

1 VIRGINIA:

2 IN THE COUNTY OF DICKENSON

3
4
5 VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY

6
7 VIRGINIA GAS AND OIL BOARD

8
9
10
11
12
13
14 OCTOBER 20, 1998

15
16
17
18
19
20
21
22 Reported by:
23 SONYA MICHELLE BROWN, Court Reporter
24 Rife & Associates
25

1 P. O. Box 798
2 Grundy, Virginia 24614
3 (540) 935-5257

4 BENNY WAMPLER: Good morning. My name is Benny
5 Wampler. I'm Deputy Director for the Virginia Department of
6 Mines, Minerals and Energy, and Chairman of the Gas and Oil
7 Board; and I'll ask the Board Members to introduce
8 themselves.

9 MASON BRENT: My name is Mason Brent. I am from
10 Richmond, Virginia and I represent the Gas and Oil Industry.

11 DENNIS GARBIS: My name is Dennis Garbis. I am a
12 public member from Fairfax County.

13 CLYDE KING: My name is Clyde King. I am a public
14 member from Abingdon, Virginia.

15 SANDRA RIGGS: I'm Sandra Riggs. I am not a member
16 of the Board. I am here to advise the Board from the Office
17 of the Attorney General.

18 TOM FULMER: Tom Fulmer, Department of Mines,
19 Minerals and Energy.

20 BENNY WAMPLER: Before we get started on the...going
21 through the agenda today, I'd ask if there are any changes to
22 the agenda at this point in time. Anyone who would like to
23 suggest?

24 MARY ANN FOX: Yes, as a representative---.

BENNY WAMPLER: Come forward.

1 MARY ANN FOX: If I may approach the Board. As a
2 representative of C & R, I would like to ask that the hearing
3 that we had set for today with regard to well...is it 21672?

4 (No audible response.)

5 MARY ANN FOX: Asking that it be continued.

6 BENNY WAMPLER: Okay. And your name is?

7 MARY ANN FOX: Mary Ann Fox.

8 BENNY WAMPLER: Okay. That is docket number VGOB-
9 98-10/20-0696. Request is that that agenda item be
10 continued. Are there any objections to that continuance from
11 anyone present today?

12 (No audible response.)

13 BENNY WAMPLER: Hearing none. Are there any
14 objections from members of the Board?

15 (No audible response.)

16 BENNY WAMPLER: The matter is continued. Thank you
17 very much.

18 MARY ANN FOX: Thank you very much.

19 BENNY WAMPLER: Is there any other items before we
20 begin our agenda today?

21 GEORGE MASON: Yes, we have a presentation. Myself,
22 George Mason and Claude Morgan.

23 BENNY WAMPLER: Come forward, please.

24

--

1 GEORGE MASON: My name is George Mason. I am the
2 Vice President and General Counsel of Equitable Resources
3 Energy Company and my partner here.

4 CLAUDE MORGAN: I'm Claude Morgan. Manager of Gas
5 Projects for Consol, Inc.

6 GEORGE MASON: The reason that we are here is the
7 Board had asked us, I think, during a August hearing if we
8 could meet as representatives. My side as representative of
9 the Oil and Gas Industry, and Claude as representative of the
10 Coal Industry, and come up with some type of voluntary escrow
11 proceedings that would be heard by the Board at its November
12 hearing. We have met with the Chairman of the Board, Benny
13 Wampler, Sandra Riggs, Tom Fulmer and ourselves to review
14 this and what we could do, if we could come up with some type
15 of procedure that we could present to you.

16 We have discussed it with them and, I guess, at
17 this point in time speaking for myself, and I'll ask Claude
18 to speak after I do, is that we felt like that there were so
19 many areas...so many different items that were involved in
20 some type of escrow proceeding that we could come up with,
21 that we thought it would be best to go ahead and report to
22 the Board that we didn't think that we could come up
23 something with the time permitted that we could present to

24

--

1 the Board, the Board consider and maybe use that to
2 incorporate in a Board order that would apply to all
3 operators. So, basically rather than waiting until the
4 November hearing, we thought we should go ahead and report
5 back to the Board rather than wait another month. And some
6 of these were just...the different types of circumstances,
7 different type of ways that things are escrowed. How it
8 could come out of escrow and I felt like personally that it
9 would be a great investment of time on my part, and my
10 company, not really knowing if we had addressed all of the
11 issues that we thought that the Board wanted. Whether the
12 Board would adopt those resolutions to how you obtain money
13 out of escrow, you know, that would be adopted in a Board
14 order.

15 We thought that we had better just report back to
16 the Board that we were unable to come up with some type of
17 procedure, and that the Board would have to go ahead, I
18 assume, through its regular regulatory process and come up
19 with a procedure that would mandate how escrow or funds
20 escrowed would be taking out of escrow pursuant to a Board
21 order.

22 CLAUDE MORGAN: I pretty much agree with what George
23 has said. I guess, I was looking at it a little bit...when I

24

--

1 spoke and I asked for the opportunity to do this and I asked
2 for this opportunity, so I think I was looking at it a little
3 bit too simplistic myself at the time. I found out since
4 we...since we got into it, I was looking at some solution...I
5 thought there was some solution to what the operators could
6 go, and maybe what the operators presented, that would take
7 care of the problem, but as we have gotten into it, it
8 appears to me that, yeah, there is changes needs to be made
9 probably on how the operator reports and record keeps, there
10 is changes that needs to be made on the State or the
11 department side on how...on what they do and they are changes
12 that needs to be made through the...the escrow...on the part
13 of the escrow agent. So, it become much more complicated
14 than just something that I felt like as an operator that I
15 could suggest changes to solve the problem, because I think
16 it is going to take some changes in all...all three areas to
17 eliminate the problems that we've encountered with
18 this...with the disbursal on these...that's been before the
19 Board, and at the last meeting we spoke and we agreed that we
20 didn't want to wait until November and, say hey, we don't
21 have anything. Let's...let's tell you this month so that
22 you've got a chance to go ahead if you choose to and get it
23 on the docket for November and start the process without

24

--

1 delaying any more time. I would like to have been able to
2 come forward with a proposal as an operator, but I don't
3 think we can do one that will cover all the issues that would
4 be piece mill at best.

5 GEORGE MASON: Well, let me just add to that. It
6 was...it was like trying to come up in a vacuum, in a way.
7 Us...you know, all the different type of issues that must be
8 addressed, trying to address those issues that we think the
9 Board wants without really having guidance from the Board,
10 other than can you...we kind of volunteered to say, maybe we
11 can provide a solution to the Board that could be
12 incorporated in future orders and I'm not sure that...after I
13 just saw the number of issues involved, that I felt like it
14 was maybe insurmountable for us as two operators to volunteer
15 and then come up with something we thought would address the
16 issues and might get fifty percent, but not a hundred percent
17 of what you are looking at. So---

18 BENNY WAMPLER: In fairness to these gentlemen, when
19 they met with myself, at least we are guided by the
20 Administrative Process Act and about all we could do was tell
21 them some of the types of questions that would have to be
22 answered by this and couldn't really...didn't have any
23 recommendations to make in that kind of form. We really

24

--

1 don't have that...don't have that opportunity and I told them
2 as far as I know, the Board doesn't have any explicit things
3 in mind per say, except the need to address this. If we set
4 a hearing for November, then as we had once before, then we
5 can take recommendations from the public and begin the
6 process, if that makes sense.

7 GEORGE MASON: We had...just let me clarify that.
8 Both Claude and I had a call on a conference call, Benny, and
9 said can we meet with you because we are not really sure, you
10 know...I was kind of sitting there trying to think how
11 many...what issues do we need to address, how can we do it
12 and it was basically just at our request, can we just have an
13 open discussion on what are the issues and I didn't realize
14 just talking with Claude, the number of issues that they see
15 just from their own perspective on that side, you know, of
16 the table that are different from us as operators.

17 BENNY WAMPLER: Mr. Garbis?

18 DENNIS GARBIS: I guess I have little problem with
19 all of that. How many...what is the volume of business that
20 your company does a year, roughly?

21 GEORGE MASON: Are you talking about in, you know,
22 money or are you talking about dollars?

23 DENNIS GARBIS: Dollars.

24

--

1 GEORGE MASON: I could probably tell you more with
2 the volume of MCFs that we do.

3 DENNIS GARBIS: It is in the millions?

4 GEORGE MASON: Yes.

5 DENNIS GARBIS: Mr. Morgan, yours is the same?

6 CLAUDE MORGAN: Don't get me wrong. My is not...my
7 is not from involvement issue. I am willing to put
8 ever...whatever time is necessary in to it to do it.

9 DENNIS GARBIS: Because you know what I am about to
10 tell you.

11 CLAUDE MORGAN: Yes, I do, and that is not my issue.

12 GEORGE MASON: Uh-huh.

13 CLAUDE MORGAN: My reason for coming forward here is
14 that I see that it involves too many parties for me to try to
15 do it from an operators standpoint.

16 GEORGE MASON: Exactly.

17 CLAUDE MORGAN: In the involvement of the escrow
18 agent and the involvement of the department and the
19 involvement of the other parties.

20 DENNIS GARBIS: Well, I understand that. I
21 understand that.

22 CLAUDE MORGAN: That's...that's...that's where I'm
23 coming from.

24

--

1 DENNIS GARBIS: But as operators, in my opinion,
2 here you have a multi-million dollar a year operation. I
3 know you are...we have...we are in the age of 90's. We have
4 computers. We can send the man to the moon. I just find it
5 hard to believe that there are that many variables that we
6 can't track, and I understand there is a lot of complexities,
7 but I find it hard to believe that...and as a matter of fact,
8 it is encumbered upon the operator to be able to track every
9 single line. Every single...for every unit, for every person
10 that is involved in there, and I understand that there is
11 different time lines, and different interest rates and all of
12 that, that has got to be...and I think that's...you would be
13 far wiser and better for you guys to come up at least
14 with...with...at least make a good strong man effort. I
15 mean, I can't believe that you can't...at least in my
16 opinion, its...the ball is in your court to do that.

17 CLAUDE MORGAN: The tracking system from the
18 operators---

19 DENNIS GARBIS: Now, if, I mean, you desire
20 guidance, if you want...I'm sure that can be worked out. But
21 I'm not going to be very sympathetic. I mean, you guys can
22 figure that out.

23 CLAUDE MORGAN: But the tracking system from the
24

1 operator's side and what you are speaking to is exactly what
2 I thought the chore would be. Okay. It is from the meetings
3 we have had, and from meetings even subsequent to the one
4 that George and I have had, where there are questions as
5 to...as to what will it take for the Board to release the
6 funds? What sort of record keeping does the escrow agent
7 need to be doing? I think there is a lot beyond what you are
8 saying and what you are saying is what I thought the chore
9 initially was.

10 GEORGE MASON: Exactly.

11 CLAUDE MORGAN: But as I have gotten into it in the
12 discussions, I think it goes way beyond that, and I am very
13 willing to take on what you are talking about.

14 DENNIS GARBIS: Well, I mean, the escrow...the
15 escrow agent is going to do whatever we tell them to do. So,
16 he can...that's a function of...he is going to take his
17 orders whatever we tell him to do. I am sure he is capable
18 of doing that and he will do that. As far as the Board's
19 part in formulating whatever we have to do...if it makes
20 sense and it protects everyone's interest than I'm sure that
21 we will be able to arise to the occasion to do that. But I
22 certainly hope that we don't think that the little man
23 whose...whose...he is not going to be able to track...if you

24

--

1 can't track it, how do you expect a poor guy out in the boon
2 docks to take care of that? He can't take care of that.

3 CLAUDE MORGAN: We are not saying that at all,
4 Dennis. We are not saying that at all. We are recognizing
5 that. But what we are saying is that is probably part of the
6 fix. Okay? What you are talking about is probably part of
7 the fix is some better tracking system from the operator's
8 stand point, but we feel that there is a lot more parts to
9 that fix that we can't contribute that needs to be---

10 CLYDE KING: Such as?

11 CLAUDE MORGAN: Such as what will it take to make
12 you comfortable that you can disburse the funds---

13 GEORGE MASON: Uh-huh.

14 CLAUDE MORGAN: ---and I think you are going to
15 come into that today.

16 DENNIS GARBIS: Well, it will make us...well, I tell
17 you exactly what will make us feel comfortable, would be that
18 in every and any business you have to account for every
19 nickel that is brought in and every nickel that goes out.
20 There is multi-billion dollar corporations that do that every
21 single day and you are no exception and you have to do it.

22 CLAUDE MORGAN: Okay. So...but what we can do...I
23 mean, we can track and we have given the information, I

24

--

1 think, that can be laid out to show, let's say that a unit is
2 there with multiple owners, and we've got the records to show
3 what we paid into that fund for each of those owners, and we
4 can tell you how much total we have paid into that funds for
5 each of those owners, and we have done that for the ones in
6 question today, which we will be discussing later.

7 CLYDE KING: Then what's the problem?

8 DENNIS GARBIS: Yeah, then what's the problem?

9 CLAUDE MORGAN: The problem is, is what happens to
10 that when is goes into that fund---

11 CLYDE KING: It is in escrow fund?

12 CLAUDE MORGAN: ---is then...is then being escrowed
13 on a unit basis, not on a tract basis. It is all lumped into
14 one pot and escrowed together and how do you pull it out by
15 tract out of that? That's the part I can't handle as an
16 operator.

17 CLYDE KING: Then that's the escrow agent's
18 responsibility.

19 GEORGE MASON: Yeah. Well, that's a determination
20 that you need to make.

21 CLAUDE MORGAN: And that's part of what I am saying
22 that needs to be involved in this also in order to be able to
23 do that.

24

--

1 GEORGE MASON: That's the single biggest issue
2 is...that we perceive it if you had a Board order that goes
3 ahead and pools that unit, but you may have fifty (50) tracts
4 in that unit. And what if you have where you have those that
5 can agree as to the percentage and the amount, you know, for
6 one tract of the fifty (50)...say we are in agreement, then
7 how do you pull that out...how do you do that and I think
8 that we...it...I feel very comfortable with the accounting
9 system that we have in place and what we have done, how we
10 keep track of that, but is that accounting system the same
11 one that is going to be used by the other operator? Is that
12 the same one that should be used for anybody else that is
13 involved in it? Then you have the process as I see it that
14 was brought up was, you know, about due process about other
15 people having input, you know, to the Board as to how things
16 should be accomplished rather than just having two
17 operators...the two largest operators come forward and say
18 this is how the Board ought to do...you know, handle these
19 issues.

20 DENNIS GARBIS: Well, I think, the first thing is
21 that from your...from the operator's standpoint, as I said
22 before, every person, every tract...everything has to be
23 accounted for.

24

--

1 CLAUDE MORGAN: And that is.

2 GEORGE MASON: And we do that.

3 DENNIS GARBIS: I mean, that's...that is...in my
4 mind is clearly in your court...that ball is in your court.
5 You have the ball to handle that. Now, as far as tracking
6 that, I mean, there are...there are...there has got to be
7 mechanisms and I'm sure that there is not...we are not the
8 first one to come along with this problem. I mean, are there
9 other...and maybe I can ask other...the members of the State
10 if there are...is there some organization, is there some
11 entity that is doing this properly, or is there some
12 mechanism...tracking mechanism, that somebody is doing with a
13 high degree of accuracy?

14 BENNY WAMPLER: We have got our internal auditors
15 searching throughout the Commonwealth and other States as
16 well to see if there is any similar escrow accounting system
17 that, you know, matches. So, far we haven't found one that
18 matches as directly as we would like. But we are looking at
19 that.

20 DENNIS GARBIS: Well, what I can tell you is back in
21 August, that box of stuff that you put on a corner of that
22 one desk, I mean, that was unacceptable. I don't know how
23 anybody could track that. So, I hope that is not what you
24

1 consider to be acceptable because, in my opinion, that was
2 not acceptable. I mean, is that...are you are saying that is
3 your best shot.

4 CLAUDE MORGAN: No.

5 DENNIS GARBIS: Okay. So, I mean---.

6 MARK SWARTZ: I was going to...we had a meeting
7 yesterday that I think was a little more productive and if I
8 could, like summarize. We met with representatives of Mr.
9 King and other folks from the escrow agent, we met with Sandy
10 Riggs---.

