

1 VIRGINIA:

2 IN THE COUNTY OF WASHINGTON

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8 JANUARY 20, 1997

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13 BOARD MEETING

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BENNY WAMPLER: We'll go ahead and get started.
Good morning. My name is Benny Wampler. I'm Deputy Director for the Virginia Department of Mines, Minerals and Energy and Chairman of the Gas and Oil Board. I'd ask the Board members to introduce themselves, starting with Mr. Garbis.

DENNIS GARBIS: My name is Dennis Garbis. I'm from Fairfax County. I'm a public member.

MAX LEWIS: Max Lewis from Buchanan County, a public member.

BILL HARRIS: I'm Bill Harris, Wise County public member.

MR. GILLIAM: Richard Gilliam of Abingdon, Coal Industry Representative.

MR. FULMER: Tom Fulmer, Department of Mines, Minerals and Energy.

BENNY WAMPLER: Sheila, did you want to wait or do you want to go on?

SHEILA McCLANAHAN: Whatever you want to do is fine?

BENNY WAMPLER: Okay. Do you need to wait for the others to---?

SHEILA McCLANAHAN: Not really.

1 BENNY WAMPLER: Okay. First item on today's
2 agenda, the Board will receive information and comments from
3 the Buchanan County Citizens Action Group regarding it's
4 organization and current activities, and Sheila McClanahan
5 will be presenting to the Board. Welcome.

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

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

23 The problems mainly that we were trying to discuss

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1 with the Senator and Delegate Stump were destruction to
2 private property; risks associated with the development of
3 the coalbed methane to our health, water loss, water damage,
4 and resource waste. Upon their suggestions, we formed
5 committees and we tours in the county, which I think Mr.
6 Wampler was able to go on a couple of those. Basically, what
7 they did was go to the areas that they felt needed to be
8 reviewed and we did have a couple meetings thereafter with
9 Mr. Wampler and Mr. Fulmer and various members from the
10 corporations that were involved in the production and
11 development of a coalbed methane in the county.

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

23 We do feel like that we need to improve the quality

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1 of our life in the county and we do feel that it is the
2 obligation and responsibility of a corporation and our state
3 agencies to help us accomplish that.

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

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1 do have a law in place that says coal mining activities when
2 it's lost due to that, they have to replace it. So, that's
3 what we're looking at.

4 As far as property damage, these people have to pay
5 taxes on their property. The law states, if I can read it
6 here is that, excuse me, under the general provision, Article
7 I of the Act, 45361.3 Construction, we're supposed to
8 recognize the use of the surface for gas or oil development
9 shall be only that which is reasonably necessary to obtain
10 oil and gas. And I realize that reasonably is probably part
11 of the problem there, that what's reasonable to us may not be
12 reasonable to them and what's reasonable to them may not be
13 reasonable to us. So, that in itself is a problem. It also
14 says that this act is supposed to protect the citizens and
15 the environment of the Commonwealth from public safety and
16 environmental risk that are associated with this. And we
17 feel that within this group we need to ask for more
18 enforcement regarding this statement in the act.

19 So, if anyone has any questions right now.

20 BENNY WAMPLER: Any questions from members of the
21 Board?

22 BILL HARRIS: Is there something that we can do and
23 I know in recognition I'm...personally, I'm happy to see

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1 people getting together. You know, I think there are...if
2 you look back at the history of this, there have been times
3 when there has been lots of problems and times when maybe
4 things were done without thought or whatever, or sometimes
5 with thought, but I think...you realize our position too,
6 that there are---

7 SHEILA McCLANAHAN: Yes.

8 BILL HARRIS: ---you know, in what we're trying to
9 do is to enforce the legislation and I think...but we aren't
10 without, I think, an understanding of the problem and
11 sympathy toward the problem...I may be speaking personally,
12 but anyway...but I think the Board feels the same way. But a
13 lot of times our hands are tied in some of the kinds of
14 things that are the issues. But I am really happy to see the
15 group form and I don't know what kind of support we can give
16 or information we can give or whatever.

17 SHEILA McCLANAHAN: I think one of the goals that
18 we would like to reach, is a working a relationship with the
19 Board as far as the committees that the Board does has some
20 type of control over reviewing the regulations and that type
21 of thing.

22 BILL HARRIS: Yeah.

23 SHEILA McCLANAHAN: Because I think that public
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1 input is essential in that process.

2 BILL HARRIS: Well, we invite that, you know,
3 that's in, you know, during...there are public comment
4 periods.

5 SHEILA McCLANAHAN: Right.

6 BILL HARRIS: The state has a standard.

7 SHEILA McCLANAHAN: Right.

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

9 SHEILA McCLANAHAN: I understand that, but---

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

12 SHEILA McCLANAHAN: Right. I understand that, but
13 really what I'm speaking about is actually being a part of
14 that committee, because it's wonderful that we can take a
15 part in that process by giving you our comments, but that's
16 kind of---

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

19 SHEILA McCLANAHAN: ---after the fact.

20 BILL HARRIS: Yeah, I understand.

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

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1 However, the thing that's repeated several times in the gas
2 act is that you all have the ability to promulgate
3 regulations and that is basically really to enforce the
4 existing laws, and the laws that we do have are good up to a
5 certain point. Some of them are vague, but we do see that
6 there is room for improvements as far as enforcing what we
7 already have in place. And we are willing to, like I said,
8 work on the committee to initiate some changes that would
9 hopefully prevent furthering the problem in some way.

10 We're basically really not asking anything from
11 you, other than consideration to be a part of the committees
12 and to share with us the information that you do have.
13 Communication is a big problem. I think everyone would agree
14 on that. The reason for me being here today is just to let
15 you know that we have formed this group and that we do plan
16 to be active in this...the process...future processes of law
17 making and regulation review and that type of thing. We're
18 not advocates of stopping the industry. We realize that it
19 is needed. We would just like to have a little bit more
20 involvement in the process itself.

21 And we do have...the problems that I stated earlier
22 that everyone has discussed publicly, we do have pictures and
23 video tapes if any member would like to view those. All you

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1 have to do is call one of the numbers on that paper. We'll
2 send them to you for you to keep if you would like. We can
3 arrange tours for you, if you want to come on your own time
4 or whatever...at your convenience we can arrange that for
5 you.

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

15 BENNY WAMPLER: Any other comments?

16 MAX LEWIS: Yeah. I think that this Board here as
17 a committee...as a special committee that ought to go look at
18 these places at the time that they were damaged, not one year
19 or six months after the fact, because there's a lot of
20 improvements by vegetation and things that you don't see six
21 months or a year after this happened that you do see at the
22 time that it occurred.

23 SHEILA McCLANAHAN: I agree with that and we do

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1 have documentation at the time it did happen, but I also
2 agree that by going and looking at it now you might not see
3 actually what we're speaking of.

4 MAX LEWIS: Well, I understand that.

5 BENNY WAMPLER: Dennis, go ahead.

6 DENNIS GARBIS: Are there any outstanding cases in
7 particularly that you're working with or that you feel or
8 your committee feels that need to be addressed that have not
9 been addressed by whichever mining or coal company or gas
10 company?

11 SHEILA McCLANAHAN: We have various...numerous
12 individual cases and then group cases, but I think as a
13 whole...the community as a whole has tried to initially work
14 with the corporations, the companies that they're involved
15 with. As I said, a lot of this...education is a really big
16 problem and the people...initially when all of this happens,
17 they really don't know where to go, who to talk to, what the
18 laws are, what their rights are. They do feel that they've
19 been, you know, mistreated in some way, but through the
20 process of just researching all of this and trying to educate
21 ourselves, we've tried to work with various agencies and the
22 corporations. We're working with Delegate Stump in various
23 different areas and we hope that will alleviate some of the
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1 problems that we're having or help steer us in a resolution
2 to the problems. But as far as specific cases, if that is
3 what you're asking about, I don't think that, you know, it
4 would be appropriate for me to say anything. I mean, actual
5 names or what's going on or that type of thing.

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

18 SHEILA McCLANAHAN: Right.

19 DENNIS GARBIS: And then there's somewhere in
20 between. So, I, you know, I think maybe just as thinking out
21 loud here, maybe that would be way to...at least if there's
22 some very definite specific cases that are...that people like
23 they've been wronged, then maybe that's something that could
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1 be worked on, you know, one by one to take care of them and
2 then, you know, the major grievances go away.

