 property line?

19 **Rick Cooper**: The black dotted line would be the property line.

20 **Bradley Lambert**: I was looking at the red dotted line as the property line, so if the black dotted
21 line is the property line, it's not on 2A according to the survey.

22 **Rick Cooper**: Right. I agree.

23 **Mark Swartz**: Well, I think in fairness to Mr. Cooper.... You went up there. Did you conclude
24 that there probably was some disturbance when they were building the pad to cross his property
25 line or did I misunderstand you?

26 **Rick Cooper**: No, you are correct. They probably.... the pad, if you see the edge of this, is
27 maybe forty or fifty feet wide. They did cut some trees on his property, also.

1 **Mary Quillen**: So, this is still about the surface disturbance on the surface?

2 **Rick Cooper**: Right. This is surface ownership here. It's the same objection as before, an
3 unreasonable use of the surface owner's property. No alternative locations were provided.

4 **Mary Quillen**: And it's only for the pipeline? Because the well is not on his property. Is that
5 correct?

6 **Rick Cooper**: Yes.

7 **Bradley Lambert**: Mr. Cooper, was this disturbance done prior to issuing the second permit?

8 **Rick Cooper**: The second permit has not been issued. That's what the objection came in on.

9 **Bradley Lambert**: Okay. So, the disturbance was done under the first permit?

10 **Rick Cooper**: That is correct.

11 **Mary Quillen**: But, you said that the disturbance was on...for the well pad and it's not on his
12 property. So, where is the disturbance on his property?

13 **Rick Cooper**: It's real hard to see it here, but it does look like.... You know, when you develop
14 a site, you have to cut adjacent trees and things like that so some of the trees were cut on his
15 property.

16 **Mary Quillen**: Okay. So, that was the disturbance, was the trees?

17 **Rick Cooper**: That's correct. And it's a really close property line, as you see here. The circle
18 that you're looking at here is probably thirty feet, but in actuality it's only six inches on the
19 surface remember.

20 **Donnie Rife**: From what I'm looking at, it looks like the well head is on 2A.

21 **Rick Cooper**: Pardon me?

22 **Donnie Rife**: It looks to me like the well head is on his property.

23 **Link Smith**: It is.

24 **Donnie Rife**: And, I'm telling you.... You can see the line coming up through here. You can
25 expand it out and it's to the right.

26 **Rick Cooper**: Yes, if you want to look at the well head for actual size, you look at the dot in the
27 middle of that little circle and that's probably the actual location, not the entire circle itself.

28 **Bradley Lambert**: Mr. Swartz, do you have anything?

1 **Mark Swartz**: Two things. One, the well is six or seven inch dimension, okay? And I would
2 simply state that this plat tells me that that is to the west of his property line by some feet. I
3 mean, not some huge distance, but it's on the property to the west. The other observation I would
4 have is to incorporate if I could, I'd like to repeat myself, the information that I tendered to the
5 Board with regard to the last hearing. You all can have that.

6 **Bradley Lambert**: That will be accepted.

7 **Mark Swartz**: And then, again, indicate that we have intentionally tried to keep the well
8 location off of...the actual well location...off of Mr. Smith's property. And, then lastly, that.... I
9 don't want to take the lid off the jar. We also tendered the same deeds with regard to our
10 certification. That's all I would have, Mr. Chairman.

11 **Bradley Lambert**: Mr. Smith, do you have anything further to add?

12 **Link Smith**: You know what? I've objected to this and objected to it and you all are giving
13 them the right to come on private property and do whatever they want. It's just that plain and
14 simple. I can say I own the gas. They say they own the gas. They say they have the right to
15 come in and take it. You're giving them that right. You're giving them the right to come on
16 private property and do whatever they want. It's just that plain and simple. It don't matter what I
17 say. I base my objections. I own the property. They've come in here. They've disturbed the
18 property. That don't matter. You all are going to uphold the Director's decision. It's that plain
19 and simple. A property owner, according to this Board, has no rights no more.

20 **Bradley Lambert**: Any discussion from the Board?

21 **Mark Swartz**: Excuse me, Mr. Chairman. If I could make one more observation. The Tract
22 ID's indicate that Cabot Oil and Gas is what we show as the owner under both of these tracts.
23 So, just so you know. The coal interests are Reserve Coal and Consolidation Coal. But Cabot,
24 from our title work, is the oil and gas owner. Of course, Mr. Smith says he is but....

25 **Bradley Lambert**: Questions from the Board or discussion?

26 **Mary Quillen**: I'm a little concerned because we can't determine.....we need to see a plat.

27 **Rick Cooper**: You have a plat.

28 **Bruce Prather**: Yeah, but we don't have the certified one that the surveyor has signed. We've
29 got a piece of something, but....

30 **Mary Quillen**: Oh, there it is.

31 **Rick Cooper**: No, it's in there and signed.

32 **Bradley Lambert**: We've got it.

1 **Bruce Prather**: It's signed. Okay. Let's see what we've got.

2 **Mark Swartz**: It's Page 17 of 42, I believe. Is that what it is, right?

3 **Rick Cooper**: Yes, it is.

4 **Mary Quillen**: Okay. Yeah.

5 **Bruce Prather**: There it is. Now is this road the property line?

6 **Rick Cooper**: If you all don't mind to speak up, we can't get that on record if you need us to
7 hear what you're talking about.

8 **Bruce Prather**: Supposedly, this is the property line, that red looking thing going down through
9 there.

10 **Mary Quillen**: So, the road is right at the property line. Is that what we're seeing?

11 **Rick Cooper**: If you look at the plat, and if you look at the circle where the well is located,
12 you'll see a black dashed line just to the right or east of it. That is the property line. And, if you
13 look just to the left of the well, those red dashed lines are the road. That is a pre-existing road,
14 just to let you know. The road has been constructed for many years. I think that Cabot
15 constructed that road in like 1997, so it has been there for....

16 **Link Smith**: That road is to the old Kinder homeplace. Nobody constructed it. That was the
17 way the people that lived behind me got in and out. They had the right to travel over that to get
18 in and out to their home. No, Cabot didn't construct it or nobody else.

19 **Rick Cooper**: Cabot did not permit that road to that Cabot well out through there?

20 **Link Smith**: They did not construct that road. They might have a permit for the road, but as far
21 as constructing a road, no, that went to the old Kinder homeplace.

22 **Rick Cooper**: But, you would.... I'm not really wanting.... It's not an argument. The road had
23 been in place for a long time. Correct?

24 **Link Smith**: The road has been in place ever since back in the 1800's.

25 **Mary Quillen**: Who maintains the road?

26 **Bruce Prather**: Does the county maintain the road?

27 **Link Smith**: No, it's a...

28 **Bruce Prather**: Private?

29 **Link Smith**: Private road.

1 **Rick Cooper**: Currently, CNX has a permit that has this road on it and Cabot does also. So,
2 CNX has been maintaining the road.

3 **Bradley Lambert**: Anything further?

4 **Link Smith**: How did CNX start maintaining the road when they don't have a right to use the
5 road?

6 **Rick Cooper**: You stopped them from coming in from the saw mill area years ago.

7 **Link Smith**: Right.

8 **Rick Cooper**: And, did they not go out and fill up a lot of those holes with rocks a couple of
9 times out through there on your request?

10 **Link Smith**: CNX? No. You made Cabot do that.

11 **Rick Cooper**: Right. Well, it's a shared responsibility between Cabot and CNX. Both of them
12 sort of have a dual-existing permit there on the exact same route.

13 **Link Smith**: How did they get the permit on that route? CNX. How did they get that permit? I
14 never was notified of it.

15 **Rick Cooper**: I don't, at this time, know which permit it was on.

16 **Link Smith**: Huh?

17 **Rick Cooper**: I don't recall which permit it was on. It may be that...is that 122 out on the left?

18 **Link Smith**: How come I wasn't notified of this?

19 **Rick Cooper**: Well, I guess the issue here is it has been pre-existing road for many years and
20 Cabot did permit that originally probably in 1997 to access the first well that was put out in that
21 part of Tazewell County.

22 **Link Smith**: But, how did Cabot or CNX get a permit for this road when it's a private road
23 across my property? Who granted them that permission? Did you all?

24 **Rick Cooper**: I know, I may have made a mistake in saying that, Mr. Smith. I don't recall a
25 well going out through there. So, to be very honest, I'd have to do some research and see that,
26 but they are permitted to come in from an opposite direction to that location.

27 **Link Smith**: Okay.

28 **Rick Cooper**: And that's what we're looking at here on the south. All that is permitted road
29 coming south up to this location.

1 **Mary Quillen**: It looks like it's to the left of the property line on this plat.

2 **Bruce Prather**: Yeah, it is.

3 **Bradley Lambert**: Any other discussions or questions from the Board? Ms. Quillen, do you
4 have anything further?

5 **Mary Quillen**: I'm just looking at this certified plat. It, the well does...and the property line, it
6 is to the left of the property line. Am I reading that correctly?

7 **Rick Cooper**: I think you are, Ms. Quillen.

8 **Bradley Lambert**: If you have it on your iPad screen, Ms. Quillen, you can really blow it up
9 and...

10 **Mary Quillen**: I couldn't pull it up. I'm having trouble getting into my...

11 **Bradley Lambert**: Would you like to see it on mine?

12 **Mary Quillen**: No, I was looking at his.

13 **Bradley Lambert**: Okay.

14 **Mary Quillen**: I looked at his.

15 **Bruce Prather**: Are we looking at the same thing?

16 **Mary Quillen**: That's what I'm trying to see here. Oh, yeah. This is 144. Is that?

17 **Bruce Prather**: Go all the way down. The number will be on it.

