

**VIRGINIA GAS
AND OIL BOARD**

**MONTHLY
BOARD
TRANSCRIPT**

JANUARY 1999

ORIGINAL

1 VIRGINIA:

2 IN THE COUNTY OF WASHINGTON

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8 JANUARY 20, 1998

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BOARD MEETING

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1 BENNY WAMPLER: We'll go ahead and get started.
2 Good morning. My name is Benny Wampler. I'm Deputy Director
3 for the Virginia Department of Mines, Minerals and Energy and
4 Chairman of the Gas and Oil Board. I'd ask the Board members
5 to introduce themselves, starting with Mr. Garbis.
6 DENNIS GARBIS: My name is Dennis Garbis. I'm from
7 Fairfax County. I'm a public member.
8 MAX LEWIS: Max Lewis from Buchanan County, a
9 public member.
10 BILL HARRIS: I'm Bill Harris, Wise County public
11 member.
12 MR. GILLIAM: Richard Gilliam of Abingdon, Coal
13 Industry Representative.
14 MR. FULMER: Tom Fulmer, Department of Mines,
15 Minerals and Energy.
16 BENNY WAMPLER: Sheila, did you want to wait or do
17 you want to go on?
18 SHEILA McCLANAHAN: Whatever you want to do is
19 fine?
20 BENNY WAMPLER: Okay. Do you need to wait for the
21 others to---?
22 SHEILA McCLANAHAN: Not really.
23 BENNY WAMPLER: Okay. First item on today's
24 agenda, the Board will receive information and comments from
25 the Buchanan County Citizens Action Group regarding it's

1 organization and current activities, and Sheila McClanahan
2 will be presenting to the Board. Welcome.

3 SHEILA McCLANAHAN: Thank you. Good morning,
4 everyone. I handed out earlier...excuse me, a list of names,
5 contact names, for our group. There are phone numbers for
6 each of those names. There's also an address and a fax
7 number for our group if at any time in the future you need
8 information from us of any kind, we'll be happy to provide it
9 for you, if you just call someone on that list or you can fax
10 the information you need to us.

11 The first question that generally people ask us is,
12 who is BCAG, or what is BCAG? And I hope that by me assuming
13 that most of you all have probably heard a little about us
14 and just to back up a little bit to explain ourselves, about
15 nine (9) months ago a group of citizens met with Senator
16 Reasor and Delegate Stump to discuss problems that several of
17 the citizens in the county were facing primarily, but not
18 solely, from coalbed methane development and production in
19 the county.

20 The problems mainly that we were trying to discuss
21 with the Senator and Delegate Stump were destruction to
22 private property; risks associated with the development of
23 the coalbed methane to our health, water loss, water damage,
24 and resource waste. Upon their suggestions, we formed
25 committees and we tours in the county, which I think Mr.

1 Wampler was able to go on a couple of those. Basically, what
2 they did was go to the areas that they felt needed to be
3 reviewed and we did have a couple meetings thereafter with
4 Mr. Wampler and Mr. Fulmer and various members from the
5 corporations that were involved in the production and
6 development of a coalbed methane in the county.

7 Since that time we have formed Buchanan County
8 Citizens Action Group and just to go over some our goals with
9 you to let you know what our ideas are and what we are hoping
10 to accomplish with this group. We would like to educate
11 ourselves and the citizens in the county about the current
12 laws that we have, what our rights are under those laws and
13 how we can work with the agencies, the government groups, the
14 corporations and the committees to initiate new changes, if
15 that's what is needed, new laws and new regulations, or to
16 provide maybe something through the school systems to help
17 educate the children in the county as to what's going on.

18 We do feel like that we need to improve the quality
19 of our life in the county and we do feel that it is the
20 obligation and responsibility of a corporation and our state
21 agencies to help us accomplish that.

22 The problems, as I am sure you all are aware, that
23 we're facing is so complex. There are laws in place that
24 provide us with some protection and then there are laws that
25 we need to have in place to help provide us with this

1 protection that we need. I realize that it's not completely
2 your responsibility and you don't have complete control over
3 this, but we are asking for your help and your corporation in
4 teaching us and, I guess, getting the proper solution to the
5 problem as best as we can for everyone involved. Some of the
6 things that people have said about the group since we've
7 started with that, we're just a bunch of surface owners that
8 are really upset about not getting a piece of the pie and
9 that's just basically not true. There are people, I'm sure,
10 that do feel that way within the county, but I haven't met
11 any one person since I've been involved with this that that's
12 their sole reason for being a part of our group. We're
13 talking about people that have had water for like fifty (50)
14 plus years...seventy (70) years and they've lost it
15 completely. We don't have a law that says they have to
16 replace it permanently as far as the gas production, but we
17 do have a law in place that says coal mining activities when
18 it's lost due to that, they have to replace it. So, that's
19 what we're looking at.

20 As far as property damage, these people have to pay
21 taxes on their property. The law states, if I can read it
22 here is that, excuse me, under the general provision, Article
23 I of the Act, 45361.3 Construction, we're supposed to
24 recognize the use of the surface for gas or oil development
25 shall be only that which is reasonably necessary to obtain

1 oil and gas. And I realize that reasonably is probably part
2 of the problem there, that what's reasonable to us may not be
3 reasonable to them and what's reasonable to them may not be
4 reasonable to us. So, that in itself is a problem. It also
5 says that this act is supposed to protect the citizens and
6 the environment of the Commonwealth from public safety and
7 environmental risk that are associated with this. And we
8 feel that within this group we need to ask for more
9 enforcement regarding this statement in the act.

10 So, if anyone has any questions right now.

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

13 BILL HARRIS: Is there something that we can do and
14 I know in recognition I'm...personally, I'm happy to see
15 people getting together. You know, I think there are...if
16 you look back at the history of this, there have been times
17 when there has been lots of problems and times when maybe
18 things were done without thought or whatever, or sometimes
19 with thought, but I think...you realize our position too,
20 that there are---.

21 SHEILA McCLANAHAN: Yes.

22 BILL HARRIS: ---you know, in what we're trying to
23 do is to enforce the legislation and I think...but we aren't
24 without, I think, an understanding of the problem and
25 sympathy toward the problem...I may be speaking personally,

1 but anyway...but I think the Board feels the same way. But a
2 lot of times our hands are tied in some of the kinds of
3 things that are the issues. But I am really happy to see the
4 group form and I don't know what kind of support we can give
5 or information we can give or whatever.

6 SHEILA McCLANAHAN: I think one of the goals that
7 we would like to reach, is a working a relationship with the
8 Board as far as the committees that the Board does has some
9 type of control over reviewing the regulations and that type
10 of thing.

11 BILL HARRIS: Yeah.

12 SHEILA McCLANAHAN: Because I think that public
13 input is essential in that process.

14 BILL HARRIS: Well, we invite that, you know,
15 that's in, you know, during...there are public comment
16 periods.

17 SHEILA McCLANAHAN: Right.

18 BILL HARRIS: The state has a standard.

19 SHEILA McCLANAHAN: Right.

20 MR. HARRIS: But yeah, yeah, I think---.

21 SHEILA McCLANAHAN: I understand that, but---.

22 BILL HARRIS: No, I'm not...I'm not...I'm just
23 saying that we do encourage that. We really do.

24 SHEILA McCLANAHAN: Right. I understand that, but
25 really what I'm speaking about is actually being a part of

1 that committee, because it's wonderful that we can take a
2 part in that process by giving you our comments, but that's
3 kind of---.

4 BILL HARRIS: Yeah, but that's kind of like after
5 the fact.

6 SHEILA McCLANAHAN: ---after the fact.

7 BILL HARRIS: Yeah, I understand.

8 SHEILA McCLANAHAN: Right. And a lot of what is
9 going on, we do realize that you don't have a lot of control
10 over because of the existing laws that are in place.

11 However, the thing that's repeated several times in the gas
12 act is that you all have the ability to promulgate
13 regulations and that is basically really to enforce the
14 existing laws, and the laws that we do have are good up to a
15 certain point. Some of them are vague, but we do see that
16 there is room for improvements as far as enforcing what we
17 already have in place. And we are willing to, like I said,
18 work on the committee to initiate some changes that would
19 hopefully prevent furthering the problem in some way.

20 We're basically really not asking anything from
21 you, other than consideration to be a part of the committees
22 and to share with us the information that you do have.
23 Communication is a big problem. I think everyone would agree
24 on that. The reason for me being here today is just to let
25 you know that we have formed this group and that we do plan

1 to be active in this...the process...future processes of law
2 making and regulation review and that type of thing. We're
3 not advocates of stopping the industry. We realize that it
4 is needed. We would just like to have a little bit more
5 involvement in the process itself.

6 And we do have...the problems that I stated earlier
7 that everyone has discussed publicly, we do have pictures and
8 video tapes if any member would like to view those. All you
9 have to do is call one of the numbers on that paper. We'll
10 send them to you for you to keep if you would like. We can
11 arrange tours for you, if you want to come on your own time
12 or whatever...at your convenience we can arrange that for
13 you.

14 It's really hard for me to relay to you in words
15 what the problems are and get the meaning and the affect to
16 you without you actually being able to see it. Without
17 taking up a lot...I mean, I could have brought tapes today
18 and pictures, but that's an excessive amount of time to look
19 over them and let you see what's actually going on. So, if
20 you need that type of information, we can get that to you.
21 Just for your benefit of knowing and seeing actually what I'm
22 saying. So---.

23 BENNY WAMPLER: Any other comments?

24 MAX LEWIS: Yeah. I think that this Board here as
25 a committee...as a special committee that ought to go look at

1 these places at the time that they were damaged, not one year
2 or six months after the fact, because there's a lot of
3 improvements by vegetation and things that you don't see six
4 months or a year after this happened that you do see at the
5 time that it occurred.

6 SHEILA McCLANAHAN: I agree with that and we do
7 have documentation at the time it did happen, but I also
8 agree that by going and looking at it now you might not see
9 actually what we're speaking of.

10 MAX LEWIS: Well, I understand that.

11 BENNY WAMPLER: Dennis, go ahead.

12 DENNIS GARBIS: Are there any outstanding cases in
13 particularly that you're working with or that you feel or
14 your committee feels that need to be addressed that have not
15 been addressed by whichever mining or coal company or gas
16 company?

17 SHEILA McCLANAHAN: We have various...numerous
18 individual cases and then group cases, but I think as a
19 whole...the community as a whole has tried to initially work
20 with the corporations, the companies that they're involved
21 with. As I said, a lot of this...education is a really big
22 problem and the people...initially when all of this happens,
23 they really don't know where to go, who to talk to, what the
24 laws are, what their rights are. They do feel that they've
25 been, you know, mistreated in some way, but through the

1 process of just researching all of this and trying to educate
2 ourselves, we've tried to work with various agencies and the
3 corporations. We're working with Delegate Stump in various
4 different areas and we hope that will alleviate some of the
5 problems that we're having or help steer us in a resolution
6 to the problems. But as far as specific cases, if that is
7 what you're asking about, I don't think that, you know, it
8 would be appropriate for me to say anything. I mean, actual
9 names or what's going on or that type of thing.

10 DENNIS GARBIS: No, I was just wondering if you had
11 like a specific...the people had a specific problem and they
12 were enumerated, if there was ten (10) or twelve (12) or
13 fifteen (15), whatever they are and basically, I guess, I'm
14 just...this is a rhetorical question. I mean, if there's
15 things that need to be addressed or you feel that need to be
16 addressed, then if those are identified, and then of course,
17 obviously we need to work on the other side to give them...to
18 give this some balance, we have to give them the opportunity
19 to come forward and see that...because there's always two
20 ...actually there's three sides of the story, as you know,
21 his side, his side and then there's the truth.

22 SHEILA McCLANAHAN: Right.

23 DENNIS GARBIS: And then there's somewhere in
24 between. So, I, you know, I think maybe just as thinking out
25 loud here, maybe that would be way to...at least if there's

1 some very definite specific cases that are...that people like
2 they've been wronged, then maybe that's something that could
3 be worked on, you know, one by one to take care of them and
4 then, you know, the major grievances go away.

5 SHEILA McCLANAHAN: Well, there are...there are
6 specific cases of, or instances of people completely losing
7 their water and it's...without actually having geologists or
8 whatever specialist is needed to come in and study the areas,
9 study the water, study the strata, all of that type of thing.
10 We have people that are in areas where there's no longwall
11 mining that have completely lost their water, their water
12 supply, and the only activity that's going on in that area is
13 coalbed methane development and production. So...and this is
14 not just one isolated case. We have several cases that are
15 like that. So, who do we turn to basically to solve that
16 problem. We talked to the company, then we talked to Mr.
17 Fulmer's office, and then we talked to DMME, and then we
18 talked to EPA and just to all the agencies that we can think
19 of. So, collectively when we do that, the answer that we
20 come up with is no answer at all and so...I'm not sure if
21 that answers your question or if that gives you an example.

