

1 IN THE COUNTY OF WASHINGTON

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3 VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY

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4 VIRGINIA GAS AND OIL BOARD

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8 FEBRUARY 17, 2004

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12 APPEARANCES:

12

BILL HARRIS - PUBLIC MEMBER

DONALD RATLIFF - COAL REPRESENTATIVE

13

JAMES McINTRYE - PUBLIC MEMBER

14

BENNY WAMPLER - DIRECTOR OF THE DMME & CHAIRMAN

15

16 SHARON PIGEON, COUNSEL FOR THE BOARD WITH THE ATTORNEY  
GENERAL'S OFFICE

16

17 BOB WILSON, DIRECTOR OF THE DIVISION OF GAS & OIL AND  
PRINCIPAL EXECUTIVE TO THE STAFF OF THE BOARD

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1           BENNY WAMPLER: I'll call the meeting to order.  
2 Good morning. My name is Benny Wampler. I'm Deputy Director  
3 for the Virginia Department of Mines, Minerals and Energy,  
4 and Chairman of the Gas and Oil Board. We'll begin by asking  
5 the Board members to introduce themselves, starting with Mr.  
6 Harris.

7           BILL HARRIS: I'm Bill Harris, a public member from  
8 Big Stone Gap.

9           SHARON PIGEON: I'm Sharon Pigeon. I'm with the  
10 office of the Attorney General.

11          DONALD RATLIFF: Donald Ratliff, representing the  
12 coal industry from Wise County.

13          JIM McINTYRE: Jim McIntyre, Wise, Virginia, a  
14 citizen representative

15          BOB WILSON: I'm Bob Wilson. I'm the Director of  
16 the Division of Gas and Oil and Principal Executive to the  
17 Staff of the Board.

18          BENNY WAMPLER: Thank you. The first item on  
19 today's agenda is a petition from CNX Gas Company, LLC, for  
20 pooling of coalbed methane unit AW-35. This is docket number  
21 VGOB-04-0120-1248. We'd ask the parties that wish to address  
22 the Board in this matter to come forward at this time.

23          MARK SWARTZ: Mark Swartz and Les Arrington.

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1           BENNY WAMPLER: The record will show there are no  
2 others. You may proceed.

3           MARK SWARTZ: Mr. Chairman, we have three Middle  
4 Ridge units on the docket this morning. The one you just  
5 called is one of them, and then AZ-108 and BA-108 are also  
6 Middle Ridge. It might help if we put those together.

7           BENNY WAMPLER: Okay. If there's no objection,  
8 we'll go ahead and call docket number...the AZ-108 is docket  
9 number VGOB-04-0217-1256; and BA-108 is docket number VGOB-  
10 04-0217-1257. We'd ask the parties that wish to address the  
11 Board in these matters to come forward at this time.

12           MARK SWARTZ: Mark Swartz and Les Arrington.

13           BENNY WAMPLER: The record will show there are no  
14 others. You may proceed.

15           MARK SWARTZ: Les, you need to be sworn.

16                   (Witness is duly sworn.)

17                           LESLIE K. ARRINGTON

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

20                                   DIRECT EXAMINATION

21 QUESTIONS BY MR. SWARTZ:

22           Q.       State your name for us?

23           A.       Leslie K. Arrington.

24

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1 Q. Who do you work for?

2 A. Consol Energy, CNX Gas.

3 Q. Is CNX Gas Company Limited...or LLC the  
4 applicant with regard to all three of these applications?

5 A. Yes, it is.

6 Q. And did you either draft or direct the  
7 drafting and preparation of these notices, applications and  
8 the related exhibits?

9 A. Yes, I did.

10 Q. And you, in fact, signed them, didn't you?

11 A. Yes, I did.

12 Q. What did you do to advise people that you  
13 were seeking to pool and we were going to have a hearing  
14 today?

15 A. In AW-135, we published in the Bluefield  
16 Daily Telegraph in two different occasions, December 24th,  
17 2003, and January 30th, 2004, and we mailed by certified  
18 mail, return receipt December 19th, 2003, and then again on  
19 January 27th, 2004.

20 Q. With regard to AZ-108, what did you do?

21 A. AZ-108, I was...we mailed January 16th,  
22 2004, and it was published in the Bluefield Daily Telegraph  
23 January 23rd, 2004.

24

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1 Q. Same issues with regard to BA-108?

2 A. Mailed January 16th, 2004, and published in  
3 Bluefield Daily Telegraph January 24, 2004.

4 Q. When you published, on the occasion that you  
5 published, what appeared in the paper?

6 A. We published the notice of hearing and  
7 attached location map.

8 Q. Okay. And have you filed today with Mr.  
9 Wilson the proofs of publication that you got back from the  
10 newspaper?

11 A. Yes. Yes, we have.

12 Q. And have you also filed your mailing  
13 information, the green cards and so forth?

14 A. Yes, we have.

15 Q. Do you want to supplement any of those  
16 filings, or have you given the Board everything in terms of  
17 the filing, the publications and the notice information? Do  
18 they have everything...does Mr. Wilson have everything he  
19 needs to have this morning?

20 A. Yes. Yes.

21 Q. CNX Gas Company is..LLC is a Virginia  
22 general partnership, is that correct?

23 A. It is.

24

--

1 Q. Is it a wholly owned indirect subsidiary of  
2 Consol Energy, Inc.?

3 A. Yes, it is.

4 Q. Is CNX authorized to do business in the  
5 Commonwealth?

6 A. Yes.

7 Q. In these three applications, are you  
8 requesting that a particular entity be appointed designated  
9 operator?

10 A. Yes, we are.

11 Q. And who is that?

12 A. CNX Gas.

13 Q. And in that regard, is CNX authorized to do  
14 business in the Commonwealth, having been registered with the  
15 Department of Mines, Minerals and Energy?

16 A. Yes, it is.

17 Q. And does CNX have a blanket bond on file  
18 with regard to its wells?

19 A. Yes, it does.

20 Q. Now, these three...is it true that each of  
21 these three units is a Middle Ridge One unit?

22 A. Yes.

23 Q. And is it true that in each case you're  
24

1 proposing to drill one frac well?

2 A. Yes.

3 Q. And that would be to produce coalbed methane  
4 gas from the Jawbone on down if the Jawbone is actually below  
5 drainage?

6 A. That's correct.

7 Q. And I think that each of these acres...that  
8 each of these units is the same size? They're all 58.74  
9 acres, is that correct?

10 A. That's correct.

11 Q. And in each case, is the proposed...the  
12 proposal that there be one well?

13 A. Yes.

14 Q. And in each case, is that well actually  
15 located in the drilling window?

16 A. Yes, it is.

17 Q. A note with regard to Aw-135, we've got a  
18 well right in the corner of the drilling window, but has that  
19 been surveyed?

20 A. That was surveyed. It was put there.

21 Q. Okay. And it was surveyed so that it was  
22 actually located inside the corner of the drilling window?

23 A. That's correct.

24

--

1           Q.       What lease terms would you recommend that  
2 the Board use in the event that they enter an order with  
3 regard to these three units, and...for the purpose of  
4 affording people who are deemed to have been leased certain  
5 rights?

6           A.       Standard coalbed methane lease is a dollar  
7 per acre per year, five year paid up term, one-eighth  
8 production mai---.

9           Q.       One-eighth royalty?

10          A.       Royalty.

11          Q.       In each of these three cases, is the plan of  
12 development, that's specifically one well in the window, frac  
13 well per unit, is it your opinion that that is a reasonable  
14 plan to develop the coalbed methane resources under this unit  
15 for the benefit of all owners and claimants?

16          A.       Yes, it is.

17          Q.       And if you take the...a pooling order with  
18 regard to the respondents that we've named and couple that  
19 with the leases that CNX has obtained, will those two events  
20 contribute to protect the correlative rights of all of the  
21 owners?

22          A.       Yes, it will.

23          Q.       Let's turn to the amended notice of hearing  
24

1 with regard to AW-135 and talk about that unit specifically,  
2 okay? What...tell the Board what you have acquired and what  
3 you're seeking to pool.

4 A. Yes. We've acquired 100% of the coal owners  
5 claim to coalbed methane, 66.1219% of the oil and gas owners  
6 claim to coalbed methane. We're seeking to pool 33.8781% of  
7 the oil and gas owners claim to coalbed methane.

8 Q. And what's the estimated well cost?

9 A. \$237,194.72.

10 Q. It looks like this well has been drilled?

11 A. Yes, it has.

12 Q. What's the depth?

13 A. 2,077 feet...2,077.72 feet.

14 Q. And the permit number?

15 A. 5911.

16 Q. And when was it drilled?

17 A. December 16th of 2003.

18 Q. It looks like there is a title issue in  
19 tract 3B and an unknown claimant or claimants in tract 3B, is  
20 that correct?