18 **Mary Quillen**: 17 is the page.

19 **Donnie Rife**: Page 18 is what I've got here.

20 **Mary Quillen**: There it is. C.

21 **Bruce Prather**: We're talking about 144.

22 **Donnie Rife**: On Page 17.

23 **Mary Quillen**: Yeah. Well, it says...

24 **Bruce Prather**: See, this is 144 and you've got 131.

25 **Mary Quillen**: How is that?

26 **Bradley Lambert**: Ms. Quillen, Mr. Prather, what's the question you all have or the concern
27 you have? Maybe we can help you out because I have it up on my screen.

1 **Mary Quillen**: Just looking at where that well is located, it looks like it is to the left of the
2 property line for 2A.

3 **Bradley Lambert**: That's correct.

4 **Mary Quillen**: And that was our question. Was it on his property or was it not on his property?

5 **Rick Cooper**: The well location, itself, is not on his property but there would be some likely
6 surface damage to build the pad due to the close proximity of the property line.

7 **Mary Quillen**: Okay, so surface damages is what we are considering because that's what was in
8 your decision.

9 **Rick Cooper**: Correct. That's correct.

10 **Bradley Lambert**: Any other discussions from the Board? Ms. Quillen, Mr. Prather, do you
11 have any other questions you need answered?

12 **Mary Quillen**: No.

13 **Bradley Lambert**: Do I have a motion addressing the Director's IFFH decision only, not
14 addressing anything with the conflict there may be existing with the gas rights?

15 **Donnie Ratliff**: Mr. Chairman. Mr. Smith, trust me I feel your pain, but under the current
16 regulations, if they check all the boxes and do what's required by the regulations, we don't really
17 have a choice. But I move that we affirm the Director's decision.

18 **Bruce Prather**: I'll second that.

19 **Bradley Lambert**: I have a motion and a second. Any further discussion? [No response] All
20 in favor signify by saying yes.

21 **Board**: Yes.

22 **Bradley Lambert**: Opposed, no. [No response] That decision will be affirmed. Thank you
23 folks.

24 **Link Smith**: I'd like to request a transcript of everything that's been said here today. Would you
25 all please provide me with that?

26 **Bradley Lambert**: We'll get that as a FOIA request. Can you document that, Ms. Davis and get
27 that as a FOIA request and can you document that, Ms. Davis and get those to him?

28 **Rick Cooper**: If you would, Ms. Gilmer, make a note that Mr. Smith has requested a copy of
29 the transcript today. We'll mail that to him.

30 **Diane Davis**: Electronic or mail?

1 **Link Smith**: Mail.

2 **Diane Davis**: Do you have his address?

3 **Sarah Gilmer**: I do have his address.

4 **Mark Swartz**: It should be in the permit.

5 **Bradley Lambert**: Can you give him an estimated time?

6 **Rick Cooper**: It will be before the next Board hearing.

7 **Link Smith**: How long will I have...? What's the time limit on the deal for this?

8 **Matt Gooch**: You should ask your attorney.... I can't give you legal advice. I wish I could.

9 **Link Smith**: Okay. Thank you all. Appreciate it.

10 **Bruce Prather**: Thank you.

11 **Item Number 15**

12 **Bradley Lambert**: Okay. We're calling Docket Item Number 15, a petition on behalf of Gerald
13 L. Gray, Attorney for Pamela Hess, appealing the decision of the Director issued on May 2,
14 2014, for IFFH 220, regarding an application from CNX Gas Company for proposed well Z36D
15 and pipeline. This is Docket Number VGOB-14-0617-4049. All parties wishing to testify please
16 come forward.

17 **Gerald Gray**: Can we have a seventh-inning stretch, Mr. Chairman?

18 **Bradley Lambert**: You do, Mr. Gray.

19 **Gerald Gray**: I mean, for the Board, just to take a break before we start in.

20 **Bradley Lambert**: Oh. You want to take a break?

21 **Gerald Gray**: Huh?

22 **Bradley Lambert**: You want to take a break?

23 **Gerald Gray**: I think it would be a good idea.

24 **Bradley Lambert**: All right. We were trying to get it all in before lunch, but if you would like
25 to have a break, we'll take about a ten minute break.

26 **Gerald Gray**: I can appreciate that. [10 MINUTE BREAK]

1 **Bradley Lambert**: Ladies and gentlemen, it's time to begin our proceedings. At this time, we're
2 calling Docket Item Number 15, a petition on behalf of Gerald Gray, Attorney for Pamela Hess,
3 appealing the decision of the Director issued on May 2, 2014, for IFFH 220 regarding an
4 application for CNX Gas Company for proposed Well Z36D with a pipeline. Docket Number
5 VGOB-14-0617-4049. All parties wishing to testify please come forward.

6 **Gerald Gray**: All right. If you're going to take testimony, I assume you want that testimony to
7 be under oath.

8 **Bradley Lambert**: Yes, absolutely.

9 **Sarah Gilmer**: Ms. Hess, do you swear and affirm that your testimony is the truth, the whole
10 truth and nothing but the truth?

11 **Pamela Hess**: Yes, I do.

12 **Sarah Gilmer**: Mr. Hess, do you swear and affirm that your testimony is the truth, the whole
13 truth and nothing but the truth?

14 **Leonard Hess**: I confirm. I will confirm.

15 **Bradley Lambert**: Okay. Mr. Cooper, this is a hearing appealing your fact finding decision for
16 220. Could you go ahead and give us a brief description of what we're here for?

17 **Rick Cooper**: I will. This permit came in and the objection was received on 10/05/2011. We
18 had an original hearing scheduled on May 25, 2012, but Mr. Gray had an accident and we had to
19 postpone it. Then, we scheduled another hearing in October of 2013 and there was a scheduling
20 conflict and we had to postpone it a second time. And then we did have the hearing on 2/21 of
21 this year and they did appeal the decision. It was timely. The objections to the permit were
22 "measures in the distance to the requirement of a well's water protection stream are necessary to
23 protect water-bearing strata." And the second objection was "location of the coalbed methane
24 well or coalbed methane well pipeline will unreasonably infringe on the surface owner's use of
25 the surface, provided that a reasonable alternative site is available within the unit and granting
26 the objection will not materially impair any right contained in the agreement valid at the time of
27 the objection between the surface owner and the operator or their predecessors or successors of
28 interest." And I did rule that I would go ahead and approve the permit, that I thought the water
29 protection stream was adequate to protect the water and, in the application, the applicant had put
30 in there they would run a minimum of 409 feet of water protection string, 7-inch casing, cement
31 it back to the surface. They also had in their permit they would run 2,070 feet of 4 1/2 inch
32 casing, cement it back to the surface. And I will show you in a diagram here the Hess residence
33 is more than 2,100 feet from this well. There is a hollow in between them. They're on the
34 opposite side of the drainage and the pipeline in the application that they're objecting to is not on

1 their property and the applicant has proposed to put a road in that does cross part of the property
2 but, in my opinion, it was the least amount of disturbance that could be done.

3 **Bradley Lambert:** Before we let you continue, I'd like to hear from Mr. Gray and his clients.

4 **Gerald Gray:** Thank you, Mr. Chairman and members of the Board. The first point I want to
5 make is that, at my request, the Director went to the scene and actually visualized the area that's
6 in question here. I certainly appreciate that. When I noted my appeal and I appreciate the
7 compliment that Mr. Swartz gave me. I actually read the rules and wrote my Petition for Appeal
8 in compliance with those rules, with the statute and the regulation. And, perhaps to make it
9 easier for other landowners in the future, you could develop a form based on what I have here to
10 make it easier for landowners to comply with the rules and bring the petition forward. But, I
11 understood from my client that Mr. Cooper did go to the property along with a Mr. McLaughlin,
12 I believe. Altizer, excuse me. And...

13 **Leonard Hess:** Joe Altizer.

14 **Gerald Gray:** Joe Altizer. And made some measurements, used the GPS and I asked in my
15 cover letter to the DGO to give me a copy of any information, including photographs relied upon
16 by the Director to reach a decision and he informed me that he had nothing and I'm concerned
17 about that because, as an attorney, I understand how administrative law works. Administrative
18 law says that you make your record, that you're going to appeal it to a Circuit Court. You've got
19 to have a record so the record is incomplete before you. You have a transcript, certainly and we
20 have documents we'll be referring to during this hearing but, nevertheless, I am concerned that
21 there was information available to the Director that he relied upon which is not in the record
22 before you. And so, to that extent, I'll object to this Board hearing anything regarding this issue.
23 That's my first concern. Secondly, I will point out that there was substantial confusion at the
24 hearing because my clients were unable to determine exactly where and what the gas company
25 proposed to do on their property. I have been representing landowners against gas companies for
26 probably thirty years and the vast majority of the time my experience has been that the gas owner
27 or lessee finds it very beneficial to meet with the landowners and resolve disputes like this way
28 ahead of time. For whatever reason, that's not been the practice of CNX, certainly not in this
29 case or in another previous case I've had with them. On the contrary, EQT which is a lessee of
30 Alpha and Range Resources have worked extensively with my clients to relocate wells, relocate
31 pipelines, relocate roads, all those things. I think it's a better way to do it, quite frankly. And, in
32 fact, as I'm saying when Mr. Cooper went back to the property there was no one there from the
33 gas company to explain anything to him. So, although he took advantage of going to the site,
34 which was very helpful I believe, there was nobody there to answer any questions. So, perhaps
35 this entire proceeding could have been avoided if, in fact, there had been consultation with the
36 landowner and negotiation about the location. What you're going to find and the issue before
37 you is a road that's proposed to be located on my client's property. The evidence, the undisputed
38 evidence, is of the 24 acres that they own there's a very small portion that doesn't have a house