22 BILL HARRIS: What...I was just going to add to
23 that. I know one of the first things you mentioned was,
24 destruction of personal property and I just wondered when Mr.
25 Garbis said if there was any one thing, is that the bulk of

1 the cases or...I guess, the loss of water is very serious.
2 That needs to be---

3 SHEILA McCLANAHAN: The actual...the meat of the
4 whole thing is the water loss and contamination and
5 degradation. And then too, the resource timber and that type
6 of thing, which I'm sure all of you have either read---

7 BILL HARRIS: Yeah, that we've heard that several
8 times, yeah.

9 SHEILA McCLANAHAN: ---or discussed it privately or
10 in a group or whatever. So, that is a problem and a lot of
11 this does not fall under your jurisdiction or you don't have
12 any ability to control that. But I'm...me telling you that
13 is just to let you know that these are the concerns that this
14 group has and this is what we're working on. And even though
15 they may not directly be related, they are indirectly related
16 and they are all associated with the one common problem,
17 which is the coalbed methane development and that does fall
18 under your jurisdiction. So---

19 BENNY WAMPLER: Any other questions or comments?

20 DENNIS GARBIS: Yeah.

21 BENNY WAMPLER: Dennis.

22 DENNIS GARBIS: The other members...of the other
23 members of the group here present, could they identify
24 themselves so we can see who they are?

25 SHEILA McCLANAHAN: Let me turn around and

1 see...nope, they're not. I'm the sole person.

2 DENNIS GARBIS: I thought I've seen this gentlemen
3 over here in the corner. I've seen him quite a bit here at
4 some meetings. So, I just thought maybe he was one of these
5 individuals.

6 SHEILA McCLANAHAN: No, they're not. But if I could
7 just say that, we do appreciate what has been done thus far.
8 I know Mr. Wampler has worked with several of our members on
9 individual bases and also with us as a group, and I know that
10 there are studies going on right now concerning the
11 subsidence issues and a lot of things like in the Garden
12 Creek area. Which, as I said, all this is kind of
13 interrelated. It's all associated and we do appreciate all
14 the help that you've given us thus far. And we just want you
15 to know that we're here and if we can do anything that would
16 help you all, we're willing to do that and we would also
17 appreciate the same from you in that respect. Thank you for
18 your time.

19 BENNY WAMPLER: Thank you. Thank you very much.
20 The next item on the Board's agenda is that the Board will
21 consider request for further hearings filed by Penn Stuart on
22 behalf of Hugh MacRae Land Trust and Garden Reality
23 Corporation for dockets number VGOB 97/04/15-0576, VGOB
24 97/04/15-0577 and VGOB 97/04/15-0578. We'd ask the parties
25 that wish to address the Board in this matter to come forward

1 at this time. Mr. Mullins.

2 TOM MULLINS: How are you today?

3 BENNY WAMPLER: Fine, thank you.

4 TOM MULLINS: Penn Stuart had a conflict and had to
5 withdraw.

6 MARK SWARTZ: I'm Mark Swartz.

7 TOM MULLINS: You want us to enter our name---?

8 BENNY WAMPLER: Yes, please.

9 TOM MULLINS: ---in the record? My name is Tom
10 Mullins. I'm with the law firm of Street, Street, Street,
11 Scott & Bowman in Grundy, Virginia. I'm here today
12 representing the Hugh MacRae Land Trust and Garden Reality.

13 MARK SWARTZ: I'm Mark Swartz. I'm representing...I
14 guess, Buchanan Production and Pocahontas Gas Partnership as
15 well.

16 BENNY WAMPLER: Good morning. I know you gentlemen
17 have had correspondence back and forth and I guess maybe you
18 can enlighten the Board on where we are---.

19 TOM MULLINS: Sure.

20 BENNY WAMPLER: ---at this point.

21 TOM MULLINS: Judge, there's...of course, a lot of
22 this went on before I got involved in the case, but there was
23 an apparent agreement as to the distribution of escrowed
24 funds and the Board entered an order consistent with that for
25 the distribution of the escrow funds. Basically, the Order

1 provided that the funds were to be split between, and I'm
2 going to call the Hugh MacRae Trust, the Trust, and Garden
3 Reality, Garden, between those two entities. And as part and
4 parcel of that Order, there was a requirement on the Board in
5 paragraph six (6) of all the orders and there's multiple
6 orders and I guess let me back up, I'm hoping that all these
7 are consolidated and we're...we don't need to...I don't think
8 the Board would want to hear all this information multiple
9 times. So, if they're not all together, I'd ask that they be
10 consolidated so we can deal with it all at once.

11 BENNY WAMPLER: For all six (6) on them?

12 TOM MULLINS: Yes, sir.

13 BENNY WAMPLER: Any objections?

14 MARK SWARTZ: No. We had spoken about and it seems
15 like a good idea.

16 BENNY WAMPLER: That would also...I'll go ahead and
17 call those now.

18 TOM MULLINS: All right, sir.

19 BENNY WAMPLER: Without objection. The other items
20 are VGOB 97/05/20-0580, and VGOB 97/05/20-0581, and VGOB 97-
21 05/20-0582.

22 TOM MULLINS: All right, sir. Basically...I mean,
23 to cut to the chase and trying get to the nuts and bolts of
24 the problem is the accounting. How you...how the Trust and
25 how Garden can determine, I guess, what's what. We have, and

1 I think the Board should have as part of the administrative
2 file, and if you don't, I've made copies of the information
3 that's been submitted by both the operator and by the escrow
4 agent. The information, if you don't have it, I have copies.
5 Does anybody need copies of the information?

6 (NO AUDIBLE RESPONSE.)

7 (Tom Mullins distributes copies to the Board.)

8 TOM MULLINS: And as the Board can see, basically
9 the information is money in and money out. And I think as
10 the Board can appreciate, there is more information that
11 would be required for the trustees of the Trust and for the
12 Trustees of Garden Reality to be able to determine what the
13 money represents. In other words, what the volume of
14 production was? What the price for the gas was that was
15 produced, when it was produced? All that kind of information
16 hasn't been provided.

17 Now, I know from my discussions with Mr. Swartz
18 that...I believe that information was provided to the escrow
19 agent at the time of the deposit. I'll let him advise the
20 Board to that, but basically what the Trust, and what Garden
21 would like to see is the same kind of information that's
22 provided to royalty owners when they get their checks
23 directly from the operator, I mean as part and parcel of
24 distribution of the royalties, and that's information about
25 the production, the period of production, the price paid by

1 MCF or whatever the increment, whatever method they're paying
2 for the gas, the volume of production, what deductions were
3 made, you know, transportation charges, taxes, or whatever
4 the deductions were, any adjustments made for whatever
5 reasons, to the figures from the beginning to the end, I mean
6 current. We need that kind of information on what the well
7 has done. And I don't know that there's any dispute about
8 that.

9 Also, from the escrow agent, we'd like to have...
10 and I'm not saying that they didn't do that in part, and
11 maybe the Board can look at that and see if they feel like
12 they've completed it, but the date of the deposits from the
13 escrow agent, the amount of the deposits that were made, what
14 interest was earned, what date the interest was posted to the
15 account, the total amount deposited and what fees or
16 deductions the escrow agent made from those particular funds.

17 And last, I guess, we'd be asking that if the Board
18 were to entertain a request that some time period be given
19 for that information to be given to us. I don't know that
20 there's...I mean, from my perspective, it looks like that's
21 the kind of information that the Board would be wanting
22 royalty owners to receive and shared with the royalty owners
23 and with the Board.

24 I have one of the trustees of the trust here with
25 me today if the Board wants that formally introduced as

1 evidence. I don't know that it has to be. It's already in
2 the administrative file because it was filed by the parties.
3 If you would like him to say that's what they got and this is
4 what they need, he will say that, but I just said it.

5 BENNY WAMPLER: It's not necessary, I don't think,
6 unless you don't...unless you don't do the---.

7 TOM MULLINS: Not unless the Board thinks it's
8 necessary.

9 BENNY WAMPLER: It's not necessary. Mr. Swartz.

10 MARK SWARTZ: Both of these parties have leases with
11 my clients, and those leases cover the payment of royalties,
12 in some instances cover escrow and there are conflicts, cover
13 deductions and so forth. Hugh MacRae is one of seventeen
14 plaintiffs in a law suit in Federal Court in Abingdon, which
15 essentially is a complaint about deductions. Both of these
16 lessors receive in the ordinary course, it's my
17 understanding, of royalty statements on other wells that are
18 at issue here.

19 The history of this collection of cases is that
20 Garden and Hugh MacRae entered into an agreement to split
21 funds that had been escrowed, you know, which is one of the
22 things we were hoping people would to avoid litigation and
23 facilitate the payment of the escrowed funds. Essentially,
24 my clients appeared at those hearings that were requesting an
25 order from the Board to direct the escrow agent to pay money

1 out, and we were just kind of monitoring to make sure what
2 was happening because my clients, you know, are the
3 applicants and Consol would be the operator of these units.
4 And an order was entered and it directed Consol, the unit
5 operator, to file an accounting, and it directed the bank to
6 file an accounting. Quite frankly, we interpreted the
7 direction to file an accounting as a request for us to tell
8 you so that you could compare what we thought the total
9 funds...obviously, we couldn't track interest because we
10 weren't investing the money, but what we thought the total
11 funds that had been paid in with regard to the units in
12 question so you could compare that gross figure to what the
13 escrow agent was telling you they had on hand, plus interest,
14 so that you could make that comparison. And that's what we
15 did.

16 The information that you can see that Mr. Mullins
17 has given you this morning is pretty straight forward stuff
18 coming from my clients. Basically, there's an entry...there
19 are two of these spreadsheets that are similar. And
20 basically, it tracks...gives you the unit number, the first
21 two on this particular page, the SLW-7 and 8 units are
22 Pocahontas Gas partnership units, and the R-25 unit, I think,
23 is a Buchanan Production unit. It gives the unit ID, talks
24 ...identifies the tract that the money has been escrowed with
25 regard to, gives you the board orders, co-owner, oil and gas

1 owner, gives you their percentage of the escrow account,
2 tells you when the payments are calculated through and then
3 gives you a gross amount, which can be compared to the
4 information that the escrow agent was providing as an
5 accounting. Toward the end...well, these continue because I
6 think we went back and gave a further accounting to a
7 somewhat later date. But, you know, our impression at that
8 point in time was you wanted a total figure so you could
9 compare it to the escrow. And, you know, what we do in the
10 ordinary course when we send money to the escrow agent is we
11 send them, you know, a pretty specific accounting of what
12 happened, and the reason for the check. Here, to just give
13 you two examples of a check and a back up information that
14 gets sent to the escrow agent or a royalty owner in the
15 ordinary course.

16 The purpose of these two examples is to show you,
17 you know, what the escrow agent, and what royalty owners
18 receive when royalty checks are cut. If you take the check
19 for two thousand dollars (\$2,000), which has more
20 attachments...I mean, they're similar, and then turn to the
21 back up, the first couple of columns are columns that are
22 identification numbers with regard to the accounts
23 internally, but if you come over to the fourth column, it
24 gives the unit number, B-19 is the unit. It gives the
25 production month. So, you've got September of '97, October

1 of '97. It gives the gross MCF, the gross MMBTU, which is
2 often how the price is calculated, the MMBTU price at the
3 various points in time, the owner decimal, meaning the
4 fraction that this particular owner has in ownership interest
5 in the unit production, allocates the MCF to the owner, the
6 MMBTU, states the transportation deduction, states the tax
7 deduction and gives the net value after you've made those
8 deductions, and then ultimately gets to a total which equals
9 the amount of the check. The smaller check, I mean it has
10 the same kind of back up of the twenty-two dollar (\$22)
11 check. Obviously, since there are less transactions there,
12 but it's for October of '97, pertains to unit R-25, has the
13 same kind of information. And this information is...you
14 know, is sent...and you'll notice that both of these
15 checks...one of the checks was actually made out to the Hugh
16 MacRae Land Trust, the smaller check, and the prior check was
17 made out to the board's escrow agent, First Virginia, in care
18 of their trust department. But I mean this is the kind of
19 information that royalty owners get, that the escrow agent
20 gets, every time they get a check.

21 So in terms of...let's go back a little bit again,
22 when these petitions were first filed, in the notice of
23 hearing and the application, there was absolutely no
24 indication of what they were complaining about. So, I mean,
25 we had no idea.

1 This Board required Garden and Hugh MacRae to tell
2 us in advance of the hearing and we got a letter...I got a
3 letter and I assume you did, December 31st, from Mr. Mullins,
4 the second paragraph of which identified the issues. It says,
5 "The issues as I see them are the adequacy of the accounting
6 and the information provided. The accountings do not provide
7 any information concerning any deductions/expenses." Well,
8 as you can see, that's not true. I mean, the deductions are
9 there. I mean, the detail is what this federal lawsuit is
10 all about, but it says, you know, this is the value and this
11 is what we took off for transportation, this is what we took
12 off for taxes. It says, "They do not give an ability to
13 correlate information with particular well or wells." Well,
14 the unit grid is identified, so you know that this pertains
15 to the particular unit, whether it's R-25 or B-19, and this
16 is coming out of that unit. If there's one well in the unit,
17 you know it's one. If there's more than one well, it's the
18 collection of that production. So basically, I guess what I
19 am suggesting to you guys, and I'm pretty much done here, is
20 when we were asked for an accounting, I guess it would have
21 been last summer, because we give this kind of information to
22 our royalty owners and the escrow agent every time they get a
23 check, it never occurred to us, you know, that we needed to
24 go back and photocopy all this stuff and retender it. I
25 assume this information is available at the bank. I mean, I

1 don't know if they've asked and been rebuffed, but I would
2 hope that your escrow agent keeps the backup, you know, that
3 they receive when they get the check, although I don't know.
4 But when we were asked for an accounting, it never occurred
5 to us that this was the kind of information that was being
6 sought because we already provided it on a monthly basis when
7 we cut the checks. That's why we gave a gross number.