21 A. That's correct.

22 Q. So that would be a reason for escrow, or two  
23 reasons for escrow with regard to tract 3-B?

24

--

1 A. Yes.

2 Q. In addition, you filed a Schedule E, which  
3 shows some conflicts in some tracts?

4 A. Yes, we did.

5 Q. And the tracts where there are conflicts, if  
6 I've gone through this correctly, are 2, 3-A and 3-B?

7 A. Correct.

8 Q. And then lastly, you have filed an Exhibit  
9 EE, correct?

10 A. We have.

11 Q. And are you requesting that the Board, if it  
12 pools this unit, allow the operator to pay the people  
13 identified in Exhibit EE directly as opposed to escrowing  
14 their funds?

15 A. Yes, we are.

16 Q. This was continued from, I think it was last  
17 month, was it not?

18 A. Yes, it was.

19 Q. And because you had actually, between the  
20 time of filing and the time we were going to have the  
21 hearing, identified a bunch of folks and that's why it was  
22 remailed?

23 A. That's correct, it was.

24

--

1 Q. Let's turn to AZ-108. Tell the Board what  
2 you've acquired in this unit and what you're seeking to pool?

3 A. Yes. We've acquired 100%...AZ-108, 100% of  
4 the coal owner's claim, 97.4924% of the oil and gas owner's  
5 claim. We're seeking to pool 2.5076% of the oil and gas  
6 owner's claim to coalbed methane.

7 Q. What's the well cost here?

8 A. \$242,325.57, drilled to a depth of 2,486.72  
9 feet. The permit number is 5829.

10 Q. And what was the date it was drilled?

11 A. August 12th, 2003.

12 Q. And here we've got conflicts in tracts 1-F  
13 as in Frank, 1-H as in Harry?

14 A. Yes.

15 Q. And there's also some royalty owners who  
16 have entered into a split agreements?

17 A. Yes, there is.

18 Q. You've identified those people in Exhibit  
19 EE?

20 A. Yes, we have.

21 Q. And are you requesting that the Board, in  
22 any order it might enter, allow the operator to pay the folks  
23 in Exhibit EE directly as opposed to escrowing those funds in  
24

--

1 accordance with the terms of their agreement?

2 A. Yes, we would.

3 SHARON PIGEON: Mark, would you ask him to repeat  
4 the percentages? I misunderstood that.

5 Q. What are you seeking to pool in this unit  
6 AZ-108, Les?

7 A. We're seeking to pool 2.5076% of the oil and  
8 gas owner's claim to coalbed methane.

9 Q. Has that percentage changed since filing?

10 A. Yes, it has.

11 Q. Did you file a revised Exhibit A, page two  
12 today?

13 A. Yes, we did.

14 Q. Are you requesting that the Board dismiss  
15 any folks today?

16 A. Yes, as listed on Exhibit B-2.

17 Q. And that was also filed today?

18 A. Yes, it was.

19 Q. And Exhibit B-2 identifies Mr. James P.  
20 Blankenship, correct?

21 A. Yes.

22 Q. In tract 1-D?

23 A. Yes.

24

--

1 Q. It shows that you've leased him?  
2 A. Yes.  
3 Q. And what was his interest that you...what  
4 was the percentage of interest in this unit that you've been  
5 successful now in leasing since you've filed this?  
6 A. 97.4924% of the oil and gas owner's claim.  
7 Q. Actually his...what was his outstanding  
8 interest when you filed the application?  
9 A. His interest was 23.3061%.  
10 Q. So the...originally, you were seeking to  
11 pool a little over 25% of this unit?  
12 A. Uh-huh.  
13 Q. And in the meantime, you've leased Mr.  
14 Blankenship, and now you're seeking to pool the 2.5076%?  
15 A. Correct.  
16 Q. So you're dismissing him as a respondent and  
17 the reason is---?  
18 A. He's leased.  
19 Q. ---you've leased him. And have you also  
20 filed today a revised Exhibit B-3 to reflect the fact that  
21 Mr. Blankenship is no longer a respondent?  
22 A. Yes, we did.  
23 Q. Is there anybody else in unit BA-108 that  
24

1 you're asking be dismissed or be added?

2 BENNY WAMPLER: BA---?

3 Q. I'm sorry. I'm sorry.

4 BENNY WAMPLER: AZ.

5 A. AZ.

6 Q. AZ-108?

7 A. No, that's all in AZ-108.

8 Q. Now with regard to BA-108, we've got the  
9 same...we've got a similar situation in that we've got some  
10 folks we need to dismiss, right?

11 A. That's correct.

12 Q. And Exhibit B-2 that you filed with the  
13 Board today identifies those folks, right?

14 A. It does.

15 Q. And what's the reason for dismissal?

16 A. They were leased.

17 Q. Okay. And you've indicated in Exhibit B-2  
18 that you've leased folks since you filed---?

19 A. Uh-huh.

20 Q. ---in tract 2, 3-B, 3-D, is that correct?

21 A. Tract 2.

22 Q. Just in tract 2, I'm sorry. Then you had  
23 the revised Exhibit B-3 to delete the folks you've leased?

24

--

1 A. That's correct.

2 Q. And so I assume that the new B-3 is minus  
3 the folks identified that you've leased?

4 A. Yes.

5 Q. And then has the percentage that you're  
6 seeking to pool gone down because of those leases?

7 A. Yes, it has.

8 Q. What is the...in light of the leases you've  
9 recently obtained, what is it that you're seeking to pool  
10 today in terms of percent of owners?

11 A. Yes. We're seeking to pool on the coal  
12 interest for the coalbed methane 0.4008% if the coal interest  
13 coalbed methane claim, and 1.3455% of the oil and gas owner's  
14 claim to coalbed methane.

15 Q. Which means then that you've leased roughly  
16 99.5% of the coal and over 98% of the oil and gas claims?

17 A. We did.

18 Q. What's the well cost figure for BA-108?

19 A. \$246,338.51, to a depth of 2,528.93 feet.

20 Permit number was 5927, and it was drilled December 7th,

21 2003.

22 Q. Now, you have...there's an escrow...a need  
23 for escrow in this unit as well, correct?

24

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1 A. Yes, it was.

2 Q. And that would be because of conflicts?

3 A. Yes.

4 Q. And those tracts that have conflicts in them  
5 that need escrow or require escrow are 3-B as in boy, 3-D as  
6 in David?

7 A. Yes, it is.

8 Q. And then apparently some of the owners and  
9 claimants have entered into royalty split agreements?

10 A. Yes, they have.

11 Q. And are they identified in Exhibit EE?

12 A. Yes, they are.

13 Q. And are you requesting that the Board allow  
14 the operator to pay the people identified in Exhibit EE in  
15 accordance with the terms of their agreements rather than  
16 escrowing those funds?

17 A. Yes, we are.

18 MARK SWARTZ: Mr. Chairman, I think that's all I  
19 have on these three units.

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

22 BILL HARRIS: Mr. Chairman, I have a question about  
23 the drilled depth for the first one we covered. I think it

24

--

1 was AW-135. I just wanted a clarification there. The AFE  
2 has 2300 feet and I think you stated 2077?

3 A. Yes. This was the estimated depth that's in  
4 the well cost.

5 BILL HARRIS: The estimated?

6 A. Uh-huh.

7 BILL HARRIS: So once drilled---?

8 A. Yeah.

9 BILL HARRIS: Okay. Thank you.

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

12 (No audible response.)

13 BENNY WAMPLER: Do you have anything further, Mr.  
14 Swartz?

15 MARK SWARTZ: No, Mr. Chairman.

16 JIM McINTYRE: Move to approve.

17 BENNY WAMPLER: Motion to approve. Is there a  
18 second?

19 BILL HARRIS: Second.

20 BENNY WAMPLER: Motion and second. Any further  
21 discussion?

22 (No audible response.)

23 BENNY WAMPLER: All in favor, signify by saying  
24

--

1 yes.

2 (All members signify by saying yes.)

3 BENNY WAMPLER: Opposed, say no.

4 (No audible response.)

5 BENNY WAMPLER: You have approval. The next item  
6 on the agenda is a petition from CNX Gas Company, LLC for  
7 creation and pooling of conventional gas unit TC-13, docket  
8 number VGOB-04-0217-1258. We'd ask the parties that wish to  
9 address the Board in this matter to come forward at this  
10 time.

11 MARK SWARTZ: Mark Swartz and Les Arrington.

12 BENNY WAMPLER: The record will show there are no  
13 others. You may proceed.

14

15 LESLIE K. ARRINGTON

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

18 DIRECT EXAMINATION

19 QUESTIONS BY MR. SWARTZ:

20 Q. Les, you need to state your name for us.

21 A. Leslie K. Arrington.

22 Q. I'm just going to remind you, you're still  
23 under oath.

24

--

1 A. Yes.

2 MARK SWARTZ: Mr. Chairman, I would ask that with  
3 regard to the company, the filings and ability to transact  
4 business in the Commonwealth and that sort of generic  
5 information, that that be incorporated at this time.