1 on it or other dwellings or other buildings that's flat land and, as you all are probably aware
2 because you live around here...most of you do anyway...in Buchanan county flat land is a
3 premium. It's difficult to find and difficult to put to use. But, in this case, the gas company
4 chose to locate the road and its pipeline along the location of a pre-existing pipeline when the
5 topo map will demonstrate clearly that all they had to do was move this road a few feet away. It
6 wouldn't have inconvenienced them at all. It might have been a little bit more expensive, but
7 they can afford it and they could have avoided using my client's property at all. And that's the
8 basis of our appeal that their use of my client's property will unreasonably infringe with their use
9 of the property. Now, in an earlier hearing, I have heard objections made to...well, the land
10 owner didn't have any plans for the property. Well, I would respectfully point out that the code
11 does not require that the landowner have any plans for the property. The issue is whether or not
12 the use, by the gas company, of the land would unreasonably interfere. I will submit to you that
13 when there's a small portion of flat land on a person's property that the gas company proposes to
14 use that, that's unreasonable. Certainly, they have the right because they own the gas and we're
15 not in a position to raise the same issue that Mr. Cook did but certainly when they own the gas
16 they have the right to reasonable use of the surface to access their gas. However, under these
17 circumstances, there is virtually no reason. In fact, there's no evidence in the record at this point
18 as to why they couldn't move their road and pipeline just a few feet over and completely avoid
19 my client's property completely. In fact, it was uncontested in the informal fact hearing that the
20 gas company could have come up from a different direction and access the wells that they need
21 to up Shack Branch which I believe Mr. Cooper is familiar with and, for that reason, we believe
22 that the Director's decision ought to be reversed and you should rule in favor of the landowners
23 on the one grounds that we have available from the legislature. And that is that the proposed
24 location of the well and road would unreasonably interfere with their use of their own property.
25 Thank you, sir.

26 **Bradley Lambert:** Mr. Swartz.

27 **Mark Swartz:** Actually, I think a letter here from Mr. Cooper about his maps and photographs
28 because I may not have to do much.

29 **Bradley Lambert:** And, so, do you want to hold your remarks until...

30 **Mark Swartz:** Right.

31 **Bradley Lambert:** Mr. Cooper, would you explain your exhibits please? And could you mark
32 those exhibits for us and label them?

33 **Rick Cooper:** This is actually Page 33 in your package you have. Just a blown up copy of what
34 you already have. I would like to say in Mr. Gray's request for any pictures or notes that I had
35 taken on the field visit. I took no pictures and I provided the information stating I had taken no
36 pictures and were given to him in regard to that. And this right here is right out of the permit
37 itself. So, I want to show right here what we have. This little green area right here, that you'll

1 look in this sort of odd shaped piece of property, is the Hess property in question we're talking
2 about here. This pipeline, this blue line...

3 **Bruce Prather**: Why don't you go on the other side, Rick?

4 **Rick Cooper**: Okay. If you can't see, let me know. But this blue line that you see right here is a
5 pre-existing pipeline that has been in place for ten, fifteen years. And the plat that's in question
6 that they're talking about is this particular area right here. And you can see this yellow area right
7 here is a pre-existing road that's already in place that goes out to another well and the compressor
8 site is out here on the end. The only area.... and, so the pipeline in this application is not on the
9 Hess property. The well is not on the Hess property, but they do cross this little section right
10 here going in behind the pre-existing pipeline that's buried to put their road in to get out this area.
11 And, in my opinion, it's less surface disturbance. If you went down the hill 100 feet or 600 feet
12 or 1,000 feet it would be much more environmentally damaging to do something else. And this
13 is not on the flat. It goes in behind the flat. So, the area that's in question is not being disturbed
14 here. That is actually Exhibit 1A in the permit. This is the plat that's also in the permit here.
15 You can see this is the 750-foot radius, the well in here. And, again, the well or its pipeline
16 either one is not on the Hess property. In this particular drawing here, you can see this. This
17 would be the Hess residence right here. The pre-existing road goes right through here. This is
18 the plat in question we're talking about. This is the well. It's 2,145 feet from the Hess location
19 so, in regard to water damage, I don't see any evidence or any reason why the casing that's being
20 run the cement to the surface is not adequate, not to mention all the water that drains.

21 **Gerald Gray**: Mr. Chairman, excuse me. If I may, we didn't appeal the decision regarding the
22 water, so it's not relevant to talk about the water issues. The only thing we appealed....excuse
23 me, sir. The only thing we appealed is the Director's conclusion that the proposed use didn't
24 interfere, didn't unreasonably interfere, with their property. And that...unreasonably infringe on
25 their property. So, we don't need to talk about the water.

26 **Rick Cooper**: Okay. We won't go through that.

27 **Bradley Lambert**: Thank you, Mr. Gray. Then, Mr. Cooper if you would just...no need to
28 bring up the water issue.

29 **Rick Cooper**: Okay. No problem. This is the plat in question here...

30 **Mark Swartz**: Well, then.... Excuse me. They didn't appeal the road either. They appealed the
31 pipeline. So, I mean if he doesn't want to talk about the water because he didn't appeal it, we
32 don't need to be talking about that. That's cool. But, we don't need to be talking about the road,
33 either because there is no appeal, if you read his appeal..."Director erred in finding that the
34 proposed coalbed methane well pipeline location...pipeline location...will not unreasonably
35 infringe..." That's what they're complaining about. They weren't complaining about...

1 **Gerald Gray**: Read the next sentence, Counsel.

2 **Mark Swartz**: Excuse me.

3 **Gerald Gray**: Read the next sentence, Counsel, out of paragraph four, please.

4 **Mark Swartz**: "The location selected for the pipeline or road is on the surface owner's best land
5 which is relatively flat." The pipeline is not on your client's land.

6 **Gerald Gray**: Right. But the road is.

7 **Mary Quillen**: And, see, that's what's in our notes. It says, "the coalbed methane well pipeline
8 location."

9 **Rick Cooper**: Let me just proceed here and then we can get into the discussion here. But this
10 area right here is their flat and this little slot you see here is the pre-existing pipeline, been in
11 place for several years. So, the proposed road is going in behind that pipeline and crossing the
12 edge of the property going to this well. So, in my opinion, that's less surface destruction, less
13 environmental damage to go in that particular direction.

14 **Bruce Prather**: Rick, whose pipeline is it that you pointed out?

15 **Rick Cooper**: That is CNX pipeline.

16 **Bruce Prather**: CNX pipeline? Okay.

17 **Mary Quillen**: And this is a second pipeline that they're putting in.

18 **Rick Cooper**: The pipeline is not on the Hess property. It does actually connect to the pre-
19 existing pipeline at another location.

20 **Leonard Hess**: Actually, the pipeline is right in the center of our field. No butts about it. It's in
21 the center of the field.

22 **Rick Cooper**: The road goes in behind it.

23 **Leonard Hess**: And the road comes around above it. You've got two pipelines that join out
24 there. If you'd look at your map, you'd see it. They've brought one out of Shack for the upper
25 ridge and they buried it up the ridge, up the road and it comes across...we call it the "ball field"
26 where we used to play ball when we was young...and it intersects with the pipeline and comes
27 from out there close to my house where they messed up and brought it across the mountain in the
28 wrong direction. There's two pipelines intersect in that plat and they go out to that gas well and
29 from the gas well to the compressor station, from the compressor station down into Buchanan
30 County at Betsy's Branch. But, now, there is two pipelines. They are on our property.

31 **Rick Cooper**: We agree.

1 **Leonard Hess**: No, you didn't. You said it wasn't on there.

2 **Bradley Lambert**: Wait a minute. Hold it. I'll have to ask you to leave if you...one more
3 time...you might have to leave.

4 **Leonard Hess**: Sir.

5 **Bradley Lambert**: One more time. One more outburst like that, you'll have to leave. Go ahead
6 Mr. Cooper.

7 **Rick Cooper**: So, in my opinion, putting this road in behind the pre-existing pipeline is the least
8 amount of surface damage that you could do on the area. And that was my decision.

9 **Mary Quillen**: There's nothing said about a road in here. It's saying "pipeline."

10 **Bruce Prather**: Rick, could you put that pipeline in the pipeline that's in existence right-of-
11 way?

12 **Rick Cooper**: The pipeline that we're...in this application is not on their property. See, the
13 pipeline that we're talking about in the application will hook up back right in here.

14 **Bruce Prather**: Right. What I'm saying is could you parallel it? In other words, there's already
15 a pre-existing pipeline on there. Could you get up against it on the right-of-way of that other
16 pipeline? Apparently, what their complaint is the pipeline's going down through the middle of
17 some fairly level ground. Can't you move that thing somewhere to give them as much level
18 ground as can be had?

19 **Rick Cooper**: That is what they're doing. They're bringing the road into the western portion of
20 that piece of property, at the very edge of that.

21 **Bruce Prather**: Okay. But, see what they're saying is that this is affecting their surface.

22 **Rick Cooper**: I understand.

23 **Bruce Prather**: And this is their flat ground surface.

24 **Pamela Hess**: Could I say something, please? I own 24 acres, approximately, in Buchanan
25 County. Of those 24 acres, probably two to three acres is usable, flat land. Of those three little
26 spots, they have proposed either three gas wells, one on each, or a pipeline, or a road. And, you
27 know, that little flat is just about an acre. And, if you cut a road through it, what are you going to
28 have? It's triangular shaped, too. So, you know, it will damage the use of that land. Everything
29 else is strictly steep hillside. That's my opposition to it when they have.... I'm not very educated
30 on a map like that, but there is a road they have existing in Shack's Branch that is approximately,
31 according to their GPS, 900 feet from their existing road that they have up to the proposed gas

1 well. And it's almost the same distance from my road down to the gas well. So, I don't
2 understand the big problem, why they can't just come up?