8 When, you know, I found out from Mr. Mullins
9 December 31st that this was what they were looking for, I
10 faxed him pretty quickly the longer example here so that he
11 would at least be aware of, you know, what I was going to be
12 talking about today. So, you know, in conclusion, you know,
13 I believe that we provide the standard type of accounting
14 information that you would expect to see as a royalty owner
15 in the oil and gas industry with regard to deductions, with
16 regard to the value, with regard to price, with regard to
17 production during a given period of time in the ordinary
18 course to the escrow agent and to our lessors.

19 The argument that we really have with Hugh MacRae
20 is flushed out pretty clearly in their litigation in Federal
21 Court, and I just see this as, you know, an associated
22 tactic. And what they're complaining about in the litigation
23 is they think that the deductions are too big, and they are
24 alleging that we are deducting things that we're not supposed
25 to be deducting. But...and ultimately, we will get some kind

1 of decision in federal court vis a vis, them as lessors of
2 ours in relation to that. But the information is provided,
3 it's available. We feel like we've done our job in that
4 regard.

5 BENNY WAMPLER: Mr. Mullins.

6 TOM MULLINS: First, Garden Realty is not a part of
7 that federal suit and Garden Realty wants that information
8 for its own ability to determine what's going on. Yes, and
9 by just way of discussion, and I guess what we call it back
10 home a country report, I know that federal suit has been
11 filed, but it's got nothing to do with Garden Realty and I
12 think that, in this instance, has nothing to do with this
13 particular question. As I understand it, while the
14 information has been provided to the escrow agent concerning
15 these wells, it has not been provided to the royalty owners
16 for these wells. I think it was filed part and partial with
17 the delivery of the check. Of course, our clients...my
18 clients didn't get the check.

19 I think the issue is how this Board wants to insure
20 that this information gets to royalty owners when a...either
21 a voluntary agreement or a resolution of the ownership,
22 conflicting issue in question is had concerning a particular
23 well. The way I see it, I don't think it ought to be the
24 royalty owner's burden to try to go and gather the
25 information. They ought to be provided the information. It

1 ought to be given to them as it would be with anybody else's
2 ...I mean, if they're the owner of the well, they're the
3 owner of the well...or the gas, excuse me, the royalty
4 interest in the well and they ought to get the information,
5 and that's just the way I see it. I don't think anybody is
6 questioning or debating the type of information. I think
7 everybody is in agreement as to the type of information.
8 It's just the mechanism to get the information, if I'm
9 reading everything correctly.

10 BENNY WAMPLER: Are you saying...I don't mean to
11 interrupt you.

12 TOM MULLINS: Sure.

13 BENNY WAMPLER: Are you saying that the format that
14 was just discussed is adequate so far as to detail?

15 TOM MULLINS: Well, I think it depends...every...and
16 I agree with Mark, there's basic information that different
17 companies report and different formats. I don't think
18 there's any dispute about that. I mean, we have examples
19 here from Conoco, which is a little bit different format than
20 that, but I think it's the same basic type of information.
21 That's what everybody is looking for, just some mechanism so
22 you can relate back production, price, volume, deductions,
23 time periods; and on the escrow side, the interest, when it
24 was posted, what deductions were made. Not questioning the
25 amount of the deductions, that's a separate issue for a

1 separate fourm if Garden chooses to do so in the future, and
2 Hugh MacRae is doing it right now. We just need a mechanism
3 to get the information. We don't care whether the operator
4 provides it to us. We don't care if the escrow agent
5 provides it to us, but somebody ought to provide it to us.

6 MAX LEWIS: How could a escrow agent supply it to
7 you unless he gets it from---?

8 TOM MULLINS: He cannot.

9 MAX LEWIS: ---the well operator?

10 TOM MULLINS: He cannot. In this particular
11 instance---

12 MAX LEWIS: I didn't see how they could.

13 TOM MULLINS: In this particular instance, I believe
14 that, based on Mark's presentation, that that has happened in
15 this case. Whether it happens in every case, I don't know.
16 And the Board may want to consider that in its resolution of
17 the issue because this issue may govern future disputes of
18 this nature as to how...what mechanism to employ.

19 BILL HARRIS: Mr. Chairman?

20 BENNY WAMPLER: Mr. Harris.

21 BILL HARRIS: I know we have an agreement with the
22 escrow agents, the banks or financial institutions. I don't
23 have that in front of me, but is there normally a procedure
24 where this is provided to the recipients of the checks? I
25 know it's...so there's no policy in that or regulation that

1 says they have to provide that. There obviously must be one
2 for the companies to provide that to the escrow agent.

3 BENNY WAMPLER: The companies have to provide that
4 when they move money into the funds.

5 BILL HARRIS: But the form, obviously, is different.
6 That's what I'm hearing you all say.

7 BENNY WAMPLER: I think the presumption was the
8 companies would provide this to the parties as well, and
9 evidently that's not happened.

10 BILL HARRIS: Well, if there's a gap in time, and I
11 can see where that would be. I mean, it may be three years
12 down the way, so...I mean, I guess...But what you're saying,
13 the parties will already be known at that time and it's just
14 out of a routine filing, or a routine---

15 BENNY WAMPLER: Following Board order, the parties
16 are known, you know, once we come in here. I mean, that
17 doesn't prevent other parties from coming forward at some
18 time, but that will always be subject to some order.

19 BILL HARRIS: I guess what I was asking---

20 BENNY WAMPLER: So you'll have all the parties
21 identified.

22 BILL HARRIS: ---if the companies were to provide
23 that to the parties, how...when they send the money to the
24 bank, how do they know at that time who else to send copies
25 of that to? I guess that was my question. Would they know

1 at that time?

2 MARK SWARTZ: I guess accounting...I mean, is not
3 set up to send people copies of checks. I mean, there are
4 units where you might have to send fifty copies.

5 BILL HARRIS: Well, I don't know that it needs to be
6 a copy of the check.

7 MARK SWARTZ: But this is the check. I mean, when
8 we generate a check, what I've given you is what comes out of
9 the computer. Okay. And we treat the bank as if it were a
10 royalty owner. I mean, that's the way it defaults. So
11 they...you know, if you compare the two examples I gave you,
12 one is a check made out to Hugh MacRae and one is made to the
13 escrow agent, and they're pretty much the same, the details
14 the same. So, when the computer systems generate a royalty
15 check, they generate this kind of detail, but you know, it's
16 not set up to send...you know, the programming. And I think,
17 you know, to the extent, and I don't know because I haven't
18 talked to the escrow agent. They may have a file on every
19 one of these units that has all of this detail in it that
20 would be pretty easy for a claimant...because the problem is
21 you're using the term royalty owner, and you know, that's
22 okay, but I mean, you know, we've got a bunch of...in some
23 units you really have a lot of people who may or may not---

24 BILL HARRIS: Oh, I understand. I understand the
25 problem.

1 MARK SWARTZ: ---wind up, you know, with a piece of
2 the money and, you know, I think that there's certain...we're
3 providing the information on an ongoing basis. I mean, some
4 of these units date back to '93, '95. You know, as far as I
5 know, and I'm not guessing or reaching here, we are providing
6 this kind of information on an ongoing monthly basis to the
7 escrow agent. Hopefully, and I think we need to find out,
8 they are filing this in some kind of orderly fashion so that
9 if the kind of question that is being asked today comes up,
10 you know, there's a mechanism, you can go review the file or
11 you can have copies made or whatever, which I don't think is
12 an enormous burden. I would resist, however, ordering
13 operators to send potentially large numbers of copies of this
14 information, you know, when they've got a royalty system that
15 is really not programmed to accomplish this. I mean, as long
16 as we've got some depository for this information, I would
17 hope that would satisfy.

18 BILL HARRIS: I would not suggest that. I mean,
19 that wasn't my suggestion. I just wondered what the current
20 state in this agreement is, number one, is this information
21 retained by the escrow agent? And I don't know if it's in
22 the agreement that would be retained, but I don't know.

23 TOM FULMER: Mr. Chairman, can I just interject
24 something here?

25 BENNY WAMPLER: Mr. Fulmer.

1 TOM FULMER: The escrow agent is a entity which has
2 been designated by the Board through a contract. They
3 receive funds according to the Board order. Now, they also
4 received that Board order and what comes into it. The
5 companies are those people who provide the money, or the
6 operator who provides monies to them, provides them with the
7 information, but you've got to realize that until such time
8 it is determined who that money belongs to, these are dormant
9 files. They have no meaning until such time that it's
10 decided on who is going to get the money. Then at that point
11 in time, you're going to have to have the accounting to
12 occur. This is a situation where the parties have agreed to
13 disperse a certain percentage of it, but you have one account
14 for one order. And we're talking about several orders for
15 which a party is part of that one order. It's not the whole
16 order, it's part of that order. So they have a certain
17 percentage.

18 BILL HARRIS: Well, I guess my concern is, I think
19 if I had an interest in this and that's...I don't know if
20 that's the right word to use. If I were a claimant, then I
21 would want to be able to track money from when it was
22 deposited...from when it was deposited until I received it.
23 Even before that, if it's generated...if it's generated, then
24 I would like to see...well, how much was taken out. I mean
25 just out of curiosity. And I don't know if I'm entitled to

1 that legally.

2 MAX LEWIS: Yeah.

3 MARK SWARTZ: Mr. Fulmer is giving you not...let me
4 tell you what I think he's trying to tell you, again, in a
5 different way. These checks to the escrow agent collect all
6 funds pertaining to a given unit that needs to be escrowed,
7 which really may include people beyond...let's just take the
8 larger check that went on our...that went on B-19.

9 BILL HARRIS: Yeah. You're saying that could...
10 yeah. There may be fifty people that---

11 MARK SWARTZ: There may be people other than Garden,
12 other than Hugh MacRae, that have an interest in that two
13 thousand one hundred and twenty-three dollars (\$2,123). So
14 there is, you know, the back up that we gave you all had some
15 percentages that pertained...what Mr. Mullins passed out is,
16 we verified the percentages of these people and we said of
17 the money on hand, this is the percentage that they have
18 agreed to split. So it's really...the trust department is
19 treated as a royalty owner for all funds that need to be
20 escrowed regarding all tracts that may be in a given unit, so
21 that the break out is even more complex. I mean there's
22 another step here.

23 BILL HARRIS: Oh, yeah, I understand.

24 MARK SWARTZ: And that break out occurs by virtue of
25 a Board order. In the Board orders that you guys enter has

1 Exhibit B-3 typically, and lists the percentages, the
2 interest in the unit for each of the claimants and if they're
3 long wall panels, as we've seen that, there's a further break
4 out. So if you take the...and then there's an Exhibit E,
5 which is the conflicting claims escrow which we typically
6 give you, and if you take those Exhibits and the amount of
7 the check, you can sit down and figure out, you know, what
8 percentage is attributable of any given check to any given
9 interest. I mean, you can do that, but you're not going to
10 get that off of a royalty check. You're also going to have
11 ...a royalty check would be payable to the escrow. You're
12 also going to have to go to the Board, which is part of the
13 problem here. I mean, this is not transparent, simple stuff
14 for the average guy to walk over. I mean, you know, I think
15 it's not rocket science. I think we can explain it to
16 people, but you have to correlate different information to
17 make it work.

18 BENNY WAMPLER: Mr. Mullins.

19 MAX LEWIS: Let me say something.

20 BENNY WAMPLER: Go ahead, Mr. Lewis.

21 MAX LEWIS: Whenever you get a check, or do you get
22 an itemized statement saying how much your operation cost is,
23 how much your transportation costs?

24 TOM MULLINS: These wells, we have not. These
25 wells that are pending, the issues before the Board, I guess.

1 today on the wells we have, we have not. No, sir. I think
2 there's two issues that are out there right now that the
3 Board has been talking about. These particular wells are
4 wells that an agreement has been reached. Once an agreement
5 has been reached, I think that there's a different standard
6 that ought to be applied. Once an agreement as to the
7 distribution of funds has been reached, or a resolution as to
8 the distribution of funds has been reached, then I think the
9 standard ought to be that either the operator or the escrow
10 agent...again, we don't care which, ought to provide the
11 information on the history of the well. I think that ought
12 to be done.

13 I would be surprised if the only mechanism they had
14 to keep track of these figures is in their royalty payment
15 checking system. I'd say they have it in a different format
16 that would be more readily available to be printed. That
17 would be my guess.

18 MAX LEWIS: I doubt that.

19 BILL HARRIS: What do they need to print this
20 stuff?

21 TOM MULLINS: For this particular kind of case,
22 when the agreement is reached and the Board enters an order
23 for the distribution of funds---.