6 BENNY WAMPLER: That will be incorporated into this  
7 record.

8 Q. Les, this is a little different for us.  
9 Normally we're out here pooling conventional wells, right?

10 A. That's correct.

11 Q. What this is, if the Board will turn to the  
12 plat...well, actually the map...let's see here, if they turn  
13 to the unit map, they will see that we're proposing a unit  
14 under state wide spacing, it looks like.

15 A. Yes, we are.

16 Q. And we've got a circular unit with a 1350  
17 foot radius, is that right?

18 A. 1250.

19 Q. I'm sorry, 1250 foot radius, correct.

20 A. Yes.

21 Q. And what's the name of this well?

22 A. TC-13.

23 Q. And it's also got PMC, is that Pocahontas  
24

--

1 Mining Company referenced?

2 A. Yes, it is.

3 Q. This...what is the estimated cost of this  
4 well?

5 A. \$300,309.12, to a depth of 5398 feet. The  
6 permit number is 5972, and it was drilled November 24th of  
7 2003.

8 Q. Okay. Initially...well, as filed, the only  
9 party that you're seeking to pool is Jewell Ridge, is that  
10 correct?

11 A. It was.

12 Q. And then subsequently, before coming here  
13 today, you discovered you left off Berwind because you felt  
14 like you would reach an agreement with them before the  
15 hearing and wouldn't need them to be pooled, but it's turned  
16 out you don't have a signed agreement from them.

17 A. That's right, we don't.

18 Q. And we have filed this morning with the  
19 Board a letter from the Berwind parties which...actually  
20 Anita never gives me a copy of anything. I think...dated  
21 yesterday, I guess.

22 A. Yes.

23 Q. Indicating that it would be their preference  
24

--

1 that otherwise works for the Board, that you pool the unit  
2 and simply give them their election rights so that if we  
3 don't reach an agreement, they can simply exercise one of  
4 their options. I think that letter says that. So we would  
5 offer the Berwind Land Company letter of February 16th as a  
6 waiver of notice by certified mail and a waiver of the right  
7 to object or attend this hearing today. So that really  
8 brings us down to Jewell Ridge, correct?

9 A. It does.

10 Q. And what is Jewell Ridge's interest that  
11 we're seeking to pool?

12 BENNY WAMPLER: Before you go there, this may be  
13 related to that. Will you associate the Berwind Land  
14 Company? Is it...repeat testimony for me if you need to,  
15 what's their interest .

16 A. On Berwind Land or Jewell Ridge?

17 BENNY WAMPLER: Berwind Land. Try to dispose of it  
18 as we go. You've got the 2.74 acres, is that it as far  
19 as---?

20 A. Berwind...Berwind Land, Berwind Oil & Gas  
21 had an interest in three different tracts, tract 3-A, tract  
22 3-D, and tract 4. In tract 3-A, Berwind's interest was  
23 3.4608%, tract 3-D was 0.0266%, and in tract number 4, it was

24

--

1 2.2444%.

2 BENNY WAMPLER: I didn't have that.

3 MARK SWARTZ: It's on the tract IDS.

4 A. On the revisions, I'm sorry.

5 BENNY WAMPLER: Okay.

6 BILL HARRIS: One quick question while we're on  
7 that letter, is there a reason why we got two? I know one  
8 says fax and the other says mail.

9 A. I think one is Berwind Land and one is  
10 Berwind Oil & Gas.

11 BILL HARRIS: Two different companies.

12 MARK SWARTZ: No wonder you're confused.

13 Q. The Board could...to really address  
14 Berwind's interest, could either look at the tract  
15 identifications, which came with the original application, or  
16 Exhibit B-3 that was filed today, correct?

17 A. Uh-huh.

18 Q. And that has the percentages that...either  
19 of those exhibits have the percentages you just referred to?

20 A. Yes, they do.

21 Q. And the---.

22 BENNY WAMPLER: Mark, excuse me, but I still have a  
23 question about Berwind---

24

--

1           MARK SWARTZ: Okay.

2           BENNY WAMPLER: --before we move on to that.

3           MARK SWARTZ: Sure.

4           BENNY WAMPLER: You may not be moving off of it,  
5 but my question is, talk about notice.

6           A.       Notice. They were given notice of the well  
7 ...well, and to be quite honest, what happened here is I'm so  
8 used to going through these things. We have a coalbed  
9 methane lease with Berwind and I just passed right over it as  
10 far as the oil and gas goes. And when I caught that...when  
11 we caught that situation, we gave them notice and they said,  
12 "Well, we'll just do a letter."

13           BENNY WAMPLER: Thank you.

14           Q.       Now, Jewell Ridge is in...is in tract 4, and  
15 we need to look at the piece of the Jewell Ridge interest in  
16 tract 4, which is in Exhibit B-3 that was filed with the  
17 supplemental exhibits today.

18           A.       Uh-huh.

19           Q.       Talk...explain to the Board what their  
20 partial interest is?

21           A.       Jewell Ridge has a one-thirteenth interest  
22 within tract number 4.

23           Q.       And you have yet been unable to reach an  
24

--

1 agreement?

2 A. That's correct.

3 Q. And so the party that you do not anticipate,  
4 at least not at this point having an agreement with, is  
5 Jewell Ridge, and their interest in this unit is 0.1870,  
6 correct?

7 A. That's correct.

8 Q. And if you're able to reach an interest with  
9 Berwind, obviously we'll dismiss them down the road. If not,  
10 they can exercise their options?

11 A. That's correct, and that's what they have  
12 requested.

13 Q. This well, I think we've talked about the  
14 fact that it's being drilled and they got notice...Berwind  
15 and everyone got notice of the drilling...of the permit  
16 application. Is this...since you've depicted this on your  
17 plat as being drilled under state wide spacing, is it also  
18 true, though, that this is not in an area where this Board  
19 has previously established any kind of field rules for  
20 conventional gas?

21 A. That's correct, it is not.

22 Q. So it's a candidate for field...for state  
23 wide spacing as opposed to field rules?

24

--

1 A. Yes, it is.

2 Q. Okay. Let me make sure there's nothing else  
3 here. With regard to notice to Jewell Ridge or anybody else,  
4 was this published?

5 A. Yes, it was, January 26th, 2004, Bluefield  
6 Daily Telegraph; mailed certified return receipt January  
7 16th, 2004.

8 Q. And have you filed that information,  
9 publication and mailing with the Board today?

10 A. Yes, we have.

11 MARK SWARTZ: That's all I have.

12 BENNY WAMPLER: Questions from members of the  
13 Board?

14 (No audible response.)

15 BENNY WAMPLER: I'll just ask you to address this,  
16 Mr. Swartz. We have not accepted a waiver of notice. I  
17 guess we basically held that's not something you can waive.  
18 I think notice is required.

19 MARK SWARTZ: I can't remember if that's in the  
20 pooling situation, the permitting or pooling. I couldn't  
21 remember, but we could continue it for a month.

22 BENNY WAMPLER: We've got all the evidence in. I  
23 don't think you have to represent it, but I think the

24

--

1 smartest thing for us to do as a Board is to wait until we  
2 get actual notice. We can...I don't know if we can  
3 conditionally approve something, but we could possibly do  
4 that, conditioned upon actual notice.

5 MARK SWARTZ: It's not a problem, but I thought we  
6 came up with a form to waive permits.

7 BOB WILSON: Permits.

8 MARK SWARTZ: Okay.

9 BOB WILSON: Yes, permit applications you can  
10 accept waiver, because we got the law actually changed to  
11 accept that. But there is...the department, I think we got  
12 ourselves caught in a bind once before where we...we were  
13 told we do not have the power to waive notice even if it's a  
14 company.

15 MARK SWARTZ: Okay. I mean, we can continue it a  
16 month. It's not a problem.

17 BENNY WAMPLER: Well, let's do that. Let's  
18 continue it until next month.

19 MARK SWARTZ: That's fine. We'll be here.

20 BENNY WAMPLER: Is that acceptable to the Board  
21 members. I'm not trying to---

22 (No audible response.)

23 BENNY WAMPLER: It will be continued.

24

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1           MARK SWARTZ: We'll mail them and be back with that  
2 proof next time. That's all I've got today.

3           BENNY WAMPLER: Thank you very much.

4           MARK SWARTZ: Thank you.

5           BENNY WAMPLER: If you do have time to stay around  
6 a few minutes.

7           MARK SWARTZ: We'll definitely hang around.

8           BENNY WAMPLER: The next item on the agenda is a  
9 petition from Equitable Production Company for pooling of  
10 conventional gas unit V-535457, docket number VGOB-04-0217-  
11 1259. We'd ask the parties that wish to address the Board in  
12 this matter to come forward at this time.

13           JIM KISER: Mr. Chairman and members of the Board,  
14 Jim Kiser on behalf of Equitable Production Company. Our  
15 witness in this matter will be Mr. Don Hall. If you could  
16 swear him in, I'm going to pass out some revised exhibits.