3 **Bruce Prather**: Is that previous pipeline on your property? Does it have a right-of-way, I mean,
4 a distance.

5 **Pamela Hess**: There's a pipeline, yeah.

6 **Bruce Prather**: But, does it have a right-of-way distance? It's like 25 feet.

7 **Pamela Hess**: It's pretty wide, isn't it, Eddie? It's pretty wide. They put it in like an old logging
8 road, what you call a logging road.

9 **Bruce Prather**: Okay.

10 **Mary Quillen**: And this is a buried pipeline?

11 **Pamela Hess**: A buried pipeline.

12 **Mary Quillen**: And this one that's proposed is a buried pipeline?

13 **Pamela Hess**: I would say so.

14 **Mary Quillen**: Okay. So, is the problem the road or the pipeline?

15 **Pamela Hess**: I think, mostly, the road.

16 **Mary Quillen**: Okay.

17 **Pamela Hess**: It's going to go through that little acre flat.

18 **Mary Quillen**: Okay.

19 **Pamela Hess**: I know it's on the outer edge of it, but it will consume that little acre flat.

20 **Mary Quillen**: How deep will this pipeline be, Mr. Swartz? How deep will it be buried?

21 **Pamela Hess**: The pipeline is probably, like he said, not on my property. I'm opposing the use
22 of...building the road.

23 **Mary Quillen**: Oh, so you're not opposing the pipeline because it's not on your property.

24 **Pamela Hess**: Well, he said it's not on my land.

25 **Mary Quillen**: Okay.

1 **Rick Cooper**: If I could clear this up....the pipeline to Z36D is not on the Hess property. The
2 well is not on the Hess property. Approximately 400 feet of the road accessing Z36D does cross
3 the western portion in the existing pipeline right-of-way.

4 **Mary Quillen**: Okay. So, it's the road that's the problem.

5 **Pamela Hess**: Right.

6 **Mary Quillen**: Okay.

7 **Pamela Hess**: And the existing road frontage on this little plot of flat land is approximately
8 what, Eddie? 150 feet length? Triangle shaped. Back, maybe 150 feet. So, if they take that
9 corner, what have I got left much?

10 **Bruce Prather**: The road will be...what? A twelve-foot...

11 **Pamela Hess**: I would say it would be more than that by the time they, you know, fix it all up,
12 do whatever they do beside of it. I've never seen one just ten, twelve feet wide, so far.

13 **Mary Quillen**: And, you think there is a reasonable alternative?

14 **Pamela Hess**: Yes, I do. I've walked it. I'm an old coon hunter. I know. I've hunted there.

15 **Mary Quillen**: And, Mr. Cooper, have you been...you've been out there on the property?

16 **Rick Cooper**: I have.

17 **Mary Quillen**: And, do you know where she is talking about there is an alternative?

18 **Rick Cooper**: I do. There is another way in. I don't know that it is an easier way to come in.
19 It's very steep terrain, as I can show you, very rocky, mountainous terrain.

20 **Mary Quillen**: Yeah. That's typical Buchanan County topography.

21 **Pamela Hess**: Exactly. And when they take this flat, I'm left with steep, rugged terrain, with no
22 re-sale value, no future use at all. Who's going to want to go with a...have a little flat?

23 **Donnie Rife**: And, now, the root of it that it's all rocky terrain that she's proposing the use of a
24 road and the only piece of usable land that she's got up there, they're wanting to use it for a road.

25 **Pamela Hess**: Exactly. They want to take it for a road. They have another way from their
26 existing road.

27 **Mary Quillen**: Right, well you can see from the topo map how rugged it is.

28 **Pamela Hess**: And I think they might have an ulterior motive for the future in another gas well
29 that we addressed with Mr. Swartz and them. They proposed to build a road from Shack Branch

1 to another gas well to connect to my road, over my land to make it more convenient for their
2 infrastructure. That means access to all their existing gas wells, which is around 22 around my
3 home. This road that they will be using is like 50 feet from my bedroom. 50 feet from your
4 bedroom traffic all night, all day. So, it will interfere.

5 **Mary Quillen**: Are you proposing that the road be moved to the north side of the pipeline?

6 **Pamela Hess**: I'm proposing that they move it onto their land, from Shack Branch up to the gas
7 well which is their land.

8 **Mary Quillen**: Okay. And, see, I can't see where that is. I don't have this on that topo map.

9 **Pamela Hess**: Well, maybe Mr. Cooper could show you. I know on one of their topographical
10 maps they had it. They had a good layout of Shack's Branch up to the gas well. If you look at
11 the topographical around my land, you'll see it's rugged and rocky.

12 **Mary Quillen**: It is. I can see that because I've got the topo here. I just don't have that...

13 **Pamela Hess**: So, you see my little flat. That's all I've got.

14 **Mary Quillen**: Yeah. We can see that.

15 **Bradley Lambert**: Okay, ladies and gentlemen. Mr. Swartz, are you ready?

16 **Mark Swartz**: Yeah.

17 **Donnie Rife**: Mr. Chairman, rest of the Board, I apologize but I've got another meeting at 1:30
18 and it's just right up the road, but I'm going to have to leave.

19 **Bradley Lambert**: Thank you, Donnie.

20 **Donnie Rife**: Whatever it's worth, if I had a piece of level land, I wouldn't want it botched up
21 either.

22 **Bradley Lambert**: Thank you, Donnie.

23 **Gerald Gray**: Excuse me. I'm as deaf as you are.

24 **Mark Swartz**: The first point I would like to make is that Z36D is not on the appellant's...it's on
25 a 965-acre tract that we don't have an interest in.

26 **Gerald Gray**: We agree.

27 **Mark Swartz**: Then, there is an infrastructure that is to be permitted.....oh, boy. There is some
28 infrastructure that is to be permitted from the subject of this permit...from Z36D to the AA36D
29 and that is not....this area is not.

1 **Gerald Gray**: Excuse me. I'm sorry, Mark. I can't see a thing.

2 **Mark Swartz**: Why don't you stand over here?

3 **Gerald Gray**: Well, it's easiest for me to sit.

4 **Mark Swartz**: Well, I'd like the Board to see, so if you guys want to see, you can move because
5 I want the Board to see.

6 **Gerald Gray**: Let me respectfully suggest you just move that back a little bit and stand to one
7 side and we can all see it.

8 **Mark Swartz**: And this is not on their property either. They're telling you that the road is on
9 the flat piece that they own, but if you look at this topo map, it is up the hill from the flat piece.
10 You'll see, and you have a copy of this in your computers, that the red line....so, this is their
11 property line, this green line. The red dashed line comes off of this road, comes up here, crosses
12 the pipeline, the existing pipeline, heads up this way and then gets off of their property. You can
13 see the topo lines here. This is a 6.8% grade. You can see the topo lines and you can see the flat
14 spot that they're talking about clearly depicted here and the road is uphill from the flat spot.
15 And, I guarantee you we did that on purpose and we have gone to the uphill side of the existing
16 pipeline. This is the road here.

17 **Gerald Gray**: But what you point out is the red dashed area. That's the road. That's the
18 proposed road.

19 **Mark Swartz**: And here's the flat spot.

20 **Mary Quillen**: This is the road, right?

21 **Mark Swartz**: That's the proposed road.

22 **Mary Quillen**: Okay.

23 **Mark Swartz**: And this is the flat spot. Okay? And these are the topo lines and we're uphill.
24 This is the existing pipeline, this blue line.

25 **Mary Quillen**: And is this their property, here?

26 **Mark Swartz**: This green line is their property.

27 **Mary Quillen**: Okay, so it does go across this part of their property.

28 **Mark Swartz**: Right. We can see that, but we're uphill from their flat spot where there are no
29 contour lines.

30 **Mary Quillen**: Right.

1 **Mark Swartz**: So, we are not running through the alleged flat spot.

2 **Mary Quillen**: Well, there's actually no contour lines here.

3 **Mark Swartz**: Well, there is right here.

4 **Mary Quillen**: Yeah.

5 **Mark Swartz**: And here.

6 **Mary Quillen**: Well, it is, isn't it?

7 **Mark Swartz**: Yeah.

8 **Mary Quillen**: It does come down there.

9 **Mark Swartz**: Right.

10 **Mary Quillen**: It comes to right around there.

11 **Mark Swartz**: And if you look at the aerial.... I'm sorry. If you look at the aerial, you can get a
12 sense of what's already there. I mean we are looking at existing right-of-way and our....what Mr.
13 Cooper was telling you is we're trying to stay on the contours. We're trying to stay uphill of the
14 existing right-of-way.

15 **Bruce Prather**: Mark, I think what you tried to do there is you consider the pipeline, it could be
16 an encumbrance to their flat land and what you're doing...you're staying north of that pipeline
17 with your road.

18 **Mark Swartz**: North, northwest.

19 **Bruce Prather**: And so, consequently, you're on the side...not on probably a big grade but
20 you're on a grade there.

21 **Mark Swartz**: And to address the question of alternative access, I mean look at the hill that you
22 would be climbing. You know, I mean this in terms of, although he didn't really spend a lot of
23 time discussing why he felt it made sense to do it this way....we are essentially tracking existing
24 infrastructure. We're trying to stay off of their flat ground by going uphill from the existing
25 pipeline and the alternatives in this terrain.... I mean, if you look at the topo map, you're going to
26 be going up an extremely significant hill to come from here and cut and that's what Mr. Cooper
27 saw.