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

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

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1 themselves so we can see who they are?

2 SHEILA McCLANAHAN: Let me turn around and
3 see...nope, they're not. I'm the sole person.

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

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

21 BENNY WAMPLER: Thank you. Thank you very much.
22 The next item on the Board's agenda is that the Board will
23 consider request for further hearings filed by Penn Stuart on
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1 behalf of Hugh MacRae Land Trust and Garden Reality
2 Corporation for dockets number VGOB 97/04/15-0576, VGOB
3 97/04/15-0577 and VGOB 97/04/15-0578. We'd ask the parties
4 that wish to address the Board in this matter to come forward
5 at this time. Mr. Mullins.

6 TOM MULLINS: How are you today?

7 BENNY WAMPLER: Fine, thank you.

8 TOM MULLINS: Penn Stuart had a conflict and had to
9 withdraw.

10 MARK SWARTZ: I'm Mark Swartz.

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

12 BENNY WAMPLER: Yes, please.

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

17 MARK SWARTZ: I'm Mark Swartz. I'm representing...I
18 guess, Buchanan Production and Pocahontas Gas Partnership as
19 well.

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

23 TOM MULLINS: Sure.

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1 BENNY WAMPLER: ---at this point.

2 TOM MULLINS: Judge, there's...of course, a lot of
3 this went on before I got involved in the case, but there was
4 an apparent agreement as to the distribution of escrowed
5 funds and the Board entered an order consistent with that for
6 the distribution of the escrow funds. Basically, the Order
7 provided that the funds were to be split between, and I'm
8 going to call the Hugh MacRae Trust, the Trust, and Garden
9 Reality, Garden, between those two entities. And as part and
10 parcel of that Order, there was a requirement on the Board in
11 paragraph six (6) of all the orders and there's multiple
12 orders and I guess let me back up, I'm hoping that all these
13 are consolidated and we're...we don't need to...I don't think
14 the Board would want to hear all this information multiple
15 times. So, if they're not all together, I'd ask that they be
16 consolidated so we can deal with it all at once.

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

18 TOM MULLINS: Yes, sir.

19 BENNY WAMPLER: Any objections?

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

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

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1 TOM MULLINS: All right, sir.

2 BENNY WAMPLER: Without objection. The other items
3 are VGOB 97/05/20-0580, and VGOB 97/05/20-0581, and VGOB 97-
4 05/20-0582.

5 TOM MULLINS: All right, sir. Basically...I mean,
6 to cut to the chase and trying get to the nuts and bolts of
7 the problem is the accounting. How you...how the Trust and
8 how Garden can determine, I guess, what's what. We have, and
9 I think the Board should have as part of the administrative
10 file, and if you don't, I've made copies of the information
11 that's been submitted by both the operator and by the escrow
12 agent. The information, if you don't have it, I have copies.
13 Does anybody need copies of the information?

14 (NO AUDIBLE RESPONSE.)

15 (Tom Mullins distributes copies to the Board.)

16 TOM MULLINS: And as the Board can see, basically
17 the information is money in and money out. And I think as
18 the Board can appreciate, there is more information that
19 would be required for the trustees of the Trust and for the
20 Trustees of Garden Reality to be able to determine what the
21 money represents. In other words, what the volume of
22 production was? What the price for the gas was that was
23 produced, when it was produced? All that kind of information

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1 hasn't been provided.

2 Now, I know from my discussions with Mr. Swartz
3 that...I believe that information was provided to the escrow
4 agent at the time of the deposit. I'll let him advise the
5 Board to that, but basically what the Trust, and what Garden
6 would like to see is the same kind of information that's
7 provided to royalty owners when they get their checks
8 directly from the operator, I mean as part and parcel of
9 distribution of the royalties, and that's information about
10 the production, the period of production, the price paid by
11 MCF or whatever the increment, whatever method they're paying
12 for the gas, the volume of production, what deductions were
13 made, you know, transportation charges, taxes, or whatever
14 the deductions were, any adjustments made for whatever
15 reasons, to the figures from the beginning to the end, I mean
16 current. We need that kind of information on what the well
17 has done. And I don't know that there's any dispute about
18 that.

19 Also, from the escrow agent, we'd like to have...
20 and I'm not saying that they didn't do that in part, and
21 maybe the Board can look at that and see if they feel like
22 they've completed it, but the date of the deposits from the
23 escrow agent, the amount of the deposits that were made, what
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1 interest was earned, what date the interest was posted to the
2 account, the total amount deposited and what fees or
3 deductions the escrow agent made from those particular funds.

4 And last, I guess, we'd be asking that if the Board
5 were to entertain a request that some time period be given
6 for that information to be given to us. I don't know that
7 there's...I mean, from my perspective, it looks like that's
8 the kind of information that the Board would be wanting
9 royalty owners to receive and shared with the royalty owners
10 and with the Board.

11 I have one of the trustees of the trust here with
12 me today if the Board wants that formally introduced as
13 evidence. I don't know that it has to be. It's already in
14 the administrative file because it was filed by the parties.
15 If you would like him to say that's what they got and this
16 is what they need, he will say that, but I just said it.

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

19 TOM MULLINS: Not unless the Board thinks it's
20 necessary.

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

22 MARK SWARTZ: Both of these parties have leases with
23 my clients, and those leases cover the payment of royalties,

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1 in some instances cover escrow and there are conflicts, cover
2 deductions and so forth. Hugh MacRae is one of seventeen
3 plaintiffs in a law suit in Federal Court in Abingdon, which
4 essentially is a complaint about deductions. Both of these
5 lessors receive in the ordinary course, it's my
6 understanding, of royalty statements on other wells that are
7 at issue here.

8 The history of this collection of cases is that
9 Garden and Hugh MacRae entered into an agreement to split
10 funds that had been escrowed, you know, which is one of the
11 things we were hoping people would to avoid litigation and
12 facilitate the payment of the escrowed funds. Essentially,
13 my clients appeared at those hearings that were requesting an
14 order from the Board to direct the escrow agent to pay money
15 out, and we were just kind of monitoring to make sure what
16 was happening because my clients, you know, are the
17 applicants and Consol would be the operator of these units.
18 And an order was entered and it directed Consol, the unit
19 operator, to file an accounting, and it directed the bank to
20 file an accounting. Quite frankly, we interpreted the
21 direction to file an accounting as a request for us to tell
22 you so that you could compare what we thought the total
23 funds...obviously, we couldn't track interest because we

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1 weren't investing the money, but what we thought the total
2 funds that had been paid in with regard to the units in
3 question so you could compare that gross figure to what the
4 escrow agent was telling you they had on hand, plus interest,
5 so that you could make that comparison. And that's what we
6 did.

7 The information that you can see that Mr. Mullins
8 has given you this morning is pretty straight forward stuff
9 coming from my clients. Basically, there's an entry...there
10 are two of these spreadsheets that are similar. And
11 basically, it tracks...gives you the unit number, the first
12 two on this particular page, the SLW-7 and 8 units are
13 Pocahontas Gas partnership units, and the R-25 unit, I think,
14 is a Buchanan Production unit. It gives the unit ID, talks
15 ...identifies the tract that the money has been escrowed with
16 regard to, gives you the board orders, co-owner, oil and gas
17 owner, gives you their percentage of the escrow account,
18 tells you when the payments are calculated through and then
19 gives you a gross amount, which can be compared to the
20 information that the escrow agent was providing as an
21 accounting. Toward the end...well, these continue because I
22 think we went back and gave a further accounting to a
23 somewhat later date. But, you know, our impression at that

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1 point in time was you wanted a total figure so you could
2 compare it to the escrow. And, you know, what we do in the
3 ordinary course when we send money to the escrow agent is we
4 send them, you know, a pretty specific accounting of what
5 happened, and the reason for the check. Here, to just give
6 you two examples of a check and a back up information that
7 gets sent to the escrow agent or a royalty owner in the
8 ordinary course.