17           (Witness is duly sworn.)

18           BENNY WAMPLER: The record will show there are no  
19 others. You may proceed.

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

23   DIRECT EXAMINATION

24

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1 QUESTIONS BY MR. KISER:

2 Q. Mr. Hall, if you'd state your name for the  
3 record, who you're employed by and in what capacity?

4 A. My name is Don Hall. I'm employed by  
5 Equitable Production Company as District Landman.

6 Q. And do your responsibilities include the  
7 land involved here and the surrounding area?

8 A. Yes, they do.

9 Q. And are you familiar with Equitable's  
10 application seeking the establishment of a unit and seeking  
11 the pooling of any unleased interest for EPC number VC-  
12 535457, which was dated January the 15th, 2004?

13 A. Yes.

14 Q. And is Equitable seeking to force pool the  
15 drilling rights underlying the unit as depicted at Exhibit A,  
16 that being the plat to the application?

17 A. Yes, sir.

18 Q. Does Equitable own drilling rights in the  
19 unit here?

20 A. We do.

21 Q. And prior to filing the application, were  
22 efforts made to contact each of the respondents and an  
23 attempt made to work out a voluntary lease agreement?

24

--

1 A. Yes.

2 Q. What was the interest of Equitable in...  
3 under lease in the unit at the time the application was  
4 filed?

5 A. At the time the application was filed, it  
6 was 96.21% we had leased.

7 Q. And since that time, have you continued to  
8 attempt to reach a voluntary agreement with the unleased  
9 parties?

10 A. Yes.

11 Q. And have you been successful?

12 A. Yes.

13 Q. You've picked up one additional lease, I  
14 think, tract 11, Clayton Baker?

15 A. That's correct.

16 Q. So the only unleased tract remains tract 3,  
17 that's Albert Mullins and Jane Mullins?

18 A. That's correct.

19 Q. And are all the unleased parties set out at  
20 revised exhibit B-3?

21 A. Yes.

22 Q. And could you state the current situation of  
23 the leased and unleased percentages for the Board?

24

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1           A.       Currently we have 99.17% leased and .83%  
2   unleased.

3           Q.       We don't have any unknown or unlocateable  
4   respondents in this unit?

5           A.       No.

6           Q.       Is that correct?  And are the addresses set  
7   out in the revised Exhibit B to the application the last  
8   known addresses for the respondents?

9           A.       Yes.

10          Q.       And in your professional opinion, was due  
11   diligence exercised to locate each of the respondents named  
12   there?

13          A.       It was.

14          Q.       Are you requesting the Board to force pool  
15   all the unleased interest as listed at Exhibit B-3?

16          A.       Yes.

17          Q.       Did we file today an Exhibit B-2 to show the  
18   additional lease picked up on tract 11?

19          A.       We filed an exhibit, a revised Exhibit B-2  
20   dismissing Clayton Baker and a revised Exhibit B-3 indicating  
21   the only unleased party.

22          Q.       Are you familiar with the fair market value  
23   of drilling rights in the unit here and the surrounding area?

24

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1           A.       Yes.

2           Q.       Could you advise the Board as to what those  
3 are?

4           A.       We pay a five dollar bonus, a five year term  
5 with a one-eighth royalty.

6           Q.       And, in your opinion, do the terms you've  
7 just testified to represent the fair market value of and fair  
8 and reasonable compensation to be paid for drilling rights  
9 within this unit?

10          A.       They do.

11          Q.       Now, as to the one respondent who remains  
12 unleased, that being the Mullins in tract 4, do you agree  
13 that they be allowed the following statutory options with  
14 respect to ownership interest within the unit: one,  
15 participation; two, a cash bonus of five dollars per net  
16 mineral acre, plus a one-eighth of eight-eighths royalty; or  
17 three, in lieu of that cash bonus and a one-eighth of eight-  
18 eighths royalty, a share in the operation of the well on a  
19 carried basis as carried operator under the following  
20 conditions: Such carried operator shall be entitled to the  
21 share of production from the tracts pooled accruing to his  
22 interest exclusive of any royalty or overriding royalty  
23 reserved in any leases, assignments thereof, or agreements

24

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1 relating thereto of such tracts but only after the proceeds  
2 applicable to his share equal, A) 300% of the share of such  
3 cost applicable to the interest of a carried operator of a  
4 leased tract or portion thereof; or B) 200% of the share of  
5 such cost applicable to the interest of the carried operator  
6 of an unleased tract or portion thereof?

7 A. Yes.

8 Q. Do you recommend that the order provide that  
9 any elections by respondents be in writing and sent to the  
10 applicant at Equitable Production Company, 1710 Pennsylvania  
11 Avenue, Charleston, West Virginia 25328, attention Melanie  
12 Freeman, Regulatory?

13 A. Yes.

14 Q. And should this be the address for all  
15 communications with the applicant concerning any force  
16 pooling order?

17 A. It should.

18 Q. Do you recommend the order provide that if  
19 no written election is properly made by a respondent, such  
20 respondent should be deemed to have leased and elected the  
21 cash royalty option in lieu of participation?

22 A. Yes.

23 Q. Should the unleased respondents be given 30  
24

1 days from the date of the execution of the Board order to  
2 file their written elections?

3 A. Yes.

4 Q. If an unleased respondent elects to  
5 participate, should they be given 45 days to pay for their  
6 proportionate share of well costs?

7 A. Yes.

8 Q. Does you expect any party electing to  
9 participate to pay in advance that party's share of completed  
10 well costs?

11 A. We do.

12 Q. Should the applicant be allowed 120 days  
13 following the recording date of the Board order, and  
14 thereafter annually on that date until production is  
15 achieved, to pay or tender any cash bonus becoming due under  
16 the order?

17 A. Yes.

18 Q. Do you recommend that the order provide that  
19 if the respondent elects to participate but fails to pay  
20 their proportionate share of well costs, then respondent's  
21 election to participate should be treated as having been  
22 withdrawn and void, and such respondent should be treated as  
23 though no initial election had been filed, in other words,  
24

1 deemed to have leased?

2 A. Yes.

3 Q. Do you recommend the order provide that  
4 where a respondent elects to participate but defaults in  
5 regard to the payment of well costs, any cash sum becoming  
6 payable to that respondent be paid within 60 days after the  
7 last date on which the respondent could have made payment of  
8 those well costs?

9 A. Yes.

10 Q. Okay. In this particular unit, we do not  
11 have any unknown or unlocateable owners or any conflicting  
12 claimants, so the Board does not need to establish an escrow  
13 account, is that correct?

14 A. That's correct.

15 Q. And who should be named the operator under  
16 any fore pooling order?

17 A. Equitable Production Company.

18 Q. And what is the total depth of the proposed  
19 well under the plan of development?

20 A. The total depth is 6,233 feet.

21 Q. And the estimated reserves for the unit?

22 A. 300,000,000 cubic feet.

23 Q. Are you familiar with the well costs and the

24

--

1 Exhibit C, the AFE, that's been reviewed, signed and  
2 submitted to the Board?

3 A. Yes, sir.

4 Q. Was that AFE prepared by an engineering  
5 department knowledgeable in the preparation of AFEs and  
6 knowledgeable in regard to well costs in this area?

7 A. It was.

8 Q. In your professional opinion, does it  
9 represent a reasonable estimate of the well costs?

10 A. Yes.

11 Q. Could you state for the Board both the dry  
12 hole costs and the completed well costs for this well?

13 A. The dry hole cost is \$228,667, and the  
14 completed well cost is \$414,544.

15 Q. What are the estimated reserves for this  
16 unit?

17 A. 300,000,000 cubic feet.

18 Q. Do these costs anticipate a multiple  
19 completion?

20

21 A. Yes.

22 Q. Does your AFE include a reasonable charge  
23 for supervision?

24

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1 A. Yes.

2 Q. In your professional opinion, would the  
3 granting of this application be in the best interest of  
4 conservation, the prevention of waste and the protection of  
5 correlative rights?

6 A. Yes.

7 JIM KISER: Nothing further of this witness at this  
8 time, Mr. Chairman.

9 BENNY WAMPLER: What was your depth?

10 JIM KISER: I believe 6233.

11 A. 6233.

12 BENNY WAMPLER: Questions from members of the  
13 Board?

14 DON RATLIFF: There's no permit number?

15 A. Pardon?

16 DON RATLIFF: No permit number? Do you have a  
17 permit?

18 A. I don't know if we've applied for this one  
19 yet or not. I don't think we have.

20 BENNY WAMPLER: Any other questions?

21 (No audible response.)

22 BENNY WAMPLER: Do you have anything further?

23 JIM KISER: Mr. Chairman, we'd ask that the  
24  
25

1 application be approved as submitted.

2 DON RATLIFF: Motion to approve, Mr. Chairman.

3 BENNY WAMPLER: Motion to approve. Is there a  
4 second?

5 BILL HARRIS: Second.

6 BENNY WAMPLER: Motion and second. Any further  
7 discussion?

8 (No audible response.)