28 **Mary Quillen**: Explain this to me. Now, this road here...this is part of that proposed road?

29 **Mark Swartz**: No.

30 **Mary Quillen**: Or is this all one...

1 **Mark Swartz**: This is a different permit.

2 **Gerald Gray**: Just the red dashed area is the issue.

3 **Mary Quillen**: Oh, okay. So, this one doesn't...

4 **Mark Swartz**: Right. What we're talking about is this hash line here.

5 **Mary Quillen**: Right. And it intersects with this one right here.

6 **Mark Swartz**: Correct. It comes off of that and it goes up there.

7 **Mary Quillen**: Okay.

8 **Mark Swartz**: Correct. And it's on.... actually, this is the piece that crosses their property right
9 here. There's the...

10 **Mary Quillen**: I see. This is something that's already existing and this just intersects with it.

11 **Mark Swartz**: Correct. Or, it's to be permitted with this well. I really haven't researched that,
12 but I know that this is the piece that's being permitted, the 400 feet that's being permitted with
13 this application.

14 **Bradley Lambert**: Mr. Swartz and Ms. Quillen, if you all could kind of talk to us so we can
15 hear your discussion. I have no idea what you all talked about.

16 **Mary Quillen**: Okay. You repeat what I asked.

17 **Mark Swartz**: The first question was whether or not this yellow road had anything to do with
18 this permit application and my answer to that was, "No, that the permit application we're talking
19 about is this 400 feet from here to here of road."

20 **Gerald Gray**: Mr. Swartz, for the transcript do you want to indicate when you say, "Here, here
21 and there," what you're actually...

22 **Mark Swartz**: Well, there is a road in yellow that comes off of AA36C and heads at least
23 initially, to the east. Off of that, there is a hash mark red road that goes up to AA36D and that
24 hash mark red road is the 400 feet, roughly, that is road that is being permitted, that's sought to
25 be permitted with this application. And that was the other question that Ms. Quillen had.

26 **Mary Quillen**: Right. And this proposed road is on the northwest side of the existing pipeline.

27 **Mark Swartz**: Of the existing pipeline and the flat.

28 **Mary Quillen**: Right.

29 **Mark Swartz**: Which is shown on the topo map.

1 **Bradley Lambert**: In the transcripts, Mark, let me ask you this question. Pamela Hess says, "If
2 they build the road down that ridge, they will take our flat." And you're responding, "The
3 problem with the idea of taking the flat is that, if you look at the topo map, the flat is where you
4 are sitting would be to the right of the road because that's the flat area. So, as you can see, we're
5 on the slope-side of the flat area." Did you all talk about that when you were in the field or....
6 Mr. Cooper, did you have any discussion with Mr. and Mrs. Hess about the road being on the
7 ridge or...

8 **Rick Cooper**: We walked the route through there. They saw where the road was. CNX had
9 recently flagged the road, so we did see where the new road was flagged off to go on the outer
10 slope of the edge of the flat.

11 **Bradley Lambert**: Okay.

12 **Gerald Gray**: Let me add that, perhaps Mr. Swartz who does not live in Buchanan County has a
13 different definition of what we mean of the coal fields for "flat land." People who live in cities
14 think that flat land is like our floor here, but for those of us who live in the mountains, as you
15 well know, where you were born "flat land" simply means that you don't fall off of it when you
16 walk.

17 **Mark Swartz**: I live on the Coal River.

18 **Bradley Lambert**: Well, I was going to say I've been to Charleston. It's not very flat up there.
19 Okay. Anything further Mr. Gray?

20 **Gerald Gray**: Once again, by looking at the topo map, it would be extremely easy to put that
21 road on the other side of the pipeline and it would be off the Hess property completely. That
22 would avoid the whole problem. And, it's not that steep. It's difficult to tell, but they had the
23 ability to build a safe road that's environmentally protected, just by going a few feet off the Hess
24 property. And that's all we're asking you all to do, is to give them a bare minimum right that the
25 legislature says you all have the right to give them. That's our only request.

26 **Bradley Lambert**: Mr. Swartz, would it be too far out of the way if this Board asks you to see
27 that you could have your engineers re-look at that area and see if it's possible to build off of their
28 property?

29 **Mark Swartz**: Well, anything is possible, okay?

30 **Bradley Lambert**: Okay.

31 **Mark Swartz**: I mean, the question here is "Is this an unreasonable interference with their use
32 of their property?" And, we could move it up the hill, I guess, but we've got a permit. The
33 question is "Did he make an unreasonable call? Did we make an unreasonable plan?" So the
34 answer to your question is, "Yes, it's possible, but we need to move forward."

1 **Bruce Prather**: Mark, that pipeline is an encumbrance to their surface.

2 **Mark Swartz**: It's already there.

3 **Bruce Prather**: And, it's already there. And, so I realize the pipeline is buried two to three feet.
4 So they've still got their flat ground there, but you still have that as an encumbrance on their
5 surface. And I mean since you've got it there and I assume you've paid the damages for the
6 thing, that's yours. So, if you wanted to exercise your rights on that pipeline there wouldn't be
7 very much flat ground left back to the north there. I don't know how wide your right-of-way is.

8 **Mark Swartz**: Well, it looks like the pipeline is actually sort of on the north side of the flat spot,
9 as well when you look at the topo map. Although, you can't really tell with the contour lines
10 there, but it's certainly off to the north of that. And, you're right. I mean there's a....you know,
11 you can't be building houses or barns on top of pipelines and so, you know.

12 **Bruce Prather**: But see the pipeline's buried, so they don't look at it as an encumbrance to their
13 surface because it's buried and they've still got their flat ground there, but this thing is still an
14 encumbrance to their title.

15 **Mark Swartz**: Right. It limits some activities.

16 **Bruce Prather**: Yeah.

17 **Bradley Lambert**: Mr. Hess, I'm sorry. You asked for a comment.

18 **Leonard Hess**: Mr. Lambert, if they put the road or the pipeline in, then all that land, what flat
19 land like Mr. Gray said flat land...there's not no real flat land in Buchanan county, but I'm sure
20 you've been down there and you know what little bit of land we do have, 24 acres...it's just about
21 all mountain. And, I've seen them put gas wells. I can take you up there and show you and I'd
22 be glad to take any of you. Mr. Cooper, I asked him to come up and he walked it with me. I can
23 show you gas wells where you would think, "How did they get it there?" But they can. But,
24 they are wanting to take advantage of us and tear our land up to where we'll never be able to use
25 it for anything. I mean, would you want a bunch of cows out there? I can't even put cows on my
26 land because I don't know what else they're going to do. I mean, we haven't got three acres of
27 usable land and they want to tie it all up. And, they've got.... if Mr. Pinnick was here, he'd tell
28 you. He told me a while ago. He said, "There's a hundred acres right around you that we own."
29 That's who they lease from. And we put two..."

30 **Gerald Gray**: That would be Commonwealth Coal, right?

31 **Leonard Hess**: Yes. They put two hard tops to the top of the mountain where I'm at and they
32 went through a whole lot worse than what they would have to do to put their road. We're not
33 objecting to gas wells. We're just objecting about them tying up our land to where we can't use it
34 and our heirs won't be able to use it. And, you know, I don't think it's fair. I don't think it's

1 reasonable that they should take my land that I have to pay tax on and they get the gas off of it,
2 but they don't pay no tax...not on land...and tie it up like that to where we have no benefit.
3 They're getting the benefit of it, but we don't.

4 **Bradley Lambert**: Mr. Hess, would you agree after the hearings and testimony about the topo
5 map, Exhibit 1A? Would you agree, now, that that road does not go through your flat land, but
6 to the ridge adjacent to your flat land?

7 **Leonard Hess**: No, the road does go through our land and what he...

8 **Bradley Lambert**: I'm not questioning whether or not it goes through your land. The question
9 was, "Does it go through your level, flat land, that you pointed out on the topo map or..."

10 **Gerald Gray**: Let me help you answer that.

11 **Bradley Lambert**: Let me finish my question. Or, as it was in the testimony that I just read that
12 the road is proposed to go on the ridge?

13 **Leonard Hess**: Well, see, the flat land dumps out on the ridge. That's what it is. It's a ridge
14 coming up where it's been stripped and made it flat. And that's where they're coming.

15 **Bradley Lambert**: On the flat land or on the ridge?

16 **Leonard Hess**: On the ridge, through.... The flat land is on the ridge where they had stripped it.

17 **Gerald Gray**: There's actually two areas of flat land. One's around their house and one is in this
18 area. If you look at the topo map and look at the red dashed area, that will help clarify it. It's not
19 a very big area, admittedly. But, once again, when all you own is a little bit, then it's very
20 important to you.

21 **Leonard Hess**: Yes.

22 **Mary Quillen**: Is this a reclaimed surface mine?

23 **Leonard Hess**: Where they...they stripped and augered where we live, I guess 50 years ago.
24 And, you know, it's a strip bench.

25 **Mary Quillen**: Okay. That's what I was going to say. Is it a bench?

26 **Leonard Hess**: Yes, ma'am.

27 **Mary Quillen**: It is a bench?

28 **Leonard Hess**: Yes, ma'am.

29 **Pamela Hess**: And, may I add also when Mr. Cooper came up there is an existing gate.
30 Correct? You know, the gate at the end of the field.

1 **Rick Cooper**: Yes.

2 **Pamela Hess**: I thought you said it would go beside of the fence line, inside my fence.

3 **Leonard Hess**: That's what you told us.

4 **Pamela Hess**: Is that correct?

5 **Leonard Hess**: That's where they had the pink ribbons at, wasn't it?

