

V I R G I N I A:

BEFORE THE VIRGINIA GAS AND OIL BOARD

IN RE:

Appeal of the State Gas and Oil Inspector's Decision IFFH-7093 dated June 9, 1993 in the matter of Jeffery Brent Counts, Coal, Gas and Oil, Mineral Interest Owner; Terry Ball and Lisa K. Ball, Coal, Gas and Oil, and Mineral Interest Owners, v. Equitable Resources Exploration, Inc., Proposed Well 289-C in the Ervinton District of Dickenson County, Virginia, Permit Number 2471, Docket No. VGOB-93-0720-0391

This cause came on for hearing before the Virginia Gas and Oil Board ("Board") this 20th day of July, 1993 pursuant to § 45.1-361.36 of the Code of Virginia, 1950 as amended, upon the following Objections to the Well Permit and Notices of Appeal Pertaining to the Virginia Gas and Oil Inspector's ("Inspector") Decision IFFH-7093 dated June 9, 1993:

a. Letter of Objection in Reference to Permit for Proposed Well P-289C (EREX), filed by Jeffery Brent Counts dated May 14, 1993, received by the Division of Gas and Oil on May 24, 1993.

b. Letter of Objection to Granting of Permit for Proposed Well P-289C from Terry D. Ball to the Inspector dated May 28, 1993, received by the Division of Gas and Oil on June 1, 1993.

c. Letter of Appeal to Well Permit P-289C (EREX) Before the Department of Mines, Minerals and Energy, Division of Gas & Oil, filed by Jeffery Brent Counts dated June 15, 1993, and received by the Division of Gas and Oil on June 17, 1993.

d. Letter of Notice of Appeal of Inspector's Decision with addendum thereto from Terry D. Ball dated June 15, 1993, and received by the Division of Gas and Oil on June 17, 1993.

e. Letter of Appeal to Well Permit P-289C (EREX) Before the Department of Mines, Minerals and Energy, Division of Gas & Oil, with attachment thereto filed by Jeffery Brent Counts, dated June 14, 1993, received by the Division of Gas and Oil on June 18, 1993.

f. Letter of Objection in Reference to Proposed Well P-289C (EREX) from Terry D. Ball, undated, received by the Division of Gas and Oil June 17, 1993.

Equitable Resources Exploration ("EREX") was represented at the hearing by James E. Kaiser of the law firm Hunter, Smith & Davis. Sandra B. Riggs, Assistant Attorney General, was present to advise the Board. The Petitioners failed to appear to be heard or to present evidence.

FINDINGS OF FACT

1. On February 15, 1993, pursuant to §§ 45.1-361.21 and 45.1-361.22, EREX filed with the Virginia Gas and Oil Board its application for the pooling of all the coalbed methane interests in a 58.770-acre drilling unit in the Nora Coalbed Gas Field ("Subject Drilling Unit") to be served by a new coalbed methane gas well (herein "Proposed Well P-289C") in the location depicted on Exhibit A hereto, and the Application named Petitioner Jeffery Brent Counts as a party whose interests were to be pooled. EREX's pooling application came on for hearing before the Virginia Gas and Oil Board pursuant to §45.1-361.19 and §9-6.14:12 of the Code on March 16, 1993, VGOB Docket No. 93-0316-0344; and after a hearing, the Board denied the objections and granted EREX's application as is evidenced by the Board's Order entered April 16, 1993 and filed April 23, 1993

in Deed Book 291, Page 471, Dickenson County, Virginia. Petitioner Jeffery Brent Counts filed written objections, but did not appear at the hearing to be heard or to put on evidence. The record and the evidence presented at the hearing of VGOB 93-0316-0344 was incorporated into the hearing of this appeal of the Director's Decision.

2. On April 13, 1993, EREX filed with the Virginia Gas and Oil Board its application to modify the pooling order entered for the Drilling Unit to be served by Proposed Well P-289C to include interests claimed by Terry D. Ball and Lisa K. Ball in Subject Drilling Unit. EREX's application to amend the pooling order for Subject Drilling Unit came on for hearing before the Virginia Gas and Oil Board pursuant to § 45.10-361.19 and § 9-6.14:12 of the Code on May 18, 1993, VGOB Docket No. 93-0518-0371, and after a hearing, the Board denied the objections and granted EREX's application as evidenced by the Board's Order entered July 21, 1993 and filed July 30, 1993 in Deed Book 293, Page 477, Dickenson County, Virginia. Terry D. Ball, Lisa K. Ball and Jeffery Brent Counts filed written objections, but did not appear at the hearing to be heard or to put on evidence. The record of and the evidence presented at the hearing of VGOB 93-0518-0371 was incorporated into the hearing of this appeal of the Director's Decision.

3. On May 11, 1993, EREX filed with the Virginia Division of Gas and Oil its application for a permit for Proposed Well P-289C pursuant to § 45.1-361.29.B of the Code with respect to an operation on N. B. Sutherland (T-364) tract of 408.23 acres, more or less, in the Ervinton District, Dickenson County, Virginia; and thereafter, the Virginia Division of Gas and Oil received objections to EREX's Application for a Permit for Proposed Well P-289C from Jeffery Brent Counts, Terry D. Ball and Lisa K. Ball.

4. On May 27, 1993, at 10:00 AM, an Informal Fact Finding Hearing was convened before the Inspector pursuant to §§ 45.1-361.35.G and 9-6.14:11 of the Code to hear objections to the issuance of a permit for Proposed Well P-289C. Jeffery Brent Counts, Terry D. Ball and Lisa K. Ball appeared at the Informal Fact Finding Hearing. On June 9, 1993 the Inspector issued a report containing his findings and decision, and issued Permit No. 2471 for Proposed Well P-289C.