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

11 (All members signify by saying yes.)

12 BENNY WAMPLER: Opposed, say no.

13 (No audible response.)

14 BENNY WAMPLER: You have approval. The next item  
15 on the agenda is a petition from Equitable Production Company  
16 for pooling of coalbed methane unit VC-535602, docket number  
17 VGOB-04-0217-1260. We'd ask the parties that wish to address  
18 the Board in this matter to come forward at this time.

19 JIM KISER: Mr. Chairman, again, Jim Kiser on  
20 behalf of Equitable Production Company. Our witness again  
21 will be Mr. Don Hall, and I think Mr. Meade is here.

22 BENNY WAMPLER: If you will, sir, at this time  
23 state your name for the record?

24

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1           BERNARD MEADE: Bernard Meade.

2           BENNY WAMPLER: The record will show there are no  
3 others. You may proceed.

4           BERNARD MEADE: Well, the first thing I want---.

5           BENNY WAMPLER: Mr. Meade, what we do is we let  
6 them make their presentation and then you can ask questions  
7 and then address the Board.

8           BERNARD MEADE: Okay.

9           BENNY WAMPLER: Let's see what they're applying  
10 for.

11          BERNARD MEADE: I didn't know.

12          BENNY WAMPLER: That's okay.

13

14                                   DON HALL

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

17                                   DIRECT EXAMINATION

18 QUESTIONS BY MR. KISER:

19           Q.       Mr. Hall, again, state your name, who you're  
20 employed by and in what capacity?

21           A.       Don Hall. I'm employed by Equitable  
22 Production Company as District Landman.

23           Q.       And do your responsibilities include the  
24

--

1 land involved here and the surrounding area?

2 A. They do.

3 Q. And are you familiar with the application  
4 Equitable filed seeking to pool any unleased parties for EPC  
5 number VC-535602, which was dated January the 15th, 2004?

6 A. Yes.

7 Q. And is Equitable seeking to force pool the  
8 drilling rights underlying the unit, which depicted at  
9 Exhibit A, that being the plat to the application?

10 A. Yes.

11 Q. Does Equitable own drilling rights in the  
12 unit involved here?

13 A. We do.

14 Q. And prior to filing the application, were  
15 efforts made to contact each of the respondents and an  
16 attempt made to work out a voluntary lease agreement?

17 A. Yes.

18 Q. What was the interest of Equitable in the  
19 gas estate within the unit?

20 A. We have 98.08% leased.

21 Q. And the interest in the coal estate?

22 A. 100%.

23 Q. Are all the unleased parties set out at  
24

--

1 Exhibit B-3?

2 A. Yes, sir.

3 Q. Are you familiar with drilling rights of  
4 parties other than Equitable underlying this unit?

5 A. Yes.

6 Q. And what is the unleased interest within the  
7 gas estate in this unit?

8 A. 1.92%.

9 Q. And the coal estate is a 100% leased?

10 A. Right.

11 Q. Again, we don't have any unknown or  
12 unlocateables in this case?

13 A. No.

14 Q. And in your professional opinion, was due  
15 diligence exercised to locate each of the respondents named  
16 herein?

17 A. Yes.

18 Q. Are the addresses set out in Exhibit B to  
19 the application the last known addresses for the respondents?

20 A. Yes.

21 Q. Are you requesting the Board to force pool  
22 all the unleased interest as listed at Exhibit B-3?

23 A. Yes.

24

--

1 Q. Again, are you familiar with the fair market  
2 value of drilling rights in the unit here and the surrounding  
3 area?

4 A. Yes.

5 Q. Could you advise the Board as to what those  
6 are?

7 A. Five dollar bonus, and a five year term,  
8 one-eighth royalty.

9 Q. And, in your opinion, do the terms you've  
10 just testified to represent the fair market value of and fair  
11 and reasonable compensation to be paid for drilling rights  
12 within this unit?

13 A. Yes.

14 MR. KISER: Mr. Chairman, as to the election  
15 options and the various times afforded to make those and the  
16 consequences of those, we'd ask that the testimony taken in  
17 our previous hearing, that being VGOB docket number 04-0217-  
18 1259, be incorporated for purposes of this hearing?

19 BENNY WAMPLER: That will be incorporated.

20 Q. Mr. Hall, we do have a somewhat unusual...at  
21 this point, I'd like to direct the Board to the plat, which  
22 would be Exhibit A to your application, and to Exhibit E,  
23 which is our exhibit denoting who we have to escrow. We do  
24

1 have an escrow situation here and it's kind of unusual in  
2 that we have, because of some overlaps and some interlocks  
3 among these tracts that are in the unit, not only do we have  
4 conflicting claims to CBM on some of these tracts between the  
5 gas estate and the coal estate, but we also have potential  
6 conflicting claimants to the individual estates themselves.  
7 In other words, we can go through it tract by tract, I guess  
8 might be the best way to do it. If we can start with...if  
9 everybody is on E, tract 4, you see you have a list of the  
10 gas estate owners and some undivided interest, or ACIN,  
11 that's your conventional conflicting claims, is that  
12 correct, Mr. Hall?

13 A. Yes.

14 Q. Tract 5, again, is your conventional  
15 conflicting claim, is that correct?

16 A. Yes.

17 Q. Tract 6 is the first double conflict tract,  
18 as I'll call it, in that we have, because of the overlap and  
19 the interlock among these tracts, we have a...two potential  
20 claims to the gas estate and then a conflicting claim to the  
21 coal estate, is that correct?

22 A. That's correct, and to clarify the matter a  
23 little bit, the tracts that...we have listed the overlap area

24

--

1 is a separate tract. If you look at the plat---

2 Q. Yeah, go back to the plat.

3 A. ---you'll see, for instance the lines in  
4 tract 2, that's an overlap from 1 and 3, so we made 2 a  
5 separate tract since it was an overlap. That's the only part  
6 of either tract that's in question.

7 Q. Tract 7 is the most interesting of them all.  
8 If you'll look at the ownership depicted there and again  
9 look at the plat, we have your conventional conflicting claim  
10 between the gas estate owners, or potential conflicting claim  
11 because we have a list of individuals as potential gas estate  
12 owners or the Hagen Estate and then on the coal estate it's  
13 either ACIN, LLC or the Hagen Estate. These tracts, we feel  
14 based upon our investigation of the ownership and the survey  
15 that we've done are Board escrow tracts. There's actually  
16 some tracts also, because everybody is leased, will be  
17 subject to internal escrow. But E represents everything that  
18 we would ask the Board to escrow.

19 JIM KISER: I don't know if you want to address  
20 any questions before we go into the operations questions.

21 BENNY WAMPLER: Any questions at this point from  
22 members of the Board?

23 (No audible response.)

24

--

1           BENNY WAMPLER: Go ahead.

2           Q.       And, Mr. Hall, who should be named operator  
3 under any force pooling order?

4           A.       Equitable Production Company.

5           Q.       And what is the total depth of the proposed  
6 well?

7           A.       2705 feet.

8           Q.       And the estimated reserves for the unit?

9           A.       300,000,000 cubic feet.

10          Q.       Are you familiar with the AFE that was  
11 filed, signed and submitted to the Board as Exhibit C to the  
12 application?

13          A.       Yes.

14          Q.       Was it prepared by an engineering department  
15 knowledgeable in the preparation of AFEs and knowledgeable in  
16 regard to well costs in this area?

17          A.       Yes.

18          A.       Yes.

19          Q.       Could you state both the dry hole costs and  
20 the completed well costs for this well?

21          A.       The dry hole cost is \$125,893, and the  
22 completed well cost is \$255,233.

23          Q.       255,233?

24

--

1 A. Yes.

2 Q. All right. And do these costs anticipate a  
3 multiple completion?

4 A. Yes.

5 Q. Does your AFE include a reasonable charge  
6 for supervision?

7 A. It does.

8 Q. In your professional opinion, will the  
9 granting of this application be in the best interest of  
10 conservation, prevention of waste and the protection of  
11 correlative rights?

12 A. Yes.

13 JIM KISER: Nothing further of this witness at this  
14 time, Mr. Chairman.

15 BENNY WAMPLER: The tract 2 that you created over  
16 that area, you don't have them listed in E. Is there a  
17 reason for that?