6 **Pamela Hess**: Do you know what I'm talking about? There's the gate...

7 **Leonard Hess**: All the way out.

8 **Gerald Gray**: One at a time.

9 **Pamela Hess**: Here's my gate and the fence line. Did you not say it was going to go down?

10 **Rick Cooper**: It goes around the left hand portion of that.

11 **Pamela Hess**: You wasn't going to go through the gate, though. You said it would go...

12 **Rick Cooper**: Correct.

13 **Pamela Hess**: That's in my flat.

14 **Rick Cooper**: That's the way it was flagged off, right off the edge of the pre-existing road.

15 **Pamela Hess**: But, it's still in the flat, in the fenced flat. It wasn't going to go through the gate.

16 They're going to stay on this side. Here's the fence. They're going to stay on this side of my

17 fence.

18 **Gerald Gray**: Which is on your land.

19 **Pamela Hess**: Is on my land.

20 **Bradley Lambert**: I've been reading topo maps for a lot of years in doing my job. That topo

21 map says that road is going on a hillside.

22 **Pamela Hess**: There's no hillside there that I know of.

23 **Leonard Hess**: There's no hillside.

24 **Rick Cooper**: It's a downhill slope. Those contours are going down.

25 **Bradley Lambert**: Well, that's what that map says.

26 **Rick Cooper**: They are correct. It is going down. That's correct.

1 **Bradley Lambert**: But, that doesn't show it going through a flat. Do we need to get a revised
2 map on the road location? That's what I'm hearing. There's discrepancies on where the road's
3 going to go here.

4 **Gerald Gray**: Honestly, if you look carefully at it... It's where the first little red dash starts and
5 then dashes on down. The initial portion is what they're referring to as a flat.

6 **Rick Cooper**: What they're talking about, I believe Mr. Gray, is this little area right here.

7 **Gerald Gray**: Right.

8 **Rick Cooper**: Actually, it takes right off the pre-existing road and goes over the hill, that
9 contour, and follows back around below the pipeline and back into here. So, it actually comes
10 off the very first part of the road and it probably does go 50 feet or whatever before it drops
11 down over the hill.

12 **Pamela Hess**: Correct.

13 **Gerald Gray**: Right. Wouldn't be hard at all just to move it a few feet and stay off our land
14 completely.

15 **Bruce Prather**: Rick, the auger mines that came in off that strip up there....would this road be
16 going right over the top of where those auger holes were?

17 **Mary Quillen**: No.

18 **Bruce Prather**: Originally.

19 **Rick Cooper**: There is not a pre-existing road right through here. This is not a pre-existing road
20 that I'm aware of right here.

21 **Mary Quillen**: But, he said it had been augered.

22 **Rick Cooper**: I'm not sure I know enough about that...

23 **Bruce Prather**: That might present a problem.

24 **Mary Quillen**: Yeah.

25 **Bruce Prather**: Putting a road in there would be, you know if you build it on top of an old,
26 abandoned auger mine, it would collapse on you.

27 **Mary Quillen**: Yeah, when he said that auger...

28 **Rick Cooper**: Yes, I'm not familiar with the mining in the area so I really can't say what I think.

29 **Bruce Prather**: Well, he said there was auger holes in there.

1 **Leonard Hess**: Sir, it's been stripped out. And what they did...what part of the mountain they
2 could get off easy, they stripped it. And what they couldn't get off easy, it's a big old long like
3 drill bit...they put holes in all through the mountain.

4 **Mary Quillen**: Some of those auger holes are pretty close together on a lot of these sites so it
5 means that it's pretty honey-combed. Is that right?

6 **Leonard Hess**: Yes, ma'am. Actually, it's dangerous, the whole top of the mountain because, if
7 there's nothing supporting in those auger holes, then you know it could collapse. And I believe
8 that was six foot high coal that they took out. It was the Big Banner seam.

9 **Rita Surratt**: Is your home located on the flat?

10 **Leonard Hess**: Not that flat, but right.

11 **Rita Surratt**: Does it come within 50 feet of your home?

12 **Mark Swartz**: No, 1,500 feet.

13 **Leonard Hess**: The road, where they use and all travel by, is within 50 foot of my bedroom.

14 **Rita Surratt**: That's what I heard you say, 50 feet.

15 **Pamela Hess**: 50 foot of my bedroom. The road that they use to access that...

16 **Rita Surratt**: Oh, okay.

17 **Pamela Hess**: Will be within 50 foot of my bedroom.

18 **Mark Swartz**: If this theory that the road is proposed to be built on top of coal that was auger
19 mined, that would confirm that the topo map is correct and it's on a hillside.

20 **Bruce Prather**: Exactly.

21 **Bradley Lambert**: I agree.

22 **Mark Swartz**: Okay. I mean, so this road, except for the first little bit, is on a hill. And it's
23 there because we put it there on purpose, so it wouldn't be on their flat land. Even though there's
24 nothing built there, we try to stay off of that because it is so credible for people to come in and
25 say...if you put a road through the middle of somebody's pasture, they're going to complain and
26 they're probably going to complain successfully. And we're aware of that. So, we try to locate
27 this stuff and this was not an accident that it's on a hill. It's cheaper to build it on a flat. So,
28 we've put this on the hillside to the...90 percent of it, to the extent that we could to keep out of
29 their way. We've built it on the far side of the pipeline that was already there. And I think we
30 made a reasonable choice to minimize any impact on their most valuable land.

1 **Gerald Gray**: Just to finish up, I think he's correct to identify the precise issue. And that is
2 where they start or end up, depending on where you're coming from on the Hess property. That
3 little area there is primarily where our concern is and it would not be a significant investment on
4 their part, at all, to simply move that location off that area of flat land.

5 **Bradley Lambert**: Anything further from the Board? Any other questions or comments? [No
6 response] Mr. Cooper, do you have anything further you could add?

7 **Rick Cooper**: No, I don't.

8 **Bradley Lambert**: Okay. All right. For the Board, what we're here to decide today is to
9 whether or not to uphold the Informal Fact Finding decision of 220 regarding the road and also
10 included in the objection was the well and the pipeline which I think we can remove from the
11 other objection because we now agree that the well and the pipeline is not on the Hess property.

12 **Gerald Gray**: Right.

13 **Bradley Lambert**: Do we agree, Mr. Gray?

14 **Gerald Gray**: We agree the well is on the property that the pipeline and the road are affiliated
15 with. Let me say that.

16 **Bradley Lambert**: Well, I'm not sure if that pipeline's even affiliated, is it Mr. Cooper?

17 **Rick Cooper**: The pipeline is not on the Hess property. The pipeline proposed for this
18 application is not on the Hess property.

19 **Bradley Lambert**: And, I think we have, if I'm following all of the discussions correctly, I think
20 we have narrowed it down to just a small portion of the road that leaves the existing road to
21 create the road that goes....and a small portion of that road is on the flat area where the Hess....
22 But, we might agree that's no more than 50-100 feet?

23 **Gerald Gray**: Maybe 175 feet, it looks like.

24 **Pamela Hess**: It's only 150 wide.

25 **Bradley Lambert**: The decision for the Board to make here, today, is whether or not Mr.
26 Cooper erred in his decision on whether or not the property of the Hess' would be impacted by
27 that small portion of the road and the road on it. And we've heard the testimony from both
28 parties here and we've also heard the briefing from Mr. Cooper and his exhibits that he presented
29 of where the road is located. So, I would put that before the Board for a motion to either affirm
30 or not the decision of the Director.

31 **Mary Quillen**: Mr. Lambert.

32 **Bradley Lambert**: Ms. Quillen.

1 **Mary Quillen**: Your proposal a few minutes ago or your suggestion a few minutes ago to Mr.
2 Swartz about having their engineer, before we make a decision on this, to have their engineer go
3 out there and look at that again to see if there is any way that there could be some minor
4 adjustment that would relieve some of the concern for Mr. and Mrs. Hess.

5 **Mark Swartz**: I need to comment on that theory, okay. To change a permit application, we
6 have to file a modification to the permit that gives everybody in this unit or that got notice the
7 first time. We have to re-notify them of the modification. They then have a 15-day objection
8 period. So, they can all object to the modification. Then, we get to set hearings in front of him
9 with regard to the objections to the permit modification. He has a hearing. He makes a decision.
10 They have a chance to appeal. It has taken us, what, two years to get to the point we are
11 now...maybe three years. We cannot move this little bit of road without filing a permit
12 modification and starting all over again. And yes, theoretically, that could happen but I just need
13 to for the record state that it would cause....basically, we would be starting over. We can't fix
14 this by doing that. We're going to start over.

15 **Gerald Gray**: With all due respect, if I may reply. The gas company actually benefits by this
16 because the price of gas has gone up significantly since they first made this application, number
17 one. Number two, the only people who would be objecting, who would have standing to object
18 would be the Hess' or Commonwealth Coal, which has never objected to anything. So, Mr.
19 Swartz, with all due respect, just throwing up a specter of concern that's not in the real world.
20 There won't be any objections. I think the suggestion is very reasonable. But, on the other hand,
21 if he would prefer then I would ask this Board to simply reverse the decision of the Director and
22 put Mr. Swartz where he seems to want to be. But, honestly, the smartest thing here and the
23 easiest thing is to ask them to go back, make a very minor change, you won't see us again and
24 they can go on with their plans.

25 **Bradley Lambert**: I made that suggestion to Mr. Swartz, hoping that we could get some
26 conclusion other than this Board having to act, but Mr. Swartz is correct. We don't have the
27 ability at this point to direct him to go back and re-permit or make an amendment to a permit.