11 BETTY KEEN: I can't hear, please. I can't hear
12 you.

13 MARK SWARTZ: Well, I am doing my best.

14 BETTY KING: Well, pull the mikes up. Don't you
15 have microphones?

16 MARK SWARTZ: The microphones do not amplify sound.

17

18 BETTY KEEN: Thank you.

19 BENNY WAMPLER: State your name for the record,
20 please.

21 MARK SWARTZ: Mark Swartz. We met yesterday in Mr.
22 Fulmer's office to try and identify issues and I think Mr.
23 King was here to give a report and maybe, I guess, you can
24

--

1 feel free to chime in when I am done, but to try to identify
2 what are the issues between the operator, the escrow agent,
3 and the State that need to be addressed to come up with a
4 methodology to disburse funds. Now, the box of information,
5 which keeps coming up here, is not the last set of
6 information that was given to the Board, and I have no way of
7 knowing if the spread sheets that we developed from the
8 information in those boxes on a per tract historical basis
9 with one number, you know, the tract ID reference charts, I
10 don't know if any of that stuff founded to you all...found
11 its way to you all. But there is information that's
12 probably, you know, ten (10) or fifteen (15) pages that
13 summarizes the relevant data from the box of information in a
14 line item form. If you want to go into unit, you know,
15 Northeast Long wall, whatever the number is in a given tract,
16 there is a total number historical stated that was paid into
17 escrow...that's our position, that we paid this amount into
18 escrow. It should be there with regard to this tract and
19 that summary information has been provided because now the
20 box of information, you know, if somebody says, I don't agree
21 with that number, that box of information is our
22 representation in writing that these are the can...these are
23 the check copies and the detailed...the royalty detail, which

24

--

1 you can go to to derive this number, if you want to spend the
2 time. Okay. So, our position is not in...in a vacuum, but
3 in reality, that subsequent to coughing up the base
4 documents, we took the time and effort to prepare some of it
5 manual, spread sheets that captured all of that information.
6 Now---

7 DENNIS GARBIS: You said manually?

8 MARK SWARTZ: Some of it is manual spread sheets. I
9 mean, we pulled it off the computer, but then we organized it
10 in Excel spread sheets so that it would be more
11 understandable to the Board and people looking at it, you
12 know, than a computer printout coming off of...off of our
13 computer system and we tried to present it with some clarity.

14 Now, what we were talking about yesterday was, we
15 keep records as operators, and I'm sure this is true of every
16 operator regardless of their computer system on a tract
17 basis, not on a unit basis, because we pay royalty to people
18 who have interest in tracts. I mean, that's the base line
19 that we have to get down to. The escrow agent, when they
20 were hired and the request for proposals went out, it was
21 assumed that they would keep records on a unit basis. So,
22 their number has no relevance to anyone who might call in as
23 a tract owner...if you call in and say, what have you got on
24

1 deposit, they say what tract...what unit are you in and you
2 will say W-46, they will give you a gross number that has no
3 relationship at all. One of things we were talking about
4 yesterday, and to get back to where these guys are coming
5 from, although perhaps they didn't very artfully express
6 this, you know, maybe we---

7 DENNIS GARBIS: No, I think they expressed
8 themselves very well.

9 MARK SWARTZ: ---maybe---

10 DENNIS GARBIS: I don't think they need a lawyer to
11 help them out in that department. Did you, Claude?

12 (No audible response.)

13 DENNIS GARBIS: Engineers...being an engineer and I
14 know an engineer can do that very well, I think.

15 CLAUDE MORGAN: Thank you, Dennis.

16 GEORGE MASON: That's all right. All for your
17 lawyer.

18 MARK SWARTZ: Well, one thing we talked about
19 yesterday was how do we deal with that problem. I mean, do
20 we want to implement a system where we are escrowing by tract
21 as a sub account under a unit, and one of these we talked
22 about yesterday was probably not, because the fees would just
23 skyrocket out of control, you know.

24

--

1 DENNIS GARBIS: That's right. That's not...yeah.

2 MARK SWARTZ: And so if that's...we can't make these
3 calls, but those are issues we are talking about. So, how do
4 we then get into some fairly simple way, get to a position
5 where a couple of pieces of paper we can direct the people
6 and say look this is...you know, you've got one of these in
7 the mail, and if you have got that and you call the escrow
8 agent, you can apply this math to it and you can figure it
9 out, you know, by making two multiplications.

10 But now once you've allocated...the other problem
11 we were talking about, once we say we have got a number and
12 we have paid it in for this tract, then the escrow agent
13 needs to tell us what is the net income on that number over
14 time. If everybody went in from day one, then we just need
15 one number from them and we can apply it over time and we
16 spent some time yesterday discussing what kind of records do
17 they have that the Board could rely on, that the operators
18 could rely on in terms of assessing what would be a
19 reasonable allocation of net profit over time to funds on
20 deposit. In the event that there are amended orders, because
21 that happens and people get added or the configuration in the
22 escrow account changes that date, you have got to have
23 start/stopping points and we discussed that. We need to come

24

--

1 up with a solution, but I think, you know, we can deal with
2 that issue.

3 But essentially to summarize the approach and
4 this...and now I am speaking for myself, but it seems to me
5 that collectively we need to come up with a repeatable
6 dupli...you know, a procedure that can be duplicated that is
7 a reasonable procedure to allow funds to be disbursed by the
8 agreement of claimants from escrow. We need a procedure.
9 That in that procedure, the operators need to quantify what
10 they paid into escrow on a per tract basis. You know, we
11 don't have any argument with that. That's how we pay our
12 royalty. We can regenerate those numbers. We can duplicate
13 those numbers. Then we need the escrow agent to somehow
14 allocate net income or provide a mechanism, you know, to say
15 the annual number for net income in '96 that would be
16 reasonable to you, would be this percent, or the quarterly
17 number, or some number that we could apply and we need to
18 then allocate, you know, on that basis using a number that
19 the escrow agent gives us to the deposit allocation that we
20 are getting from the operators to come up with a grossed up
21 number that includes income. Then we need...we need to share
22 that information with the people who want the money out of
23 escrow.

24

--

1 DENNIS GARBIS: Let me stop you right there. Let me
2 ask you a question, because I think you are heading in the
3 right direction. How often does...do you guys send out
4 checks to...to people?

5 MARK SWARTZ: 25th of the month.

6 DENNIS GARBIS: Every month.

7 GEORGE MASON: Every month, yes.

8 CLAUDE MORGAN: Every month.

9 MARK SWARTZ: Right. Not everybody is the same
10 date, but every month. There is the delay in starting, and
11 then you start, and it is every month that there is
12 production, and with coalbed methane, generally speaking,
13 there is production every month.

14 DENNIS GARBIS: Okay.

15 MARK SWARTZ: And it sounds like the bank does not
16 do a daily reconciliation. So, the income and expenses would
17 be on a monthly basis, it sounded like from our meeting
18 yesterday, would be the best that we could do in terms of,
19 you know, what was the...what was...what was the balance as
20 of any point in time would be a month end number from them.
21 Okay. Certainly they are capable of giving us a
22 historic...sounds like a historical...this would be a fair
23 figure...percentage to use as net income after fees for this

24

--

1 year, or that year, or whatever, so that we can...we could
2 apply that. Then we need to share this information with the
3 people who want the money out of escrow, and then there needs
4 to be a mechanism for them to either complain or accept the
5 calculation as reasonable and accurate. I mean, that's sort
6 of what I perceive as the minimum that needs to occur to get
7 money out of escrow.

8 DENNIS GARBIS: Well, I would agree that...I believe
9 you have to account for it by tract.

10 MARK SWARTZ: And we do that.

11 GEORGE MASON: Exactly.

12 DENNIS GARBIS: And you do that.

13 CLAUDE MORGAN: Yeah. That's the part of it I said
14 we could handle.

15 DENNIS GARBIS: You can handle that. I think,
16 though that, in my opinion, that the escrow agent
17 really...the reason why I ask about the time it may make it
18 and this...I am just thinking out loud, if you paid out
19 quarterly or you paid out with longer periods, so that you
20 can get actual...I mean, I don't...if they do that, they
21 could probably give you the exact return on that minus fees
22 on a periodic basis, so that you can actually plug in an
23 actual number and based on that---.

24

--

1 MARK SWARTZ: I would have thought that too. But---
2 .

3 DENNIS GARBIS: ---because this is esc...I mean, if
4 these are monies held in escrow. I mean, if you do that
5 quarterly, you can get actual numbers and, again, but it
6 would be encumbered upon the operator to produce...to give
7 that information out to whomever is required of it. I mean,
8 you---

9 MARK SWARTZ: But the quality---

10 DENNIS GARBIS: ---in my opinion, the ball is still
11 in your court to track...I mean, to account for every penny.

12 BENNY WAMPLER: Let me get us back on---

13 GEORGE MASON: Account for the principal.

14 BENNY WAMPLER: ---let me get us back on line here.

15 DENNIS GARBIS: I'm sorry.

16 BENNY WAMPLER: Of course, we are not trying to
17 take, of course, any testimony here or anything like that.
18 We are discussing...these gentlemen reported back. I think
19 they had requested a couple of months ago to...the Board had
20 on the agenda, the initiation of rule making and we held that
21 in abeyance now. Now, I think what we have to decide is
22 whether or not we want to proceed as a Board with rule making
23 to consider all these facets and factors that might need to

24

1 go in the rules and regulations regarding escrow. It really
2 gets to be that simple. Do we want to do that or do we...do
3 we not?

4 CLYDE KING: I have a couple of questions. Is a
5 tract a person, or is it a unit of---?

6 GEORGE MASON: A tract is a piece of property that
7 is being forced pooled, or as a part of a unit, it can be
8 multiple owners.

9 CLYDE KING: Okay. But that could be...that could
10 be any number of people?

11 BENNY WAMPLER: It could be a number of people.

12 GEORGE MASON: You could have fifty (50) tracts and
13 you could have fifty (50) people owning one of those tracts.

14 CLYDE KING: But you do have the record if there is
15 fifty (50) people in one tract---?

16 GEORGE MASON: Yes, sir.

17 CLYDE KING: ---how much went into the escrow fund--
18 -?

19 CLAUDE MORGAN: For that tract.

20 CLYDE KING: ---for that tract?

21 GEORGE MASON: Yes, we keep account of that.

22 CLYDE KING: Maybe I am too simple to understand,
23 but it looks to me like if the escrow agent receives that on
24

1 a monthly basis...you are saying that that happens monthly---
2 ?

3 GEORGE MASON: Right.

4 CLYDE KING: ---rather than quarterly?

5 GEORGE MASON: Uh-huh.

6 CLYDE KING: And interest as I understand it is
7 figured daily or---?

8 GEORGE MASON: No.

9 CLYDE KING: ---monthly?

10 BILL KING: Well, different...you know, different
11 investments may pay at different times.

12 CLYDE KING: But you know what the...what the rate
13 is?

14 BILL KING: We know what the rate is and when it is
15 allocated...you know, the basic difference here, is this
16 system was designed to account on a unit basis, not on a per
17 tract. So---.

18 CLYDE KING: But you can divide that by the fifty
19 (50) people that are in that tract?

20 BILL KING: If all the tracts money came in equally
21 then it is pro-rata and that's crutch of the matter here is--
22 -.

23 BENNY WAMPLER: Let me stop us at this point and
24

1 thank these gentlemen for your presentation and not mix and
2 mingle with the other and we can decide at the end of the day
3 whether or not we want to proceed with rule making, if that's
4 okay with members of the Board, after we have had an
5 opportunity to go through this case and see how we think it
6 is...the information is coming forward and how we think we
7 able to deal with it. That should tell us whether or not we
8 have got all these things reconciled or at least what we...it
9 may better point us to the direction we need to go in the
10 future. Does that make sense?

11 DENNIS GARBIS: Sure.

12 GEORGE MASON: Can I just add one thing just for the
13 record to explain? Dennis, you are talking about the box of
14 materials or what have you that you had looked at. All
15 right. I have never seen those, or gone through that, and
16 nor has anybody at my company, nor did we participate in the
17 meeting that they had with Tom on that what Mark was just
18 talking about. But it sound like a logical procedure that
19 they are heading down. So, I don't have the basis of
20 information to address the issues that you are talking about.

21 BENNY WAMPLER: Thank you. The first item on the
22 agenda, we said we would consider recommendations from First
23 Virginia Bank, escrow agent for the Board. Mr. King, we'd

24

--

1 ask you to come forward at this point in time and---.

2 BILL KING: Good morning. I am Bill King with First
3 Virginia Bank and, I guess, the one thing I wanted to start
4 out with, I think, there are...there seems there are two
5 different problems or matters for discussion]. One, is going
6 forward and looking at the whole procedure and coming up with
7 something. The other is to...what I think you are asking me
8 now is a recommendation on the current withdraw application.

9 BENNY WAMPLER: Yes, sir. We...of course, I will
10 refer to the September 24th letter that you wrote and then
11 you have had subsequent discussions as I understand
12 yesterday. You met with Ms. Riggs and Mr. Fulmer.

13 BILL KING: Right.

14 BENNY WAMPLER: And, I guess...I don't know who all
15 was in that. Claude Morgan was in that meeting.

16 BILL KING: We...and I have decided...I think it was
17 productive from my point of view, because I learned a lot in
18 some of the phone conversations I have had. But let me start
19 out from the beginning, we felt like that the way this was
20 set up by unit, is that when the Board was issued, there
21 are...there is scheduling...I believe, it is called a
22 schedule E that lists the various interest, and then when it
23 came time to disburse the balance in the unit, would be

24

--

1 disbursed based on those...those percentages, or at least
2 those percentages divided by the total percent of what is
3 being forced pooled. And that...that works...I think that
4 still works in a lot of situations.

5 The current circumstance thought is a little
6 different, in that money came in at a later date. It was not
7 in the whole time. Therefore, it is not a simple matter of
8 saying, here is the balance. Here is the interest that the
9 particular entities have. We multiply it. It doesn't work
10 out. And what I think we worked out yesterday is there are
11 two solutions. The simple one is to determine the date that
12 the funds in question went into the escrow account and the
13 day they went out and then take...try to back that out of the
14 total balance in those units and deal with the two
15 separately. In other words, we have an escrow account for a
16 particular unit that, from the beginning up through a certain
17 date, and we may...we may just for argument's sake here say
18 it is May of '97. But up to that date, the allocation is
19 already done, should be correct and the percentages, you
20 know, may very well apply. It may be something we have to
21 look at closer. Then the money that came in at that point,
22 we need to take...take out and separate and try to compute
23 the interest that was accrued on that balance, and then...and

24

--

1 then go forward from that date with the whole account.

2 I think the chances are good that...that it can be
3 worked out that way and it is going to take the corporation
4 of the operators that put the money in, possibly, too, the
5 people withdrawing the money and ourselves and the staff to
6 agree on, yes that's a reasonable figure and, you know,
7 everybody accepts that. Our concern as escrow agent is that
8 in making withdraw...a partial withdrawal from a unit, say
9 certain tracts out of a unit, that we don't over pay or under
10 pay on those, if we over pay...if we...if we come up with a
11 number that seems reasonable and we pay that out without
12 balancing it back to the whole unit, there is a chance that
13 the remaining money...the interest...the remaining interest
14 in those monies are going to get short changed. We don't
15 want that to happen.

16 That takes to me to the other. I said, there were
17 two solutions. The other one is more complex, where you go
18 back to day one and reconstruct everything by tract. That
19 would be very, very time intensive and the question is who,
20 how and all those things. But the...again, there is one
21 unit...there is one unit in there, I think, that the
22 ownership is entirely by the withdrawal applicants and that
23 one is relatively easy. But the other six (6) units not

24

--

1 only...there is mixed interest, but there is also funds that
2 went in and out at different times, and that's what...that
3 what really complicates it. And it is something that can be
4 worked through. It is really just a matter of the time and
5 who...who does all of that.

6 CLYDE KING: I have a question.

7 BENNY WAMPLER: Mr. King?

8 CLYDE KING: Bill, how much have we disbursed? I
9 don't recall disbursing hardly any.

10 BILL KING: Hardly any. There had been a few pretty
11 modest amounts and maybe even a couple were not conflicting
12 claims. But there may have been a couple of unlocateable---

13 SANDRA RIGGS: I think they have all been in
14 conventional drilling units where an unknown or unlocateable
15 has come forward and identified themselves.