18 A. Probably have both parties leased.

19 BENNY WAMPLER: So there's not a conflict there?

20 A. There's a conflict as to which one of the  
21 parties owns that.

22 BENNY WAMPLER: But you leased both?

23 A. But we have both leased.

24

--

1           JIM KISER: So for your purposes, it's not a  
2 conflict.

3           A.       Right.

4           BENNY WAMPLER: Do you have anything further?

5           JIM KISER: Not at this time.

6           BENNY WAMPLER: Questions from members of the  
7 Board?

8           DON RATLIFF: Mr. Chairman.

9           BENNY WAMPLER: Mr. Ratliff.

10          DON RATLIFF: Is the well outside the drilling  
11 window?

12          A.       Yes, it is.

13          JIM KISER: Did you seek an exception in the  
14 permitting process for this well?

15          A.       If we applied for a permit, we have. I'm  
16 not sure if this well has been---?

17          JIM KISER: Or will you seek an exception?

18          A.       We will if it hasn't already been done.

19          BENNY WAMPLER: Any other questions?

20          JIM KISER: This is a Nora well?

21          A.       Yes.

22          BENNY WAMPLER: Now, you're familiar with Mr.  
23 Meade?  
24  
~

1           JIM KISER: I think maybe Mr. Wishoun worked with  
2 him and maybe Mr. Hall. I've not met him.  
3           BENNY WAMPLER: Do you plan to call this gentleman?  
4 If you do, let's bring him on down, or not?  
5           JIM KISER: It probably wouldn't be a bad idea.  
6 Why don't you come on down and we can swear you in. Mr.  
7 Meade is leased by the way.  
8           MR. MEADE: What?  
9           JIM KISER: Leased.  
10          BERNARD MEADE: I'm not here...I'm here for a  
11 different thing.  
12          JIM KISER: Oh.  
13          BERNARD MEADE: And the two people that's not  
14 leased, I'm here for that.  
15          BENNY WAMPLER: Go ahead and be sworn in. State  
16 your name for the record.  
17          (Witness is duly sworn.)  
18          BENNY WAMPLER: State your name for us, please.  
19          KEITH WISHOUN: Keith Wishoun.  
20          BENNY WAMPLER: Okay, Mr. Meade.  
21          BERNARD MEADE: Bernard Meade.  
22          BENNY WAMPLER: Okay, go ahead with your  
23 previous---.

24

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1           BERNARD MEADE: That seam of property we've got,  
2 they've at least got twenty or thirty dozen people and it's  
3 not even their property. I've tried to get them straightened  
4 out. They said they wasn't straightening it out. They said  
5 it was up to me to straighten it out.

6           BENNY WAMPLER: We have to have more information  
7 about what you're talking. Which tracts?

8           BERNARD MEADE: It's a piece of property here.  
9 They've leased our property and leased to other people, too.  
10 They've leased it to other people. I said ain't you all  
11 checked the record on it. They said no. Said we ain't going  
12 to check the record. That's what they told me. There's  
13 another piece here at the home place, Mommy excepted the gas  
14 rights of one. They said she can't except the gas rights.  
15 There's nobody that can except the gas rights when you sell a  
16 piece of property. Mr. Hall told me that his self there. He  
17 said there's no way you can except. I've got deeds here  
18 showing it has been excepted in. In another place, they said  
19 they couldn't lease. They said they couldn't find no tax map  
20 in the Courthouse. They said if they can't find a tax map,  
21 they can't lease. But according to this piece of paper right  
22 here...it starts out right here it says, "approximately three  
23 thousand feet of intersection of Virginia Route 649 and 646

24

--

1 on the waters of Long Fork Branch." It takes all of it in.

2 BENNY WAMPLER: What are you reading from? Does it  
3 got a Deed Book?

4 JIM KISER: It's on the notice.

5 BERNARD MEADE: No, this right here just shows  
6 where---.

7 BENNY WAMPLER: Oh, your notice, okay.

8 BERNARD MEADE: This shows going down the road  
9 there. They've got it messed up there. Nobody knows how to  
10 straighten it out. But anybody knows you can lease...can  
11 except coal, gas, oil, between yourselves and put in a deed  
12 and except it. It's right in the deed. Mr. Hall said it's  
13 impossible. He said you can't except anything.

14 BENNY WAMPLER: Mr. Kiser, can you shed any light  
15 on by asking some questions?

16 JIM KISER: So, you...you and/or the people that  
17 you're here representing today have some ownership in tracts  
18 4 and 6 in this unit, is that correct?

19 BERNARD MEADE: Yes, we own in it. I don't know  
20 what 4 and 6. I don't know nothing about that. Right  
21 here---.

22 JIM KISER: Well, it's two different tracts?

23 BERNARD MEADE: Yeah. This tract right here. They  
24

--

1 are two different tracts.

2           JIM KISER: Okay, we're depicting...let's start  
3 with tract 4.

4           BERNARD MEADE: Now, right here...right here  
5 depicts 649 you're talking about.

6           BENNY WAMPLER: Can you tell us who you're here  
7 representing today? Are you representing these other Meades  
8 that are here?

9           BERNARD MEADE: Yeah. Yes.

10          BENNY WAMPLER: All of them?

11          BERNARD MEADE: Yeah.

12          BENNY WAMPLER: Okay.

13          BERNARD MEADE: I'm representing them on that...  
14 where they got the other people on them. I'm representing  
15 myself, too. We didn't know anything about it until somebody  
16 put it in front of me. They said how are they leasing that  
17 stuff to you people and they give me a copy of it. That's  
18 the way we found out about it. Right here is where I'm  
19 talking about. Here's the 649 route comes right down through  
20 here. It touches the property all the way down.

21          JIM KISER: Okay. As to tract 4, it looks like our  
22 exhibits depicting one, two, three, four, five, six people  
23 having an interest in that tract.

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1           BERNARD MEADE: Six.

2           JIM KISER: Three of the six being leased and three  
3 of them being unleased. Would that...Mr. Wishoun and Mr.  
4 Hall, would that be consistent with the ownership  
5 investigation that you conducted?

6           KEITH WISHOUN: Yes.

7           JIM KISER: And that included a review of the---.

8           BERNARD MEADE: Including the foot---.

9           JIM KISER: ---records in the Courthouse.

10          KEITH WISHOUN: Yes.

11          BERNARD MEADE: In the lease we signed, it says  
12 eight.

13          JIM KISER: Eight what?

14          BERNARD MEADE: Eight people in it. Eight shares.  
15 Then when you read it off there you said six. It says right  
16 in there eight. One-eighth is what it says.

17          JIM KISER: That's the royalty amount.

18          BERNARD MEADE: Yeah. But that's supposed to be  
19 eight people and it's not six to start with.

20          JIM KISER: No, no, no. It's one-eighth divided  
21 pro-rata among the...pro-rata between all the different  
22 owners. It's twelve and a half percent of the gross is what  
23 that one-eighth represents. It doesn't have anything to do

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1 with the ownership.

2           BERNARD MEADE: Well, it does too, if you own three  
3 shares, you're going to get more than the other one.

4           JIM KISER: Well, you'll get whatever your share  
5 within that tract is of the one-eighth.

6           BERNARD MEADE: Yes, it---.

7           JIM KISER: Tract 4 in your case it would be---.

8           BERNARD MEADE: It don't say how many shares. It  
9 don't say nothing in it. People don't...you don't even know  
10 what you're getting and what you're not getting.

11           BENNY WAMPLER: Well, your interest in the unit is  
12 in Exhibit E.

13           BERNARD MEADE: Yeah, but see what it is, some of  
14 them that don't own it leased it to them and didn't even own  
15 it in that. That's what I'm talking about right here. They  
16 should have straightened that up and get the ownership right  
17 on it before they started anything else on it. There is  
18 supposed to be eight shares...six shares in the home place.  
19 They've got eight shares in it. One of them leased...leased  
20 the five shares from one person. They don't own that many  
21 shares.

22           BENNY WAMPLER: We don't have anything here showing  
23 anything like that.

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1           BERNARD MEADE: Like what? I've got the deed right  
2 here that goes by what I'm talking about. If you get  
3 everybody else's lease where they signed it, you can see it.  
4 See, the only one I have is mine.

5           JIM KISER: See, actually...I don't know if tract 4  
6 is the home place. But we actually do have six people having  
7 an interest that you're confused by that one-eighth.

8           BERNARD MEADE: No, when he leased, he come over  
9 and told me Margaret had five shares. I said how could you  
10 have five shares when they ain't but six of us in it? My  
11 sister said she had five shares of it. She don't own no five  
12 shares.

13           JIM KISER: Who's Mark?

14           BERNARD MEADE: Uh?

15           JIM KISER: Mark.

16           BERNARD MEADE: Mark who?

17           JIM KISER: That's what you said. "Mark has five  
18 shares."

19           BERNARD MEADE: Margaret.

20           BENNY WAMPLER: Margaret.

21           JIM KISER: Oh, Margaret, I'm sorry.

22           BERNARD MEADE: Margaret said she had five shares.  
23 She don't have no five---.

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1           BENNY WAMPLER: The interest...listen, what we have  
2 before us in tract 4, the interest...and it shows it's  
3 leased, the interest is 2.618603%, the acreage is 1.5380.  
4 Then in Tract 6 the interest within the unit is .760424%  
5 representing .4460 acreage for Margaret...Margaret Meade  
6 Bolling and Donnie R. Bolling, her husband.