9 The purpose of these two examples is to show you,
10 you know, what the escrow agent, and what royalty owners
11 receive when royalty checks are cut. If you take the check
12 for two thousand dollars (\$2,000), which has more
13 attachments...I mean, they're similar, and then turn to the
14 back up, the first couple of columns are columns that are
15 identification numbers with regard to the accounts
16 internally, but if you come over to the fourth column, it
17 gives the unit number, B-19 is the unit. It gives the
18 production month. So, you've got September of '97, October
19 of '97. It gives the gross MCF, the gross MMBTU, which is
20 often how the price is calculated, the MMBTU price at the
21 various points in time, the owner decimal, meaning the
22 fraction that this particular owner has in ownership interest
23 in the unit production, allocates the MCF to the owner, the

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

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

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22 This Board required Garden and Hugh MacRae to tell
23 us in advance of the hearing and we got a letter...I got a

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

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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

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1 alleging that we are deducting things that we're not supposed
2 to be deducting. But...and ultimately, we will get some kind
3 of decision in federal court vis a vis, them as lessors of
4 ours in relation to that. But the information is provided,
5 it's available. We feel like we've done our job in that
6 regard.

7 BENNY WAMPLER: Mr. Mullins.

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

21 I think the issue is how this Board wants to insure
22 that this information gets to royalty owners when a...either
23 a voluntary agreement or a resolution of the ownership,

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1 conflicting issue in question is had concerning a particular
2 well. The way I see it, I don't think it ought to be the
3 royalty owner's burden to try to go and gather the
4 information. They ought to be provided the information. It
5 ought to be given to them as it would be with anybody else's
6 ...I mean, if they're the owner of the well, they're the
7 owner of the well...or the gas, excuse me, the royalty
8 interest in the well and they ought to get the information,
9 and that's just the way I see it. I don't think anybody is
10 questioning or debating the type of information. I think
11 everybody is in agreement as to the type of information.
12 It's just the mechanism to get the information, if I'm
13 reading everything correctly.

14 BENNY WAMPLER: Are you saying...I don't mean to
15 interrupt you.

16 TOM MULLINS: Sure.

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

19 TOM MULLINS: Well, I think it depends...every...and
20 I agree with Mark, there's basic information that different
21 companies report and different formats. I don't think
22 there's any dispute about that. I mean, we have examples
23 here from Conoco, which is a little bit different format than
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1 that, but I think it's the same basic type of information.
2 That's what everybody is looking for, just some mechanism so
3 you can relate back production, price, volume, deductions,
4 time periods; and on the escrow side, the interest, when it
5 was posted, what deductions were made. Not questioning the
6 amount of the deductions, that's a separate issue for a
7 separate forum if Garden chooses to do so in the future, and
8 Hugh MacRae is doing it right now. We just need a mechanism
9 to get the information. We don't care whether the operator
10 provides it to us. We don't care if the escrow agent
11 provides it to us, but somebody ought to provide it to us.

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

14 TOM MULLINS: He cannot.

15 MAX LEWIS: ---the well operator?

16 TOM MULLINS: He cannot. In this particular
17 instance---.

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

19 TOM MULLINS: In this particular instance, I believe
20 that, based on Mark's presentation, that that has happened in
21 this case. Whether it happens in every case, I don't know.
22 And the Board may want to consider that in its resolution of
23 the issue because this issue may govern future disputes of

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1 this nature as to how...what mechanism to employ.

2 BILL HARRIS: Mr. Chairman?

3 BENNY WAMPLER: Mr. Harris.

4 BILL HARRIS: I know we have an agreement with the
5 escrow agents, the banks or financial institutions. I don't
6 have that in front of me, but is there normally a procedure
7 where this is provided to the recipients of the checks? I
8 know it's...so there's no policy in that or regulation that
9 says they have to provide that. There obviously must be one
10 for the companies to provide that to the escrow agent.

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

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

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

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

23 BENNY WAMPLER: Following Board order, the parties

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1 are known, you know, once we come in here. I mean, that
2 doesn't prevent other parties from coming forward at some
3 time, but that will always be subject to some order.

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

5 BENNY WAMPLER: So you'll have all the parties
6 identified.

7 BILL HARRIS: ---if the companies were to provide
8 that to the parties, how...when they send the money to the
9 bank, how do they know at that time who else to send copies
10 of that to? I guess that was my question. Would they know
11 at that time?

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

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

17 MARK SWARTZ: But this is the check. I mean, when
18 we generate a check, what I've given you is what comes out of
19 the computer. Okay. And we treat the bank as if it were a
20 royalty owner. I mean, that's the way it defaults. So
21 they...you know, if you compare the two examples I gave you,
22 one is a check made out to Hugh MacRae and one is made to the
23 escrow agent, and they're pretty much the same, the details

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1 the same. So, when the computer systems generate a royalty
2 check, they generate this kind of detail, but you know, it's
3 not set up to send...you know, the programming. And I think,
4 you know, to the extent, and I don't know because I haven't
5 talked to the escrow agent. They may have a file on every
6 one of these units that has all of this detail in it that
7 would be pretty easy for a claimant...because the problem is
8 you're using the term royalty owner, and you know, that's
9 okay, but I mean, you know, we've got a bunch of...in some
10 units you really have a lot of people who may or may not---

11 BILL HARRIS: Oh, I understand. I understand the
12 problem.

13 MARK SWARTZ: ---wind up, you know, with a piece of
14 the money and, you know, I think that there's certain...we're
15 providing the information on an ongoing basis. I mean, some
16 of these units date back to '93, '95. You know, as far as I
17 know, and I'm not guessing or reaching here, we are providing
18 this kind of information on an ongoing monthly basis to the
19 escrow agent. Hopefully, and I think we need to find out,
20 they are filing this in some kind of orderly fashion so that
21 if the kind of question that is being asked today comes up,
22 you know, there's a mechanism, you can go review the file or
23 you can have copies made or whatever, which I don't think is

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1 an enormous burden. I would resist, however, ordering
2 operators to send potentially large numbers of copies of this
3 information, you know, when they've got a royalty system that
4 is really not programmed to accomplish this. I mean, as long
5 as we've got some depository for this information, I would
6 hope that would satisfy.

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

12 TOM FULMER: Mr. Chairman, can I just interject
13 something here?

14 BENNY WAMPLER: Mr. Fulmer.

15 TOM FULMER: The escrow agent is a entity which has
16 been designated by the Board through a contract. They
17 receive funds according to the Board order. Now, they also
18 received that Board order and what comes into it. The
19 companies are those people who provide the money, or the
20 operator who provides monies to them, provides them with the
21 information, but you've got to realize that until such time
22 it is determined who that money belongs to, these are dormant
23 files. They have no meaning until such time that it's

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1 decided on who is going to get the money. Then at that point
2 in time, you're going to have to have the accounting to
3 occur. This is a situation where the parties have agreed to
4 disperse a certain percentage of it, but you have one account
5 for one order. And we're talking about several orders for
6 which a party is part of that one order. It's not the whole
7 order, it's part of that order. So they have a certain
8 percentage.

9 BILL HARRIS: Well, I guess my concern is, I think
10 if I had an interest in this and that's...I don't know if
11 that's the right word to use. If I were a claimant, then I
12 would want to be able to track money from when it was
13 deposited...from when it was deposited until I received it.
14 Even before that, if it's generated...if it's generated, then
15 I would like to see...well, how much was taken out. I mean
16 just out of curiosity. And I don't know if I'm entitled to
17 that legally.

18 MAX LEWIS: Yeah.

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

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

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

16 BILL HARRIS: Oh, yeah, I understand.

17 MARK SWARTZ: And that break out occurs by virtue of
18 a Board order. In the Board orders that you guys enter has
19 Exhibit B-3 typically, and lists the percentages, the
20 interest in the unit for each of the claimants and if they're
21 long wall panels, as we've seen that, there's a further break
22 out. So if you take the...and then there's an Exhibit E,
23 which is the conflicting claims escrow which we typically

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1 give you, and if you take those Exhibits and the amount of
2 the check, you can sit down and figure out, you know, what
3 percentage is attributable of any given check to any given
4 interest. I mean, you can do that, but you're not going to
5 get that off of a royalty check. You're also going to have
6 ...a royalty check would be payable to the escrow. You're
7 also going to have to go to the Board, which is part of the
8 problem here. I mean, this is not transparent, simple stuff
9 for the average guy to walk over. I mean, you know, I think
10 it's not rocket science. I think we can explain it to
11 people, but you have to correlate different information to
12 make it work.