16 CLYDE KING: And that's been very few?

17 BILL KING: Right.

18 BENNY WAMPLER: Yeah, and that's very straight
19 forward.

20 CLYDE KING: My...my, and maybe I am trying to be
21 too simple with it. If you take a dollar and it makes four
22 (4) percent interest, or whatever, then that should fairly
23 easy to understand that that dollar is worth one dollar plus
24

1 four (4) percent at the end of ever---.

2 BILL KING: Right.

3 CLYDE KING: ---whatever period you are working
4 with.

5 BILL KING: Right. Let me go back to how this has
6 been done. Again, we are counting by unit or Board order
7 number that is assigned.

8 CLYDE KING: Tracts?

9 BILL KINGS: As the money comes in, it goes into
10 that account, it is invested, and then on a time weighted
11 basis, both the earnings and the expense are allocated,
12 because we have one big pool of money that is invested and
13 the earnings and the expenses are allocated pro-rata among
14 the units on a time weighted basis, meaning that, if within
15 the unit, or among the units for that matter, but if money
16 comes in on March 1st and...well, let me take that...let's
17 say we are talking about a quarter. Money comes in April 1st
18 and other money comes in May 15th. The allocation of
19 interest, you know, the dollars that were in there April 1st,
20 are getting more on a pro-rata basis. If you have within
21 that unit, though money that came in April 1st, and let's say
22 during the time period, you know, another larger amount of
23 money comes in not for all the tracts, but a specific tract,
24

--

1 or a few tracts we're not accounting by tract and, therefore,
2 you know that creates some...where we have to go back and
3 manually look at how that...you know, how that interest and
4 expense is allocated. Now, that's the real problem we are
5 dealing with on this specific issue.

6 If...the other thing too I was going to say, what
7 we looked at yesterday would be a means where we...if we have
8 to go back and say, reallocate by tracts, we can come up with
9 a net income percentage to use as long as, again, I think
10 everyone should look at it, see how it is computed and agree,
11 and then let's take an example. I think this is what Mr.
12 Swartz was alluding to, is that they can reproduce the
13 figures that went in by tract. Dates and amounts. We can
14 provide a net interest, net earnings figure, and then you've
15 got...it is simple on a case by case basis, principal times
16 rate times time, but you've got, you know, a zillion...not a
17 zillion obviously, but you've got a lot of computations that
18 would have to be done like that because it's based on the
19 number of tracts. But in affect, what we can do for any
20 given time period is take the earnings over all that we have,
21 the expenses, take the net, and then that net would be
22 divided by the average of the beginning balance or value and
23 ending. It is a fairly simplistic approach, but it is one

24

--

1 that is used a lot in time weighted returns.

2 DENNIS GARBIS: Well, actually as you were
3 explaining this, what you have here basically is a mutual
4 fund, on a much smaller scale, obviously. But the mutual
5 funds do that everyday.

6 BILL KING: Right.

7 DENNIS GARBIS: So, I mean, there's a mechanism and
8 we are not...we are not inventing the wheel.

9 BILL KING: Well, in a perfect world in going
10 forward, and I would say that probably strong consideration
11 should be given to tract accounting. The thing that we...I
12 think right now we have somewhere approaching two hundred
13 (200) accounts...unit accounts. Maybe one eighty or ninety
14 (180 or 190), does that sound right?

15 BENNY WAMPLER: Yeah, that's close.

16 BILL KING: And, you know, we...now among ourselves,
17 I mean the es...the staff, the escrow agent, we were talking
18 about that. I mean, the numbers of accounts to be, you know,
19 allocated and posted, the royalties to all of that would
20 probably go from two hundred (200) to two thousand (2,000).
21 I don't know. It may be less. It may be more.

22 That's...that's...you know, still it is a matter of the
23 volume. The system can do it and it can be done on a daily

24

--

1 or a traditional, and again, this...you can like unto mutual
2 funds, and can like into what I compare to, because we are
3 using the same system for this as you as you would use for a
4 401K. It is a little different circumstances. The 401K
5 maybe. All of the investment vehicles are variable and they
6 are not as variable here. The other thing that's variable is
7 the money going in and out.

8 But it is...as far as going forward, or
9 participating in any input as far as how to do that or
10 reconstruct it. We are certainly willing to be involved in
11 that. But as far as the current situation, though we'd have
12 to go back and, you know, it was set up to do by units and so
13 there is a little bit of work involved to go back and figure
14 out the balances by tracts.

15 CLYDE KING: But if it was set up...if it was set by
16 unit, then you know how many tracts were in that unit, right?

17 BILL KING: Well, we...yes. I mean, we could be
18 presented with that information.

19 BENNY WAMPLER: The Board order has all that
20 information and you should have supplemental orders that
21 actually establish the accounts and move money in. So, that
22 kind of information is---

23 CLYDE KING: But a unit does have certain amount of
24

1 tracts in it?

2 BILL KING: Uh-huh.

3 CLYDE KING: And if those tracts were divided by
4 whatever that income was should come up with the amount of
5 that tract?

6 BILL KING: Right. Right. It can be done. It is
7 just a matter, the complexity is not just the number of
8 tracts, but also the number of deposits into all of those
9 tracts at different times. So, you've got a huge number of
10 transactions, so to speak, and a mechanism can be determined
11 that reasonably allocates everything to those monies. As far
12 as it being exact to the penny, I mean, the only way is to
13 have a system that does that is on a daily basis and you are
14 talking about, you know, a set up that's more expensive than
15 what we are currently dealing with.

16 BENNY WAMPLER: Let's...so, that we empty the barrel
17 on the...on our plate here, let's go ahead and let me call
18 these other agenda items, so we can go ahead and bring
19 forward and you will be available to answer questions as part
20 of the---

21 BILL KING: Oh, sure.

22 JILL HARRISON: I have one question right off the
23 bat. Are you going to call the next ones or---?

24

--

1 BENNY WAMPLER: Yes. The...I am going to go ahead
2 and call the agenda items, which is part B of this first
3 item. VGOB-97-0415-0579-01, VGOB-97-0520-0582-01, 0580-01,
4 0576-01, 0581-01, 0577-01 and 0578-01. I'd also just for
5 everyone's information call attention to an error we had. We
6 did have a duplication in the agenda item where we restated a
7 sentence that said "claimants stipulated settlement of their
8 conflicting claims to the ownership of the coalbed methane
9 gas producing the well is located on said drilling units and
10 allocable to certain tracts owned by" that statement was
11 repeated twice claimants' within these drilling units that I
12 just called. So, we'd ask the parties that wish to address
13 the Board in this matter to come forward at this time as
14 well. Go ahead.

15 JILL HARRISON: Mr. Chairman and members of the
16 Board, I'm Jill Harrison. I practice with Penn Stuart in
17 Abingdon. Today on these petitions I represent Hugh McRae
18 Land Trust and Garden Realty Corporations. With me today is
19 Miss Betty Boyd King. She is the President of Garden Realty
20 Corporation, which is a family owned corporate entity.

21 We obviously are here again requesting the
22 disbursement of the funds that are attributable to the
23 interest in the seven (7) units which come to a little over
24

1 five hundred thousand dollars (\$500,000). I guess, the one
2 question that I would ask Mr. King, and I wrote this down as
3 you were speaking, and if I mis...I don't quote you
4 correctly, please feel free to correct me, but you had
5 indicated that there were two processes. One, was a process
6 in which you would determine the date the funds in question
7 went into the account, and the date that the funds in
8 question which out of the account. Up to that point it would
9 be...up to the point they went in you could allocate and then
10 what you would have to do draw that amount back to determine
11 the interest during that time period attributable to those
12 funds. Is that...I may have simplified it a little bit?

13 BILL KING: Well, I think that's correct and again,
14 it is in a simple way, but, again, the two...the two
15 methods...I guess, what we were trying to come up with, is
16 there a reasonable way to do this other than going back and
17 taking the royalty statements or some other printouts from
18 the operators and actually redoing the whole thing.

19 JILL HARRISON: Yes, sir.

20 BILL KING: Which, again, would be---.

21 JILL HARRISON: Very time consuming.

22 BILL KING: Very, very time---.

23 JILL HARRISON: Right.

24

--

1 BILL KING: And the other way, yes, we would really
2 be able to determine as of a given date...it may be June 30th
3 '97 because under the procedures that we are working under,
4 we weren't generating for every unit a balance every month.
5 You know, it was a periodic...I think it was actually semi-
6 annually. So, we know that as of June 30th for any given
7 unit, we have a balance in that unit, which would be the
8 principal the monies that have come in, the earnings less
9 expenses.

10 JILL HARRISON: Right.

11 BILL KING: Now, what we were trying to explore---.

12 JILL HARRISON: I think I follow the process. I
13 just had one question that dealt with the process---.

14 BILL KING: Okay.

15 JILL HARRISON: ---and I don't mean to cut you short
16 by any stretch.

17 BILL KING: That's all right.

18 JILL HARRISON: But the point that I wanted to focus
19 on was based on the statement that you made about the date
20 the funds went in and the date the funds went out, since we
21 have the figures from the operator, which we have agreed if
22 they say it went in, then that's fine, then we will agree
23 with that. There isn't any problem, is there, then in
24

1 allowing or disbursing those principal amounts, as long as
2 you have a date coming out?

3 BILL KING: Well, there is a problem in that then
4 there is monies left the net earnings.

5 JILL HARRISON: The interest on the principal.

6 BILL KING: That...and which at that point, we still
7 would not know exactly what that is for your monies.

8 JILL HARRISON: Right, I understand that.

9 BILL KING: And with that left in, it would just
10 compound the problem of later determining, you know, what that
11 is, because as long as there is money in there, it should...it
12 would earning interest on interest and I feel like that the
13 simpler and the fairer or the best way is determine what it is
14 and pay the whole thing out.

15 JILL HARRISON: Then if the Board were to enter an
16 order today directing the escrow agent, you the bank, to make
17 that calculation, what time frame are we talking before it
18 would take...before the bank can say you receive five hundred
19 and thirty thousand dollars (\$530,000) in principal and X
20 number in interest?

21 BILL KING: That...you know, I don't know that I can
22 even say on my own, because it is something that as far as who
23 is going to do that calculation and---.

24

--

1 JILL HARRISON: In the bank, is that what you are
2 saying?

3 BILL KING: Right. I mean, it would be...I don't
4 think right now we have everything that we would need to do
5 that, you know, without working with the operator.

6 JILL HARRISON: Are we talking six (6) months, a year?

7 BILL KING: I wouldn't...I wouldn't...certainly
8 wouldn't think it would be a year or maybe even six (6) months,
9 but...what we...in our meeting yesterday, what we asked for...I
10 think the steps we are going to take is get the dates from the
11 operator as far as the money that came in, and also to see if
12 we can get a historical printout of...by tract of the amounts
13 and dates. I think, that's correct. And then once we have
14 that...and look to see what...what unit balances, what dates we
15 have as far as our hard copy reports of these allocations by
16 unit. Once we have that...hopefully all of that can be done
17 within a couple of weeks. I mean, that's...that's something
18 that...now, I don't know how long it might take to run the
19 transaction history statements we are talking about, or if the
20 operator can do that off their computer system.
21 That's...that's something we need to determine, but I would
22 think that could be determined fairly soon and once we would
23 have all of that data, you know, the question is, if we can use

24

1 the simpler procedure one I was talking about where we come up
2 with a balance in the account before this money came in, if we
3 can work that way hopefully, we should be able to resolve that,
4 you know, within sixty (60) days of having, you know, all the
5 data.

6 JILL HARRISON: Well, unfortunately when Ms. Riggs
7 called me last Tuesday, I told her I couldn't come to the
8 meeting yesterday because I had depositions scheduled yesterday
9 in Wise. They had been scheduled a long time. So, I would
10 have asked this yesterday, if I had the opportunity to be
11 there. But yesterday wasn't discussed how long it would take
12 for the operator to provide that information to you?

13 BILL KING: No, I don't think so. I don't think
14 we...I don't think we set a time limit or anything. I assumed
15 it would something that we could get, you know, within a
16 reasonable time. You know, a couple weeks or something.

17 BENNY WAMPLER: Mr. Morgan, can you tell us whether or
18 not that you have the, first, the ability to run a transaction
19 history statement for the unit?

20 CLAUDE MORGAN: I can't. I haven't had a chance since
21 I left yesterday to get back with Conoco and see what their
22 computer will print out for us on that. But I will try to...I
23 will try to run that down. You know, what we have got

24

--

1 is...we've got a fair amount of check stubs each month and
2 we've got a total that went in, but I have not had the chance
3 since yesterday evening to talk with the people, Conoco, who
4 are going to assist and see what they can give us as far as a
5 printout...line item printout.

6 CLYDE KING: But they would have that in units,
7 wouldn't they?

8 CLAUDE MORGAN: It would be by tract. Our payment---

9 CLYDE KING: Or tract.

10 DENNIS GARBIS: He said he could do it by tract.

11 CLAUDE MORGAN: --- (inaudible) payments are by tract.
12 We record everything by tract.

13 CLYDE KING: Well, they should have that information.

14 MARK SWARTZ: It is not as...it is not as complicated
15 as that. The issue here is the date that he is seeking to
16 identify that we left with the charge to identify and the
17 deposit. The problem is that certain payments were suspended
18 by the operator under leases in certain units, so that from the
19 beginning, all of the possible tracts that you could have paid
20 to the escrow agent weren't being paid to the escrow agent. At
21 a point in time, the operator decided to stop suspending
22 payments internally and an infusion of cash...additional cash
23 came into the escrow agent. So, all we need to know is what
24

--

1 was the date when the suspense stopped, so that we can
2 calculate our balance in the account at that point, because we
3 know that it pertains to the people's money who was not
4 suspended. So, we need to know that number.

5 Once the suspense money hit the account, it was back
6 in balance and the percentages that are in the Board order and
7 we can work it forward to the date that people started being
8 paid directly. So, we really only need...and when we left,
9 Claude and I agreed we were going to run this information, that
10 my guess is, we will have it in a week to ten (10) days, if it
11 takes that long, because a decision was made to not suspend any
12 more, if we can zero in on that date, we can look at the tract
13 payments and see when they started going to the...to the
14 Board's escrow agent and it shouldn't be much...but we're not
15 really looking at a historical every month weighted average
16 payment.

17 BILL KING: No, not on that. No, if we can do it the
18 simple way, we may not need the other thing we are talking
19 about. But there are two ways of doing this and, again, as
20 long as...from our point of view as long as whatever we do, the
21 whole unit balances, and we pay out the proper amount, and the
22 people whose money is left in there, they are being treated
23 fairly too.

24

--

1 JILL HARRISON: I have some documents that Ms. Riggs
2 had provided, they are under cover letters, some from
3 199...March, 1998, some of September, 1997, March, 1998, but
4 these are the printouts that I assume Ms. Riggs obtained from
5 the operator---

6 SANDRA RIGGS: No, from the escrow agent.

7 JILL HARRISON: Okay. From the escrow. I apologize.
8 I didn't have the correct name. But, for instance, this sheet
9 reflects a payment of a hundred and sixty-nine thousand, nine
10 hundred sixty-six dollars and ten cents (\$169,966.10) if I read
11 this correctly, for the South Long wall Six unit that pertains
12 to the tracts that are in conflict between Garden Realty, Hugh
13 McRae, the various people involved in the petition. So, a lot
14 of this information may already be available in your own
15 records if the escrow agent provided to---

16 SANDRA RIGGS: Those are the backup royalty statements
17 that come in with the checks that are in a backup financial
18 file with the escrow agent. They are not entered in any way
19 into their system so that they can pull those dates out.
20 That's the manual---

21 BENNY WAMPLER: That's the raw data.

22 SANDRA RIGGS: ---second process...that's the raw
23 data.

24

--

1 JILL HARRISON: Right, but this is in their
2 possession?

3 BENNY WAMPLER: Yes.

4 BILL KING: Uh-huh.

5 JILL HARRISON: Yeah, okay. That was the only
6 thing...I was trying to aid the process along and saying this
7 information is there.

8 SANDRA RIGGS: But they don't know when...what that
9 represents from the operator. They just know X dollars came in
10 on whatever date. They don't know...they may know what tract
11 it is for, but they don't know when the operator...what was
12 suspended, and when they stopped suspending, and in what months
13 payment that came in, and when the mix of claimants changed.