24 BILL HARRIS: You're assuming that there's some
25 mechanism in law in place that requires them to retain it to

1 be able to produce it.

2 TOM MULLINS: I think prudent business practice
3 would require them to retain it because there's a statute of
4 limitations and possible lawsuit problems. I mean, that's a
5 separate issue.

6 BILL HARRIS: Yeah. Because Mr. Swartz stated that
7 he didn't know if they retained this. I hope they do. Is
8 this given to the banks. Is this on tape? Is it
9 electronically, or is it---?

10 MARK SWARTZ: They get what you have. I mean,
11 they get a copy of what's sent to the bank.

12 TOM MULLINS: I'd be highly surprised if a month
13 after the check is issued, they destroy their information
14 concerning what deductions were taken, what the volume was.
15 I can't concede that---.

16 DENNIS GARBIS: I agree.

17 MAX LEWIS: I'd say they---.

18 BILL HARRIS: Do they microfilm these things or what
19 happens?

20 MAX LEWIS: I would say they keep that history.

21 DENNIS GARBIS: They've got to. They'd be fools
22 not to.

23 BILL HARRIS: You say that they do?

24 TOM MULLINS: They would have to keep---.

25 BILL HARRIS: I don't know.

1 TOM FULMER: You talking about the bank or our
2 escrow?

3 BILL HARRIS: Yes. Once---

4 MAX LEWIS: Yeah, he's talking about the company.

5 TOM FULMER: I forgot to tell you about the escrow
6 agent and what his job is, and he collects this information
7 that is submitted---

8 MAX LEWIS: Yeah, we know that.

9 TOM FULMER: ---by the operator, and that's the
10 information that's on file.

11 BILL HARRIS: So he is directed to save that
12 information, or is he directed---

13 TOM FULMER: It's part of the file.

14 BILL HARRIS: ---see, collecting and saving are two
15 different things. I just wonder if---

16 TOM FULMER: It's part of the file. Each..each...
17 there's an account set up. All the information that comes in
18 on that account is then stored by the escrow agent.

19 TOM MULLINS: Let me give you an example. There's
20 a five (5) year statute of limitations on lawsuit concerning
21 written contracts, and if a payment is not made pursuant to a
22 voluntary lease agreement, let's just assume a voluntary
23 lease agreement, you've got five (5) years to back up and sue
24 on a payment made four (4) years and eleven (11) months ago.
25 So, any prudent operator is going to keep those records at

1 least for five (5) years and probably longer, because if
2 there's continuing conduct, there's an argument that could be
3 made that it could be even extended further. So, I think it
4 would be almost unbelievable for any operator not to maintain
5 those records. And if they don't, the Board ought to order
6 them to maintain those records.

7 MARK SWARTZ: I guess my response to that is, I
8 don't appreciate somebody coming in here, major league people
9 with law firms that can afford to hire law firms, if they can
10 afford to hire law firms, with lawyers on the Hugh MacRae
11 Trust, when this order was entered in 1993, some of the
12 orders in 1995, suggesting that we have to go back and
13 recalculate our records, especially when I believe...you
14 know, when we are providing this information on a current
15 basis. I mean, if the Board's escrow agent is not keeping
16 this information, they need to keep it. I assume that they
17 are from what I'm hearing from Mr. Fulmer and from what I
18 know about banks, I assume...and trust departments, I assume
19 they're keeping it. I mean, if this information is available
20 on a current basis as the checks are paid, and is available
21 for inspection by people who have a reason to look at this
22 information, that ought to satisfy this. And I don't think
23 that, you know, we need to be sitting here three (3), four
24 (4), five (5), six (6) years down the road suggesting that we
25 need to go back, pay...you know, pay the additional computer

1 cost of retrieving all this from our data base. Yeah, it's
2 in our data base. I mean, we have gas volumes in our data
3 base going back years. We've got deduction volumes going
4 back years, but you know, when we're generating this on a
5 monthly basis in the ordinary course of our business, sending
6 it to somebody who, presumably, is retaining it, I don't
7 think we need to be reinventing the wheel to get this
8 information in these people's hands. I mean, if they come
9 back here and say we've been to the escrow agent and they
10 don't have any of this, we've got a problem and we need to
11 talk about it. I'm not suggesting that, you know, they're
12 not entitled to information in some form. But, you know,
13 until that happens, I'm not sure why we're here today.

14 TOM MULLINS: Well, there's a Board Order and that's
15 how we have to be able to get our money and that's how we
16 have to be able to get our accounting. This Board ordered an
17 accounting and that's what the orders say. And the question
18 is, what is that accounting? I don't think there's any
19 dispute as to what the contents of the accounting is to be.
20 The question has come down, who is to provide the accounting,
21 and that's the separate issue. When you're talking about a
22 predetermination, I guess an escrow account that nobody has
23 reached an agreement on, the Board may want to treat that
24 differently and have the...put some burdens upon the
25 claimants. At that point, they are claimants as opposed to

1 royalty owners, put the burden on the claimants to look for
2 that information. They ought to be entitled to it if they
3 look for it, but they may have to request it. But on the
4 other hand, once you've gone past that and you are now,
5 either by agreement or by court order, a royalty owner, then
6 I think there's a different set of standards that ought to
7 apply. Now, whether this Board wants to order the owners to
8 redo that information, whether that's going to be owners or
9 not, with all the computer spreadsheets and all the
10 accounting programs out there, I personally don't think it
11 would be that onerous. Whether this Board wants to do it
12 that way for the history of the well, or order the escrow
13 agent to retain these records and produce that to the then
14 royalty owners at that time, that's up to the Board to
15 determine. We just need, and would like to have, the
16 information from somebody.

17 BENNY WAMPLER: Have you made any direct attempt to
18 get it from the Board's escrow agent?

19 TOM MULLINS: The only thing that we have done...
20 that I have done...I can't represent what Penn Stuart did
21 because I wasn't involved in the case at that point in time,
22 but I don't think they did anything else either, was to file
23 this request for hearing before the Board, for the Board to
24 resolve the issue. Again, we think that it ought to be part
25 and parcel, once you become a royalty owner, you're entitled

1 to the information. You ought not have to go every month and
2 ask for it, or whatever the mechanism might would be.

3 BILL HARRIS: I need to be quiet, I guess. But I
4 agree with you. I think you really...again, if I were a
5 royalty...I don't know...if I had money due me, I would want
6 to know the history of that. It just seems to me that once
7 that is given to the...and I'm not sure what the mechanism
8 would be, but once that is given to the escrow agent, if
9 that's retained, the history of the money beyond that is
10 interest, investments, whatever, and only the escrow agent
11 has that. So the escrow agent, to me, the way I feel about
12 it, would be the place that you would end up because you
13 would have both the history of the money before the money got
14 there and the history of the money after it got there, and I
15 would think if you were a royalty owner, or due the money,
16 that you would like that information. Whether it's going to
17 be useful and meaningful, I don't know, considering the
18 number of people involved.

19 TOM MULLINS: Well, that's prior determination once
20 the royalty issue has been decided.

21 BILL HARRIS: Is decided, yes.

22 MARK SWARTZ: I'm sorry, but I really don't think
23 that the Board needs to be, or wants to, or should make a
24 distinction between the kind of information that claimants
25 are entitled to and royalty owners are entitled to. I mean,

1 I think that you need to have good accounting information,
2 period, and it needs to be contemporaneously provided to the
3 royalty owner...to the escrow agent and the royalty owners.
4 I don't see that the rules of the game change now when
5 somebody is now an owner as opposed to a claimant. I mean,
6 the escrow agent needs to have this kind of information on an
7 ongoing basis under all Board orders that it's holding funds,
8 period, whether or not there is a resolution as to who owns
9 it or who doesn't own it. I just don't draw any distinction
10 at all, like Mr. Mullins. I don't think the rules change
11 when somebody is now identified as an owner. I think the
12 information needs to be there so that there is a paper trail
13 for what the production was, what the deductions were, what
14 the value was, and then beyond that, what was the investment,
15 what was the earnings, what were the costs that were deducted
16 by the escrow agent, bring all that forward and I think it
17 needs to be all in one place. I'm hoping...I'm hoping, from
18 what we know about banks, that we can assume that's there.
19 We need to find out for sure.

20 MAX LEWIS: I think that's what really what you're
21 asking for, isn't it?

22 TOM MULLINS: There's one other issue, what
23 obligation and what reliability can we place upon the escrow
24 agent to maintain that fund. And what...if the owner gives
25 us information and the owner gives us wrong information, our

1 cause of action is back against the owner...or excuse me, the
2 operator. I'm saying owner, I meant operator. But if the
3 escrow agent gives us the wrong information, there's a buffer
4 in there. They may have misfiled it, they may have misplaced
5 it, there may be a problem. That's just the way I'm looking
6 at it. The Board is free to do what it feels like is
7 appropriate.

8 BILL HARRIS: That goes back to my first question. I
9 guess we had no agreement.

10 BENNY WAMPLER: Mr. Garbis.

11 DENNIS GARBIS: Yeah, I've got a question. I'm back
12 on first base over here. On the sheet, Mr. Swartz, that you
13 had given me over here.

14 MARK SWARTZ: Yes.

15 DENNIS GARBIS: Is this BP-19, is this all for one
16 well, or is this for a group of wells for one specific owner?
17 I mean, there's groups of three over here, one, two, three,
18 four, five, six. Well, there's one, two...two and a half
19 pages. So, is this...this is for my own edification, it may
20 or may not have anything to do with this, but I'm leading
21 somewhere, so bear with me. Is this for one owner, one
22 specific well? Anybody? I don't know.

23 MARK SWARTZ: Well, it's one unit. Okay. And I
24 would have to look at the pooling application and the order
25 on B-19 to tell you how many. I could tell from that how

1 many owners were involved. I don't...I can't tell from this
2 sheet.

3 DENNIS GARBIS: Does this apply to one specific
4 owner? In other words, I'm getting a check, I'm the owner of
5 this over here. I'm getting a check for twenty-one, twenty-
6 three, eighty-two (2,123.82).

7 MARK SWARTZ: Oh, that one?

8 DENNIS GARBIS: Yeah.

9 MARK SWARTZ: No. This is---.

10 DENNIS GARBIS: The one you had...the first one,
11 that you have in your left hand.

12 MARK SWARTZ: This is going to the Virginia Gas and
13 Oil Board's escrow agent.

14 DENNIS GARBIS: Right.

15 MARK SWARTZ: And it pertains to B-19. Without the
16 B-19 Board order, I can't tell. That's how I would I find
17 out how many---.

18 DENNIS GARBIS: How many different...how many
19 different...what percentages are...okay.

20 MARK SWARTZ: Or how many owners. You're asking
21 me...I could go to...that's how I would find out.

22 DENNIS GARBIS: Okay. Well, follow through over
23 here. So basically, there's a column for gross MCF.

24 MARK SWARTZ: Correct. That's a gross production.

25 DENNIS GARBIS: And then we're talking about gross

1 MBTU.

2 MARK SWARTZ: Right, which you'll notice is slightly
3 less.

4 DENNIS GARBIS: Okay. And then the price, the owner
5 decimal. So, in other words, he doesn't own very much,
6 whoever this person just happened to be. Then we start
7 talking about the owner in other words---

8 BILL HARRIS: Well---

9 MARK SWARTZ: Excuse me. But I think you can tell
10 from the owner decimal here that we may have multiple owners.

11 DENNIS GARBIS: Right. I'm looking at that. Yeah.

12 MARK SWARTZ: You'll notice that the decimal is
13 different. So my guess is---

14 DENNIS GARBIS: As it changes through the column.

15 MARK SWARTZ: Right.

16 DENNIS GARBIS: But then where it starts talking
17 about owner MCF, I guess that's just their percentage. So if
18 you take that .0099485 on line six (6) over there---

19 MARK SWARTZ: That's roughly ten (10) percent.

20 You'll notice, it's roughly ten (10) percent.

21 DENNIS GARBIS: So...yeah, that's ten (10) percent.

22 MARK SWARTZ: Right.

23 DENNIS GARBIS: Is that dollars?

24 MARK SWARTZ: Yes. No, no, I'm sorry. That's

25 volume.

1 DENNIS GARBIS: That's volume?
2 MARK SWARTZ: That's gas volume.
3 DENNIS GARBIS: Same thing with MBTU?
4 MARK SWARTZ: Correct.
5 DENNIS GARBIS: Now where it gets to transportation
6 deduction---.
7 MARK SWARTZ: Right.
8 DENNIS GARBIS: Well, is that dollars, or what is
9 that?
10 MARK SWARTZ: That would be dollars and cents.
11 DENNIS GARBIS: That's dollars and cents. And then
12 the taxes. Now on this transportation deduction, is that a
13 set percentage for every month? In other words, if I were an
14 owner, and I wanted to run the numbers, which I like to run
15 the numbers, would I find that number would be the same
16 percentage every month?
17 MARK SWARTZ: In a year, yes. You mean the
18 deductions?
19 DENNIS GARBIS: Right.
20 MARK SWARTZ: Now the tax deduction varies because
21 it's driven by volume and price.
22 DENNIS GARBIS: Production?
23 MAX LEWIS: Right.
24 MARK SWARTZ: It's driven by volume and price.
25 MAX LEWIS: Right.