13 BENNY WAMPLER: Mr. Mullins.

14 MAX LEWIS: Let me say something.

15 BENNY WAMPLER: Go ahead, Mr. Lewis.

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

19 TOM MULLINS: These wells, we have not. These
20 wells that are pending, the issues before the Board, I guess,
21 today on the wells we have, we have not. No, sir. I think
22 there's two issues that are out there right now that the
23 Board has been talking about. These particular wells are

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1 wells that an agreement has been reached. Once an agreement
2 has been reached, I think that there's a different standard
3 that ought to be applied. Once an agreement as to the
4 distribution of funds has been reached, or a resolution as to
5 the distribution of funds has been reached, then I think the
6 standard ought to be that either the operator or the escrow
7 agent...again, we don't care which, ought to provide the
8 information on the history of the well. I think that ought
9 to be done.

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

15 MAX LEWIS: I doubt that.

16 BILL HARRIS: What do they need to print this
17 stuff?

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

21 BILL HARRIS: You're assuming that there's some
22 mechanism in law in place that requires them to retain it to
23 be able to produce it.

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

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

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

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

15 DENNIS GARBIS: I agree.

16 MAX LEWIS: I'd say they---

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

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

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

22 BILL HARRIS: You say that they do?

23 TOM MULLINS: They would have to keep---

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1 BILL HARRIS: I don't know.

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

4 BILL HARRIS: Yes. Once---.

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

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

9 MAX LEWIS: Yeah, we know that.

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

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

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

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

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

20 TOM MULLINS: Let me give you an example. There's
21 a five (5) year statute of limitations on lawsuit concerning
22 written contracts, and if a payment is not made pursuant to a
23 voluntary lease agreement, let's just assume a voluntary

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1 lease agreement, you've got five (5) years to back up and sue
2 on a payment made four (4) years and eleven (11) months ago.

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

10 MARK SWARTZ: I guess my response to that is, I
11 don't appreciate somebody coming in here, major league people
12 with law firms that can afford to hire law firms, if they can
13 afford to hire law firms, with lawyers on the Hugh MacRae
14 Trust, when this order was entered in 1993, some of the
15 orders in 1995, suggesting that we have to go back and
16 recalculate our records, especially when I believe...you
17 know, when we are providing this information on a current
18 basis. I mean, if the Board's escrow agent is not keeping
19 this information, they need to keep it. I assume that they
20 are from what I'm hearing from Mr. Fulmer and from what I
21 know about banks, I assume...and trust departments, I assume
22 they're keeping it. I mean, if this information is available
23 on a current basis as the checks are paid, and is available

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1 for inspection by people who have a reason to look at this
2 information, that ought to satisfy this. And I don't think
3 that, you know, we need to be sitting here three (3), four
4 (4), five (5), six (6) years down the road suggesting that we
5 need to go back, pay...you know, pay the additional computer
6 cost of retrieving all this from our data base. Yeah, it's
7 in our data base. I mean, we have gas volumes in our data
8 base going back years. We've got deduction volumes going
9 back years, but you know, when we're generating this on a
10 monthly basis in the ordinary course of our business, sending
11 it to somebody who, presumably, is retaining it, I don't
12 think we need to be reinventing the wheel to get this
13 information in these people's hands. I mean, if they come
14 back here and say we've been to the escrow agent and they
15 don't have any of this, we've got a problem and we need to
16 talk about it. I'm not suggesting that, you know, they're
17 not entitled to information in some form. But, you know,
18 until that happens, I'm not sure why we're here today.

19 TOM MULLINS: Well, there's a Board Order and that's
20 how we have to be able to get our money and that's how we
21 have to be able to get our accounting. This Board ordered an
22 accounting and that's what the orders say. And the question
23 is, what is that accounting? I don't think there's any

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1 dispute as to what the contents of the accounting is to be.
2 The question has come down, who is to provide the accounting,
3 and that's the separate issue. When you're talking about a
4 predetermination, I guess an escrow account that nobody has
5 reached an agreement on, the Board may want to treat that
6 differently and have the...put some burdens upon the
7 claimants. At that point, they are claimants as opposed to
8 royalty owners, put the burden on the claimants to look for
9 that information. They ought to be entitled to it if they
10 look for it, but they may have to request it. But on the
11 other hand, once you've gone past that and you are now,
12 either by agreement or by court order, a royalty owner, then
13 I think there's a different set of standards that ought to
14 apply. Now, whether this Board wants to order the owners to
15 redo that information, whether that's going to be owners or
16 not, with all the computer spreadsheets and all the
17 accounting programs out there, I personally don't think it
18 would be that onerous. Whether this Board wants to do it
19 that way for the history of the well, or order the escrow
20 agent to retain these records and produce that to the then
21 royalty owners at that time, that's up to the Board to
22 determine. We just need, and would like to have, the
23 information from somebody.

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

3 TOM MULLINS: The only thing that we have done...
4 that I have done...I can't represent what Penn Stuart did
5 because I wasn't involved in the case at that point in time,
6 but I don't think they did anything else either, was to file
7 this request for hearing before the Board, for the Board to
8 resolve the issue. Again, we think that it ought to be part
9 and parcel, once you become a royalty owner, you're entitled
10 to the information. You ought not have to go every month and
11 ask for it, or whatever the mechanism might would be.

12 BILL HARRIS: I need to be quiet, I guess. But I
13 agree with you. I think you really...again, if I were a
14 royalty...I don't know...if I had money due me, I would want
15 to know the history of that. It just seems to me that once
16 that is given to the...and I'm not sure what the mechanism
17 would be, but once that is given to the escrow agent, if
18 that's retained, the history of the money beyond that is
19 interest, investments, whatever, and only the escrow agent
20 has that. So the escrow agent, to me, the way I feel about
21 it, would be the place that you would end up because you
22 would have both the history of the money before the money got
23 there and the history of the money after it got there, and I

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1 would think if you were a royalty owner, or due the money,
2 that you would like that information. Whether it's going to
3 be useful and meaningful, I don't know, considering the
4 number of people involved.

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

7 BILL HARRIS: Is decided, yes.

8 MARK SWARTZ: I'm sorry, but I really don't think
9 that the Board needs to be, or wants to, or should make a
10 distinction between the kind of information that claimants
11 are entitled to and royalty owners are entitled to. I mean,
12 I think that you need to have good accounting information,
13 period, and it needs to be contemporaneously provided to the
14 royalty owner...to the escrow agent and the royalty owners.
15 I don't see that the rules of the game change now when
16 somebody is now an owner as opposed to a claimant. I mean,
17 the escrow agent needs to have this kind of information on an
18 ongoing basis under all Board orders that it's holding funds,
19 period, whether or not there is a resolution as to who owns
20 it or who doesn't own it. I just don't draw any distinction
21 at all, like Mr. Mullins. I don't think the rules change
22 when somebody is now identified as an owner. I think the
23 information needs to be there so that there is a paper trail

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1 for what the production was, what the deductions were, what
2 the value was, and then beyond that, what was the investment,
3 what was the earnings, what were the costs that were deducted
4 by the escrow agent, bring all that forward and I think it
5 needs to be all in one place. I'm hoping...I'm hoping, from
6 what we know about banks, that we can assume that's there.
7 We need to find out for sure.

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

10 TOM MULLINS: There's one other issue, what
11 obligation and what reliability can we place upon the escrow
12 agent to maintain that fund. And what...if the owner gives
13 us information and the owner gives us wrong information, our
14 cause of action is back against the owner...or excuse me, the
15 operator. I'm saying owner, I meant operator. But if the
16 escrow agent gives us the wrong information, there's a buffer
17 in there. They may have misfiled it, they may have misplaced
18 it, there may be a problem. That's just the way I'm looking
19 at it. The Board is free to do what it feels like is
20 appropriate.

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

23 BENNY WAMPLER: Mr. Garbis.

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

4 MARK SWARTZ: Yes.

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

13 MARK SWARTZ: Well, it's one unit. Okay. And I
14 would have to look at the pooling application and the order
15 on B-19 to tell you how many. I could tell from that how
16 many owners were involved. I don't...I can't tell from this
17 sheet.