14 JILL HARRISON: I understand that completely. My
15 point was that if this information is provided by the operator,
16 then they have the information in their backup that they can
17 confirm it with. I am just trying---

18 BILL KING: Sure.

19 JILL HARRISON: ---to say that there is information
20 available.

21 BILL KING: What date was that by the way?

22 JILL HARRISON: Which...which document?

23 BILL KING: The one hundred and sixty thousand
24

1 (169,000).

2 JILL HARRISON: September 25, 1995. And then
3 I've...I've...the ones that were provided to me, there's
4 another that's for...this is the Northeast Long wall Nine unit,
5 October 25th, 1996. Hundred thirty-six thousand and four
6 hundred and seventy-six dollars and twenty-seven cents
7 (\$136,476.27). So, they're...they're all very large...large
8 amounts compared to the other deposits that were made with the
9 bank. But, I mean, it is just a confirmation once the
10 operator provides the information to you, this is available.
11 When did these escrow...when were the escrow funds first
12 started depositing with the bank?

13 BILL KING: When the account began?

14 BETTY KING: Yes.

15 BILL KING: Oh.

16 JILL HARRISON: 1990?

17 BILL KING: 1992 or late '92.

18 JILL HARRISON: Okay. Well, our request is to the
19 Board. We would like our money, to be very basic about it.

20 BENNY WAMPLER: Ms. King, you---

21 BETTY KING: Well, all right, if you can't hear me
22 raise your hand. I'm a school teacher too. Really, people,
23 this has been a long and frustrating time for the stockholders

24

--

1 of Garden Realty, and me in particular, because I am the one
2 who gets the telephone calls. Somehow it got out that there
3 was money there. It was my...it is our understanding, and we
4 appreciate the Board, that the function of the Board is to take
5 care of the small people like Garden Realty Corporation. You
6 know that we are a small family owned corporation. We do
7 business in Buchanan County. We pay good taxes in the State of
8 Virginia and Buchanan County. We have five (5) families that
9 still reside in Virginia and pay their taxes. And you know, we
10 don't like to be in a position of coming here and begging for
11 money that is in the bank, that is ours, that has languished up
12 there since...are we saying '92? Since the year '92, is that
13 when it has been---?

14 JILL HARRISON: Your funds may not have gone until '95
15 or '96.

16 BILL KING: That's when the funds started.

17 BETTY KING: Our funds, I may not know because now
18 Consol was taking care of us for awhile before they started
19 that out. If...if you will just please tell us what to do
20 next. Our attorney has had to...you know, I'm not an
21 attorney...we're not attorneys, so I can't read the statutes.
22 It doesn't mean a thing to me and I have had to call our
23 attorney and she has had to take us through this step by step
24

--

1 incurring a lot of legal fees. We appreciate what you are
2 doing, but we would like our money. Some of our chi...I call
3 them children, some of our stockholders are very young and
4 they're putting children through college. The rest of us are
5 senior citizens and we might like to do something with it. You
6 think what...Mr. King, you think what if...if that was your
7 money sitting up there in the bank and we could be investing
8 it.

9 BILL KING: Well, I...one good thing it is invested.

10 BETTY KING: I know you are investing it and I
11 appreciate that---

12 BILL KING: It may not be the way you would---

13 BETTY KING: ---but we play the stock market.

14 BILL KING: Okay. I can assure you we are not
15 investing it in stocks in this account anyway. But I---

16 CLYDE KING: Hopefully not in stocks.

17 BILL KING: ---I really can't put myself in your
18 position maybe, but I share the concern and again, I think
19 we...it really is, unfortunately, you know, more complicated
20 than what it looks like it should be.

21 BETTY KING: Evidently.

22 BILL KING: But if...if we can have, you know, the
23 input and cooperation of all the parties, I really think that

24

--

1 we can get something done on this, hopefully, perhaps, within
2 thirty (30) days if this more simple approach that we talked
3 about yesterday would work out. But...and I really think it
4 should be done in a way that we pay out the full amount. You
5 know, not...not leave the interest there. Pay out the full
6 amount, and hopefully have everyone agree as to, yes, this a
7 reasonable method and therefore this is the amount that is
8 owing.

9 JILL HARRISON: Well, my clients at this point have
10 said if it sounds semi-halfway, decent, reasonable, agree to
11 it.

12 BILL KING: Okay.

13 JILL HARRISON: So, you have the agreement of Garden
14 Realty and Hugh McRae Land Trust to do that. We have no desire
15 to make the operator go back in every check and every debit.

16 BETTY KING: Cert...certainly not in Mr. Bob Looney,
17 who has helped and helped every time I turn around. I call him
18 or Gill Gillenwater and I have to say...please put me on record
19 as saying that the Bluefield Branch of Consol could not be
20 nicer. Could not have been nicer because I have
21 called...sometimes I felt like I was Alice in Wonderland.
22 Thank you.

23 BENNY WAMPLER: Thank you.

24

--

1 SANDRA RIGGS: Okay.

2 BENNY WAMPLER: Thank you very much.

3 JILL HARRISON: I think pursuant to the statute, and
4 I'll go get my code section, but in 45.1-361.19, "it is
5 mandatory the Board shall order disbursement," I think there is
6 a time...thirty (30) day time limit. I know we've been at this
7 for over a year and a half now. So, we would respectfully
8 request that the Board enter an order letting us withdraw our
9 funds from the bank.

10 BENNY WAMPLER: Any questions?

11 DENNIS GARBIS: I have one question. Somebody said
12 over here, this goes back to the suspension of payments. For
13 what reason were those payments suspended? There was---.

14 MARK SWARTZ: Under the lease terms.

15 DENNIS GARBIS: Under the lease terms?

16 MARK SWARTZ: Right. The lease allowed us to suspend
17 payments that were in conflict.

18 JILL HARRISON: And that would have...so, that I may
19 speak up for Hugh McRae Land Trust, that is Consol's position
20 on the issue. But we are not here to argue that at this point.
21 As far as we are concerned at this point, at this point, we
22 are not interested in that issue. We just want the funds that
23 are there.

24

--

1 TOM FULMER: (Inaudible).

2 CLYDE KING: That the what...the funds that were
3 suspended were eventually---?

4 JILL HARRISON: I'm sorry, Tom, I didn't hear what you
5 said.

6 CLYDE KING: ---put in?

7 MARK SWARTZ: Correct.

8 JILL HARRISON: I didn't hear what you said. I'm
9 sorry.

10 TOM FULMER: How are you going argue a lease in front
11 of the Board?

12 JILL HARRISON: I'm sorry.

13 SANDRA RIGGS: The Board can't construe lease terms,
14 is what he was said.

15 TOM FULMER: (Inaudible).

16 JILL HARRISON: Oh. Okay. I'm sorry, Mr. King. I
17 didn't mean to interrupt you when you spoke.

18 CLYDE KING: I just ask...the money that was suspended
19 was placed in escrow---?

20 MARK SWARTZ: Correct.

21 CLYDE KING: ---at a later time?

22 MARK SWARTZ: Correct.

23 JILL HARRISON: Yes, sir.

24

--

1 CLYDE KING: Not very long, but---.

2 JILL HARRISON: Three (3) years or four (4) years, but
3 it was put there.

4 CLYDE KING: Was interest figured on that that was in
5 suspension?

6 MARK SWARTZ: We are in a lawsuit over that.

7 CLYDE KING: Oh.

8 MARK SWARTZ: Okay. Which is fine, you know, but, I
9 mean, it is the reality of that. You know, I might suggest to
10 the Board that R-25 is a unit that could be just be paid out.
11 I mean, there's not a lot of money in it, but there's no
12 problem that I see with R-25, and Mr. King can give them a
13 balance as of a date because there is no other parties. There
14 were no suspense delays. You know, if they're...if they're
15 prepare to acknowledge, you know, that it is their right amount
16 of the int...the earnings are appropriate, you ought to give it
17 to them. You know, we volunteered after the last meeting, and
18 I mean my clients specifically volunteered, if we could get a
19 number from the bank with regard to interest, that we will do
20 the calculation and share it with Jill and, you know, disclose
21 how it was made and let them either agree or disagree that it
22 was reasonable or not reasonable. You know, but there
23 was...until today, I was not unaware that there was a desire to
24

1 reach an agreement that the amount was appropriate from Consol.

2 JILL HARRISON: I have to...I have to ask for a
3 clarification of that. Mark, you are saying that you haven't
4 known that we've agreed with your figures until today?

5 MARK SWARTZ: I had a conversation with Mr. Seigel
6 within the last five (5) or six (6) weeks where he told me he
7 wouldn't agree to anything.

8 BETTY KING: Oh.

9 JILL HARRISON: And you were present at the last Board
10 hearing when I said...and I presented and I had filed a
11 letter...well, that doesn't matter. But I completely and
12 absolutely disagree with that statement.

13 MARK SWARTZ: My impression has been---.

14 JILL HARRISON: Impression does not---.

15 BETTY KING: I disagree with it too, because I have
16 talked to Mr. Seigel.

17 JILL HARRISON: But that doesn't...that's irrelevant
18 for this---.

19 SANDRA RIGGS: Well, let me ask something and maybe
20 this will clarify it. When you say you agree to the figures,
21 you are still in the lawsuit contesting that the amount is
22 proper?

23 JILL HARRISON: Garden Realty is not in a lawsuit.

24

--

1 SANDRA RIGGS: I understand.

2 JILL HARRISON: Hugh McRae---.

3 SANDRA RIGGS: I understand.

4 JILL HARRISON: ---is in a lawsuit that deals with---

5 .

6 SANDRA RIGGS: But it is the same pot of money that we
7 are splitting here.

8 JILL HARRISON: No, ma'am. What their lawsuit deals
9 with are reasonable production costs, interest...possible
10 interest that should have been earned. It has absolutely
11 nothing to do with what Consol has said they have deposited
12 into those accounts and I have filed a letter with the Board
13 that says, if they say deposited it, we agree with it. We will
14 not contest it.

15 SANDRA RIGGS: Are you saying that, if the Board
16 disburses in accordance with the operator's statement, that the
17 Board is released from liability for any other payments to your
18 clients?

19 JILL HARRISON: Now, one more time.

20 SANDRA RIGGS: Are you saying that if...if the
21 operator gave you the numbers, and you agreed to them, and you
22 have now an agreement with regard to entitlement from the
23 escrow account, that that is your full claim against the Board

24

--

1 and the escrow agent and you are releasing them from any
2 further liability once they disburse?

3 JILL HARRISON: I would say...my response to that is,
4 everything that..that we have been provided is based on records
5 that have been provided by the operator. My clients have no
6 ability to go back and check any of this information. We are
7 going solely on what's been provided to us. The Board is the
8 regulatory authority that oversees the operator.

9 SANDRA RIGGS: Okay.

10 JILL HARRISON: So, if the Board's jurisdiction is to
11 oversee the operations of the operator, and it later comes to
12 light that there is a complete, not that I am saying it would
13 ever happen, but if it comes to light that there was a complete
14 misrepresentation as to funds, or there is some other torts
15 action involved which the Board should have been overseeing,
16 then no, we will not release that. But we will say, yes, if
17 the operator says that's in here today. Then yes. Those are
18 our funds and we want it.

19 SANDRA RIGGS: Then in my opinion under the law there
20 is no agreement as to entitlement---

21 JILL HARRISON: Then---

22 SANDRA RIGGS: ---that triggers the thirty (30) day
23 for disbursement.

24

--

1 JILL HARRISON: Okay. That's fine, then. I have my
2 instruction on how to proceed. If we don't obtain an order
3 today, then that's fine, I have my instructions on how to
4 proceed.

5 SANDRA RIGGS: Well, the Board has a couple of ways to
6 go. The Board can approve the application, but you don't know
7 how much to approve it for. So, I don't know what it is you
8 are approving. You can deny the application on the basis that
9 there is no entitlement and they can take their appeal on to
10 Circuit Court, which would be a (inaudible) Appeal and let the
11 Court figure what the monies are.

12 JILL HARRISON: We wouldn't be following that route.

13 SANDRA RIGGS: Those are the possibilities...or you
14 can continue it. You have got three...three possibilities
15 until you get back the numbers that you need in order to enter
16 an order of disbursement.

17 JILL HARRISON: And I respectfully disagree on the
18 fact that you don't know what you are approving. It seems to
19 me that you have some very capable individuals here which have
20 said, if we are told let's disburse this money, they can do the
21 calculations to come up with the figures. So, in my mind, it
22 is quite feasible for the Board to enter an order to say, let's
23 disburse this money. Operator, you provide the needed records

24

--

1 to the escrow agent and escrow agent you come up with what
2 interest should attributable to those funds. I mean, that's a
3 direct order it seems to me that's going to have to be entered
4 today, or at some point in time, before these individuals will
5 provide the records and then the escrow agent can do the job
6 that you are charging them with doing.

7 BENNY WAMPLER: Any questions?

8 MASON BRENT: I have...I have more questions than we
9 have time for me to ask. Ms. King took the...literally took
10 the words right out of my mouth. But this whole thing reminds
11 of Alice in Wonderland. It is just getting stranger and
12 stranger all the time. I've got to say just bluntly that I am
13 not impressed with the operators, I'm not impressed with the
14 bank and I'm not impressed with our Board. We've got to
15 resolve this thing and move on. It just seems like everybody
16 is pointing a figure the other way and I'm just getting really
17 frustrated and losing all of my patience with this. To say
18 that I have more questions than we have got time to answer, but
19 if I may, Mr. King, start with you.

20 You receive these deposits from these
21 operators...your bank---?

22 BILL KING: Right.

23 MASON BRENT: ---receives and your bank is chartered
24

1 to do business in the State of Virginia, obviously?

2 BILL KING: Obviously.

3 MASON BRENT: And you receive these deposits from
4 these operators. What records do you keep for these
5 individual's deposits that your bank receives? I mean, do you
6 know where that deposit came from and what day your bank
7 received it---

8 BILL KING: Yes.

9 MASON BRENT: ---and any back up...do you retain any
10 back up information that they send you telling you what that
11 deposit is for?

12 BILL KING: Yes, we do. We receive with each check a
13 royalty statement and that's filed in a file for that unit
14 number.

15 MASON BRENT: And tell me...tell me what's on that
16 royalty statement? That gives you a unit number?

17 BILL KING: It gives us a unit number, which is all we
18 use to post it.

19 MASON BRENT: It gives you the tracts?

20 BILL KING: It does..and then it shows all the tracts,
21 I believe.

22 MASON BRENT: And does it tell you how much for each
23 tract they are depositing?

24

--

1 BILL KING: I believe it breaks it down that way.

2 MASON BRENT: So, you have...in your records you have

3 deposits made by tract and the date they were made?

4 BILL KING: We have...right, we have filed by unit.

5 That would be---.

6 MASON BRENT: Yeah, but within that...within that

7 file---.

8 BILL KING: Uh-huh.

9 MASON BRENT: ---it gives you the individual tract

10 information, is that right?

11 BILL KING: I think it does.

12 BENNY WAMPLER: It does. That's what Jill...Ms.

13 Harrison was referring to.

14 JILL HARRISON: Uh-huh.

15 BILL KING: Right, that's one of the printouts she

16 had.

17 MASON BRENT: So, if I asked you today...if you and I

18 walked outside here, and I asked you, Mr. King, would you tell

19 me if a tract number one...would you go back in your records

20 and figure out for me when principal deposits were made for

21 that tract...the date they were made, the amount?

22 BILL KING: No, I couldn't.

23 MASON BRENT: You can't do that.

24

1 BILL KING: I couldn't do it...well, in other words,
2 what you would be asking us to do is go through the royalty
3 receipts in a unit, and I'm assuming that a given tract would
4 only appear in one unit. I mean, I...I think that's
5 probably...anyway we pull out that file for that unit depending
6 on how volumist it is. We would go through and any royalty
7 statement...you know, manually look at each statement from now
8 back to, I guess, 1992 and any tract one, whatever...anything
9 that came in reflecting tract one, we would have to pull that
10 out. Then we would have do some type of calculation for
11 every...let's say there was, and I don't know there could
12 be...how many months are talking here?

13 DENNIS GARBIS: Seventy-two (72).

14 BILL KING: Let's say...let's say...let's say seventy-
15 two (72), yeah. You could have actually seventy-two (72)
16 transactions, meaning seventy-two (72) interest calculations
17 and then---

18 MASON BRENT: But you're...to that unit, aren't you
19 accruing interest on a monthly basis?

20 BILL KING: Right, to---

21 MASON BRENT: Let's go back to the unit.

22 BILL KING: To the unit, right.

23 MASON BRENT: To the unit you're accruing interest on

24

--

1 a monthly basis. Well, you...I mean, you have got the
2 historical history back seventy-two (72) months, don't you, of
3 what---?