1 MARK SWARTZ: It's a percentage.

2 MAX LEWIS: Yeah.

3 MARK SWARTZ: So that would change. The
4 transportation deduction is set per MC...per MCF, but as the
5 volume...so that deduction itself---

6 MAX LEWIS: Goes up and down.

7 MARK SWARTZ: ---Cardinal States deduction, would
8 be the same for a year and the gathering would be the same
9 for a year and would be adjusted, and it's applied to an MCF.

10 MAX LEWIS: Yeah.

11 MARK SWARTZ: So the deduction is a fixed dollars
12 and cents number. As the MCF varies, it would change, but
13 it's fixed for a year is my understanding.

14 BILL HARRIS: Is this because of yearly contracts?

15 MARK SWARTZ: I think they look at it annually.

16 DENNIS GARBIS: Okay. Following through---

17 MARK SWARTZ: I'm not sure they've adjusted it
18 annually, but they look at it annually.

19 DENNIS GARBIS: Following through over here. And
20 again, I'm on line six (6), so it says over here the net
21 value is two hundred and sixty-six (266)...I'm assuming
22 that's dollars.

23 MARK SWARTZ: Correct.

24 DENNIS GARBIS: Two hundred and sixty-six dollars
25 and eighteen cents (\$266.18). What is the gross number I

1 started with? I think this report is insufficient. If I
2 were an owner, I would say your report is no good because it
3 doesn't tell me where I start from. Where do I...I'm
4 subtracting two hundred and thirty-six dollars and eight
5 cents (\$236.08), fifteen dollars and fifty-four cents
6 (\$15.54) to get some number, two sixty-six (266). But what
7 was the number...obviously, I could do the...you know,
8 subtraction/addition backwards, but I think it's deficient in
9 that I don't have a number, a gross number, where I'm
10 starting from. I mean, from my...if I were an owner, I'm
11 looking at this, I would tell you, why are you making me go
12 through this arithmetic exercise because I'm lazy. Do you
13 understand what I'm saying?

14 MARK SWARTZ: Uh-huh.

15 DENNIS GARBIS: So what is the gross number? So, I
16 mean...I don't know if that's a question or has anything to
17 do with it. As an owner, I'm coming through there and I say
18 what was I entitled to as a .0099 et cetera ownership? Why
19 ...you know, what am I entitled to? What are all the
20 deductions? And then, what is my bottom line. So for this
21 particular owner, he's entitled to two hundred and sixty-six
22 dollars and eighteen cents (\$266.18). But you see where...
23 you see the---

24 MAX LEWIS: Fifteen million eight hundred and
25 twenty---

1 MARK SWARTZ: My assumption is that you would take
2 the MMBTU and multiply it by the MMBTU price and that would
3 give you the gross value.

4 MAX LEWIS: Right.

5 MARK SWARTZ: I mean, that...you know, you
6 can't...you're saying you can't pick a number off there. I'm
7 agreeing with you, but I'm saying you can pretty simply
8 calculate that by that one multiplication.

9 DENNIS GARBIS: Again, as you said, it's not rocket
10 scientist work.

11 MARK SWARTZ: Right.

12 DENNIS GARBIS: But again, I think if you make it so
13 that one would be able to track it pretty easily, and
14 particularly, I guess, in the case of an escrow agent, you
15 have a whole number of these, I mean it would...it just makes
16 things a little bit clearer. And I think you're...at least
17 in my opinion, I think our job is to make sure that it is
18 clear to the average person on the street. He gets the form
19 over here and he can look at it...obviously...it might take
20 the form of this one over here where we only have two lines
21 so I could be able to see that I got a check for twenty-two
22 dollars and sixty cents (\$22.60), but when you run through
23 the numbers...see, because you got...and what really stuck
24 out in my mind, you know, I'm looking at owner MCF and you're
25 talking about volume, volume, and then all of a sudden I

1 switch to dollars and I get twenty-two dollars and sixty
2 cents (\$22.60). I think that needs to be put in there and
3 make it clearer. Now one could say, I don't have enough room
4 on my spreadsheet, but you know, you go into Excel or Access,
5 or something like that, you could make the...you could make
6 it work, I'm sure...if you've got somebody there that's smart
7 on a computer. I mean, from my standpoint, I think your form
8 is deficient, or someone's form, your owner's form, your
9 client's form, somebody's form is deficient. Just to make
10 it, again, more clearer. And I don't know if that's the
11 question or part of where you're going with that. But again,
12 any other deductions, that's always been in my mind how this
13 thing progressed. If I were an owner, that's what I would
14 want to know, and I'd be pretty adamant about it.

15 MARK SWARTZ: The deduction numbers are reported on
16 here, and to the extent that owners want further back up,
17 believe me, we've had plenty of discussions with that over
18 many years. And I think...I think the point of a royalty
19 statement is to set forth in writing the outline of what
20 you've done. In other words, what did you produce, what did
21 you sell it for, what did you take off the top and what's the
22 royalty. And to give people the basic information so that
23 they can say I don't like a transportation deduction of that
24 size. You need to defend it further so they can ask a
25 question. I don't have a problem with that. And believe me,

1 we get enough of those questions. I can't argue with you
2 that you need to do a multiplication here to get a gross
3 starting value.

4 DENNIS GARBIS: Sure, as a courtesy. As a courtesy
5 to your clients.

6 MARK SWARTZ: I think these royalty statements do
7 the basic...send the basic information out there, this is
8 where we started, you know, we report volumes to Mr. Fulmer's
9 office as well. There are some cross checks here, you know,
10 we've got charts. You know, there's a lot of back up
11 information here. But you're coming full circle. I mean, if
12 the escrow agent retains this kind of information for each
13 Board order, my view would be that there is a history
14 available to claimants and owners. If the Board's escrow
15 agent doesn't do that, I think we need to make sure that they
16 do.

17 BENNY WAMPLER: Other question or comments from
18 members of the Board?

19 TOM MULLINS: The only thing about this, I guess,
20 example submitted...I'm not representing myself as a
21 sophisticated accountant, because I'm not. I'm a lawyer, I'm
22 not an accountant, but what are the numbers 904, 906, and 919
23 mean. I mean, I don't know what that code represents. And
24 it may be just something that I'm ignorant of, but I just
25 don't know.

1 MARK SWARTZ: Well, if you had asked me before
2 today, I bet I could tell you. And the other thing that
3 happens with this, which we don't have in front of us,
4 royalty owners periodically get a booklet or a brochure with
5 regard to their royalty statements, which I didn't bring
6 today, but I know that and I know these companies send it to
7 them, with regard to what these codes are, what they mean and
8 what the components are. Now whether or not those
9 explanations would have the codes that, you know, Tom is
10 asking about, I don't know. But I do know that just in terms
11 of royalty owner relations, my clients send that information
12 periodically with royalty checks.

13 TOM MULLINS: But that's for a royalty owner.

14 MARK SWARTZ: Well, it would go to the bank, too.

15 TOM MULLINS: But now we're one step removed. We're
16 back from the bank. Conoco...I mean, this is really not
17 before the Board, but if you want to look at an example of
18 their royalty statement, it's different, and it has explained
19 all that information down here. It's got the gross value on
20 it that you were talking about. Again, what I'm interested
21 in is getting this information for these wells to my clients.

22 BENNY WAMPLER: You're saying it's different. Is it
23 different being better in your mind?

24 TOM MULLINS: In my mind it is. I'll be...I mean, I
25 didn't make copies. This is just something that one of my

1 clients gave me. This is a Garden Reality statement, and I
2 only have one copy.

3 BILL HARRIS: Mr. Chairman, let me just make a
4 comment. We've kind of gone, I think---

5 TOM MULLINS: Full circle.

6 BILL HARRIS: Well, yeah. But we're...it sounds
7 like we're bashing forms here and I'm not sure that's what
8 the intent was. But I think the real question is, you know,
9 should...and I don't know that we can answer it as a Board.
10 I'm not sure what our powers are, but should this information
11 be supplied, and I think it should, but what form it should
12 take, I don't know. Who provides it, I don't know. I mean,
13 I can suggest, but I'm not...I mean, I'm just one person.
14 But about the only thing about the information provided on,
15 you know, without you having to sit down and calculate the
16 totals yourself, about the only thing I think we could do at
17 this point is make suggestions to the companies as to the
18 kind of information. I mean, you know, we didn't...I don't
19 know up front when companies first start sending this
20 information to the escrow agent, I'm sure that there was an
21 accounting. I don't know how that was defined and I'm sure
22 that companies...I would like to think that companies do the
23 best they can to be in compliance with that, so they're
24 providing information that's asked for. I don't know what
25 we've asked for.

1 TOM MULLINS: The only other problem with letting
2 the escrow agent provide us, just Xerox these, as you can see
3 from this example, there's multiple claimants. Is there a
4 way to relate all this back to the agreement, or to the order
5 that's entered by the Court? Who can do that? I don't think
6 the escrow agent can do that. I think the only people...and
7 the company is going to have to...the operator is going to
8 have to do that for future payments anyway. That's something
9 ...that's a hoop that they are going to have to go through.

10 BENNY WAMPLER: You know, I think...I just think the
11 Board to the point that we're asked to disburse a check for
12 whatever, twenty-two dollars and thirty-six cents (\$22.36),
13 just to keep it simple, and say that the Board has
14 asked...this twenty-two dollars and sixty cent (\$22.60)
15 example here, is asked to...we have an agreement of the
16 parties and ask to disburse that. I don't envision the Board
17 making that disbursement based on the bank records without a
18 certification from the operator that they are in fact in
19 agreement with that. I also...and having said that, I also
20 don't know whether or not any claimant can walk into the
21 escrow agent and ask to see all the records pertaining to
22 that claimant, and be able to get them. I don't know that
23 they can show them in that format. In fact, I would presume,
24 without checking, and we will check, that they could not show
25 them, because they would...in order to do that, they would

1 have to show them, you know, every...just the file. And I
2 don't think they could show them the file. Maybe they could,
3 I don't know. But I'm typically not used to having access to
4 everybody else's financial information, and I don't believe
5 in this case that someone off the street can walk in...and
6 I'm not downing, I'm just saying some claimant could walk in
7 and have access to, and be able to conduct these
8 calculations.

9 BILL HARRIS: The only way I could see this would
10 work is there's just some master...since everybody is on the
11 Internet now, some master accounting schedule that's up there
12 and all of this is just uploaded from the companies, and the
13 banks take it off, and it's always on line and it's always
14 available, you use your code, get in and find it out for
15 those particular ones. I don't know, unless there's a common
16 accounting---

17 TOM MULLINS: I think there is something common.
18 Once the order is entered, the monies won't be going to the
19 escrow agent again. The operator has to start making those
20 distributions. He's got to enter all that into his system.
21 I don't think it would be much of a calculation at all to
22 have that formula apply to the prior numbers to give you an
23 accounting of what you've just got from the escrow agent, and
24 then from then on you'll get the regular statement. But we
25 need the information in a useable form. And I think once

1 we're determined to be the owner of the royalty, either by
2 agreement or by order, we're entitled to it.

3 BILL HARRIS: That's beyond where I was, getting...
4 just going to the bank and saying, okay, the money you're
5 holding, the escrow agent---

6 TOM MULLINS: That's a claimant.

7 BILL HARRIS: ---goes to us.

8 TOM MULLINS: That's right.

9 BILL HARRIS: And then after that, where production
10 is still being done, then the company---

11 MAX LEWIS: There's no way that you can go into the
12 escrow agent and get the history of the well. You have to
13 get that from the operator.

14 BENNY WAMPLER: You may be able to go in and
15 calculate it if you had access to all the information, but I
16 don't know that you could get access to all the information.

17 MAX LEWIS: You couldn't get the history. No.

18 DENNIS GARBIS: Where's the question? Where's the
19 question? We kind of went around in circles here. I kind of
20 lost track.

21 TOM MULLINS: My question, I guess, is the same.
22 For these wells, we would like to have, for the Hugh MacRae
23 Trust and for Garden Realty, the history of the well and the
24 royalty attributable to them pursuant to the Board order with
25 all the information that we've discussed, with all the

1 deduction information, the volume information, period
2 information.

3 BILL HARRIS: Essentially this?

4 TOM MULLINS: Essentially that as long as it's in...
5 yes, essentially that, or the Conoco format. I personally
6 think that's a better format, but let's not argue about
7 formats.