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

22 MARK SWARTZ: Oh, that one?

23 DENNIS GARBIS: Yeah.

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

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

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

6 DENNIS GARBIS: Right.

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

10 DENNIS GARBIS: How many different...how many
11 different...what percentages are...okay.

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

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

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

17 DENNIS GARBIS: And then we're talking about gross
18 MBTU.

19 MARK SWARTZ: Right, which you'll notice is slightly
20 less.

21 DENNIS GARBIS: Okay. And then the price, the owner
22 decimal. So, in other words, he doesn't own very much,
23 whoever this person just happened to be. Then we start
24

1 talking about the owner in other words---.

2 BILL HARRIS: Well---.

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

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

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

8 DENNIS GARBIS: As it changes through the column.

9 MARK SWARTZ: Right.

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

13 MARK SWARTZ: That's roughly ten (10) percent.
14 You'll notice, it's roughly ten (10) percent.

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

16 MARK SWARTZ: Right.

17 DENNIS GARBIS: Is that dollars?

18 MARK SWARTZ: Yes. No, no, I'm sorry. That's
19 volume.

20 DENNIS GARBIS: That's volume?

21 MARK SWARTZ: That's gas volume.

22 DENNIS GARBIS: Same thing with MBTU?

23 MARK SWARTZ: Correct.

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1 DENNIS GARBIS: Now where it gets to transportation
2 deduction---.

3 MARK SWARTZ: Right.

4 DENNIS GARBIS: Well, is that dollars, or what is
5 that?

6 MARK SWARTZ: That would be dollars and cents.

7 DENNIS GARBIS: That's dollars and cents. And then
8 the taxes. Now on this transportation deduction, is that a
9 set percentage for every month? In other words, if I were an
10 owner, and I wanted to run the numbers, which I like to run
11 the numbers, would I find that number would be the same
12 percentage every month?

13 MARK SWARTZ: In a year, yes. You mean the
14 deductions?

15 DENNIS GARBIS: Right.

16 MARK SWARTZ: Now the tax deduction varies because
17 it's driven by volume and price.

18 DENNIS GARBIS: Production?

19 MAX LEWIS: Right.

20 MARK SWARTZ: It's driven by volume and price.

21 MAX LEWIS: Right.

22 MARK SWARTZ: It's a percentage.

23 MAX LEWIS: Yeah.

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

4 MAX LEWIS: Goes up and down.

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

8 MAX LEWIS: Yeah.

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

12 BILL HARRIS: Is this because of yearly contracts?

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

14 DENNIS GARBIS: Okay. Following through---

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

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

21 MARK SWARTZ: Correct.

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

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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---

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1 MAX LEWIS: Fifteen million eight hundred and
2 twenty---.

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

6 MAX LEWIS: Right.

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

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

13 MARK SWARTZ: Right.

14 DENNIS GARBIS: But again, I think if you make it so
15 that one would be able to track it pretty easily, and
16 particularly, I guess, in the case of an escrow agent, you
17 have a whole number of these, I mean it would...it just makes
18 things a little bit clearer. And I think you're...at least
19 in my opinion, I think our job is to make sure that it is
20 clear to the average person on the street. He gets the form
21 over here and he can look at it...obviously...it might take
22 the form of this one over here where we only have two lines
23 so I could be able to see that I got a check for twenty-two
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1 dollars and sixty cents (\$22.60), but when you run through
2 the numbers...see, because you got...and what really stuck
3 out in my mind, you know, I'm looking at owner MCF and you're
4 talking about volume, volume, and then all of a sudden I
5 switch to dollars and I get twenty-two dollars and sixty
6 cents (\$22.60). I think that needs to be put in there and
7 make it clearer. Now one could say, I don't have enough room
8 on my spreadsheet, but you know, you go into Excel or Access,
9 or something like that, you could make the...you could make
10 it work, I'm sure...if you've got somebody there that's smart
11 on a computer. I mean, from my standpoint, I think your form
12 is deficient, or someone's form, your owner's form, your
13 client's form, somebody's form is deficient. Just to make
14 it, again, more clearer. And I don't know if that's the
15 question or part of where you're going with that. But again,
16 any other deductions, that's always been in my mind how this
17 thing progressed. If I were an owner, that's what I would
18 want to know, and I'd be pretty adamant about it.

19 MARK SWARTZ: The deduction numbers are reported on
20 here, and to the extent that owners want further back up,
21 believe me, we've had plenty of discussions with that over
22 many years. And I think...I think the point of a royalty
23 statement is to set forth in writing the outline of what

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1 you've done. In other words, what did you produce, what did
2 you sell it for, what did you take off the top and what's the
3 royalty. And to give people the basic information so that
4 they can say I don't like a transportation deduction of that
5 size. You need to defend it further so they can ask a
6 question. I don't have a problem with that. And believe me,
7 we get enough of those questions. I can't argue with you
8 that you need to do a multiplication here to get a gross
9 starting value.

10 DENNIS GARBIS: Sure, as a courtesy. As a courtesy
11 to your clients.

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

23 BENNY WAMPLER: Other question or comments from
24

1 members of the Board?

2 TOM MULLINS: The only thing about this, I guess,
3 example submitted...I'm not representing myself as a
4 sophisticated accountant, because I'm not. I'm a lawyer, I'm
5 not an accountant, but what are the numbers 904, 906, and 919
6 mean. I mean, I don't know what that code represents. And
7 it may be just something that I'm ignorant of, but I just
8 don't know.

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

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

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

23 TOM MULLINS: But now we're one step removed. We're

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1 back from the bank. Conoco...I mean, this is really not
2 before the Board, but if you want to look at an example of
3 their royalty statement, it's different, and it has explained
4 all that information down here. It's got the gross value on
5 it that you were talking about. Again, what I'm interested
6 in is getting this information for these wells to my clients.

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

9 TOM MULLINS: In my mind it is. I'll be...I mean, I
10 didn't make copies. This is just something that one of my
11 clients gave me. This is a Garden Reality statement, and I
12 only have one copy.

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

15 TOM MULLINS: Full circle.

16 BILL HARRIS: Well, yeah. But we're...it sounds
17 like we're bashing forms here and I'm not sure that's what
18 the intent was. But I think the real question is, you know,
19 should...and I don't know that we can answer it as a Board.
20 I'm not sure what our powers are, but should this information
21 be supplied, and I think it should, but what form it should
22 take, I don't know. Who provides it, I don't know. I mean,
23 I can suggest, but I'm not...I mean, I'm just one person.

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1 But about the only thing about the information provided on,
2 you know, without you having to sit down and calculate the
3 totals yourself, about the only thing I think we could do at
4 this point is make suggestions to the companies as to the
5 kind of information. I mean, you know, we didn't...I don't
6 know up front when companies first start sending this
7 information to the escrow agent, I'm sure that there was an
8 accounting. I don't know how that was defined and I'm sure
9 that companies...I would like to think that companies do the
10 best they can to be in compliance with that, so they're
11 providing information that's asked for. I don't know what
12 we've asked for.

13 TOM MULLINS: The only other problem with letting
14 the escrow agent provide us, just Xerox these, as you can see
15 from this example, there's multiple claimants. Is there a
16 way to relate all this back to the agreement, or to the order
17 that's entered by the Court? Who can do that? I don't think
18 the escrow agent can do that. I think the only people...and
19 the company is going to have to...the operator is going to
20 have to do that for future payments anyway. That's something
21 ...that's a hoop that they are going to have to go through.

22 BENNY WAMPLER: You know, I think...I just think the
23 Board to the point that we're asked to disburse a check for

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1 whatever, twenty-two dollars and thirty-six cents (\$22.36),
2 just to keep it simple, and say that the Board has
3 asked...this twenty-two dollars and sixty cent (\$22.60)
4 example here, is asked to...we have an agreement of the
5 parties and ask to disburse that. I don't envision the Board
6 making that disbursement based on the bank records without a
7 certification from the operator that they are in fact in
8 agreement with that. I also...and having said that, I also
9 don't know whether or not any claimant can walk into the
10 escrow agent and ask to see all the records pertaining to
11 that claimant, and be able to get them. I don't know that
12 they can show them in that format. In fact, I would presume,
13 without checking, and we will check, that they could not show
14 them, because they would...in order to do that, they would
15 have to show them, you know, every...just the file. And I
16 don't think they could show them the file. Maybe they could,
17 I don't know. But I'm typically not used to having access to
18 everybody else's financial information, and I don't believe
19 in this case that someone off the street can walk in...and
20 I'm not downing, I'm just saying some claimant could walk in
21 and have access to, and be able to conduct these
22 calculations.