4 BILL KING: Right.

5 MASON BRENT: ---rate applied to that unit on a
6 monthly basis?

7 BILL KING: Right.

8 MASON BRENT: Okay. And that's not too hard to
9 retrieve, is it?

10 BILL KING: As far as the earnings at any given time?

11 MASON BRENT: No, no, the rate that you use to
12 calculate the earnings. I mean, I get a bank statement every
13 month and it tells me what my monthly interest rate is and what
14 the compounded rate is year to date, or whatever. I mean, I
15 can go back---.

16 BILL KING: Yeah. Right. Now---.

17 MASON BRENT: ---in my shoe boxes, I can go back
18 seventy-two (72) months and tell you what I've earned on a
19 monthly basis.

20 BILL KING: Right.

21 MASON BRENT: Rate. Per rate.

22 BILL KING: But now it is...of course, I mean, it is
23 a little...it is not a deposit account obviously, but yes we

24

--

1 can determine the rate for any given time period or month. So--
2 -.

3 MASON BRENT: Okay. And you can apply that to that
4 unit?

5 BILL KING: Right. That's in affect. That's---.

6 MASON BRENT: And then within that unit you know...and
7 this is a question.

8 BILL KING: Uh-huh.

9 MASON BRENT: Within that unit, I understand that you
10 know which tracts are in that unit, and the deposit that was
11 made per tract in that unit? They send you a check. Let's say
12 they send you a check for a hundred thousand dollars
13 (\$100,000). It is my understanding, based on what I've heard
14 here, that you have available with that royalty statement,
15 within that royalty statement, it will tell you that twenty-
16 five thousand dollars (\$25,000) of that was for tract one and
17 twenty-five thousand dollars (\$25,000) of that was for tract
18 two and twenty thousand (20,000) was for tract three. So,
19 you've got that information there.

20 BILL KING: It is in the file, but let...let me go
21 back to the very beginning and what...this was set up to do
22 accounting by units and the whole---.

23 MASON BRENT: I understand that. I understand that.

24

--

1 But that---.

2 BILL KING: In other words, we are trying to have it
3 set so that it is not a manual process anytime, you know, there
4 was...the idea was that when a withdrawal came up, that for any
5 given unit, you know, we would have a Board order saying, pay
6 this out, and here is a schedule of the owners and their
7 percentage interest and we cut checks based on that percentage
8 interest times the balance that's in that account, because the
9 unit...you know, we don't...we don't actually have to go back
10 and figure out what the interest was for this...it is already
11 done. The balance that's in there has allocated both earnings
12 and expenses.

13 MASON BRENT: But the problem that I see is that unit
14 accounting is not reality today.

15 BILL KING: That's right.

16 MASON BRENT: And we wouldn't be sitting here
17 discussing all of this. So, let's deal with the reality that
18 we have---.

19 BILL KING: Right.

20 MASON BRENT: ---not what we had hoped would happen.

21 BILL KING: Well, I'm coming...that's---.

22 MASON BRENT: What we had hoped would happen, was this
23 could...from the bank's perspective, this could all be handled

24

--

1 on a unit basis. The reality is we are now down fighting tract
2 by tract---

3 BILL KING: Right.

4 MASON BRENT: ---to figure out what's going on.

5 BILL KING: Right.

6 MASON BRENT: So, it just seems to me that we've got
7 to quit dwelling on it is all being done on a unit basis, and
8 figure out how we are going to unwind what's been done on a
9 tract basis, and that's my line of questioning here, is if we
10 know...if we can go back and establish the rate...the
11 investment rate...the interest rate---?

12 BILL KING: Right.

13 MASON BRENT: ---that's been applied to the unit.
14 Well, if it has been applied to the unit then isn't it implicit
15 there that it has been applied to the tracts within that unit?

16 BILL KING: Sure. That's right. This is...yeah, this
17 is what we discussed---

18 MASON BRENT: Okay. So, if you tell me that it...if
19 you tell me that if in March of 1993, the interest rate that
20 was applied to this account was six (6) percent, then that kind
21 of tells me that in March of 1993 six (6) percent applied to
22 tract one, right?

23 BILL KING: Uh-huh. Right.

24

--

1 MASON BRENT: Which had...why can't we go back then,
2 and if this Board were to establish...let me put my question
3 this way, if this Board were to establish an order for you to
4 disburse the Garden Realty deposits with interest that were
5 applied to the units within which the Garden Realty tract were
6 owned...held, can't you come up with, knowing the rates and
7 knowing the dates of deposits, and I know it is not, you know,
8 something you can go back and weep up for me in an hour, but---
9 ?

10 BILL KING: Right. That's...that's the whole matter.

11 MASON BRENT: ---can't you go back and...can't you go
12 back and figure out---?

13 BILL KING: The answer is, yes, it can absolutely be
14 done, and then the question is well...I don't have any idea
15 what kind of time, you know, we are talking about and, you
16 know, whether we should be compensated for additional time and
17 if it is a few hours, you know, we are not going to worry about
18 it. My problem is right now, I don't...I am not confident to
19 know what kind of time frame, you know, that we are talking
20 about. And really this...this is actually what we were
21 discussing yesterday, as far as how we go back and compute this
22 by tract, and I...I still say...I don't think it is enough to
23 just pull out the tracts that are involved, and compute that
24

--

1 and say, ay, ha, here it is, because if we do that...if there
2 is any...if there is any flaw in the procedure and if we
3 haven't computed that for every tract in that unit and balanced
4 those all of that to what we actually have for that unit, then
5 we could have more problems down the road. So, that makes
6 it...you know, that makes little more...even more time
7 consuming, because instead of seven (7) tracts we are talking
8 about...I really don't know how many, but---

9 CLYDE KING: Mason, excuse me. Could I ask a
10 question?

11 MASON BRENT: Sure.

12 CLYDE KING: You know what the principal is then,
13 don't you?

14 BILL KING: For?

15 CLYDE KING: For a tract.

16 BILL KING: A given tract?

17 CLYDE KING: Uh-huh. Not counting interest.

18 BILL KING: We would only know what the principal for
19 a given tract is based on what the operator tells us, or going
20 back through all the royalty---

21 CLYDE KING: Well, what the deposit said the principal
22 was?

23 BILL KING: Oh, on a given transaction, right. Right.

24

--

1 CLYDE KING: Yeah. Then you could disburse the
2 principal, and settle the interest after you do all your
3 calculations?

4 BILL KING: Well, if we...again, if we do that, you
5 know, we are compounding the problem later. We've got interest
6 still in there earning interest and I guess what I am thinking
7 is, the principal, I guess, could be determined in a matter of,
8 I don't know a few...a week or a few days and I would...I would
9 just feel it would be the most prudent thing to take a little
10 more time, and hopefully by that I only mean another, you know,
11 a couple or a few weeks, and determine the whole thing and get
12 the whole thing---.

13 CLYDE KING: If we could come up with that
14 period...that time frame, Mason, that would certainly, I think,
15 be suitable.

16 MASON BRENT: Well, at some point, or rather you are
17 going to have to...at some point or another, you are going to
18 have to determine how much interest has accrued to each
19 individual tract.

20 BILL KING: Uh-huh.

21 BENNY WAMPLER: Right.

22 MASON BRENT: I mean, at some point or the other.

23 BENNY WAMPLER: The parts have to equal the whole, is
24

1 what you have to get to.

2 MASON BRENT: Yeah, and at this point...this point in
3 time...at this point in time---

4 BILL KING: Well---

5 MASON BRENT: ---excuse me. At this point in time,
6 if we ask you to make that calculation for Garden Realty and
7 the units within which their tracts reside right now, why
8 wouldn't you want to go ahead and make that calculation for all
9 of those, and just go ahead and get it done, so that some of
10 the parts does, in fact, equal the whole, rather than just if
11 we were to ask you to handle Garden Realty...rather than just
12 try to figure theirs out, just go ahead and do the whole thing,
13 since you've got go through the whole calculation anyway?

14 BILL KING: I agree...that's...yeah, that's...that's
15 what I say. Within a given unit, is that what you're referring
16 to, all of the...all of the tracts, I mean, for Garden, for
17 Hugh McRae, for every---?

18 CLYDE KING: That way you know each unit.

19 BILL KING: That's...I think, that's...I think that's
20 a prudent thing to do and---

21 MASON BRENT: And can...if we were to ask you to have
22 that available to us by our next meeting in a form in which we
23 can act on any individual disbursement request, can you do

24

--

1 that?

2 BILL KING: I really...for myself without consulting
3 with some of my associates, to say yes on that, I'm...I'm
4 placing a whole...you know, a lot of things at risk, because
5 its...like I said its...the number of people we have to put on
6 that are not...you know, a small finite number, I just do not
7 know as of this day whether...whether we could have that in
8 thirty (30) days. Now, let me go back to something---

9 MASON BRENT: How many...how many...how many units are
10 involved in this?

11 JILL HARRISON: Seven (7).

12 BILL KING: Seven (7) units.

13 MASON BRENT: And within those seven (7) units, on
14 average, is how many tracts?

15 JILL HARRISON: I don't know if I can tell you exactly
16 how many tracts. Some had just one and some had two (2) or
17 three (3).

18 MASON BRENT: And as many as five (5) or---?

19 JILL HARRISON: I don't think there are that many.

20 MASON BRENT: Not as many as five (5).

21 SANDRA RIGGS: These are those Long wall panels.

22 MASON BRENT: Right.

23 SANDRA RIGGS: They are not the eighty (80) acre
24

--

1 drilling unit panels. They are the long...they are much larger
2 units then---.

3 JILL HARRISON: Were you talking about out tracts or
4 the entire tracts in the unit? I'm sorry, Mr. Brent.

5 SANDRA RIGGS: Entire tracts in the unit.

6 MASON BRENT: I want to know how many units Garden
7 Realty is---?

8 BENNY WAMPLER: Involved in.

9 MASON BRENT: ---tracts are involved in?

10 JILL HARRISON: Seven (7).

11 BILL KING: That's seven (7). And in those seven (7)
12 units, in each unit there's one unit that there's only a few
13 tracts or at least---.

14 SANDRA RIGGS: There's one unit there is only one
15 tract being escrowed that's their money. There are no other
16 interest in it. That's the simple one.

17 BILL KING: Right.

18 SANDRA RIGGS: That's an eighty (80) acre Oakwood I--
19 -.

20 BETTY KING: That's easy.

21 BILL KING: Right. And that is the one we could pay
22 out---.

23 BETTY KING: Today.

24

--

1 BILL KING: ---in a very, very short time. Yeah.

2 SANDRA RIGGS: Right. That one is the easy one.

3 JILL HARRISON: Yeah, it could have been done a long
4 time ago.

5 SANDRA RIGGS: And then it goes from there clear up to
6 a sealed gobb unit, I think, which is thousands of acres with
7 thousands of tracts in it.

8 BETTY KING: May I ask a question?

9 BENNY WAMPLER: Yes, ma'am.

10 BETTY KING: Mr. King, is this the first time this
11 escrow account has...in '92 you formed it...in '92, is this the
12 first time the bank has had something like this to do?

13 BILL KING: Yes.

14 BETTY KING: And you've not had any guidelines and you
15 haven't formed any...was that what you were doing yesterday,
16 was trying to decide how we were...you were going to be able to
17 do this?

18 BILL KING: Yes. We were discussing the possible---.

19 BETTY KING: And they have been in there since '92?

20 BILL KING: Well, again---.

21 BENNY WAMPLER: Let me bail Mr. King out just a
22 second. He had...he is operating under a contract to the
23 Board, or the bank is. It is the escrow agent. When the
24

1 Board...when that contract was, or when the RFP, Request for
2 Proposal, was sent out, and they placed a bid on that, it was
3 based on the unit. It did not contemplate disbursal by tracts.
4 It contemplated that you would have the entire unit being
5 disbursed. Now, Mr. King, I'd say to you, realizing that and
6 realizing you could have a contractual problem, which you
7 gently raised here, I would say to you that...that if that is
8 the problem, I will commit, and obviously we don't have a open
9 wallet, but I commit that we would recognize that to resolve
10 this issue, and we would work out reasonable compensation,
11 whatever it takes to get this resolved because it is important.
12 It could help the Board to set...you know, set everything else
13 straight. So, it is very important in this transaction. It is
14 not right to hold you to a contractual matter, and then say go
15 do everything else we want, and I am not suggesting that's what
16 we are trying to do. But in essence, this thing has evolved
17 into something that I don't think we anticipated at the time
18 that it was all set up.

19 BILL KING: Yeah.

20 JILL HARRISON: And I may make a point, too. Mr.
21 Brent has a very good point about doing all the tracts within
22 the unit because we also have the applications that were
23 between Torch---

24

--

1 BENNY WAMPLER: Torch. That's right.

2 JILL HARRISON: ---Hugh McRae and Consol. They
3 involve like thirteen (13) units, but they involve these seven
4 (7) units---.

5 BENNY WAMPLER: That's right.

6 MASON BRENT: Right.

7 JILL HARRISON: ---and then, Hugh McRae and Coal
8 Mountain have entered into...we haven't filed the petitions.
9 We've been waiting to see what was going to happen with all of
10 this.

11 BETTY KING: Garden Realty...Garden Realty.

12 JILL HARRISON: Well, you've got that one too.
13 Garden...Hugh McRae and Coal Mountain has done an agreement and
14 Garden Realty and Coal Mountain has done an agreement, which
15 also involves some of these same units. So, if that is done
16 now, that's going to save a great deal of time and expense
17 later. So---.

18 BENNY WAMPLER: Well, now, that's why we would need to
19 do it, because you...I don't see how you can disburse---

20 SANDRA RIGGS: Well, we would have to do it again and
21 again though, Benny, because what's going to happen, is for
22 those new ones that haven't been recognized by the Board and
23 the payments are going...are not been paid direct yet, that

24

--

1 accounting is going to keep changing because every month new
2 monies are going to be coming into the account.

3 JILL HARRISON: But you will have saved time and money
4 in the sense that the procedure is going to be established and
5 if they have worked through the accounting, at least to that
6 point---.

7 SANDRA RIGGS: You'd have to update it with the new
8 deposits.

9 JILL HARRISON: Yeah, but update is much better than
10 having to go back and create the...you know, the whole process
11 again.

12 CLYDE KING: Why not update it all? Update it all? I
13 mean, all of this.

14 MARK SWARTZ: We need a closure here. I mean, we...I
15 mean, Ms. Riggs suggested we have two options. We really have
16 three. I think that the Board needs get itself in a position
17 to enter an order that says this is the amount of principal and
18 interest we think you are entitled. They don't want it, if
19 that's something different. But I, you know, the way to get
20 the closure here is to get to that point. I can do---.

21 MASON BRENT: And that's why I am...that's why I am
22 trying to get....

23 MARK SWARTZ: Right.

24

--

1 BILL KING: Right.

2 MARK SWARTZ: We would and, you know, you might want
3 the escrow agent to make the calculations, but if the escrow
4 agent could give a net income figure per calendar year, and
5 could give us ending balances for calendar month, we would be
6 willing to take a stab at the...well, we would only need to six
7 (6) of the units, and calculated what we think it is you need
8 to have to make an order. I mean, independent of the bank. I
9 mean---

10 MASON BRENT: Well, the problem...the only problem I
11 have with that, Mr. Swartz, is that...we will take a stab at
12 it, is not the kind of commitment I am looking for here.

13 MARK SWARTZ: Well, I can't...well, I mean, I...we
14 will share our calculations with you. I mean, if I have ending
15 balances on a monthly basis, I know what we've paid in. I
16 mean, we've got the tract data. We shared it with you all. We
17 have it available to us. We will...we left yesterday with an
18 understanding that we would determine that suspense date. So,
19 we will know what that is. I do not have a net income number.
20 So, he has got to give that to me. I can then apply that net
21 income number to the periods of time that the money was not
22 there. I mean, when I say a stab, I mean, I am going to do an
23 actual calculation, but it is not going to be a daily
24

--

1 calculation. I mean, I can't do that. I don't have the
2 ability to do that. But we can come back, if we have got the
3 balances for the units, which is how they keep their records,
4 an income that we can apply over time. We can come back with a
5 calculation that we can disclose, this is how we made the
6 calculation using this information, and if it seems like a
7 reasonable approach to get from here to there, you can sign off
8 on it, if you've got a lot of questions, well, then maybe you
9 will want the bank to do it. But, I mean, my client is just as
10 interested in closure here, and a process, as you all. I mean,
11 this is a problem that needs resolution.