7           BERNARD MEADE: Look on the other, see what their  
8 percentage is.

9           BENNY WAMPLER: Do you not...do you have...does he  
10 have this information?

11           JIM KISER: I'm sure he does.

12           BERNARD MEADE: I don't...no, I don't have---.

13           JIM KISER: Well, no, I guess---.

14           BERNARD MEADE: No, I didn't bring that part of me.  
15 I just brung the lease---.

16           JIM KISER: Yeah.

17           BERNARD MEADE: I mean, the deeds and things.

18           DON HALL: Yeah, he got a copy of it.

19           BERNARD MEADE: Look at the other shares on the  
20 rest of them and see how it comes out.

21           BENNY WAMPLER: Well, I can show you, sir. I'll  
22 let you look at it so you can see what I'm reading to you.  
23 All I'm doing is reading you what they...this is what they

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1 presented to the Board.

2           BERNARD MEADE: Yes. That's...that's Arch Mullins.  
3 How much was it right there?

4           BENNY WAMPLER: That's a...that's the acreage.

5           BERNARD MEADE: All right. Now, look right  
6 here...look right here now on mine. See the difference  
7 is...we're suppose to be equal. We're suppose to be equal.

8           BENNY WAMPLER: Says who?

9           BERNARD MEADE: Huh? We've got a equal number of  
10 shares.

11           BENNY WAMPLER: Well, you're talking about how much  
12 own within...per unit.

13           BERNARD MEADE: That's what...that's what we're  
14 talking about. If you look...I can't see through these  
15 glasses too good.

16           BENNY WAMPLER: Here is...here is the two again.

17           BERNARD MEADE: Yeah. But you don't understand  
18 what I'm talking about.

19           BENNY WAMPLER: I do. You're saying yours should  
20 have the same thing as she does.

21           BERNARD MEADE: Right. We should have...no, she  
22 should have one share more than us, I believe. But see  
23 there's just six of us to start with. So, how can one

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1 have---?

2           JIM KISER: See, we're actually showing that you  
3 have, as you like to call them "shares", you have---.

4           BERNARD MEADE: No.

5           JIM KISER: ---three times the interest of---.

6           BERNARD MEADE: We're apart...no, I didn't say  
7 that.

8           JIM KISER: ---Shirley, Donald or William.

9           BERNARD MEADE: No.

10          JIM KISER: Well, that's what we're showing.  
11 That's what our title abstract shows.

12          BERNARD MEADE: What I'm talking about is there  
13 wasn't but eight heirs in it to start with.

14          JIM KISER: We never said there was.

15          BERNARD MEADE: Huh?

16          JIM KISER: We've only got six.

17          BENNY WAMPLER: They're just showing six.

18          JIM KISER: We're just showing six.

19          BENNY WAMPLER: I mean, what we have before us is  
20 six. I don't know what anybody told you. But what we have  
21 is six, okay. That's what...that's what---.

22          BERNARD MEADE: Well, why does one got three parts  
23 of it...five parts of it and another just have one part?

24

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1 That's what I'm getting at there. That's---.

2 BENNY WAMPLER: Okay, maybe we can...we'll ask them  
3 to explain things.

4 BERNARD MEADE: Yeah, ask them to explain that to  
5 me, one has got five parts and the rest of us has got one  
6 part.

7 JIM KISER: I'm not familiar with the title, so  
8 I'll ask one of you two to explain that.

9 KEITH WISHOUN: Margaret Meade acquired another  
10 three interests plus hers from some of the siblings, nieces  
11 and nephews, from what we got at the courthouse records.

12 BERNARD MEADE: Yes, but you didn't check the  
13 records. I've got a deed right here that shows that she  
14 didn't...the ones that signed it, part of them didn't own it.  
15 You said that wasn't legal because she can't except the gas  
16 rights from it. I've got the deed right here. You can look  
17 at it and see, she didn't except them. She got them to sign  
18 to her and them not on it.

19 JIM KISER: Well, I guess at some point, I need to  
20 bring up---.

21 BERNARD MEADE: Read right...read right here---.

22 JIM KISER: I guess at some point I need to bring  
23 up the fact that---.

24

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1           BERNARD MEADE: Read right here and see what it  
2 says.

3           JIM KISER: ---the Board can't...doesn't have any  
4 jurisdiction over ownership in the land.

5           BERNARD MEADE: Yeah, but he does. He refuses to  
6 straighten it out.

7           JIM KISER: No, what I'm saying is if you...if this  
8 is a problem that we cannot work out with you, then your  
9 remedy is in the Circuit Court.

10          BERNARD MEADE: No, I'm not trying to do that. But  
11 see right here, it is excepted on some of these. I'm talking  
12 about she can't get those that she don't own.

13          BENNY WAMPLER: Well, what they're saying, and  
14 I---.

15          BERNARD MEADE: He didn't check the records and  
16 see.

17          BENNY WAMPLER: Well, we can't...the Board---.

18          BERNARD MEADE: No, I know that.

19          BENNY WAMPLER: ---has no jurisdiction over that.

20          BERNARD MEADE: But the only thing I was coming  
21 over for, I was wanting you to deny the claim until they  
22 straightened it out. I'm not against pooling it. But I'm  
23 just getting against the way they wanting to do it. He told  
24

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1 me over there she had five shares in it. I said she can't  
2 have. He pulled another out and said she has got Parkus'. I  
3 said, wait a minute, I said, Parkus don't own no share. He  
4 sold his.

5 BENNY WAMPLER: Let me ask him a few questions.  
6 You went to the courthouse and you researched the deeds at  
7 the courthouse, is that right? Everything was recorded?

8 KEITH WISHOUN: Yeah.

9 BENNY WAMPLER: Tell me what you found. Just tell  
10 the Board what you found then.

11 KEITH WISHOUN: Margaret Meade Bolling having four-  
12 sevenths of the interest and one-seventh being to Bernard  
13 Meade and Carl Meade and a Jimmy Meade, one-seventh each.

14 BERNARD MEADE: Who owns the rest of it?

15 KEITH WISHOUN: Margaret Meade Bolling.

16 BERNARD MEADE: How much?

17 KEITH WISHOUN: Four-sevenths.

18 BERNARD MEADE: See, there are two deeds in this  
19 right here now that she don't...she signed that she don't  
20 own. That's what I'm...what I'm trying to explain to you.  
21 He leased it more from her than she owned. He leased Parkus'  
22 share, he didn't own...Parkus didn't own it. He signed it  
23 over to her. Carl owned it. Mommy's share, she didn't own  
24

1 it. Mommy sold her share before she died. Margaret went and  
2 got her to make her another deed for it and her not owning  
3 it. It didn't check the records on that. That's what I'm  
4 talking about. See, the people...a lot of people on each  
5 deed don't own the shares they're getting. On that first  
6 tract there, they've got people right here, even the same the  
7 Deed Book as ours, they've got...when he wrote it up, he put  
8 that our Deed Book and page number on their lease. Right  
9 here the lease is. They don't own a thing on it. I said  
10 twenty people will be on that. You can look at both deeds  
11 right here and see what I'm talking about. Right here is the  
12 Deed. This Deed was dated 1942 when that Deed was made.  
13 They bought the whole thing. When they start leasing oil,  
14 they're getting people that don't even own it.

15 BENNY WAMPLER: Mr. Kiser?

16 JIM KISER: Mr. Chairman, might I suggest since  
17 both of these...I assume both tracts at each issue that we  
18 seem to be talking more about, tract 4, since they're both  
19 subject to Board escrow and Mr. Meade doesn't have any  
20 objection and none of the unleased parties who are subject to  
21 a jurisdiction have come forward with any objection, might I  
22 suggest that we go forward with the pooling today and then  
23 ongoing we will certainly continue to work with Mr. Meade to

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1 work out these differences of opinion as to the ownership  
2 within these tracts.

3           BERNARD MEADE: If they'll do it. I went down at  
4 Big Stone...when I called over here and they told me to go  
5 Big Stone. He wouldn't help me a bit. Everything I said,  
6 you're wrong on. Just like that lease. Any lawyer that's  
7 reading it here or anybody that knows anything, you can  
8 except the gas rights. He says you can't except them. Now,  
9 you told me that, didn't you?

10           DON HALL: I said that that particular deed didn't  
11 except it. I didn't say that you can't.

12           BERNARD MEADE: It does except it. It's right in  
13 it. You can read it right here. I don't...I don't mind to  
14 do what they do if you all will put a clause it they have to  
15 do what they said they'll do. I don't care a bit to do what  
16 they're wanting. I'm not against that. (Inaudible). The  
17 only thing I come over here against is the heirs that's in  
18 the two deeds. That's the only thing I'd be interested in.  
19 When he said he couldn't lease that piece of property because  
20 they didn't have the tax map to do it. It shows right here.  
21 They've got in their thing. I showed him the map of it.  
22 Right here is the map. I've got it. It shows it in it. It  
23 says "3,000 feet from 646...to the corner of 646 to 649."

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1 All the way down. It follows her property all the way down.