23 BILL HARRIS: The only way I could see this would

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1 work is there's just some master...since everybody is on the
2 Internet now, some master accounting schedule that's up there
3 and all of this is just uploaded from the companies, and the
4 banks take it off, and it's always on line and it's always
5 available, you use your code, get in and find it out for
6 those particular ones. I don't know, unless there's a common
7 accounting---

8 TOM MULLINS: I think there is something common.
9 Once the order is entered, the monies won't be going to the
10 escrow agent again. The operator has to start making those
11 distributions. He's got to enter all that into his system.
12 I don't think it would be much of a calculation at all to
13 have that formula apply to the prior numbers to give you an
14 accounting of what you've just got from the escrow agent, and
15 then from then on you'll get the regular statement. But we
16 need the information in a useable form. And I think once
17 we're determined to be the owner of the royalty, either by
18 agreement or by order, we're entitled to it.

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

22 TOM MULLINS: That's a claimant.

23 BILL HARRIS: ---goes to us.

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1 TOM MULLINS: That's right.

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

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

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

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

11 DENNIS GARBIS: Where's the question? Where's the
12 question? We kind of went around in circles here. I kind of
13 lost track.

14 TOM MULLINS: My question, I guess, is the same.
15 For these wells, we would like to have, for the Hugh MacRae
16 Trust and for Garden Realty, the history of the well and the
17 royalty attributable to them pursuant to the Board order with
18 all the information that we've discussed, with all the
19 deduction information, the volume information, period
20 information.

21 BILL HARRIS: Essentially this?

22 TOM MULLINS: Essentially that as long as it's in...
23 yes, essentially that, or the Conoco format. I personally

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1 think that's a better format, but let's not argue about
2 formats.

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

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

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

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1 from the bank with regard to what the earnings and costs, you
2 know, attributable to this account were, so you know what the
3 earnings component was. And then from the Board order, you
4 have the decimal that relates to this particular claimant,
5 which is reported, you know, here, and you can figure that
6 out. Now, admittedly some math here, but I don't know...you
7 know when you've got---

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

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

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

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

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

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

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

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1 the Board ought insure that they get it.

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

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

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

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

14 MAX LEWIS: Operator.

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

20 MARK SWARTZ: Its already happened here---.

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

22 MARK SWARTZ: ---I mean, this Board order required
23 us as of a date to paying them. One of these checks is an R-

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1 25 check that we've paid...we're paying to them.

2 MR. HARRIS: Right. And---

3 MARK SWARTZ: So, we stopped escrowing the funds.
4 We're sending them the money. They're are getting this kind
5 of detail.

6 BILL HARRIS: Right. Okay.

7 MARK SWARTZ: That happens just automatically.
8 When they become the royalty owner for that decimal and it
9 gets paid to them, they get the backup we're looking at and I
10 gave you an example of what's happened.

11 BILL HARRIS: And what you'll need in the interim
12 is the problem.

13 TOM MULLINS: Correct, that's the question. From
14 the time the escrow started to the time the escrow ends,
15 based on the Board order.

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

20 TOM MULLINS: Correct.

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

22 DENNIS GARBIS: Excuse me.

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

2 BILL HARRIS: Uh-huh, yeah.

3 BENNY WAMPLER: Dennis.

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

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1 information needs to be available to them, and I think that's
2 just a part of doing business. So, basically I agree with
3 Mr. Mullins, I think that he needs to...I guess I'm making a
4 motion to that effect, that he be granted what he would like
5 to have.

6 BILL HARRIS: Who gives the information?

7 MAX LEWIS: The operators.

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

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

11 DENNIS GARBIS: Ultimately, the operator. The
12 operator has to...he has that information. The operator has
13 to have it. I mean, this is also kind of a straw, I can get
14 beaten down on this. But I mean, if a lot of the stuff is a
15 matter of public record, isn't it also available under the
16 Freedom of Information Act?

17 BILL HARRIS: Now, does that cover that?

18 MAX LEWIS: I doubt it does.

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

20 MAX LEWIS: I don't think it would be. I think it
21 would be to the operators, but I meant the royalty, but other
22 than that I don't think---

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

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

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

6 MAX LEWIS: I wouldn't.

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

9 TOM MULLINS: The volumes may be as reported, but
10 not any of the other charges or anything else.

11 BENNY WAMPLER: Anything reported in Mr. Fulmer's
12 office is clearly---.

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

15 MAX LEWIS: No, not some of that.

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

18 MAX LEWIS: I wouldn't---.

19 TOM MULLINS: There are banking regulations...there
20 are all kinds of---.

21 BENNY WAMPLER: I'd say the banking rules and
22 regulations would take precedent over the---.

23 MARK SWARTZ: Yeah, but you're the owner of that
24

1 account. At least for the...you know, the Estate is. So, I
2 would think that---

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

5 MAX LEWIS: I wouldn't either.

6 BENNY WAMPLER: ---that is a (inaudible) type of
7 information.

8 MARK SWARTZ: I don't know.

9 BENNY WAMPLER: I don't know either.

10 DENNIS GARBIS: Tom has something to say there.

11 MAX LEWIS: I wouldn't think so.

12 TOM FULMER: Mr. Chairman, I just want to mention
13 here and I know it's been going back and forth. In regards
14 to the escrow agent, I'm hearing things now that the escrow
15 agent should be doing. Well, the Board order requires monies
16 to be deposited with the escrow agent. It doesn't say
17 deducts, taxes, all that information. It doesn't say that.
18 The operator sends it in. If you...if the Board members also
19 remember that within the Board order it states what the lease
20 would require to be done. The conditions of the lease and
21 that...all of that is spelled out in that Board order. So,
22 if you're asking the escrow agent, do they need to keep track
23 of accounting the deduct and then you're going into a

24

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1 different arena than what the escrow agent is normally used
2 for under the escrow contract that we have with them.

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

5 DENNIS GARBIS: Yeah, the operator. I think that's
6 my motion.

7 BENNY WAMPLER: I have a motion. Do we have a
8 second?

9 MAX LEWIS: I second it.

10 BENNY WAMPLER: Motion is seconded. Any further
11 discussion?

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

14 DENNIS GARBIS: Correct, from the operator.

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

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

23 TOM MULLINS: Applicable to us.

24

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1 DENNIS GARBIS: ---that's applicable to Garden
2 Reality and MacRae and---.

3 TOM MULLINS: Based upon our interest.

4 DENNIS GARBIS: ---how far...going back to the
5 inception?

6 TOM MULLINS: Going back to the initial deposit
7 until the time that the escrow account closed. I mean,
8 during that period.

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

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

12 BENNY WAMPLER: Any further discussion?

13 (No audible response.)

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

15 (All signify by yes.)

16 BENNY WAMPLER: Opposed, say no.

17 (No audible response.)

18 BENNY WAMPLER: You have unanimous approval. We'll
19 take a five (5) minute break.

20 (OFF RECORD - BREAK)

21 BENNY WAMPLER: The next item on the agenda the
22 Board will consider a petition from Buchanan Production
23 Company for pooling coalbed methane unit identified as S-17

24

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1 an Oakwood Coalbed Methane Gas Bill. This is docket number
2 VGOB 98/01/20-0617. We'd ask the parties that wish to
3 address the Board in this matter to come forward at this time
4 and identify yourself, please.

5 JIM KISER: Mr. Chairman, if I might, with
6 permission of Mr. Swartz who has items number three (3) and
7 four (4), I'm Jim Kiser here on behalf of Columbia Natural
8 Resources. We had a...we had filed a petition for a location
9 exception as matter number five (5) today. And due to the
10 serious illness within the family of one our witnesses who
11 is...because of that illness was unable to be here today to
12 testify, we would ask that VGOB docket number 98/01/20-0618,
13 be continued until the February hearing.