12 MASON BRENT: Well, you're right. I...you know, I
13 feel more comfortable myself in asking our escrow agent and
14 that bank to make this deter...I appreciate your offer to that,
15 but I feel a lot more comfortable in asking the bank to come up
16 with it, because I think they've got the information. It may
17 be a little boorish task we are asking them to do. But our
18 Chairman has indicated that he is willing, you know, to the
19 best we can, to accommodate the bank on that.

20 BILL KING: Well, that's...you know, basically I
21 appreciate the fact that we...at least want everyone to know
22 we've...we are operating in accordance with the way we are
23 supposed to. We have just come up with something that was
24

1 unforeseen. We are willing to do whatever we can to help get
2 it resolved. And I would...I would say it may be helpful for
3 the Board to allow us to work with whomever, the operators, the
4 staff, whatever resources that we may need, if there are
5 questions that come up when we are working on this, or if we
6 want to have them take advantage of their offer, give them the
7 data, do our thing and compare at least---

8 MASON BRENT: Where I want to get, and I need...you
9 know, I need help down from the other end of the table, but
10 where I want to get is, I want to get at the end of this
11 hearing, right here, to where we've asked you to come back to
12 us in thirty (30) days, in November...at our November, and tell
13 us what balances are due on disbursement in these units within
14 which Garden Realty has these tracts, principal and interest,
15 as you have calculated from...when you get back to the office
16 today or whatever---

17 BILL KING: Right. And---

18 MASON BRENT: ---and so we could be in position then,
19 to order the disbursement of the principal and interest as you
20 calculate it, that is due on the tracts held by Garden Realty.
21 That's where I want to try to get here. If there is anybody
22 here that can help me get there, help me.

23 DENNIS GARBIS: Well, what I am concerned about is the
24

1 potential liability issue, and I want to make sure that, you
2 know, that we are protected and that we have deliberate process
3 before us, and I fully appreciate what Brent is saying, but
4 part of that is that we need to get something memorized so that
5 we have a methodology that would enable us from here on out,
6 because bad news doesn't get better with age---

7 BENNY WAMPLER: Right.

8 DENNIS GARBIS: ---and we need to bite the bullet and
9 get this thing squared away. I mean, I think that's...that's
10 not going to happen over night and I think this is the first
11 step in that direction.

12 CLYDE KING: Are you...excuse me. Are you willing to
13 say that you would release the Board from any liability with
14 these figures?

15 JILL HARRISON: With regard to these escrow amounts?

16 CLYDE KING: Yes.

17 JILL HARRISON: I think that is a distinct possibility
18 once we see the amounts and how it was determined. Yes, sir.

19 CLYDE KING: That would certainly speed up the
20 process.

21 JILL HARRISON: I'm not saying I'll give a blanket
22 lia...release of liability for all issues---

23 CLYDE KING: On this one item?

24

--

1 JILL HARRISON: ---but I would. Yes, sir.
2 CLYDE KING: And maybe let Consol---.
3 BETTY KING: Garden Realty would.
4 JILL HARRISON: Yeah.
5 CLYDE KING: Mark, you compare your figures with his
6 and see...you should come up---.
7 MARK SWARTZ: If I can get those two pieces of
8 information---.
9 CLYDE KING: That should be available.
10 MARK SWARTZ: ---and we can do a calculation that we
11 can share with you on a spreadsheet form so you can see how we
12 did it. They can do whatever they, you know, have. But---.
13 CLYDE KING: It ought to come up the same, really, if
14 you use the same percentages.
15 JILL HARRISON: Since there is no issue as to the R-25
16 unit, could we, at a minimum, get an order today issuing the
17 disbursement of those funds and the interest on the amount?
18 BENNY WAMPLER: We can deal with that right now. As
19 far as R-25 there is no...is there an issue of that, Sandra?
20 JILL HARRISON: I think that would go a long way
21 with...with Hugh McRae Land Trust, even though it is a very
22 small amount. It will at least be an order that I can report
23 back was entered.

24

--

1 CLYDE KING: I think we can do that, don't you?

2 SANDRA RIGGS: Let me see.

3 BENNY WAMPLER: Mr. Garbis?

4 DENNIS GARBIS: Mr. Chairman, since I do have concerns
5 about the liability, I would like to make a motion for
6 executive session. I move that this meeting be recessed and
7 that the Board immediately reconvene in an executive closed
8 meeting for the purpose of consultation with legal counsel and
9 briefings by staff members, consultants or attorneys pertaining
10 to actual or probable litigation, or rather specific legal
11 matters requiring the provision of legal advise by counsel, as
12 permitted by Section A, paragraph seven of Section 2.1.344 Code
13 of Virginia. This motion is made with respect to the matters
14 identified in agenda as item number one.

15 BENNY WAMPLER: Second? Is there a second?

16 MASON BRENT: I'll second. Let's get it over with.

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

18 (All signify affirmatively.)

19 BENNY WAMPLER: Oppose say no.

20 (No audible response.)

21 BENNY WAMPLER: We are in executive session.

22 (Closed Executive Session.)

23 CLYDE KING: I move we go out of executive session.

24

--

1 BENNY WAMPLER: Okay. I'll have each Board member
2 affirm that only matters discussed were matters of a legal
3 nature while we were in executive session and we will do a form
4 of a roll call vote just if you will state your name.

5 MASON BRENT: I do.

6 DENNIS GARBIS: I affirm.

7 CLYDE KING: I affirm.

8 BENNY WAMPLER: And I affirm. We are out of executive
9 session. Are the other folks coming back in?

10 JILL HARRISON: They're indisposed at the moment.

11 BENNY WAMPLER: All right. No problem. Should we
12 wait?

13 JILL HARRISON: I'll go and find out. No we don't
14 have to wait.

15 BENNY WAMPLER: Okay. All right. Okay. Ready.

16 DENNIS GARBIS: Mr. Chairman, I would like to make a
17 motion that pertains to unit R-25, tract six, with the
18 principal amount presently being held of one thousand, three
19 hundred fifty-two dollars and nineteen cents (\$1,352.19) plus
20 accrued interest, plus any fees be disbursed, fifty (50)
21 percent to the Hugh McRae Land Trust and fifty (50) percent to
22 Garden Realty Corporation in accordance with an agreement sent
23 to the Board, contingent upon each applicant separately

24

--

1 agreeing on record that said amount represents their complete
2 entitlement to and claim against the R-25 unit escrow account.

3 JILL HARRISON: The escrow account---?

4 BETTY KING: For the R-25.

5 CLYDE KING: I second.

6 JILL HARRISON: I was going to say, I can't discuss it
7 until you second the motion

8 CLYDE KING: Second. Excuse me.

9 BENNY WAMPLER: We have a motion to second. Any
10 discussion?

11 JILL HARRISON: Would you mind reading that, again,
12 Mr. Garbis?

13 DENNIS GARBIS: Certainly. The motion will be that
14 the R-25 unit, tract six, with one thousand, three hundred
15 fifty-two dollars and nineteen cents (\$1,352.19) plus interest,
16 less fees, be disbursed fifty (50) percent to the Hugh McRae
17 Land Trust, fifty (50) percent to Garden Realty Corporation in
18 accordance with agreement sent to the Board, contingent upon
19 each applicant separately agreeing on record, that said amount
20 represents their complete entitlement and claim against the R-
21 25 unit escrow account.

22 JILL HARRISON: And what would be the...I'm not saying
23 I won't do that. But what would be the statutory or regulatory

24

--

1 authority for requiring a release from the applicants.

2 SANDRA RIGGS: You want me to address that one?

3 DENNIS GARBIS: Yes, please.

4 SANDRA RIGGS: I don't think he asked for a release.
5 I think he asked for an agreement as to entitlement and the
6 requirement in the statute is that the applicants agree to
7 their entitlement from the escrow account.

8 JILL HARRISON: That's not what the statute says.

9 SANDRA RIGGS: .225 says, "such order shall be issued
10 within thirty (30) days of receipt of notification of the final
11 legal determination of entitlement, thereto" meaning to the
12 escrow, "or upon agreement of all claimants as to entitlement."

13 JILL HARRISON: He does not say that.

14 SANDRA RIGGS: And the Board construed that to be its
15 definition last month, that you've got to agree to principal
16 and interest less fees, your claim to the escrow account.

17 JILL HARRISON: Okay. I...I respectfully disagree
18 with that, and believe that that is not a correct reading of
19 the statute. However, given the small amount that we are
20 talking about at this point, and in order that we can move
21 ahead, with Ms. King's permission and I have Mr. Seigel's
22 permission, I will represent to the Board on the record that we
23 will accept the amount of...that Mr. Garbis read and interest

24

--

1 and title thereto as our entitlement on that unit. R-25 only.

2 BETTY KING: Only.

3 BENNY WAMPLER: Okay. Motions?

4 JILL HARRISON: And maybe that will save us from...if
5 I can talk Mr. Seigel into...not to moving forward with other
6 matters.

7 BENNY WAMPLER: Any further discussions?

8 (No audible response.)

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

10 (All signify affirmatively.)

11 BENNY WAMPLER: Oppose say no.

12 (No audible response.)

13 BENNY WAMPLER: You have approval on that.

14 CLYDE KING: Okay. Mr. Chairman, I have another
15 motion. With respects to units SLW5, SLW6, SLW7, SLW8 and
16 NBLW9 and NBL10---.

17 BENNY WAMPLER: That will be an NEWL.

18 CLYDE KING: NE?

19 DENNIS GARBIS: NE.

20 CLYDE KING: NEWL. NEW---.

21 BENNY WAMPLER: WL9 and 10.

22 CLYDE KING: ---WL9 and WL10. That's for the record.

23 For which the total entitlement has not been calculated, the

24

--

1 Board directs the operator and the escrow agent to jointly work
2 together to determine the calculated entitlement for escrowing
3 funds attributable to the applicant's interest and reconciled
4 to each unit's account, and the escrow agent will report back
5 to the Board at its November hearing so the Board may determine
6 whether or not each of the applicants agree with the escrow
7 agent's calculation of their respective entitlement.

8 BENNY WAMPLER: A motion.

9 DENNIS GARBIS: I second the motion.

10 BENNY WAMPLER: The motion is second. Any discussion?

11 JILL HARRISON: Does that mean that I am going to have
12 to agree that day?

13 BENNY WAMPLER: Well, our...what we would---.

14 JILL HARRISON: I'm going to receive information that
15 day and I am going to be required to agree that day?

16 CLYDE KING: The information will be available.

17 SANDRA RIGGS: It will be presented for you to agree
18 or not.

19 BETTY KING: That day?

20 JILL HARRISON: That day I have to say I agree with it
21 or not?

22 SANDRA RIGGS: Well, they don't have to disburse that
23 day. They have taken the position that they won't disburse
24

1 until you do agree. So, it is up to you once you have the
2 numbers how...how it proceeds from that point forward.

3 JILL HARRISON: Well, we've already agreed to the
4 principal amount. So, really the only amount is the interest.

5 CLYDE KING: I think what we are saying, Jill, is that
6 we don't know what the principal amount and the calculation is,
7 and we will have to get that available. It could be available,
8 if the motion passes, maybe to you sooner, couldn't it?

9 BENNY WAMPLER: It would be our intent---

10 JILL HARRISON: I think that's the only equitable
11 thing---

12 BENNY WAMPLER: ---that you have that information as
13 soon as it is calculated, so that...so that you could, you
14 know, hopefully come here prior to the next meeting having
15 looked at the information and resolve in question.

16 JILL HARRISON: Well, I appreciate that, because I
17 think that would be the only equitable way.

18 CLYDE KING: Mr. Chairman, I think we need to say that
19 it be available to both sides as soon as possible.

20 BENNY WAMPLER: I mean, because we are not...you know,
21 we are not...certainly---

22 CLYDE KING: No.

23 BENNY WAMPLER: ---from my perspective, I haven't
24
25

1 heard anybody on the Board wanting the operator and the escrow
2 agent operating in one of these numbers. It is an open forum
3 that as they have that information, it is to everybody's
4 benefit that they be sharing that information even...even by on
5 a unit by unit---

6 JILL HARRISON: Oh, I understand that completely, but
7 I...I guess, in my perspective, we did these applications a
8 year and a half ago. The...I checked the dates on it to see
9 when we were actually provided with readable, understandable
10 information, and it was a cover letter dated August 27th, 1998,
11 that we received that information. So, we're talking two
12 months...less than two months ago, and under the previous
13 orders, we had thirty (30) days to agree or disagree, and we
14 agreed within that time period; filed a letter saying, yes we
15 agree with it; and then we are back here today, and then when
16 the motion was first read, it was you will given those numbers
17 and you will agree or not, that day. So, in my mind, I'm
18 thinking we've waited for a year and a half, we responded
19 within our correct time period, and now I'm being told you have
20 to agree that day. That seems entirely inequitable. But if it
21 is going to be provided to us before hand then, that's fine.

22 CLYDE KING: I amend the motion to say the---

23 SANDRA RIGGS: Does it say that day?
24
25

1 CLYDE KING: ---you will receive it as soon as
2 possible.

3 JILL HARRISON: I appreciate that, Mr. King. Thank
4 you.

5 CLYDE KING: I think that's fair.

6 BENNY WAMPLER: Do you agree with that...a second to
7 that motion?

8 DENNIS GARBIS: Yes.

9 BENNY WAMPLER: Any further discussion?

10 (No audible response.)

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

12 (All signify affirmatively.)

13 BENNY WAMPLER: Oppose say no.

14 (No audible response.)

15 BENNY WAMPLER: You have approval. Thank you.

16 JILL HARRISON: Thank you. Thank you for your time.
17 I appreciate it.

18 BENNY WAMPLER: And Mr. King, you know, just so we
19 close...as you leave, if you will work with our office
20 on...just being in touch with me and Don Conklin, the parties
21 that you worked with before, if you factor in additional costs
22 and we will try to resolve that very quickly.

23 BILL KING: Okay.

24

--

1 JILL HARRISON: If I may ask one additional question.
2 Earlier there was a comment made that at the end of the day,
3 it was a possibility you might discuss rule making. Will that
4 in any way affect our ability to possibly receive an order at
5 the November, 19...because I know the rule making process and
6 how long it takes?

7 BENNY WAMPLER: That will not in any way affect
8 anything.

9 JILL HARRISON: Okay. All right. I just wanted to
10 make sure before I left. Thank you.

11 BENNY WAMPLER: Sure. Thank you. The next item on
12 the agenda the Board...the Gas and Oil Board will reconvene
13 docket number VGOB-98/03/24-0641 concerning the appeal of the
14 inspector's decision rendered in the informal fact finding
15 hearing referenced as IFFH 9197. We'd ask the parties that
16 wish to address the Board in this matter to come forward at
17 this time.

18 TOM FULMER: I'm coming forward, Mr. Chairman, since
19 I'm the one being appealed.

20 BENNY WAMPLER: All right.

21 TOM FULMER: I'll just give the Board an update in
22 regards to this item. This was a...if the Board could remember
23 this is...this item was brought before the Board on appeal by
24

1 Ms. Ruth Street in regards to well number Z-38A. I had went
2 through a decision process in regards to the permit, and the
3 permit modification, and issued an order, and this order was
4 then appealed to the Board. At that, time Ms. Street asked for
5 a continuance due to some health problems. This was continued
6 on indefinitely until she could...she could appear. Since that
7 time, the modification of which the applicant, Pocahontas Gas
8 Partnership in this case, withdrew their permit application,
9 modification and rerouted the...the...in this case, we are
10 talking about an access road, and rerouted the access road.
11 So, actually the modification became mute in regards to that
12 particular permit application. And the reason it is on the
13 Board agenda now is for final closure on this...on this item,
14 because there was never...this was already...it has been
15 docketed with the Board, but it has never been heard by the
16 Board and this matter is really mute at this time.

17 BENNY WAMPLER: Any questions from members of the
18 Board?

19 CLYDE KING: Do we need a motion to accept it has a
20 mute---?

21 SANDRA RIGGS: Well, yeah, I think you need to vote to
22 either approve or disapprove the inspector's decision on
23 appeal.