5. On July 20, 1993 at 9:00 AM, a hearing was held in the above styled-cause before the Virginia Gas and Oil Board pursuant to § 45.1-361.36 of the Code to hear the appeals of Jeffery Brent Counts, Terry D. Ball and Lisa K. Ball filed pursuant to § 45.1-361.35 of the Code.

6. Subject Drilling Unit is located in the Nora Coalbed Gas Field which was established pursuant to §45.1-361.20 of the Code by Board Order dated March 20, 1989. The Nora Coalbed Gas Field Rules, among other things, provide for one well to be located in each unit, provide that units within the field shall be 60.0 acres in size with a tolerance of 15 percent (15%), requires that any well located in a unit within the field be at least 300 feet from the outside boundary of such unit, and requires that any well located in a unit be at least 600 feet from any other well completed or permitted in the same pool.

7. By Mineral Lease dated October 12, 1989 (herein "Lease") Jeffery Brent Counts, as Lessor, leased, let and demised for a term of five (5) years unto Motivation Coal Company, as lessee, all of Lessee's undivided interest in the coal and the mining rights and privileges necessary or convenient to mine and remove said coal, including that which underlies Subject Drilling Unit. Pursuant to the terms of the lease, mine and development plans are to be at the sole control and discretion of the Lessee. Pursuant to the terms of the Lease and its permits to mine the coal, Motivation Coal Company is the operator of the coal interests underlying the tract claimed by Jeffery Brent Counts and by Terry D. Ball and Lisa K. Ball. Pursuant to § 45.1-361.29 et seq., Motivation Coal Company, as the coal operator, consented to the stimulation of the coal underlying the portion of Subject Drilling Unit to which the Petitioners claim

an interest.

8. At the time of the pooling of Subject Drilling Unit, EREX held the right to explore for, market and produce 97.99% of the coalbed methane gas in Subject Drilling Unit; Jeffery Brent Counts owned the right to explore for, market and produce 1.206% of the coalbed methane gas in Subject Drilling Unit, which interests were subject to the Lease; Terry D. Ball and Lisa K. Ball collectively held the right to explore for, market and produce .804% of the coalbed methane gas in Subject Drilling Unit, which interests were subject to the Lease.

9. Proposed Well P-289C is to be drilled at the location shown on Exhibit A hereto and meets the criteria of the Nora Coal Bed Gas Field Rules. Proposed Well P-289C is not to be located on the tract identified as the "Jeffery Counts et al coal, oil & Gas Tract".

#### CONCLUSIONS OF LAW

Section 45.1-361.35 of the Code sets forth the grounds upon which a person with standing may object to an application for a new permit, i.e., §45.1-361.B sets forth surface owner objections, § 45.1-361.C sets forth royalty owner objections, § 45.1-361.D. sets forth coal owner objections, and § 45.1-361.E. sets forth mineral owner objections. The Board finds that the Petitioner's have failed to meet the requirements of § 45.1-361.35, and specifically finds that:

a. The Petitioners have not posed objections as surface owners.

b. The objections which the Petitioners pose as royalty owners, other than those which are contractual in nature, are addressed by the Nora Coal Bed Gas Field Rules and by the Board's Pooling Order for Subject Drilling Unit entered in VGOB Docket No. 93-0316-0344 and VGOB 93-0518-0371 (collectively "Pooling Order").

c. Petitioners' objections as coal or mineral owners are governed by § 45.1-361.11 of the Code. The Board in entering the Pooling Order and by the entry of this Order has determined that the well work for Proposed Well P-289C can be done safely with respect to persons engaged in coal mining at or near the well site. The Board has further determined from the evidence presented that the well work proposed for Well P-289C does not constitute an unreasonable or arbitrary exercise of the well operator's right to explore for, market and produce coalbed methane gas, but rather is consistent and in compliance with the Board's Order establishing the Nora Coal Bed Gas Field.

Section 45.1-361.36 of the Code provides that, subject to certain stated conditions, any person with standing under the provisions of § 45.1-361.30 who is aggrieved by a decision of the Director may appeal to the Board. Section 45.1-361.23.E. of the Code provides that the Board shall conduct hearings of appeals of the Director's Decisions in accordance with the formal litigated issues hearing provisions of the Administrative Process Act (§ 9-6.14:12). Section 9-6.14:12 of the Code provides that the burden of proof shall be upon the proponent or applicant. In this appeal, the Petitioners/proponents, Jeffery Brent Counts, Terry D. Ball and Lisa K. Ball, failed to appear before the Board to be heard on their objections, to put on evidence in support of their objections, or to challenge the evidence presented at the hearing by EREX in support of the issuance of the permit.

Accordingly, this Board affirms the Inspector's decision and finds that Petitioners' objections are unsupported by the evidence and do not meet the requirements of § 45.1-361.35 of the Code.

DONE AND EXECUTED this 20<sup>th</sup> day of August, 1993, by Order of this Board.

Benny R. Wampler  
Chairman, Benny R. Wampler

DONE AND PERFORMED this 20<sup>th</sup> day of August, 1993, by a majority of the Virginia Gas and Oil Board.

Byron T. Fulmer  
Byron Thomas Fulmer  
Principal Executive to the Staff  
Virginia Gas and Oil Board

STATE OF VIRGINIA )  
COUNTY OF WISE )

Acknowledged on this 20<sup>th</sup> day of August, 1993, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.

Susan G. Garrett  
Susan G. Garrett  
Notary Public

My commission expires 7/31/94

STATE OF VIRGINIA )  
COUNTY OF WASHINGTON )

Acknowledged on this 20<sup>th</sup> day of August, 1993, personally before me a notary public in and for the Commonwealth of Virginia, appeared Byron T. Fulmer, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.

Diane J. Davis  
Diane J. Davis  
Notary Public

My commission expires 9/30/97