14 BENNY WAMPLER: Anyone here today in the audience
15 that came to testify in this case?

16 (No audible response.)

17 BENNY WAMPLER: Any objection from the Board to
18 continuation?

19 MAX LEWIS: No.

20 BENNY WAMPLER: The matter will be continued.

21 JIM KISER: Thank you.

22 BENNY WAMPLER: Thank you. Mr. Swartz, your case
23 has been called.

24

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1 MARK SWARTZ: Which one is this?

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

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

18

19

20 LESLIE K. ARRINGTON

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

23 DIRECT EXAMINATION

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1 QUESTIONS BY MR. SWARTZ:

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

3 A. Leslie K. Arrington.

4 Q. Who do you work for?

5 A. Consol.

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

9 A. Yes, I did.

10 Q. Did you mail, as required by statute?

11 A. Yes, I did.

12 Q. What did you mail?

13 A. A Notice of Hearing as submitted.

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

15 A. On December the 12th, 1997.

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

18 A. Yes, we have.

19 Q. To Mr. Fulmer's Office?

20 A. Yes, I have.

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

22 A. Yes, they are.

23 Q. Okay.

24

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1 A. Listed under Exhibit Number One.

2 Q. In the packet today?

3 A. Yes.

4 Q. Okay. Three of the people signed for the
5 mail and one was returned?

6 A. That's correct.

7 Q. Did you also publish?

8 A. Yes, we did, in the Bluefield Daily
9 Telegraph on December 19th, 1997.

10 Q. And you pub...okay, and did you publish the
11 Notice of Hearing and the Exhibit A, which shows the unit?

12 A. Yes, we did.

13 Q. This is an application to pool a unit within
14 the Beatrice Sealed Gob, is it not?

15 A. That's correct, it is.

16 Q. What is the amount of production that
17 the...that is allocated to each of the units within the
18 sealed gob area?

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

20 Q. Okay. Who are the...are the...are the
21 respondents identified here on Exhibit B3?

22 A. Yes, they are.

23 Q. And their interest in the...in the...in the
24

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

1 Corporation?

2 A. Yes, it is.

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

6 A. Yes, it does.

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

10 A. Yes, it has, and those are listed as
11 Exhibits Two, Three and Four.

12 Q. In the packets?

13 A. Yes, it is.

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

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

19 Q. And the respondent's are identified in
20 Notice of Hearing?

21 A. Yes, they are.

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

23 A. That's correct, there are.

24

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1 Q. Okay. And their...you had addresses for all
2 of them?

3 A. Yes, we did.

4 Q. And their addresses were listed in Exhibit
5 B3?

6 A. Yes, they were.

7 Q. Did you wish to add any respondents or
8 dismiss any respondents today?

9 A. No, we do not.

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

13 A. Yes, it does.

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

16 A. It seeks to pool 3.2092 percent of the oil
17 and gas interest.

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

20 A. One hundred percent of the coal interest and
21 96.7908 percent of the oil and gas interest.

22 Q. Is there a well cost estimate included?

23 A. Yes, it is.

24

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1 Q. And what's that estimate?

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

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

6 A. Yes, it is.

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

9 A. Yes, we have.

10 Q. And it gives the names of the people
11 whose...who are claimants and it gives their potential
12 percentage in the unit, does it not?

13 A. Yes, it does.

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

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

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

20 A. Yes, it is.

21 Q. It's a sealed gob unit?

22 A. In the Beatrice mine.

23 Q. How many wells?

24

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

2 Q. Okay. And again, we're talking about
3 production from below the Tiller Seam out of the Beatrice
4 Seal Gob?

5 A. That's correct, it is.

6 Q. Just...have you...have you and your...have
7 you attached a draft proposed order?

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

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

12 A. Yes, it is.

13 Q. And it has been tailored to specifically
14 pertain to this unit?

15 A. Yes, it has.

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

21 A. That's correct.

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

24

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1 A. That's correct, it will.

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

6 A. That's correct, it is.

7 Q. And that would be how the royalty would be
8 allocated?

9 A. That's correct.

10 Q. And that's the type of calculation you've
11 used in generating those figures for Exhibit B3 and Exhibit
12 E?

13 A. Yes.

14 Q. Is the plan of development here with regard
15 to this sealed gob unit a reasonable plan to develop within
16 the allocation formula prescribed by the Board for the
17 Beatrice Sealed Gob?

18 A. Yes, it is.

19 Q. Okay. And will it contribute to the
20 protection of correlative rights of the owners in this
21 particular unit less in the likelihood of both physical waste
22 and economic waste?

23 A. Yes, it would.

24

--

1 Q. That's all I have.

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

4 MARK SWARTZ: Okay.

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

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

11 BENNY WAMPLER: Right.

12 MARK SWARTZ: And so the paragraph seven (7) in the
13 Exhibit F order essentially says that gas from any well in an
14 eighty (80) acre unit within the Beatrice Sealed Gob shall be
15 allocated only to that eighty (80) acre unit unless there's a
16 combination and we're not asking for a combination today.
17 So, until the three hundred and fifty thousand (350,000)
18 ...the three hundred fifty (350) MMCF is produced, the
19 allocation from the well will only be to this eighty (80)
20 acre unit and it will be...each owner's percentage will be
21 the acres in their tract that are within the eighty (80) acre
22 unit divided by eighty (80), and that's what that paragraph
23 is intended to say.

24

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

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

9 TOM FULMER: Here, I have a copy.

10 MARK SWARTZ: Well, if you...let me just pick up
11 one point as well. If you go to page four (4)...little e on
12 page four (4), that sets forth the allowable production of
13 three hundred fifty (350) MMCF, which we've been talking
14 about. But it also goes on to provide for the allocation,
15 which is essentially repeated in the draft order, the method
16 of allocation. And then f...little f on page four (4), which
17 goes over onto the next page, talks about an ability to
18 produce in excessive of allowable production, but you have to
19 come back to the Board and the Board has to authorize the
20 combination of two or more units to produce from a well. The
21 theory being that if you've got a well done and you can
22 produce multiple units, why spend more money. But you've
23 required us to come back. Now, this S-17 that we're in front

24

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1 of you today is not a combination. It's a start up sort
2 of...sort of unit.

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

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

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

11 MARK SWARTZ: I don't think so. I mean, as long as
12 he was the Vice President at the time. In fact, I would give
13 you a definite no, they do not. I mean, he had to be...have
14 the authority to do it when he did it, but...now, if Claude
15 Morgan or Gill Gillenwater, Randy Albert were no longer
16 around...since they've got ongoing responsibilities, I
17 think we would need to update that, but their...all three of
18 those fellows are around and still in those positions.

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

22 MARK SWARTZ: Mr. Smith is still there.
23 McDonald---?

24

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1 LESLIE K. ARRINGTON: Yes.

2 MARK SWARTZ: ---is still there.

3 BENNY WAMPLER: The purpose of including the draft
4 order response---.

5 MARK SWARTZ: Well, when you...when the Board
6 amended the regulations, you permitted people to go to much
7 shorter forms and you'll notice that the Notice of Hearing
8 and the application are much more simple and straight forward
9 then they used to be. But there's a due process requirement,
10 I mean, in addition to the Board's requirements that people
11 be apprised of what relief you're seeking and the reason I've
12 attached the Board order is it is the most specific
13 indication that I can think of what we are actually seeking
14 in terms of relief and are likely to get. So, if people look
15 at that, that's...rather than me summarizing it, we've just
16 attached it. And also, the theory is that we will be giving
17 Sandra Riggs this order on a disk with the blanks plugged in
18 and we may make less mistakes going forward from a word
19 processing standpoint. That's not necessarily guaranteed,
20 but it's the theory.

21 BENNY WAMPLER: Other questions for the members of
22 the Board?

23 BILL HARRIS: Mr. Chairman, I do have one about the
24

1 well. This shows the drilling of a new well. Is this
2 nor...well, there's nothing normal about this. So, I
3 guess...I just wondered what...are there wells in place
4 already that can be used or converted?