28 **Gerald Gray**: Certainly.

29 **Bradley Lambert**: All that we can do today is to act on the Director's decision, whether it was
30 proper or not. And that's what we have to make a decision on.

31 **Bruce Prather**: Mr. Chairman.

32 **Bradley Lambert**: Mr. Prather.

33 **Bruce Prather**: Mark, is your road that you're proposing to build on this property...does it have
34 a flag down the center line of where that road is going to be at? Have you guys surveyed that?

35 **Mark Swartz**: Was the road flagged?

1 **Rick Cooper**: The road was flagged to the well location.

2 **Bruce Prather**: It was flagged. Does it look like it's possible to build that road from what you
3 seen of the flags?

4 **Rick Cooper**: The way it was flagged?

5 **Bruce Prather**: Yeah.

6 **Rick Cooper**: The road can be built the way it is flagged.

7 **Bruce Prather**: Okay.

8 **Gerald Gray**: It's just right across their flat, in the first part of it. That's where our concern is.

9 **Bradley Lambert**: So, I'll again put it before the Board that all that we can do at this proceeding
10 is to act upon whether or not Mr. Cooper made the right decision in his informal fact-finding
11 hearing and that's what we have to vote on. So, given that, I'll call for a motion. Not a motion to
12 approve. Not a motion to deny. Just a motion. One way or the other. I'm not encouraging
13 anything.

14 **Bruce Prather**: Well, I hate to interject the Board into this thing, but we've been asked to make
15 a decision and, as far as I'm concerned, the operator has done as well as he can do on the permit
16 he's got to put that road as far up the hill as he can get it without making the thing unaffordable.
17 So, about all I can say on the thing that I think that Mr. Cooper was correct in his diagnosis of
18 the problem out there. Now, if that affirms what he says, then I would make a motion to affirm
19 what he says. I mean, I hate to see this happen because I realize as well as anyone else that you
20 just have a certain amount of flat ground, that they do have a pipeline encumbrance adjacent.
21 You know, it's on that flat ground, anyway. And, so, if this is going to be north of that pipeline,
22 it won't be as big a problem as.....in other words, if they've got two or three acres there of flat
23 ground on that strip mine, this isn't going to encumber it any more than it already is. Let's put it
24 that way. Is that what you was asking for?

25 **Bradley Lambert**: I think you made a motion to affirm the decision.

26 **Bruce Prather**: Yeah. Okay.

27 **Bradley Lambert**: Do I have a second? [No response] Since I have no second motion, that
28 motion has failed and not sure where we're going to go from here. Counsel... Since I don't have a
29 second on the motion to approve, do I have a motion to disapprove the decision?

30 **Mark Swartz**: Well, you have to.....the alternative would be to grant the appeal. I mean, the
31 choices really are to deny the appeal because what he did, in your judgment was reasonable. The
32 other would be to grant the appeal because you concluded that what he did was unreasonable.
33 So, you've got a non-answer. They have the burden of winning the appeal.

1 **Bradley Lambert:** That's true.

2 **Mark Swartz:** I don't have.... So, and I guess a non-decision on the Board's part is perfect from
3 my standpoint because the appeal failed. So, I think you really have three choices. No motion
4 passes, the appeal fails or you deny the appeal, which affirms his decision, or you grant the
5 appeal, which overturns his decision. Or you do nothing.

6 **Gerald Gray:** And the fourth.....there's one more and that is CNX could have a strike and go to
7 reasonableness right at this moment and agree to be gentlemen about it, and ladies, and go back
8 to respond to the Chairman's recommendation or request.

9 **Pamela Hess:** True.

10 **Bradley Lambert:** Just a minute. [Pause] We're going to take about a five minute recess, so we
11 can confer with counsel. [Recess]

12 **Bradley Lambert:** Ladies and gentlemen, if you will go back into session at this time. Ladies
13 and gentlemen, since I called for a vote and we had a motion, but we didn't have a second.
14 Therefore, there's no action from the Board, so I guess at this point the Director's decision stands.
15 Thank you.

16 **Item Number 16**

17 **Bradley Lambert:** At this time, we're calling Docket Item Number 16, a petition from CNX
18 Gas Company, LLC for re-pooling of Unit B33, under the Oakwood Field unit. Oakwood Field
19 1. This is Docket Number VGOB-12-0417-3049-01. All parties wishing to testify please come
20 forward.

21 **Mark Swartz:** Mark Swartz and Anita Duty.

22 **Bradley Lambert:** She's coming.

23 **Mark Swartz:** Finally, I get some help.

24 **Bradley Lambert:** Finally, huh? Sarah, you want to swear them in?

25 **Sarah Gilmer:** Anita, do you swear or affirm that your testimony is the truth, the whole truth
26 and nothing but the truth?

27 **Anita Duty:** Yes.

28 **Bradley Lambert:** You may proceed, Mr. Swartz.

29 **Mark Swartz:** Thank you. Anita, would you state your full name for us, please?

30 **Anita Duty:** Anita Duty.

1 **Mark Swartz**: Who do you work for?

2 **Anita Duty**: CNX Land, LLC.

3 **Mark Swartz**: And, is CNX Land, LLC, a Virginia Limited Liability Company?

4 **Anita Duty**: Yes.

5 **Mark Swartz**: Is it authorized to do business in the Commonwealth?

6 **Anita Duty**: Yes.

7 **Mark Swartz**: Is it registered with the DMME?

8 **Anita Duty**: Yes.

9 **Mark Swartz**: And the DGO?

10 **Anita Duty**: Yes.

11 **Mark Swartz**: Does CNX have a blanket bond on file?

12 **Anita Duty**: They do.

13 **Mark Swartz**: And, is the applicant, CNX Gas Company, requesting that someone be
14 designated as the Board's, or re-designated, as the Board's Operator?

15 **Anita Duty**: Yes.

16 **Mark Swartz**: And, who is that?

17 **Anita Duty**: CNX Gas Company.

18 **Mark Swartz**: This was previously pooled?

19 **Anita Duty**: It was.

20 **Mark Swartz**: Back in, roughly, April of 2012, right?

21 **Anita Duty**: Yes.

22 **Mark Swartz**: And we're back again because...a line move?

23 **Anita Duty**: Yes, in addition to losing the farm-out agreement with Geomet.

24 **Mark Swartz**: Okay.

25 **Anita Duty**: Or, it was terminated.

1 **Mark Swartz**: Okay, so when the Geomet farm-out agreement terminated, all of a sudden we
2 didn't have a lease in play and we had to deal directly with the people that were lessors on that
3 GeoMet agreement, correct?

4 **Anita Duty**: Yes.

5 **Mark Swartz**: So, we have that issue and they would have an opportunity, those lessors would
6 have an opportunity to participate because their one and only gas company that they had a lease
7 with has fallen by the wayside. Right?

8 **Anita Duty**: Yes.

9 **Mark Swartz**: And then we also have had, when we were here last, because this is an amended
10 notice of hearing. When we were here last, an issue came up at the last minute with the Rogers
11 with regard to a survey and a boundary. Correct?

12 **Anita Duty**: It did.

13 **Mark Swartz**: And we asked for a continuance to resolve that issue and we were able to resolve
14 it, so we're back here with an amended notice of hearing and application and exhibits to solve the
15 boundary issue and also deal with the GeoMet issue. Correct?

16 **Anita Duty**: Yes.

17 **Mark Swartz**: And that's why it's being re-pooled?

18 **Anita Duty**: It is.

19 **Mark Swartz**: And, except for the changes that were driven by the expiration of the GeoMet
20 farm-out agreement and the Rogers boundary change, have you tried to retain everything as it
21 was back in April of 2012, so that people have the same participation option that they would
22 have had from the get-go?

23 **Anita Duty**: Yes.

24 **Mark Swartz**: Okay. For example, we have given the Board an estimate of costs?

25 **Anita Duty**: We have.

26 **Mark Swartz**: And that estimate of costs is precisely the estimate that we provided when we
27 were here in April of 2012?

28 **Anita Duty**: Yes.

29 **Mark Swartz**: And what was that estimate then and what is it now?

30 **Anita Duty**: \$351,052.

1 **Mark Swartz**: And, we're proposing how many wells?

2 **Anita Duty**: One.

3 **Mark Swartz**: And that well is, I pretty much think, in the center of the drilling, is it not?

4 **Anita Duty**: Yes, it is.

5 **Mark Swartz**: Okay. And, it's a frack well?

6 **Anita Duty**: Yes.

7 **Mark Swartz**: I think we have a permit. What's the permit under?

8 **Anita Duty**: 12-562.

9 **Mark Swartz**: Okay. And people who might ultimately elect to participate would be
10 participating at that number?

11 **Anita Duty**: Yes.

12 **Mark Swartz**: And any Board Order approving this re-pooling application, should that Order
13 provide that all of the respondents be afforded an opportunity to participate if they choose to do
14 so?

15 **Anita Duty**: Yes.

16 **Mark Swartz**: Okay. What did you do to advise people that we would be having a hearing on
17 this unit?

18 **Anita Duty**: We mailed by certified mail, return receipt requested on April 18, 2014, published
19 in the *Bluefield Daily Telegraph* the notice and location map on April 22, 2014. And, we did
20 mail amended exhibits to the landowners, also.

21 **Mark Swartz**: Okay. And you have a list of people in your amended application and also in
22 your notice of listed respondents, the people that you're seeking, that this Order would affect.
23 Correct?

24 **Anita Duty**: Yes.

25 **Mark Swartz**: Do you want to add any additional respondents today?

26 **Anita Duty**: No.

27 **Mark Swartz**: Do you want to dismiss any?

28 **Anita Duty**: No.