24

--

1 CLYDE KING: I so move.

2 DENNIS GARBIS: I second.

3 MASON BRENT: That you approve?

4 SANDRA RIGGS: Is that approval of the inspector's
5 decision on appeal?

6 CLYDE KING: Of the...to approve his recommendation.

7 MASON BRENT: Thank you.

8 TOM FULMER: Thank you, Mr. Chairman.

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

10 (All signify affirmatively.)

11 BENNY WAMPLER: Oppose say no.

12 (No audible response.)

13 BENNY WAMPLER: So, you all can be bureaucratcs too.

14 CLYDE KING: I never thought that would ever happen.

15 BENNY WAMPLER: The next item on the Board's agenda is
16 a petition from Pocahontas Gas Partnership for pooling of a
17 coalbed methane unit identified as W-46. Docket number VGOB-
18 98/10/20-0689 and we'd ask the parties that wish to address the
19 Board in this matter to come forward at this time, please.

20 MARK SWARTZ: Mark Swartz and Les Arrington on behalf
21 of Pocahontas Gas Partnership and you might want to call the
22 next unit as well. The 0690.

23 BENNY WAMPLER: All right. We will also consider a
24

1 petition from Pocahontas Gas Partnership for pooling of a
2 coalbed methane unit identified as V-46. This is docket number
3 VGOB-98/10/20-0690; and here, again, we'd ask the parties that
4 wish to address the Board in these matters to come forward at
5 this time.

6 MARK SWARTZ: Mark Swartz and Les Arrington, again.
7 With regard to these two units, the Board should have a packet
8 of revised exhibits. When the two units were initially noticed
9 and mailed out, as luck would have it, there was some level of
10 confusion as to what county these units were in. So, they were
11 noticed as being in Buchanan County and it turned out one was
12 in Tazewell...W-46 was actually in Tazewell County, and V-46 is
13 in both Tazewell and Buchanan County. The remainder...so a
14 number of the modifications simply correct that error. There
15 are also some other modifications that simply reflect that
16 leasing has been ongoing and the percentages have changed. The
17 parties are the same. The published notice was actually
18 correct except for one, you know, small map that said Buchanan
19 County. We have some level of concern that...from a...given
20 the respondents here, that they are heirships, that perhaps we
21 might want to republish and come back next month. We may have
22 people here today that might want these heard today. So, I
23 mean, we kind of...we are not producing them. We can hold off

24

--

1 until next month comfortably if that seems appropriate to the
2 Board.

3 BENNY WAMPLER: Have you verified that these
4 gentlemen---?

5 MARK SWARTZ: Are you guys here on those...on those
6 units, do you know or---?

7 JOHN ROBERTS: W-47.

8 LESLIE K. ARRINGTON: W-47. That one is next month.

9 MARK SWARTZ: That's next month.

10 JOHN ROBERTS: Well, the letters we got said it was
11 for today.

12 LESLIE K. ARRINGTON: Yes, sir. You just..you
13 received a notification on W-47 for...it should be next month.

14 JOHN ROBERTS: It was...that paper that I had said to
15 be here today and to a meeting you have today.

16 LESLIE K. ARRINGTON: What...what...yes, sir. What's
17 your name?

18 JOHN ROBERTS: John Roberts.

19 BENNY WAMPLER: That's what I wanted to verify, that
20 it really wasn't something here with this one because I didn't
21 know what to tell them this morning. I knew we had a problem
22 with this one. And the other gentlemen's name was---?

23 MILLARD HORNE: Horne...Millard Horne.

24

--

1 BENNY WAMPLER: Mr. Horne.

2 JOHN ROBERTS: William Roberts would be the name that
3 you...it would be in. That's my dad.

4 LESLIE K. ARRINGTON: I'll have to...I'll check that
5 when I get back to the office. It may have been W-47 and maybe
6 we left on it incorrectly.

7 MARK SWARTZ: Well, there's a...there's William
8 Roberts heirs in W-46.

9 BENNY WAMPLER: And I've got a Millard Horne in here
10 on Exhibit E.

11 MARK SWARTZ: Was this...was this...was this your dad?

12 JOHN ROBERTS: Who, William Roberts?

13 MARK SWARTZ: Right.

14 LESLIE K. ARRINGTON: Uh-huh.

15 JOHN ROBERTS: Uh-huh.

16 MARK SWARTZ: Okay. Now, that's W-46, which is up for
17 today.

18 MILLARD HORNE: When we called home, they told us 47
19 was (inaudible).

20 BENNY WAMPLER: It is okay.

21 MARK SWARTZ: Okay. So, you've got the wrong number,
22 but the right day.

23 JOHN ROBERTS: Okay.

24

--

1 BENNY WAMPLER: Okay. Now---.

2 MARK SWARTZ: And we're coming from, with the Board,
3 just so you understand, we have to publish in the newspaper.
4 Okay. And when we published, we had it in Buchanan County.
5 Okay. Which is a mistake. It is actually in Tazewell. And
6 we're concerned that we get it right and what I was...what I
7 was explaining to the Chairman was that we would perhaps prefer
8 to have this put off till next month's hearing, so that we can
9 republish so if there is any other people, you know, in this
10 unit looking at this publication notice, or any other heirs
11 looking at this publication notice, they at least have their
12 right county to help them decide whether or not they want to
13 come, and I guess my question to you is, can you come back next
14 month, do you want us to proceed this month and get partly
15 through this? I mean, what...what's---?

16 BENNY WAMPLER: What we can do is if you have a
17 particular interest that you want to raise, we can go ahead and
18 allow you to do that, and you rely on that being on the record
19 that we will deal with that, or if you want to cross examine
20 witnesses, you would need to be here, if it is continued. What
21 we are trying to do is not inconvenience you any more than we
22 have to.

23 MARK SWARTZ: Well, next month will be in Abingdon,
24

1 too. I don't know if that's more convenient or less
2 convenient.

3 MILLARD HORNE: It's closer, yeah.

4 MARK SWARTZ: Is that closer?

5 (No audible response.)

6 MARK SWARTZ: So, I mean, it is kind of up to...I
7 mean---

8 JOHN ROBERTS: Well, you know, that left us a couple
9 of questions that, you know, that I would like to ask. You
10 know, we can continue it on to next month. That's fine. But
11 there's a couple of questions, you know, that I am concerned
12 with. For instance, okay, who oversees, and see, you know, the
13 people that owned this land are being paid a fair amount for
14 this...for their, you know, for their interest in it?

15 MARK SWARTZ: Well, you either...you would enter into
16 a lease with Pocahontas. I don't know if anybody has been in
17 touch with you yet. But if they haven't, I'll certainly
18 look...make sure that they get in touch with you in terms of
19 whether or not you could reach a lease with them. If you can't
20 reach a lease with them that's acceptable to you all, then it
21 is up to this Board in their order to say this is going to be
22 the amount, if you can't reach a voluntary agreement.

23 So, one of two things is going to happen. I will
24

1 definitely...Mr. Looney is here today, I will definitely have
2 him as we are heading out the door to get...get a way to
3 contact you guys, get leases to you all, and if you can reach
4 an agreement, well, that will take care of it. If you can't,
5 then that's a decision that the Board is going to have to make
6 and I would probably recommend if you can't reach an agreement,
7 then you might want to come back, you know, next month, to at
8 least be present when the testimony is given. So, one of those
9 two things is going to happen.

10 JOHN ROBERTS: The thing...the thing I'm...see, most
11 of the people that are involved there are old people, and they
12 don't have any idea of what's going on, or what they are
13 entitled to or what they are not. What I'm saying is, do I
14 need to go get me a lawyer to see that their interests are
15 looked after, or is that, you know, the job of the Board to see
16 that they are treated fair and get the fair amount for
17 the...for what they own?

18 SANDRA RIGGS: The hearings---

19 JOHN ROBERTS: I mean, is that...is that a decision
20 of the Board or is that something that I need to address
21 myself?

22 SANDRA RIGGS: The Board sits in formal hearing, and
23 that's governed by the Administrative Process Act, which is a

24

--

1 litigated issues forum where generally both parties appear
2 before the Board, put on their evidence, the Board considers
3 the evidence and makes a decision. Much as a Judge would do in
4 a courtroom. You know, the Board has adopted a standard form
5 of pooling order that it generally uses. We can provide you a
6 copy with...probably a copy was attached to the application
7 that spells out exactly what the applicant is looking for. It
8 was Exhibit F in the packet that you would have gotten.
9 If...they are asking the Board to enter an order that says
10 basically what is set forth in this document right here.

11 JOHN ROBERTS: Yeah, but the documents that we
12 received...like I said, we are simple people. We are not
13 highly educated, like a lot of lawyers, and supposedly the
14 Board members that's been elected to do this. You know, we are
15 just simple people and the terms that we received all this
16 stuff in, we can't understand it. We don't have any idea of
17 what's going on or what's being done. They're in terms that we
18 can not understand. We can not relate to them because we don't
19 know what's going on. We are in the dark. And they are
20 coming...the gas company is coming and saying...talking to like
21 my mother, and saying here, you know, we will pay you fifty
22 dollars (\$50.00) per acre for this gas and you take this check
23 and put it in the bank and in thirty (30) days, you know, you

24

--

1 get the money. You know, that...that...you know, that just
2 don't---.

3 MILLARD HORNE: They don't understand what's going on.

4 JOHN ROBERTS: I don't understand what's going on.

5 SANDRA RIGGS: Well, with regards to just
6 understanding what the law is on pooling and so, you know, you
7 could meet with the gas and oil inspector, or myself, and we
8 can try to go over with you, your questions with regard to the
9 process. With respect to your particular interest in seeking
10 legal advice on how appropriate terms are on offer from the
11 operator might be, there you really need to either come to your
12 own conclusions or get advice. The Board can't tell you what
13 kind of---

14 JOHN ROBERTS: Well, I'm not asking you to do that,
15 I'm just, you know, seeing how that is governed. How...you
16 know, who...if it is overseen by somebody, you know, to see
17 that they're treated fairly, or if I need to hire somebody to
18 see that they're treated fairly?

19 SANDRA RIGGS: If you're negotiating with the operator
20 on a voluntary lease, it just like any other contract you enter
21 into. You need to make sure that the terms that you are being
22 offered are fair and equitable terms. If you don't reach a
23 voluntary agreement with the operator, then they will be back

24

--

1 here next month to present their case with respect to what
2 terms they would like the Board to approve. If you disagree
3 with those, you can also appear either personally, or through
4 counsel to present to the Board, and it is done in a, you know,
5 in a forum like this where the Board hears everybody's opinion
6 and then makes a decision.

7 BENNY WAMPLER: And the law and regulations lay a lot
8 of that out of what we are governed by. But it does allow the
9 activity to go forward, but protects the interest while it is
10 there and, you know, we...any order we issue would give you or
11 your mother, or whomever you are dealing with, election
12 options. But here again, it is written in lawyer terms.

13 JOHN ROBERTS: Yeah, but it is written in terms that
14 we don't understand, you know.

15 MARK SWARTZ: Well---

16 JOHN ROBERTS: We don't know if we are being treated
17 fair or not.

18 BENNY WAMPLER: I understand.

19 DENNIS GARBIS: Well, if it makes you feel any better
20 sometime...most of the time, I don't understand it either.

21 CLYDE KING: But if they don't...excuse me, Mr.
22 Chairman.

23 BENNY WAMPLER: Mr. King?

24

--

1 CLYDE KING: If they don't accept what the...what
2 Pocahontas Gas offers, they can be forced pooled, right?

3 SANDRA RIGGS: Well, that's what this application is
4 is, a compulsory pooling application.

5 CLYDE KING: So, in other words, if you don't accept,
6 then you would be put into a pool and they will be money coming
7 to you down the road as the gas is pulled out.

8 JOHN ROBERTS: So, in other words, even though we are
9 the owner of the gas, if we say no, we don't agree for that
10 price, they are going to take it any way?

11 SANDRA RIGGS: The statute...the way the statute is
12 set up...compulsory pooling statute, which is what this
13 application is all about today, the operator has to...number
14 one, identify the drilling unit and when I say drilling unit,
15 that's the square that's depicted on this plat that you got.
16 And under the statute, anybody that owns an interest within
17 that drilling unit will share in the production or royalties
18 from this well. Now, the well is not located on your tract,
19 but your tract is within the eighty (80) acres that the law
20 says is the drilling unit and that's to set up a grid whereby
21 gas coming out of that well, royalties get paid to the persons
22 within the drilling unit serviced by that well. Okay. Now,
23 your tract is down here in the opposite corner from where their

24

--

1 well is located, but you're still within...part of your tract
2 is still within this drilling unit. So, under the law, you
3 would...even though that well isn't located on your property,
4 you would be entitled to receive some royalties off of that
5 well because you are within the eighty (80) acre drilling unit
6 that this Board has established as being the area that will be
7 drained by that well. And so what the statute does, is set up
8 a process where the production off that well is allocated over
9 that eighty acres, so that everybody in that eighty acres, not
10 just the people on whose property the well is located, but
11 everybody in that eighty acres has a formula where they share
12 in the production.

13 Now, the statute...if you can't reach a voluntary
14 agreement with the operator, gives you three (3) options under
15 the pooling order. One, you participate in the operation by
16 becoming their partner and to do that, you have to pay your
17 proportionate cost of drilling the well. The other is to be a
18 carried operator, and in that situation, you don't put any
19 money up front. It is taken out of your working
20 interest/entitlement until such time as the cost...your
21 proportionate cost of that well gets paid in. And then you
22 start sharing, or you are deemed to be leased under the terms
23 of the pooling order, and the Board, through its order, would
24

1 establish the lease terms and that would be a situation similar
2 to what they would offer you a voluntary agreement on and
3 that's a royalty interest. And by statute, that's one-eighth
4 interest of royalty...royalties in gas and oil terminology is
5 like rent on real property. They pay you a rental payment
6 basically. And those are three options that the pooling order
7 and the statute offer. Now, you have thirty (30) days from the
8 entry of the order to decide which way you want to go with your
9 particular interest within that drilling unit and it will vary
10 from person to person, depending on how big their tract is, and
11 how much, you know, their proportionate share would be, and
12 what their economic situation is. I mean, that's an individual
13 decision about which way you want to go. But once you notify
14 the operator which...whether you want to participate, be
15 carried or be deemed to lease or leased, then that's fixed by
16 the Board order and they...once they start production, then
17 they pay accordingly...according to whatever election you
18 chose. And that's the way the statute is set up. It offers
19 choices. And one of the choices is, if you think you can cut a
20 better deal by voluntarily entering into an agreement with the
21 operator, you are free to negotiate with them. I mean, the
22 statutory remedies, you are not bound by those unless you can't
23 reach a voluntary agreement, and then if you can't reach a

24

--

1 voluntary agreement, that's when the statute kicks in.

2 BENNY WAMPLER: But you are correct with the
3 presumption that, you know, they can go ahead and produce the
4 well. The statute does...does allow that. It enables that.
5 It is an enabling type of statute to encourage the production
6 of the gas.

7 JOHN ROBERTS: Well, I...I'm looking at this
8 thing...my dad when his brothers...my great granddad owned
9 fifty-eight hundred (5,800) acres of coal in Wise. You know,
10 over in Norton, Wise County.

11 BENNY WAMPLER: Yes, sir.

12 JOHN ROBERTS: My granddad entered into a lease with
13 that...with the coal company, that royalties were to be paid
14 off the coal so many acres and they weren't supposed to touch
15 the rest...none of it...the rest of it. Well, my granddad
16 wound up dead. Shot. And...but all the land, the deeds and
17 everything...there was deeds made, land was sold, there wasn't
18 a penny of royalty paid on fifty eight hundred (5,800) acres of
19 coal, that my family was beat out of through the coal company
20 through all legislature or whatever. We fought it all the way
21 to the Supreme Court and lost.

22 MILLARD HORNE: We mostly wanted, you know, what steps
23 like you just explained that, you know, how we need to handle

24

--

1 it.

2 JOHN ROBERTS: Now, I don't...you know, I don't want
3 to see them lose what little bit they have got.

4 BENNY WAMPLER: Right. I understand. I think we
5 all...we all want to be helpful to that for you to understand
6 and make this, and talking in layman terms, as much as we can
7 about...you know, about to go on. We don't have that much
8 choice here as a Board though, but to make the...to ask them to
9 continue and republish, because it is a pretty serious flaw
10 to...although it was...you know, not an intended error. It was
11 in a different county and the people need to know where...where
12 the well is going to be in what county and all of that. So,
13 what we are trying to do is see if, you know, if there is any
14 objection to continuing it next month, and will you be able to
15 be here, or did you want to put some information on record
16 today?