8 BILL HARRIS: Yeah, because I'm saying that's---.

9 TOM MULLINS: As long as the information is there,
10 whether they have to do a mathematical function for it---.

11 MARK SWARTZ: Just see if you can compare what's
12 going on here, if you look toward the end of the packet that
13 Tom Mullins gave you this morning, there is a Hugh
14 MacRae/Garden Reality form that looks kind of like this and
15 it has SLW-7, tract 10A and it shows a hundred and forty-
16 eight thousand (148,000) total paid into the escrow agent.
17 And if you look at the...at a couple of pages later, and look
18 for the same Board order, the old 185 order, you'll show the
19 escrow agent reporting that it has a hundred and fifty
20 thousand four hundred dollars (\$150,400). You know, so at
21 least you're looking at those numbers and you're saying to
22 yourself, well, the escrow agent must have invested this and
23 done something. So, I mean these numbers do relate, and what
24 we've been talking about today is if the check information is
25 retained by the escrow agent, you can then compare that to

1 the total paid in, if you wanted to try to recreate that
2 number, that one hundred and forty-eight thousand (148,000)
3 that the operator has provided. You then have the detail
4 from the bank with regard to what the earnings and costs, you
5 know, attributable to this account were, so you know what the
6 earnings component was. And then from the Board order, you
7 have the decimal that relates to this particular claimant,
8 which is reported, you know, here, and you can figure that
9 out. Now, admittedly some math here, but I don't know...you
10 know when you've got---

11 BILL HARRIS: Whose responsibility is it to do that,
12 I wonder? And I guess that's the question, too, if you were
13 ...if you were an owner, claimant, or successful claimant and
14 went in, does the escrow agent do this? We don't have the
15 history of this to even---

16 MARK SWARTZ: Well, we've done it, you know, they
17 just don't like the way we've done it. I mean, we have said
18 to you---

19 DENNIS GARBIS: I think he's looking for more
20 detail, is that from my understanding what you were saying?

21 MARK SWARTZ: Right, but we have said to you guys,
22 their percentage of whatever funds are on hand is 4.829
23 percent in SLW-7. And this is what we paid in and you need
24 to...you either then gross that up with the earnings. I
25 mean, we have done this. Now they're saying, you know, we

1 need to do...we need to hold their hand, we need to do this,
2 we need to do that. But I mean, we have stepped up to the
3 plate and said this is the number.

4 TOM MULLINS: A couple of issues. First, again, as
5 I said at the beginning, this may impact future Board orders.
6 It's one thing when you're dealing with a trust. As Mr.
7 Swartz said, they can hire lawyers. There would be people
8 who can't and you're going to be asking them to do...go back
9 to the Board order, go back to the information supplied in
10 the accounting or the check that was deposited with the Board
11 order with a different claimants broken out and then go back
12 to his other statement and do all that math and come out with
13 your figure. I don't think that's realistic for a lot of the
14 royalty owners if that's part of the Board's consideration.

15 Number two, it's a lot of trouble for anybody to
16 do, no matter how sophisticated you are. The information in
17 my opinion is available. They keep it. Any prudent business
18 operator would keep it. It's not...it's not rocket science.
19 It's on some kind of data base. They can recreate it. They
20 don't want to recreate it. They don't want that trouble.
21 They don't want that burden. But now you're dealing with
22 somebody whose status has changed from a claimant to a
23 royalty owner in this situation and that's what I'm here
24 representing today. I think they are entitled to that and
25 the Board ought insure that they get it.

1 Again, if the Board wants to impose that duty upon
2 the royalty, excuse me, on the escrow agent to maintain these
3 kind of records and become that...to do that type of
4 accounting, that's up to the Board. I think the owners
5 already got it.

6 BILL HARRIS: Don't look at me. I don't have any
7 answers.

8 MAX LEWIS: We're talking about the operators---.

9 BILL HARRIS: I don't know. I agree the
10 information ought to be there. I'm not sure who should be
11 responsible for keeping track of everything and I know you're
12 saying that the---

13 MAX LEWIS: Operator.

14 BILL HARRIS: ---operator would have that. I don't
15 know what their mechanism is...I don't know. But at some
16 point if this...once the royalty owners are identified, then
17 money goes to them and checks go them and this
18 information---

19 MARK SWARTZ: Its already happened here---

20 BILL HARRIS: ---okay, so this.

21 MARK SWARTZ: ---I mean, this Board order required
22 us as of a date to paying them. One of these checks is an R-
23 25 check that we've paid...we're paying to them.

24 MR. HARRIS: Right. And---

25 MARK SWARTZ: So, we stopped escrowing the funds.

1 We're sending them the money. They're are getting this kind
2 of detail.

3 BILL HARRIS: Right. Okay.

4 MARK SWARTZ: That happens just automatically.

5 When they become the royalty owner for that decimal and it
6 gets paid to them, they get the backup we're looking at and I
7 gave you an example of what's happened.

8 BILL HARRIS: And what you'll need in the interim
9 is the problem.

10 TOM MULLINS: Correct, that's the question. From
11 the time the escrow started to the time the escrow ends,
12 based on the Board order.

13 BENNY WAMPLER: They're trying to arrive..have the
14 detailed information that would provide the backup to allow
15 them to arrive at an agreement among parties of what the
16 check...what the check we should order to be paid out.

17 TOM MULLINS: Correct.

18 BENNY WAMPLER: See, that money is still in escrow.

19 DENNIS GARRIS: Excuse me.

20 BENNY WAMPLER: They're still a claimant as far as
21 the Board is concerned.

22 BILL HARRIS: Uh-huh, yeah.

23 BENNY WAMPLER: Dennis.

24 DENNIS GARRIS: Well, at least from my opinion...I
25 mean, I run a business and I know frequently that I have

1 requests that go back that go back three (3) and four (4),
2 five (5), six (6), seven (7), eight (8) years and I keep my
3 records back till 1981 and any business...anybody who is in
4 business who doesn't is wrong. I mean, if you are in
5 business today, with the government attitude and everything,
6 if you aren't keeping your records, I mean, you're
7 just...you're weak. You're exposing yourself unnecessarily
8 as far as I'm concerned. But I mean, I...you know, I think
9 my perspective, the one that I'm looking at, I guess I'm
10 ready to make a motion, but I think the flow of information,
11 the openness that's required for...looking at, as Mr. Mullins
12 says, for a small man coming after you who might not be as
13 sophisticated as others to be able to look at something and
14 have everything out there in front of them, I think
15 that's...I think that's paramount. I think we need to make
16 sure that for every person that has...even if it's a one
17 millionth of a part owner and as a royalty owner, that
18 statement needs to be as clear as possible and that
19 information needs to be available to them, and I think that's
20 just a part of doing business. So, basically I agree with
21 Mr. Mullins, I think that he needs to...I guess I'm making a
22 motion to that effect, that he be granted what he would like
23 to have.

24 BILL HARRIS: Who gives the information?

25 MAX LEWIS: The operators.

1 DENNIS GARBIS: It's got to come from the operator.

2 BILL HARRIS: There's a gap in there. So, that has
3 to come from...see, I think that was the---

4 DENNIS GARBIS: Ultimately, the operator. The
5 operator has to...he has that information. The operator has
6 to have it. I mean, this is also kind of a straw, I can get
7 beaten down on this. But I mean, if a lot of the stuff is a
8 matter of public record, isn't it also available under the
9 Freedom of Information Act?

10 BILL HARRIS: Now, does that cover that?

11 MAX LEWIS: I doubt it does.

12 DENNIS GARBIS: I don't know. I mean---

13 MAX LEWIS: I don't think it would be. I think it
14 would be to the operators, but I meant the royalty, but other
15 than that I don't think---

16 DENNIS GARBIS: Ultimately, the operator has
17 to...that's a part of doing business, the operator has to---

18 MAX LEWIS: I don't think it would be public
19 information to everybody.

20 MARK SWARTZ: Why wouldn't it be? I would think it
21 would be public information.

22 MAX LEWIS: I wouldn't.

23 BILL HARRIS: The production of the well probably
24 ...well, I don't know.

25 TOM MULLINS: The volumes may be as reported, but

1 not any of the other charges or anything else.

2 BENNY WAMPLER: Anything reported in Mr. Fulmer's
3 office is clearly---

4 MARK SWARTZ: Well, the escrow agent, I would
5 think, would be a matter of public record.

6 MAX LEWIS: No, not some of that.

7 BENNY WAMPLER: I don't know about that. I would
8 not think that to be the case, but I don't know that.

9 MAX LEWIS: I wouldn't---

10 TOM MULLINS: There are banking regulations...there
11 are all kinds of---

12 BENNY WAMPLER: I'd say the banking rules and
13 regulations would take precedent over the---

14 MARK SWARTZ: Yeah, but you're the owner of that
15 account. At least for the...you know, the Estate is. So, I
16 would think that---

17 BENNY WAMPLER: We'll look into that. I don't...
18 again, I just can't answer that. I just don't think that---

19 MAX LEWIS: I wouldn't either.

20 BENNY WAMPLER: ---that is a (inaudible) type of
21 information.

22 MARK SWARTZ: I don't know.

23 BENNY WAMPLER: I don't know either.

24 DENNIS GARBIS: Tom has something to say there.

25 MAX LEWIS: I wouldn't think so.

1 TOM FULMER: Mr. Chairman, I just want to mention
2 here and I know it's been going back and forth. In regards
3 to the escrow agent, I'm hearing things now that the escrow
4 agent should be doing. Well, the Board order requires monies
5 to be deposited with the escrow agent. It doesn't say
6 deducts, taxes, all that information. It doesn't say that.
7 The operator sends it in. If you...if the Board members also
8 remember that within the Board order it states what the lease
9 would require to be done. The conditions of the lease and
10 that...all of that is spelled out in that Board order. So,
11 if you're asking the escrow agent, do they need to keep track
12 of accounting the deduct and then you're going into a
13 different arena than what the escrow agent is normally used
14 for under the escrow contract that we have with them.

15 MAX LEWIS: He's not asking for that. He's asking
16 for the operators to do it.

17 DENNIS GARRIS: Yeah, the operator. I think that's
18 my motion.

19 BENNY WAMPLER: I have a motion. Do we have a
20 second?

21 MAX LEWIS: I second it.

22 BENNY WAMPLER: Motion is seconded. Any further
23 discussion?

24 BILL HARRIS: Can we hear their motion again? Just
25 that he be given that information or what?

1 DENNIS GARBIS: Correct, from the operator.

2 MARK SWARTZ: Now, are you talking about copies of
3 what I've given you this morning? I mean, if that's what
4 you're doing...the most cost effective thing for us might to
5 be to go to the escrow agent and copy their file. I mean, is
6 that...I need to have some feeling for what we're being asked
7 to provide.

8 DENNIS GARBIS: I think what you're being asked to
9 provide is the historical data---.

10 TOM MULLINS: Applicable to us.

11 DENNIS GARBIS: ---that's applicable to Garden
12 Reality and MacRae and---.

13 TOM MULLINS: Based upon our interest.

14 DENNIS GARBIS: ---how far...going back to the
15 inception?

16 TOM MULLINS: Going back to the initial deposit
17 until the time that the escrow account closed. I mean,
18 during that period.

19 DENNIS GARBIS: I don't think that's unreasonable.

20 MARK SWARTZ: Well, we've already provided a...I
21 can't...I'm not going to be arguing, you know, motion.

22 BENNY WAMPLER: Any further discussion?

23 (No audible response.)

24 BENNY WAMPLER: All in favor signify be saying yes.

25 (All signify by yes.)

1 BENNY WAMPLER: Opposed, say no.
2 (No audible response.)
3 BENNY WAMPLER: You have unanimous approval. We'll
4 take a five (5) minute break.
5 (OFF RECORD - BREAK)
6 BENNY WAMPLER: The next item on the agenda the
7 Board will consider a petition from Buchanan Production
8 Company for pooling coalbed methane unit identified as S-17
9 an Oakwood Coalbed Methane Gas Bill. This is docket number
10 VGOB 98/01/20-0617. We'd ask the parties that wish to
11 address the Board in this matter to come forward at this time
12 and identify yourself, please.
13 JIM KISER: Mr. Chairman, if I might, with
14 permission of Mr. Swartz who has items number three (3) and
15 four (4), I'm Jim Kiser here on behalf of Columbia Natural
16 Resources. We had a...we had filed a petition for a location
17 exception as matter number five (5) today. And due to the
18 serious illness within the family of one our witnesses who
19 is...because of that illness was unable to be here today to
20 testify, we would ask that VGOB docket number 98/01/20-0618,
21 be continued until the February hearing.
22 BENNY WAMPLER: Anyone here today in the audience
23 that came to testify in this case?
24 (No audible response.)
25 BENNY WAMPLER: Any objection from the Board to

1 continuation?

2 MAX LEWIS: No.

3 BENNY WAMPLER: The matter will be continued.

4 JIM KISER: Thank you.

5 BENNY WAMPLER: Thank you. Mr. Swartz, your case
6 has been called.

7 MARK SWARTZ: Which one is this?

8 BENNY WAMPLER: You're duly recognized. 0617.
9 Item number three (3) on the docket, S-17.

10 MARK SWARTZ: Okay. I'm Mark Swartz appearing for
11 Buchanan Production Company and Les Arrington is here with me
12 as well. This unit, the S-117 unit, is...it may be the first
13 Beatrice seal gob unit that we've been here with. If you'll
14 look at the...what would be the last page of the application,
15 you all may recall that...that you created a provisional
16 sealed gob unit in the Beatrice Mine and allowed three
17 hundred and fifty thousand (350,000) MCF of production per
18 eighty (80) acre unit. I'm not sure when this...when that
19 order was entered, but it was, you know, fairly recently, and
20 essentially what we're here on is a pooling for one of the
21 units within the Beatrice Sealed Gob Unit. So, it's a little
22 different than what we typically see, but it tracks that
23 sealed gob situation. Les, you want to be sworn.