1 **Mark Swartz**: Okay. You had previously testified, I think when this was pooled with regard to
2 your standard lease terms?

3 **Anita Duty**: Yes.

4 **Mark Swartz**: And what were those.

5 **Anita Duty**: \$5 per acre per year, with a five year paid-up term, 1/8 royalty.

6 **Mark Swartz**: And you, I believe, had also probably...I'm certain, testified in April of 2012, that
7 the drilling of a frack well and the drilling within this unit was a reasonable way to produce the
8 coalbed methane?

9 **Anita Duty**: Yes.

10 **Mark Swartz**: Is that still your opinion?

11 **Anita Duty**: It is.

12 **Mark Swartz**: Okay. And, having taken a quick look at the exhibits that were tendered today,
13 specifically Exhibit E, there are a number of reasons for escrow?

14 **Anita Duty**: Yes.

15 **Mark Swartz**: Okay. And what tracts require escrow?

16 **Anita Duty**: Tracts 2, 3, and 4, and 4 also has some unknowns that need to be...

17 **Mark Swartz**: So, we have the traditional conflicts in 2, 3, and 4 and we also have some
18 unknowns?

19 **Anita Duty**: Yes.

20 **Mark Swartz**: Okay. And do we have any split agreements that we're aware of at the present
21 time?

22 **Anita Duty**: No.

23 **Mark Swartz**: What interest in this unit has the applicant been able to acquire by lease or
24 purchase?

25 **Anita Duty**: We have acquired 65.8602 % of the coal and gas owner's claim to CBM, seeking to
26 pool 34.1398 % of the coal, oil and gas owner's claims to CBM.

27 **Mark Swartz**: I believe that's all I have, Mr. Chairman.

1 **Bradley Lambert:** Ms. Duty, you testified and you also list in your exhibits that you have some
2 unknowns.

3 **Anita Duty:** We do.

4 **Bradley Lambert:** Could you testify as to what process you used to locate these people?

5 **Anita Duty:** That process actually takes place in our title group and they use all kinds of
6 social.....they use even social media, Facebook, those type of things, Ancestry.com, contacts with
7 landowners or with other members of the family.

8 **Bradley Lambert:** Okay.

9 **Bruce Prather:** Did you advertise in the newspaper?

10 **Anita Duty:** We published the....we don't...not saying that we're trying to identify heirs, but we
11 publish our notice saying that we're going to have a hearing.

12 **Bradley Lambert:** Okay. Any other questions? Anything further, Mr. Swartz?

13 **Mark Swartz:** No, Mr. Chairman.

14 **Bradley Lambert:** Do I have a motion?

15 **Mary Quillen:** Motion to approve.

16 **Bruce Prather:** Second.

17 **Bradley Lambert:** I have a motion and a second. Any further discussion? [No response] All in
18 favor signify by saying yes.

19 **Board:** Yes.

20 **Bradley Lambert:** Opposed, no. [No response] Thank you, Mr. Swartz. That is approved.

21 **Mark Swartz:** Thank you.

22 **Item Number 17**

23 **Bradley Lambert:** Okay, the next item on the Docket is the Board will receive an update for the
24 Board and Division activities from the Staff. Mr. Cooper.

25 **Rick Cooper:** Yes, one thing I wanted to do is update the Board on our AFE for the Board
26 Audit. We have run into a little complication on that. We feel that there's a clause on the only
27 bid that we had that puts us in a precarious position for a chance of additional funding. So, the
28 panel review committee that is reviewing that, we do not recommend accepting that bid. Our
29 request to the Board would be to re-bid this out again and put an indemnification clause in the

1 contract so that DMME would not be liable for legal expenses. And so that would be the
2 recommendation to the Board. If it's okay with you all, and under your all's direction, we would
3 re-bid that out and would want to try to put it in the local papers, not just on the Virginia eVA
4 site. We're going to try to put it in some local papers and advertise and try to get a few more
5 people to accept that bid where we have a better evaluation and maybe a better audit and under
6 different conditions. So, that's my recommendation to the Board.

7 **Bruce Prather**: How many bids did you have the first time?

8 **Rick Cooper**: We sent it out to 1,050 people and got one bid.

9 **Bruce Prather**: Okay.

10 **Mary Quillen**: I agree because I was very concerned about that when I went through and looked
11 at that RFP that we really, really, really need to have a larger pool to choose from because I just
12 don't feel comfortable.

13 **Rick Cooper**: And that's the panel's recommendation, too, is that with your all's agreement, that
14 we put that out for bid. And, again, we'll put it through some of the local papers and try it one
15 more time and see what we get.

16 **Mary Quillen**: I agree.

17 **Bradley Lambert**: We actually had two bids, but one bid came in two weeks too late, so we
18 couldn't even open it, couldn't accept it and had to mail it back.

19 **Mary Quillen**: Do you need that in the form of a motion?

20 **Bradley Lambert**: Yes, we do.

21 **Mary Quillen**: I make the motion that we re-bid the RFP for the audit.

22 **Bradley Lambert**: Do I have a second?

23 **Bruce Prather**: I'll second.

24 **Bradley Lambert**: Any discussion? [No response] All in favor signify by saying yes.

25 **Board**: Yes.

26 **Bradley Lambert**: Opposed? [No response] Thank you, Mr. Cooper. You're authorized to re-
27 advertise the RFP.

28 **Rick Cooper**: Okay. We've got another item we need to do here. Mr. Gooch has....we're
29 having trouble with our web system and we have a couple Board members sitting here that have
30 to have their Conflict of Interest done by the end of this month and he has volunteered to give

1 that presentation here so they can go ahead and sign off on their Conflict of Interest. And, I
2 guess, do we want to do that, now? That's all we lack, that and the minutes approval. That's all
3 we have. But, I would like to put on the record here, too, that I know it's already been said but
4 I'm most appreciative to Diane and I hate to see her go, but I understand she wants to go. She's
5 been here for 30 years plus, but she will be truly missed and I wanted to say that.

6 **Diane Davis**: Thank you. Mr. Chairman, if you have a moment, I'd like to say something,
7 please.

8 **Bradley Lambert**: I think that you are more than privileged to take as long as you'd like to.

9 **Diane Davis**: I don't want long, but I would like to say to Mr. Chairman and the members of the
10 Board and Rick and Sarah that all are aware now that I am retiring at the end of the month and
11 I've been with the state 34 years and I've also worked part-time for 20+ years at Mountain States
12 Health Alliance. The opportunity has arisen for the third time for me to accept a full-time
13 position there. I figure that, if I turn it down again, I won't get another opportunity. I am in a
14 position to receive full retirement benefits from the state, but I still need help here. Therefore,
15 that is my reason to continue working and to accept this position. I wanted to take just a moment
16 and tell you that it's been a pleasure working with you throughout the past years. I have seen
17 many changes, numerous challenges and expect more to follow in this industry that we regulate.
18 I want to encourage you, as the Board, to remain focused on fostering and encouraging the safe
19 and efficient exploration, development and conduction of the gas and oil resources in the
20 Commonwealth while protecting the rights of gas or oil owners with interest in the resources.
21 These are all tough challenges that you must live up to and I admire you for wanting to serve the
22 Commonwealth on a very, very difficult Board. But, it is a very important Board. As you know,
23 you are charged with listening to all sides and sometimes making decisions, obviously, that are
24 not popular. I hope that each of you will strive to make oil and gas production continue to be
25 profitable and fair in the Commonwealth. I would also like to thank DMME for the opportunity
26 given to me to work here. I have personally felt I worked for two wonderful, knowledgeable
27 DGO Directors and they have enriched my experience and knowledge. I'm speaking of Bob
28 Wilson and Rick Cooper. With Bob's passing, we lost a true knowledge base that can never be
29 recovered. He came to the Division with extensive knowledge and experience in the oil and gas
30 industry and practices. Rick Cooper is the current Director and he, as well, comes with not only
31 extensive experience in the oil and gas industry and practices, but with knowledge in application
32 of mining. He has strived to make the department work closer together, the oil and gas sides,
33 and his experience in both of these makes him the perfect candidate for the position he holds. I
34 encourage you, as a Board, to listen and know that you are getting knowledgeable advice from
35 Rick. I would personally like to thank him, Mr. Lambert and the Board for this opportunity to
36 have worked all these years. Thank you.

37 **Bradley Lambert**: Thank you, Diane. We certainly appreciate your service, too. You will be
38 missed. Anything else, Mr. Cooper?

1 **Rick Cooper**: No, we just have to close the minutes and we were going to do the Conflict of
2 Interest.

3 **Bruce Prather**: When are we going to work on this Conflict of Interest thing? I'm one of...

4 **Bradley Lambert**: Just in a minute.

5 **Bruce Prather**: I don't want to adjourn and not...

6 **Item Number 18**

7 **Bradley Lambert**: We need to take a vote on the minutes. I hope everyone has had a an
8 opportunity to review the minutes. Are there any discussions on the minutes, any additions or
9 deletions? If not, I ask for a motion to approve the minutes from the May meeting.

10 **Mary Quillen**: Motion to approve.

11 **Bruce Prather**: Second.

12 **Bradley Lambert**: I have a motion and a second. All in favor signify by saying yes.

13 **Board**: Yes.

14 **Bradley Lambert**: Okay. So, the minutes are approved as received. Finally, I need to have a
15 motion to dismiss.

16 **Mary Quillen**: Motion to dismiss.

17 **Bruce Prather**: Second.

18 **Bradley Lambert**: Motion and a second. All in favor signify by saying yes.

19 **Board**: Yes.

20 **Bradley Lambert**: Thank you, ladies and gentlemen. We are dismissed.