5 LESLIE K. ARRINGTON: Yes. Yes, there are. This
6 is a conversion well.

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

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

17 BILL HARRIS: Yeah. I'm not sure what I'm trying
18 to ask.

19 MAX LEWIS: That's a coalbed methane converted into
20 a provisional well.

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

24

--

1 BENNY WAMPLER: Other questions?

2 (No audible response.)

3 BENNY WAMPLER: You got anything further, Mr.
4 Swartz?

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

10 (Review information.)

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

13 (No audible response.)

14 BENNY WAMPLER: Do we have a motion?

15 DENNIS GARBIS: I make a motion for approval.

16 BILL HARRIS: I second it.

17 BENNY WAMPLER: The motion has been seconded. Any
18 further discussion?

19 (No audible response.)

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

21 (All indicate in the affirmative.)

22 BENNY WAMPLER: Opposed, say no.

23 (No audible response.)

24

--

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

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

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

13 BENNY WAMPLER: Y-9?

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

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

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

19 BENNY WAMPLER: ---on our summary.

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

22 MARK SWARTZ: Okay.

23 BENNY WAMPLER: So, I'll correct that to
24
25

1 methane...coalbed methane unit identified as Y-9. Sorry
2 about that.

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

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

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

20

21 LESLIE K. ARRINGTON

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

24

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1 DIRECT EXAMINATION

2 QUESTIONS BY MR. SWARTZ:

3 Q. Les, you're still under oath. You need to
4 state your name.

5 A. Leslie K. Arrington.

6 Q. Who do you work for?

7 A. Consol, Inc.

8 Q. Did you participate in drafting the notice
9 and application and did you in fact sign them with regard to
10 this hearing today?

11 A. Yes, I have.

12 Q. Okay. Could you explain to the Board what
13 happened with regard to the initial pooling and leasing and
14 why we are here today?

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

24

--

1 Q. And the application today is for Oakwood II
2 as well?

3 A. That's correct, it is.

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

5 A. Yes.

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

9 A. Yes, I did. And I had two copies of the
10 document that was submitted to the Board and one of my copies
11 had the map and one did not. So, I wasn't sure whether the
12 map was included in the...in it or not. So, I did include it
13 in the exhibits today.

14 Q. Okay. Who is the applicant with regard to
15 this application?

16 A. The applicant is Buchanan Production.

17 Q. And Buchanan Production is a Virginia
18 General Partnership?

19 A. Yes, it is.

20 Q. Its partners are Appalachian Operators and
21 Appalachian Methane and both of those companies are wholly
22 owned indirect subsidiaries of MMCN Corporation?

23 A. Yes, they are.

24

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1 Q. Is BPC authorized to do business in
2 Virginia?

3 A. Yes, it is.

4 Q. Who are you asking be appointed designated
5 op...well, who are you asking to be redesignated as the
6 operator?

7 A. Consol, Inc.

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

9 A. That's correct.

10 Q. Authorized to do business in the
11 Commonwealth, registered with the DMME and it has a blanket
12 bond on file?

13 A. Yes, it does.

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

16 A. That's correct and that's listed in the
17 exhibits as Exhibit Two, Three and Four with Claude Morgan as
18 General Manager, William Gillenwater as Land Manager and
19 Randy Albert as Regulatory Manager.

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

21 A. It was a Minerva Osborne heirs.

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

24

--

1 A. No, sir, it is quite some time ago.
2 Q. That the heirship was created?
3 A. That's correct.
4 Q. Okay. Is there an ongoing effort to try
5 and...try and locate these people?
6 A. Yes, it is.
7 Q. Do you want...but at the present time their
8 addresses are...their identities are unknown and their
9 addresses are unknown?
10 A. That's correct.
11 Q. So, we are going to need an escrow just for
12 the unknown issue as well?
13 A. That's correct.
14 Q. Do you wish to add anybody or subtract
15 anybody as a respondent?
16 A. Well, we'd like to have dismissed the
17 original persons pooled, which are Mary Lester, Edith
18 Singleton, Audrey Boyd Perkins, Clayton Perkins and Ed Boyd.
19 Q. And why are you asking that they be
20 dismissed?
21 A. The interest that was originally pooled has
22 been leased.
23 Q. Okay. So, they've executed leases?

24

1 A. Uh-huh, yes.

2 Q. Obviously, there was no mailing here?

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

4 Q. Okay. Was there publication?

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

7 Q. And that's behind tab one in the book of
8 exhibits?

9 A. Yes, it is.

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

11 A. Yes, we did.

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

14 A. Its 0.625 percent of the oil and gas
15 interest.

16 Q. Okay. And what percentage of the coal and
17 oil and gas interest does the applicant own, lease or
18 otherwise control?

19 A. Okay. That was one hundred percent of the
20 coal and 99.375 percent of the oil and gas.

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

24

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

4 Q. And would you recommend those terms to the
5 Board for the Order?

6 A. Yes, we do.

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

8 A. Yes, it is.

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

11 A. Yes, it is.

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

14 A. Yes, it is.

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

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

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

20 A. Yes, it is.

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

24

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

4 Q. Okay. And the total costs allocated to the
5 Y-9 unit?

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

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

10 A. Yes, we have.

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

13 A. Yes, we did. We averaged the six (6) west
14 panel with a average depth of eighteen hundred and thirty-
15 three (1833) feet at a cost of a hundred and ninety-three
16 thousand nine hundred and sixty-eight dollars and thirty
17 cents (\$193,968.30) and for the seven (7) west panel, average
18 depth of two thousand and seventy-two (2072) feet would cost
19 of two hundred and three thousand six hundred and sixty-six
20 dollars and sixty cents (\$203,666.60).

21 Q. So, the two estimated well costs are
22 actually averages of the wells collectively in the two
23 panels?

24

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1 A. Yes, they are.

2 Q. Okay. And those wells are depicted in
3 this...on this Exhibit?

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

5 Q. Okay. The...for purposes of...is this...is
6 this a fee interest or is there going to be...once these
7 people, if and when these people are identified, is there
8 going to be...required to be in escrow?

9 A. Yes, it is.

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

11 A. Yes, we have.

12 Q. So, this would be in...this would be a
13 conflict escrow interest?

14 A. Yes, it would.

15 Q. Okay. And it sets forth the interest in the
16 unit and the interest in the two panels?

17 A. Yes, it does.

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

21 A. Yes.

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

24

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1 A. Yes.

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

4 A. Yes, we have.

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

8 A. Yes, we have.

9 Q. That's all I have.

10 BENNY WAMPLER: Questions from members of the
11 Board?

12 (No audible response.)

13 BENNY WAMPLER: The Osborne heirs are in the
14 2D...tract 2D, is that right? I'm looking at Exhibit E. Did
15 it affect any of the other percentages?

16 LESLIE K. ARRINGTON: Yes, they were under tract
17 2D. No. I don't...maybe I'm not quite understanding the
18 question first.

19 BENNY WAMPLER: All of these percentages on Exhibit
20 E are recalculated?

21 LESLIE K. ARRINGTON: Yes, they are.

22 BENNY WAMPLER: Okay.

23 MARK SWARTZ: But the...all of the people whose
24

1 percentages change except for the people we're pooling here,
2 you have leases from?

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

4 MARK SWARTZ: Just...I just wanted it on the
5 record.

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

8 (No audible response.)

9 BENNY WAMPLER: Do you have anything further?

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

13 BENNY WAMPLER: You see any problems with that, Mr.
14 Fulmer?

15 TOM FULMER: No.

16 BENNY WAMPLER: Do we have a motion?

17 BILL HARRIS: Mr. Chairman, I move we grant the
18 application as presented.

19 BENNY WAMPLER: Second?

20 DENNIS GARBIS: I'll second.

21 BENNY WAMPLER: Motion to second. Any further
22 discussion?

23 (No audible response.)

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

2 (All indicate in the affirmative.)

3 BENNY WAMPLER: Opposed, say no.

4 (No audible response.)

5 BENNY WAMPLER: You have approval. Thank you.

6 MARK SWARTZ: Thank you all.

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

9

10

11 STATE OF VIRGINIA,

12 COUNTY OF BUCHANAN, to-wit:

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

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

19

NOTARY PUBLIC

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My commission expires August 31, 2001

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