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LESLIE K. ARRINGTON

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

DIRECT EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Want to state your name for us, please?

A. Leslie K. Arrington.

Q. Who do you work for?

A. Consol.

Q. Did you draft the Notice of Hearing and sign the Notice of Hearing and the application with regard to the pooling hearing that we're here on today?

A. Yes, I did.

Q. Did you mail, as required by statute?

A. Yes, I did.

Q. What did you mail?

A. A Notice of Hearing as submitted.

Q. Okay. And when did you do that mailing?

A. On December the 12th, 1997.

Q. And have you submitted proof or certification with regard to mailing?

A. Yes, we have.

Q. To Mr. Fulmer's Office?

A. Yes, I have.

Q. Okay. And the cards are in the file?

1 A. Yes, they are.

2 Q. Okay.

3 A. Listed under Exhibit Number One.

4 Q. In the packet today?

5 A. Yes.

6 Q. Okay. Three of the people signed for the

7 mail and one was returned?

8 A. That's correct.

9 Q. Did you also publish?

10 A. Yes, we did, in the Bluefield Daily

11 Telegraph on December 19th, 1997.

12 Q. And you pub...okay, and did you publish the

13 Notice of Hearing and the Exhibit A, which shows the unit?

14 A. Yes, we did.

15 Q. This is an application to pool a unit within

16 the Beatrice Sealed Gob, is it not?

17 A. That's correct, it is.

18 Q. What is the amount of production that

19 the...that is allocated to each of the units within the

20 sealed gob area?

21 A. Three...three hundred and fifty (350) MMCF.

22 Q. Okay. Who are the...are the...are the

23 respondents identified here on Exhibit B3?

24 A. Yes, they are.

25 Q. And their interest in the...in the...in the

1 entire eighty (80) acre unit is identified as a percentage
2 unit, is it not?

3 A. Yes, it is.

4 Q. Okay. Who is the applicant here?

5 A. The applicant is Buchanan Production
6 Company.

7 Q. Okay. Is Buchanan Production Company a
8 Virginia General Partnership?

9 A. Yes, it is.

10 Q. All right. It's two partners, Appalachian
11 Operators and Appalachian Methane?

12 A. Yes, it is.

13 Q. And are both...and is Buch...both of those
14 partners indirect wholly owned subsidiaries of MCN
15 Corporation?

16 A. Yes, it is.

17 Q. Is BPC authorized or Buchanan Production
18 authorized to do business in Virginia?

19 A. Yes, it is.

20 Q. Who are you asking be appointed the
21 designated operator?

22 A. Consol, Inc.

23 Q. Okay. And is Consol, Inc. a Delaware
24 Corporation?

25 A. Yes, it is.

1 B3?

2 A. Yes, they were.

3 Q. Did you wish to add any respondents or
4 dismiss any respondents today?

5 A. No, we do not.

6 Q. If you look at Exhibit A, page two (2) in
7 your application, that sets forth the percentage of interest
8 to be pooled by this application, does it not?

9 A. Yes, it does.

10 Q. And what type of interest and what
11 percentage does the application seek to pool?

12 A. It seeks to pool 3.2092 percent of the oil
13 and gas interest.

14 Q. And what percent does the applicant own or
15 lease of the coal and oil and gas interest?

16 A. One hundred percent of the coal interest and
17 96.7908 percent of the oil and gas interest.

18 Q. Is there a well cost estimate included?

19 A. Yes, it is.

20 Q. And what's that estimate?

21 A. That cost is one hundred and twenty-three
22 thousand three hundred and fifty-eight dollars and ninety
23 cents (\$123,358.90).

24 Q. This is an eighty (80) acre unit?

25 A. Yes, it is.

1 Q. Is it authorized to do business in the
2 Commonwealth and does it...has it registered with the DMME
3 and does it have a blanket bond on file?

4 A. Yes, it does.

5 Q. Has the management committee of Buchanan
6 Production Company delegated certain responsibilities to
7 Consol, Inc.?

8 A. Yes, it has, and those are listed as
9 Exhibits Two, Three and Four.

10 Q. In the packets?

11 A. Yes, it is.

12 Q. Okay. And Consol has specified certain
13 people with regard to the delegation of authority?

14 A. Yes, it has. It's listed Claude Morgan as
15 General Manager, William Gillenwater as Land Manager and
16 Randy Albert as Regulatory Manager.

17 Q. And the respondent's are identified in
18 Notice of Hearing?

19 A. Yes, they are.

20 Q. There are five (5) of them?

21 A. That's correct, there are.

22 Q. Okay. And their...you had addresses for all
23 of them?

24 A. Yes, we did.

25 Q. And their addresses were listed in Exhibit

1 Q. Have you also attached an Exhibit E, which
2 sets forth the various interests that need to be escrowed?

3 A. Yes, we have.

4 Q. And it gives the names of the people
5 whose...who are claimants and it gives their potential
6 percentage in the unit, does it not?

7 A. Yes, it does.

8 Q. With regard to people that you have
9 successfully leased in this unit, could you tell the Board
10 what the lease terms have been?

11 A. Yes, that's one-eighth (1/8) royalty of a
12 dollar per acre with a five (5) year term.

13 Q. Okay. And this is a eighty (80) acre unit?

14 A. Yes, it is.

15 Q. It's a sealed gob unit?

16 A. In the Beatrice mine.

17 Q. How many wells?

18 A. In this unit, we have one well.

19 Q. Okay. And again, we're talking about
20 production from below the Tiller Seam out of the Beatrice
21 Seal Gob?

22 A. That's correct, it is.

23 Q. Just...have you...have you and your...have
24 you attached a draft proposed order?

25 A. Yes, we have as Exhibit F, I believe.

1 Q. And essentially this draft order Exhibit F
2 is the...is a clone, for a lack of a better term, of the
3 standard order that Sandra Riggs uses?

4 A. Yes, it is.

5 Q. And it has been tailored to specifically
6 pertain to this unit?

7 A. Yes, it has.

8 Q. The only other question I would ask you with
9 regard to that, at the top of the second page, which would
10 part of a continuation of paragraph seven (7), there is a
11 discussion with regard to how production and cost would be
12 allocated, correct?

13 A. That's correct.

14 Q. And essentially this sealed gob unit gets
15 allocated very similar to a frac unit?

16 A. That's correct, it will.

17 Q. Okay. So, the allocation procedure would be
18 to take the acres in any given tract that are within the
19 eighty (80) acre unit, divide that by eighty (80) and that is
20 the interest in unit percentage, correct?

21 A. That's correct, it is.

22 Q. And that would be how the royalty would be
23 allocated?

24 A. That's correct.

25 Q. And that's the type of calculation you've

1 used in generating those figures for Exhibit B3 and Exhibit
2 E?

3 A. Yes.

4 Q. Is the plan of development here with regard
5 to this sealed gob unit a reasonable plan to develop within
6 the allocation formula prescribed by the Board for the
7 Beatrice Sealed Gob?

8 A. Yes, it is.

9 Q. Okay. And will it contribute to the
10 protection of correlative rights of the owners in this
11 particular unit less in the likelihood of both physical waste
12 and economic waste?

13 A. Yes, it would.

14 Q. That's all I have.

15 BENNY WAMPLER: Tell me again...let's discuss again
16 paragraph seven (7).

17 MARK SWARTZ: Okay.

18 BENNY WAMPLER: We've got a sealed gob unit that
19 you're treating as what?

20 MARK SWARTZ: The Beatrice Sealed Gob is a pretty
21 good (inaudible) area. And what...what you did was...I
22 forget what the number was, but we broke it into eighty (80)
23 acre units.

24 BENNY WAMPLER: Right.

25 MARK SWARTZ: And so the paragraph seven (7) in the

1 Exhibit F order essentially says that gas from any well in an
2 eighty (80) acre unit within the Beatrice Sealed Gob shall be
3 allocated only to that eighty (80) acre unit unless there's a
4 combination and we're not asking for a combination today.
5 So, until the three hundred and fifty thousand (350,000)
6 ...the three hundred fifty (350) MMCF is produced, the
7 allocation from the well will only be to this eighty (80)
8 acre unit and it will be...each owner's percentage will be
9 the acres in their tract that are within the eighty (80) acre
10 unit divided by eighty (80), and that's what that paragraph
11 is intended to say.

12 BENNY WAMPLER: And then what would happen after
13 you obtained three hundred and fifty (350)?

14 MARK SWARTZ: You'd have to shut in the well or
15 move to combine, and in March we'll be back here combining.
16 Not necessarily with this unit, but we have some that we want
17 to piggyback. The Board's order, which I think I saw Tom
18 sharing with you guys, there's a provision toward the tail
19 end of it that allows---

20 TOM FULMER: Here, I have a copy.

21 MARK SWARTZ: Well, if you...let me just pick up
22 one point as well. If you go to page four (4)...little e on
23 page four (4), that sets forth the allowable production of
24 three hundred fifty (350) MMCF, which we've been talking
25 about. But it also goes on to provide for the allocation,

1 which is essentially repeated in the draft order, the method
2 of allocation. And then f...little f on page four (4), which
3 goes over onto the next page, talks about an ability to
4 produce in excessive of allowable production, but you have to
5 come back to the Board and the Board has to authorize the
6 combination of two or more units to produce from a well. The
7 theory being that if you've got a well done and you can
8 produce multiple units, why spend more money. But you've
9 required us to come back. Now, this S-17 that we're in front
10 of you today is not a combination. It's a start up sort
11 of...sort of unit.

12 BENNY WAMPLER: Let me also take you to your
13 Exhibit that you handed out today. I guess to Mr. Arrington.
14 Mr. Karris is not a...currently the Executive Vice President
15 of Consol, Incorporated, is that correct?

16 LESLIE K. ARRINGTON: That's correct, he is not.

17 BENNY WAMPLER: Will these documents...I guess, I'm
18 asking a legal question now, need to be updated for this to
19 be a valid resolution and---?

20 MARK SWARTZ: I don't think so. I mean, as long as
21 he was the Vice President at the time. In fact, I would give
22 you a definite no, they do not. I mean, he had to be...have
23 the authority to do it when he did it, but...now, if Claude
24 Morgan or Gill Gillenwater, Randy Albert were no longer
25 around...since they've got ongoing responsibilities, I

1 think we would need to update that, but their...all three of
2 those fellows are around and still in those positions.

3 BENNY WAMPLER: There are no other changes in here
4 that you're aware of other than Mr. Karris that have occurred
5 since this?

6 MARK SWARTZ: Mr. Smith is still there.
7 McDonald---?

8 LESLIE K. ARRINGTON: Yes.

9 MARK SWARTZ: ---is still there.

10 BENNY WAMPLER: The purpose of including the draft
11 order response---.

12 MARK SWARTZ: Well, when you...when the Board
13 amended the regulations, you permitted people to go to much
14 shorter forms and you'll notice that the Notice of Hearing
15 and the application are much more simple and straight forward
16 then they used to be. But there's a due process requirement,
17 I mean, in addition to the Board's requirements that people
18 be apprised of what relief you're seeking and the reason I've
19 attached the Board order is it is the most specific
20 indication that I can think of what we are actually seeking
21 in terms of relief and are likely to get. So, if people look
22 at that, that's...rather than me summarizing it, we've just
23 attached it. And also, the theory is that we will be giving
24 Sandra Riggs this order on a disk with the blanks plugged in
25 and we may make less mistakes going forward from a word

1 processing standpoint. That's not necessarily guaranteed,
2 but it's the theory.

3 BENNY WAMPLER: Other questions for the members of
4 the Board?

5 BILL HARRIS: Mr. Chairman, I do have one about the
6 well. This shows the drilling of a new well. Is this
7 nor...well, there's nothing normal about this. So, I
8 guess...I just wondered what...are there wells in place
9 already that can be used or converted?

10 LESLIE K. ARRINGTON: Yes. Yes, there are. This
11 is a conversion well.

12 BILL HARRIS: So, this is a conversion.
13 What...what...now, I'm not sure what happens when you do a
14 conversion. No, I'm sorry. I guess, I'm not asking that.
15 You know, I guess I...when I look down the AFE I see drilling
16 expenses and that sort of thing. I guess, that's...is that
17 the way that the amounts are allocated or what? I guess---

18 LESLIE K. ARRINGTON: That's...the total cost for
19 the well is at the bottom there. That will be the cost that
20 will be allocated and I believe that was a hundred and
21 twenty-three thousand (123,000).

22 BILL HARRIS: Yeah. I'm not sure what I'm trying
23 to ask.

24 MAX LEWIS: That's a coalbed methane converted into
25 a provisional well.

1 BILL HARRIS: Oh, oh, okay. Okay. Yeah, it just
2 hit me what's happening. Okay. Yes. Sorry. That's why you
3 smiled. I know. I just...okay. Yeah.

4 BENNY WAMPLER: Other questions?

5 (No audible response.)

6 BENNY WAMPLER: You got anything further, Mr.
7 Swartz?

8 MARK SWARTZ: If the application were approved, we
9 would request that we be...that the...that the motion allow
10 us to produce it today as opposed to waiting for the paper
11 work since it's apparently hooked up and waiting for...just
12 waiting for a Board order?