17 JOHN ROBERTS: Now, we just...we will just continue
18 it. A continuation is fine with us.

19 BENNY WAMPLER: Okay. Any problem with members of the
20 Board of continuing these two items for next month?

21 MARK SWARTZ: It will be the third Tuesday of
22 next...of November. I think, it is the 17th.

23 BENNY WAMPLER: It will be at the 4-H Center in
24

1 Abingdon, Virginia.

2 MARK SWARTZ: Do you know where the 4-H Center is
3 there in Abingdon?

4 MILLARD HORNE: We can find it.

5 MARK SWARTZ: Okay. If you need directions, we can
6 give it to you.

7 TOM FULMER: It is on Hillman Highway. Hillman
8 Highway. It is on the East side of town, up there near Roses
9 parking lot and the technical school there. You just go across
10 the memorial bridge and turn left. That's Hillman Highway.

11 MILLARD HORNE: We appreciate your alls time.

12 BENNY WAMPLER: One thing you might---.

13 MARK SWARTZ: Hang around for a minute so we...so we
14 can get...or why don't you get out in the hall with him, Bob,
15 and at least exchange names and addresses, so he can be in
16 touch with you between now and then.

17 JOHN ROBERTS: Okay.

18 MARK SWARTZ: To see if you can work something out
19 great, if not at least, we tried.

20 JOHN ROBERTS: Right. Thank you.

21 MILLARD HORNE: Thank you.

22 BENNY WAMPLER: The next item on the agenda, the Board
23 will consider a petition from Buchanan Production Company for
24

--

1 pooling of a coalbed methane unit identified as T-35. Docket
2 number VGOB-98-10/20-0695 and we'd ask the parties that wish to
3 address the Board in this matter to come forward at this time.

4 MARK SWARTZ: Mark Swartz and Les Arrington.

5 DENNIS GARBIS: Did he say 695?

6 CLYDE KING: 695, I don't have it.

7 BENNY WAMPLER: Do what? Did I call it wrong?

8 CLYDE KING: 685?

9 DENNIS GARBIS: Yeah, it is supposed to be 691, isn't
10 it?

11 CLYDE KING: 691 isn't it?

12 SANDRA RIGGS: I've got a 695.

13 TOM FULMER: 695.

14 BENNY WAMPLER: 695.

15 MARK SWARTZ: 695.

16 BENNY WAMPLER: Oh, you all are looking at Tom's
17 sheet.

18 TOM FULMER: (Inaudible).

19 BENNY WAMPLER: I'm reading from the real stuff.

20 CLYDE KING: All right.

21 TOM FULMER: I wouldn't necessary say that.

22 CLYDE KING: Is that number five (5)?

23 TOM FULMER: I'm not going to disagree with it.

24

--

1 DENNIS GARBIS: All right.
2 CLYDE KING: All right. Okay.
3 TOM FULMER: I can't even find the one I've got.
4 CLYDE KING: Paper, paper, paper.
5 DENNIS GARBIS: Now, who is acting bureaucrats?
6 CLYDE KING: Yeah.
7 BENNY WAMPLER: Okay. The record will show there are
8 no others. You may proceed.
9 CLYDE KING: What happened to 691?
10 BENNY WAMPLER: It was just a typo.
11 CLYDE KING: Oh. Oh.
12 MARK SWARTZ: Okay. Mr. Arrington, we need you under
13 oath.

14 (Witness is duly sworn.)

15
16 LESLIE K. ARRINGTON
17 having been duly sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 QUESTIONS BY MR. SWARTZ:

20 Q. Could you state your name for the record?

21 A. Leslie K. Arrington.

22 Q. Who do you work for?

23 A. Consol.

24

--

1 Q. And do you have a title with them?
2 A. Permit Specialist.
3 Q. Did you prepare the notice of hearing, the
4 application and the exhibits that are before the Board today?
5 A. Yes, I did.
6 Q. And you've signed them?
7 A. Yes, I have.
8 Q. Okay. Who is the applicant?
9 A. Buchanan Production Company.
10 Q. Is Buchanan Production Company a Virginia
11 General Partnership?
12 A. Yes, it is.
13 Q. And are the partners in that partnership
14 Appalachian Operators, Inc. and Appalachian Methane, Inc.?
15 A. Yes, it is.
16 Q. And are both of those companies indirect
17 subsidiaries of MCN Corporation?
18 A. Yes, it is.
19 Q. Is Buchanan Production Company authorized to
20 do business in Virginia?
21 A. Yes, it is.
22 Q. Is there a request being made that somebody
23 other than Buchanan Production Company be the designated
24

1 operator?

2 A. Yes, it is. Consol, Inc.

3 Q. Okay. And Consol, Inc. is a Delaware
4 corporation?

5 A. Yes, it is.

6 Q. Is Consol, Inc. authorized to do business in
7 the Commonwealth, is it registered with the DMME, and does it
8 have a blanket bond on file as required by law?

9 A. Yes, it does.

10 Q. Has the management of...does Buchanan
11 Production Company have a management committee?

12 A. Yes, it does.

13 Q. And has that management committee delegated
14 the management of its affairs and properties and the
15 development of those properties to someone else?

16 A. Yes, it has.

17 Q. To whom?

18 A. Claude Morgan as general manager; William
19 Gillenwater as Land Manager and Randy (inaudible) as regulatory
20 manager.

21 Q. Okay. And those folks are all employees of
22 Consol, Inc.?

23 A. Yes.

24

--

1 Q. Are the respondents named in the notice of
2 hearing?

3 A. Yes, they are.

4 Q. Okay.

5 BENNY WAMPLER: May I interrupt you just a second
6 regarding the corporate information? Recently there
7 was...there was a published notice of a transaction within
8 Consol of Dupont selling off another portion. Has that in any
9 way affected any of these delegations of authorities, Les?

10 LESLIE K. ARRINGTON: No.

11 MARK SWARTZ: It was a stock transaction in the
12 parent. So, no, it would not. But that's a fair...fair
13 question.

14 Q. The...are the people that are sought to be
15 pooled also listed in Exhibit B-3?

16 A. Yes, they are.

17 Q. Okay. And if you would refer just for a
18 moment to Exhibit A, page two, with regard to standing on the
19 interest that you are seeking to pool.

20 A. Uh-huh.

21 Q. With regard to the coal interest that has been
22 leased, or is owned by the applicant, what...what percentage is
23 that?

24

--

1 A. 99.9375 percent.

2 Q. Okay. And of the coal interest, what portion
3 of the coal interest that's outstanding is sought to be pooled
4 by this application?

5 A. 0.00625 percent.

6 Q. Okay. With regard to oil and gas, what is the
7 oil and gas interest that's been leased or is owned by
8 Buchanan Production Company?

9 A. 99.63749 percent of the oil and gas interest
10 is leased.

11 Q. Okay. And with regard to...again, with regard
12 to oil and gas, now what is the amount of the interest that is
13 outstanding that this application seeks to pool?

14 A. 0.36251 percent.

15 Q. With regard to lease terms that...would Consol
16 be willing...would Buchanan Production Company be willing to
17 lease these outstanding interests?

18 A. Yes.

19 Q. And what terms would Buchanan Production offer
20 to do that?

21 A. A one-eighth royalty, a dollar per acre with a
22 five (5) year paid up term.

23 Q. There is a plat map attached?

24

--

1 A. Yes, it is.

2 Q. And how many wells are contemplated?

3 A. Two.

4 Q. One of them is clearly within the drilling
5 window and one of them is on the line?

6 A. That's correct, it is.

7 Q. Which may need an exception?

8 A. Correct.

9 Q. To the extent that it is plated outside the
10 line, you will be interacting with Mr. Fulmer, if you haven't
11 already?

12 A. We have.

13 Q. And under the Oakwood I rules, Mr. Fulmer's
14 office has the ability to conform well locations to mine plans,
15 correct?

16 A. Correct.

17 Q. Okay. With regard to the costs of these
18 wells, do you have an estimate concerning costs that you've
19 prepared?

20 A. Yes, I do.

21 Q. And that's Exhibit C?

22 A. Yes, it is.

23 Q. And what is the total estimate costs?

24

1 A. Two hundred and forty-eight thousand four
2 hundred and forty-eight dollars and forty cents (\$248,448.40).

3 Q. And how many wells would that be for?

4 A. That's...that's actually the average cost of
5 two (2) wells.

6 Q. Okay. But it is...the average cost means that
7 you took the total cost of two (2) wells and divided it by two
8 (2)?

9 A. I did.

10 Q. So, this is a one well cost?

11 A. That's correct, it is.

12 Q. What is the total average depth of the two (2)
13 wells that you averaged to get this number?

14 A. Two thousand and twenty-three feet (2,023).

15 Q. Okay. And are you seeking to only allocate
16 the cost of this one average well to anybody who might opt to
17 participate?

18 A. That's correct, we are.

19 Q. And for frac production, that would be true?

20 A. That's correct.

21 Q. In the event, we are back here on gobb
22 production, we will revisit that issue?

23 A. Correct.

24

--

1 Q. Okay. Is this an eighty acre Oakwood I unit?
2 A. Yes, it is.
3 Q. And you are seeking to produce from the tiller
4 on down?
5 A. Correct, we are.
6 Q. And you are seeking to produce only frac gas
7 by this application?
8 A. Correct, we are.
9 Q. Have you also tendered an Exhibit E to the
10 Board?
11 A. Yes, we have.
12 Q. And this Exhibit shows the various tracts that
13 would require escrow?
14 A. Yes, it does.
15 Q. And the various owners of those tract...in
16 those tracts requiring escrow that are in conflict?
17 A. Yes, it does.
18 Q. And for each owner does, it set forth a
19 percent of the unit?
20 A. Yes, it does.
21 Q. And if you wanted to calculate the percent of
22 any given owners' interest in an escrow fund, would it be true
23 that you would add up all the percentages that have been
24

1 escrowed, put their number on top and divide, and that would be
2 their percentage of the monies escrowed?

3 A. Yes, it would.

4 Q. Okay. From a participation standpoint, would
5 these percentages be multiplied times the estimated costs of
6 the one well?

7 A. Yes, it would.

8 Q. And from a carried interest standpoint, these
9 would have the same effect?

10 A. Yes, it would.

11 Q. And in terms of a one-eighth royalty, these
12 would be the numbers that would be applied to the twelve and a
13 half percent royalty to get the division of interest for each
14 owner?

15 A. Yes.

16 Q. Did you mail to the folks that you had
17 addresses for?

18 A. Yes, we did.

19 Q. And have you today...well, have you previously
20 furnished the mailing information to Mr. Fulmer's office and
21 have you provided the Board with copies with the receipts
22 today?

23 A. Yes, we have.

24

--

1 Q. And were there some folks that were...that
2 were in an heirship that you didn't have addresses for, or
3 names?

4 A. I think we had names for everyone. We did
5 have an heirship listed, however.

6 Q. Okay. And to the extent that you had peoples
7 names and addresses though, you did mail?

8 A. Yes, we did.

9 Q. And to the extent that you did not, you've
10 published?

11 A. Yes, we did.

12 Q. Have you filed a proof of publication?

13 A. Yes, we did. Today, and also with Mr.
14 Fulmer's office, and it was published in the Bluefield Daily
15 Telegraph on September 25, 1998.

16 Q. Okay. And you published the notice and the
17 map?

18 A. Yes.

19 Q. Okay. Is...this plan that is proposed here to
20 develop the coalbed methane under this eighty (80) acre unit,
21 involves two (2) frac wells to drain the gas, correct?

22 A. It is, yes.

23 Q. And is that, in your opinion, a reasonable way
24

1 to degas the coal seams below the tiller?

2 A. Yes, it is.

3 Q. And will this...these proposed wells, and this
4 plan because of the field rules, protect correlative rights?

5 A. Yes, it will.

6 MARK SWARTZ: That's all I have.

7 BENNY WAMPLER: Any questions from members of the
8 Board?

9 (No audible response.)

10 BENNY WAMPLER: Do you have anything further?

11 MARK SWARTZ: No.

12 BENNY WAMPLER: Motion?

13 DENNIS GARBIS: I make a motion for approval.

14 MASON BRENT: Second.

15 BENNY WAMPLER: Motion to second. Any further
16 discussion?

17 (No audible response.)

18 BENNY WAMPLER: All in favor signify saying yes.

19 (All members signify affirmatively.)

20 BENNY WAMPLER: Oppose say no.

21 (No audible response.)

22 BENNY WAMPLER: You have approval. Thank you.

23 MARK SWARTZ: Thank you.

24

--

1 BENNY WAMPLER: Lastly coming back to...where we
2 started this morning. Again, I thank, Mr. Mason and Mr. Morgan
3 for their presentation. I think you...hopefully...hopefully
4 by cutting it off, and saying let's wait till the end to
5 decide, will help keep things in a little better perspective.
6 If you will bear with me, I'll read what we advertised last
7 time and we'll...then we can better decide if we want to move
8 in that direction, or some other direction.

9 We said that" Virginia Gas and Oil Board, on its own
10 motion, will consider whether it will initiate rule making in
11 compliance with the procedures set forth in the Department of
12 Mines, Minerals and Energy's public participation guidelines
13 regarding procedures, reporting and/or accountings to be made
14 applicable to the unit operators deposit of funds into the
15 escrow account established by the Board to receive those funds
16 specified in Virginia Code," and it lists all those sections,
17 "and the disbursement of funds from said escrow accounts in
18 accordance with the requirements of the sections of the code."

19 Now, I guess, the thing is, do we feel like that we
20 need to proceed with...at the next hearing, or at some future
21 hearing, setting this for testimony from the public as to how
22 we might need to proceed?

23 MASON BRENT: I certainly think we do.

24

--

1 DENNIS GARBIS: Sure.

2 MASON BRENT: I think going forward, we've got to find
3 a better way to handle this thing.

4 CLYDE KING: That's right. That's heading in the
5 right direction.

6 BENNY WAMPLER: Would you like to publish that for the
7 November meeting then, to make that available for the public to
8 make recommendations to us, and we...what we are doing it just
9 like beginning...it...the next step would the notice of
10 intended rule making?

11 MASON BRENT: I think so.

12 BENNY WAMPLER: Okay. We'll do that.

13 DENNIS GARBIS: Absolutely.

14 TOM FULMER: What do you mean?

15 BENNY WAMPLER: I've got the---.

16 TOM FULMER: Oh, you got it. Okay.

17 BENNY WAMPLER: I've got the language.

18 TOM FULMER: Okay.

19 BENNY WAMPLER: I'll give it to you. Anything
20 further?

21 SANDRA RIGGS: If you all have the motions that you
22 made on the earlier applications, I would like those so, that I
23 can track them for the orders.

24

--

1 TOM FULMER: Just to kind of give the Board an idea of
2 what...I can proceed with November. I got this issue of Hugh
3 McRae on the other with the escrow agent coming back. That's
4 one, then. We have a...we have one pooling that's been
5 continued from September that was scheduled for November. We
6 have three that was continued today and that's the four (4)
7 items I know of so far.

8 BENNY WAMPLER: Let's see...take the testimony or the
9 recommendations for the rule making.

10 TOM FULMER: Recommendations on that. Thank you, Mr.
11 Chairman.

12 BENNY WAMPLER: With nothing---

13 SANDRA RIGGS: Will you...will you appoint the public
14 participation committee as part of that or how do you---?

15 BENNY WAMPLER: We will discuss that at that meeting.
16 That will be one there that we typically do in the department
17 when we develop rules and regulation, is to set up a work group
18 and I plan to come forward...just so you can be thinking about
19 that and recommend that we do the same here, and then we will
20 talk about who needs to be on that. But, nothing further, we
21 are adjourned. Thank you very much.

22 DENNIS GARBIS: Thank you.

23 CLYDE KING: Thank you.

24

--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF VIRGINIA,
COUNTY OF BUCHANAN, to-wit:

I, SONYA MICHELLE BROWN, Court Reporter and Notary
Public for the State of Virginia, do hereby certify that the
foregoing hearing was recorded by me on a tape recording
machine and later transcribed by me personally.

Given under my hand and seal on this the 9th day
of October, 1998.

NOTARY PUBLIC

My commission expires August 31, 2001.