13 (Review information.)

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

16 (No audible response.)

17 BENNY WAMPLER: Do we have a motion?

18 DENNIS GARRIS: I make a motion for approval.

19 BILL HARRIS: I second it.

20 BENNY WAMPLER: The motion has been seconded. Any
21 further discussion?

22 (No audible response.)

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

24 (All indicate in the affirmative.)

25 BENNY WAMPLER: Opposed, say no.

1 (No audible response.)

2 BENNY WAMPLER: You have approval. The next item
3 on the agenda is a petition from Buchanan Production Company
4 for pooling of coalbed methane unit identified as Y-19 in the
5 Oakwood Coalbed Methane Gas Bill. This is docket number VGOB
6 90-10/10-0031-01. We'd ask the parties that wish to address
7 the Board in this matter to come forward at this time.

8 MARK SWARTZ: I'm Mark Swartz appearing for Buchanan
9 Production Company and also Les Arrington. And I think this
10 Y-9 not 19, or I've got it wrong. Let me look here...its Y-
11 9.

12 TOM FULMER: It was corrected later. I mean, it
13 was Y-9.

14 BENNY WAMPLER: Y-9?

15 MARK SWARTZ: Okay. You may have misspoken, Mr.
16 Chairman. But I thought you said 19.

17 BENNY WAMPLER: I did say 19. I was reading from
18 the---

19 DENNIS GARBIS: Yeah, it says 19 on the summary.

20 BENNY WAMPLER: ---on our summary.

21 TOM FULMER: It was corrected though to Y-9 when it
22 was proposed.

23 MARK SWARTZ: Okay.

24 BENNY WAMPLER: So, I'll correct that to
25 methane...coalbed methane unit identified as Y-9. Sorry

1 about that.

2 MARK SWARTZ: This...just by way of introduction,
3 you'll notice the docket number here is 1990 and this unit
4 was originally pooled in 1990. And the reason we're back is
5 between 1990 and today, everyone that we pooled in 1990, we
6 have obtained a lease from. So, it kind of became a
7 voluntary unit. In the course of continuing to do title work
8 and so forth in the area and on this unit, Consol discovered
9 that they had missed a half (1/2) acre tract and the Minerva
10 Osborne heirs who we haven't identified but there is a half
11 (1/2) acre tract out there that was not pooled in 1990 and
12 that we do not have a lease from and so we need to go back
13 here to pool that interest and that's why you see 1990 docket
14 number and it was necessary to come back. And Les and I will
15 talk about that. But I just wanted to sort of focus you on
16 why we are here today.

17 BENNY WAMPLER: So, you had not identified them?

18 MARK SWARTZ: Initially, no, we had not.

19

20 LESLIE K. ARRINGTON

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

23 DIRECT EXAMINATION

24 QUESTIONS BY MR. SWARTZ:

25 Q. Les, you're still under oath. You need to

1 state your name.

2 A. Leslie K. Arrington.

3 Q. Who do you work for?

4 A. Consol, Inc.

5 Q. Did you participate in drafting the notice
6 and application and did you in fact sign them with regard to
7 this hearing today?

8 A. Yes, I have.

9 Q. Okay. Could you explain to the Board what
10 happened with regard to the initial pooling and leasing and
11 why we are here today?

12 A. Yes. Originally, as the unit was drafted,
13 there was some outstanding interest which was pooled in 1990.
14 It was only pooled as an Oakwood I. And then as we acquired
15 Oxy and continued to do our mapping and so forth and leasing,
16 we have leased all the interests that was outstanding and
17 forced pooled at that time. However, as we drafted our
18 property in doing title work, we did discover that there was
19 a half (1/2) acre interest that was missed. And that's the
20 reason we're here today.

21 Q. And the application today is for Oakwood II
22 as well?

23 A. That's correct, it is.

24 Q. Okay. So, that is also a change?

25 A. Yes.

1 Q. And in the yellow booklet that you've passed
2 out today, did you include as really the last page a map of
3 the long wall panels affecting this unit?

4 A. Yes, I did. And I had two copies of the
5 document that was submitted to the Board and one of my copies
6 had the map and one did not. So, I wasn't sure whether the
7 map was included in the...in it or not. So, I did include it
8 in the exhibits today.

9 Q. Okay. Who is the applicant with regard to
10 this application?

11 A. The applicant is Buchanan Production.

12 Q. And Buchanan Production is a Virginia
13 General Partnership?

14 A. Yes, it is.

15 Q. Its partners are Appalachian Operators and
16 Appalachian Methane and both of those companies are wholly
17 owned indirect subsidiaries of MMCN Corporation?

18 A. Yes, they are.

19 Q. Is BPC authorized to do business in
20 Virginia?

21 A. Yes, it is.

22 Q. Who are you asking be appointed designated
23 op...well, who are you asking to be redesignated as the
24 operator?

25 A. Consol, Inc.

1 Q. Okay. And Consol is a Delaware Corporation?

2 A. That's correct.

3 Q. Authorized to do business in the
4 Commonwealth, registered with the DMME and it has a blanket
5 bond on file?

6 A. Yes, it does.

7 Q. And again, we have the delegation of
8 responsibility by Buchanan Production to Consol, Inc.?

9 A. That's correct and that's listed in the
10 exhibits as Exhibit Two, Three and Four with Claude Morgan as
11 General Manager, William Gillenwater as Land Manager and
12 Randy Albert as Regulatory Manager.

13 Q. And the respondents here are who or what?

14 A. It was a Minerva Osborne heirs.

15 Q. And you've identified the heirship, but I
16 take it have not been able to as yet identified the heirs?

17 A. No, sir, it is quite some time ago.

18 Q. That the heirship was created?

19 A. That's correct.

20 Q. Okay. Is there an ongoing effort to try
21 and...try and locate these people?

22 A. Yes, it is.

23 Q. Do you want...but at the present time their
24 addresses are...their identities are unknown and their
25 addresses are unknown?

1 A. That's correct.

2 Q. So, we are going to need an escrow just for
3 the unknown issue as well?

4 A. That's correct.

5 Q. Do you wish to add anybody or subtract
6 anybody as a respondent?

7 A. Well, we'd like to have dismissed the
8 original persons pooled, which are Mary Lester, Edith
9 Singleton, Audrey Boyd Perkins, Clayton Perkins and Ed Boyd.

10 Q. And why are you asking that they be
11 dismissed?

12 A. The interest that was originally pooled has
13 been leased.

14 Q. Okay. So, they've executed leases?

15 A. Uh-huh, yes.

16 Q. Obviously, there was no mailing here?

17 A. That's correct, there was not.

18 Q. Okay. Was there publication?

19 A. Yes, there was. December the 19th, I
20 believe...19th, 1997 in the Bluefield Daily telegraph.

21 Q. And that's behind tab one in the book of
22 exhibits?

23 A. Yes, it is.

24 Q. And you published the notice and the map?

25 A. Yes, we did.

1 Q. What interest does this application seek to
2 pool if you'd refer to Exhibit A, page two (2)?

3 A. Its 0.625 percent of the oil and gas
4 interest.

5 Q. Okay. And what percentage of the coal and
6 oil and gas interest does the applicant own, lease or
7 otherwise control?

8 A. Okay. That was one hundred percent of the
9 coal and 99.375 percent of the oil and gas.

10 Q. And what are the lease terms that you've
11 offered to the people that you've rented from or leased from
12 since the pooling in 1990 up till today?

13 A. For a coalbed methane lease it's a dollar
14 per acre, with a one-eighth (1/8) royalty, five (5) year
15 term.

16 Q. And would you recommend those terms to the
17 Board for the Order?

18 A. Yes, we do.

19 Q. Y-9 is an eighty (80) acre unit?

20 A. Yes, it is.

21 Q. It's over the top of a portion of the VP-8
22 mine, is that correct?

23 A. Yes, it is.

24 Q. And is the expectation here that it would be
25 producing active gob in the future under Oakwood II?

1 A. Yes, it is.

2 Q. And does it lie over two longwall panels?

3 A. Yes, the six (6) and seven (7) west panels
4 of the VP-8 mine.

5 Q. Okay. Does...is there an Exhibit G-1
6 probably the very last page of the application?

7 A. Yes, it is.

8 Q. And does that allocate...does that set forth
9 the allocation percentage and then allocate costs to the Y-9
10 unit?

11 A. Yes, it does. Out of the six (6) west panel
12 its 7.39159 percent of the production, and in seven (7) west
13 its 11.59219 percent.

14 Q. Okay. And the total costs allocated to the
15 Y-9 unit?

16 A. Two hundred and sixty-eight thousand thirty-
17 seven dollars and fifty-seven cents (\$268,037.57).

18 Q. You've attached two AFE's or estimated cost
19 Exhibit C, is correct?

20 A. Yes, we have.

21 Q. Have you...all right. Have you tried to
22 average those for purposes of Exhibit G?

23 A. Yes, we did. We averaged the six (6) west
24 panel with a average depth of eighteen hundred and thirty-
25 three (1833) feet at a cost of a hundred and ninety-three

1 thousand nine hundred and sixty-eight dollars and thirty
2 cents (\$193,968.30) and for the seven (7) west panel, average
3 depth of two thousand and seventy-two (2072) feet would cost
4 of two hundred and three thousand six hundred and sixty-six
5 dollars and sixty cents (\$203,666.60).

6 Q. So, the two estimated well costs are
7 actually averages of the wells collectively in the two
8 panels?

9 A. Yes, they are.

10 Q. Okay. And those wells are depicted in
11 this...on this Exhibit?

12 A. On the Exhibit G. Uh-huh.

13 Q. Okay. The...for purposes of...is this...is
14 this a fee interest or is there going to be...once these
15 people, if and when these people are identified, is there
16 going to be...required to be in escrow?

17 A. Yes, it is.

18 Q. Okay. And so you submitted an Exhibit E?

19 A. Yes, we have.

20 Q. So, this would be in...this would be a
21 conflict escrow interest?

22 A. Yes, it would.

23 Q. Okay. And it sets forth the interest in the
24 unit and the interest in the two panels?

25 A. Yes, it does.

1 Q. For purposes of royalty for production, the
2 division of interest in six (6) west and seven (7) west would
3 control?

4 A. Yes.

5 Q. And for purposes of allocation of costs, the
6 interest in the unit would control?

7 A. Yes.

8 Q. And again, we've submitted an Exhibit F or a
9 draft order?

10 A. Yes, we have.

11 Q. And just to indicate, I would try tailor
12 this...if you'll look at paragraph five (5), dismissals, have
13 we in fact listed the people that we've asked be dismissed?

14 A. Yes, we have.

15 Q. That's all I have.

16 BENNY WAMPLER: Questions from members of the
17 Board?

18 (No audible response.)

19 BENNY WAMPLER: The Osborne heirs are in the
20 2D...tract 2D, is that right? I'm looking at Exhibit E. Did
21 it affect any of the other percentages?

22 LESLIE K. ARRINGTON: Yes, they were under tract
23 2D. No. I don't...maybe I'm not quite understanding the
24 question first.

25 BENNY WAMPLER: All of these percentages on Exhibit

1 E are recalculated?

2 LESLIE K. ARRINGTON: Yes, they are.

3 BENNY WAMPLER: Okay.

4 MARK SWARTZ: But the...all of the people whose
5 percentages change except for the people we're pooling here,
6 you have leases from?

7 LESLIE K. ARRINGTON: That's correct, we do.

8 MARK SWARTZ: Just...I just wanted it on the
9 record.

10 BENNY WAMPLER: That's fine. Any other questions
11 from members of the Board?

12 (No audible response.)

13 BENNY WAMPLER: Do you have anything further?

14 MARK SWARTZ: No. Oh, except for, as long as this
15 unit is in production, I would like it effective today, if we
16 could, if it's approved.

17 BENNY WAMPLER: You see any problems with that, Mr.
18 Fulmer?

19 TOM FULMER: No.

20 BENNY WAMPLER: Do we have a motion?

21 BILL HARRIS: Mr. Chairman, I move we grant the
22 application as presented.

23 BENNY WAMPLER: Second?

24 DENNIS GARBIS: I'll second.

25 BENNY WAMPLER: Motion to second. Any further

1 discussion?

2 (No audible response.)

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

4 (All indicate in the affirmative.)

5 BENNY WAMPLER: Opposed, say no.

6 (No audible response.)

7 BENNY WAMPLER: You have approval. Thank you.

8 MARK SWARTZ: Thank you all.

9 BENNY WAMPLER: That concludes the items for
10 today's agenda. Thank you all. Thank you very much.

11

12

13 STATE OF VIRGINIA,

14 COUNTY OF BUCHANAN, to-wit:

15 I, SONYA MICHELLE BROWN, Court Reporter and Notary
16 Public for the State of Virginia, do hereby certify that the
17 foregoing public hearing was recorded by me on a tape
18 recording machine and later transcribed under my supervision.

19 Given under my hand and seal on this the 16th day
20 of February, 1998.

21

Sonya Michelle Brown
NOTARY PUBLIC

22

23 My commission expires August 31, 2001

24

25