2 DON HALL: That's the description on where the well  
3 is in front of the application.

4 JIM KISER: That's what we use for publication---.

5 DON HALL: Yeah.

6 JIM KISER: ---and the notice of hearing purposes.

7 BERNARD MEADE: Well, that wasn't...that wasn't  
8 when we got the stuff. It calls for 600 acres in that, if I  
9 ain't mistaken. That's the way it went down through there.

10 DON HALL: 600 acres was the...640 acres in the  
11 lease that we---.

12 BERNARD MEADE: But if they'll do what they you, I  
13 don't...I don't care a bit. But they won't do what they say  
14 unless you all put something in it.

15 JIM KISER: It's in our...it's in our best interest  
16 to continue to look at this to make sure we have ownership  
17 properly depicted.

18 BERNARD MEADE: If you all put something in that to  
19 make sure they do, I'm satisfied with it. That's the only...  
20 I told them before and they wouldn't do nothing.

21 JIM KISER: Well, Mr. Wishoun, would be it your  
22 testimony, and Mr. Hall also, I guess, because apparently  
23 you've worked some on it too, that to the best of your

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1 knowledge and abilities as to what is actually contained in  
2 the Dickenson County public records, this is an accurate  
3 depiction of the ownership on this two tracts?

4 KEITH WISHOUN: Yes.

5 DON HALL: Yes. We've met with Mr. Meade a week or  
6 two ago on these same issues. We're satisfied with the  
7 information that we have...the title work that we've done,  
8 that it's accurate.

9 BERNARD MEADE: Now, I asked him about that and  
10 they told me they ain't checked nothing and we're going to  
11 check anything.

12 JIM KISER: And that's reflected in Exhibit B?

13 BERNARD MEADE: And on that other piece over there,  
14 there ain't near...see, we don't know where it goes to. I  
15 said right here it says it goes past these lines. He said if  
16 you don't check with that...he said get your lawyer to check  
17 to see. Now, their engineer told me that. He said we ain't  
18 going to do nothing. Now, they're telling you a different  
19 story here today.

20 BENNY WAMPLER: Well, they're under oath and you  
21 just heard the testimony.

22 BERNARD MEADE: Yeah, I know it. I'm under oath  
23 too.

24

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1           BENNY WAMPLER: Yes, sir.

2           BERNARD MEADE: I've got the papers to prove what  
3 I'm talking about and they don't. On that one part right  
4 here, he told me...when I told him, I said, Parkus Meade  
5 don't own a thing there. He said, yes, he does. The next  
6 time he comes back, he said, yeah, you're right. He did sell  
7 his part. He said, it's no good, because the gas rights was  
8 excepted when Mommy sold it to him.

9           BENNY WAMPLER: Let me ask you one question, are  
10 you challenging what is on record at the courthouse?

11          BERNARD MEADE: Right.

12          BENNY WAMPLER: Are you agreeing that what they're  
13 say is on record---?

14          BERNARD MEADE: No.

15          BENNY WAMPLER: ---but you think it's wrong?

16          BERNARD MEADE: No. I ain't agreeing with what  
17 they say is on records because they said they didn't know  
18 nothing about it. They ain't checked the records.

19          BENNY WAMPLER: Well, he just testified that he  
20 checked the records.

21          BERNARD MEADE: Right.

22          BENNY WAMPLER: Do you disagree with those records  
23 that he---?

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1           BERNARD MEADE: No, I just disagree with the way he  
2 said it. Yeah, he checked them after I told him, I said,  
3 Parkus Meade don't own that there. The next time he come up  
4 he said I went to the courthouse and found this right here.  
5 He said he don't own it. That's what he told me. He said he  
6 don't...he don't own it. That's the only one he checked he  
7 told me about. Right here is the one that he got out  
8 (inaudible). He told me he couldn't check it out. He said  
9 he didn't know where the line was. I said, it goes to B. I.  
10 C.'s line. I said, anybody knows where that is. That's what  
11 I'm talking about right there. They won't...unless they pin  
12 them down, they won't do nothing.

13           BENNY WAMPLER: I'm pinning them down.

14           KEITH WISHOUN: My records are dated from October  
15 the 6th, '03.

16           BENNY WAMPLER: Okay. You went to the courthouse?

17           KEITH WISHOUN: Yeah, both those days. One is  
18 October the 2nd and the other one is October the 6th.

19           BERNARD MEADE: Okay. Let me ask you a question.  
20 On this deed right here I'm talking about, who owns that  
21 property then? If you checked it out, who owns it?

22           KEITH WISHOUN: Your property in question?

23           BERNARD MEADE: Yeah, that thirteen acres, who owns  
24

1 it?

2 KEITH WISHOUN: You, Margaret and Jimmy and Carl.

3 BERNARD MEADE: All right. Why did you lease it to  
4 these other people if you checked its identity? I've got it  
5 right here that shows where he has leased to other people  
6 now. He just now told us it's in our family.

7 KEITH WISHOUN: As a courthouse record, we got that  
8 as another tract that's in question with him.

9 BERNARD MEADE: See, that's what I'm talking about.  
10 He said he got it another tract. He has not checked the  
11 deed if he says that. I've got two tracts right here. He  
12 kept mentioning we owned it, but he says it's the other  
13 tract. So, I don't know what he's talking about.

14 BENNY WAMPLER: Explain to him---.

15 KEITH WISHOUN: One tract is a 12.292 acre tract,  
16 which is the Blanch Freeman heirs. That's the property that  
17 he's questioning here. Their tract is a 13.45 acre tract.

18 BERNARD MEADE: No, I'm questioning Blanch Freeman  
19 ...I'm questioning the Blanch Freeman tract. That's what I'm  
20 questioning you for our deed right here calls for. My  
21 grandmother bought it in 1962 and they've owned it ever  
22 since.

23 BENNY WAMPLER: He's agreeing that you...that

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1 that's what you're questioning.

2           BERNARD MEADE: Well, why did he lease it to other  
3 people then?

4           JIM KISER: We've got the same six Meades owning  
5 interest in both of those tracts.

6           BERNARD MEADE: Right here it has got...right here  
7 it has Blanch Freeman heirs on it, too. He leased it to  
8 Blanch Freeman heirs. I've got it right here. That's what  
9 I'm talking about. Wait a minute and I'll show you. Now,  
10 read that right there at the top and see what it says. It  
11 all goes to...all those didn't sign right there is the heirs  
12 that's to that piece of property you're talking about right  
13 here. It's a whole bunch of them. Now, what does that say  
14 right there? See, if it isn't the same...same page and deed  
15 book as mine. Right here is...right here is the heir deed.  
16 See, even put our deed book and page number on those things  
17 there.

18           BENNY WAMPLER: Well, look at the paper I gave you.  
19 That's what before this Board. There's nothing on here.

20           BERNARD MEADE: No, I know...I know that right  
21 there. That's what I'm talking about. I said they leased it  
22 to the wrong people. They leased that property...if they're  
23 going to do that and pool it and they've got thirty or forty  
24

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1 in that other heirs there, what are you going to get out of  
2 it? Just about half of them needs the stuff right here is on  
3 that one piece.

4 BENNY WAMPLER: Well---.

5 BERNARD MEADE: Whatever you want to do. The only  
6 thing I was wanting to do...looks like before they leased  
7 something they'd have to---.

8 JIM KISER: This is...this is tract 5---.

9 BERNARD MEADE: Tract 5?

10 JIM KISER: ---in the unit. Yeah, you're 4 and 6.

11 BENNY WAMPLER: See, you're looking a different  
12 one. That's what I'm trying to tell you. The only thing you  
13 have an issue in six is it's "or the Hagen Estate, Inc."

14 BERNARD MEADE: It joins the Hagen Estate.

15 BENNY WAMPLER: Pardon?

16 BERNARD MEADE: That piece joins the Hagen Estate.

17 BENNY WAMPLER: Right. But that's tract 5.

18 BERNARD MEADE: Well---.

19 BENNY WAMPLER: They're not showing you in that  
20 tract. That's a different tract and different ownership.

21 BERNARD MEADE: You still don't understand what I'm  
22 talking about. I said the piece that---.

23 BENNY WAMPLER: No, I sure don't.

24

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1           BERNARD MEADE: The piece that they do show me in  
2 there, they leased it to other people and people don't even  
3 own it.

4           BENNY WAMPLER: Well, they may have, but it's not  
5 before this Board.

6           BERNARD MEADE: It's not?

7           BENNY WAMPLER: No. No, sir, that's not presented  
8 before this Board.

9           BERNARD MEADE: I don't know...I don't know---.

10          BENNY WAMPLER: What's before the Board is what I  
11 gave you regarding those two tracts. I gave you the entire  
12 Exhibit E.

13          BERNARD MEADE: Yeah, well, that's...that's the  
14 piece---.

15          BENNY WAMPLER: And that's all...that's all they're  
16 asking here to be placed into escrow.

17          BERNARD MEADE: Well, that's the tract right there.  
18 That's it. That's it.

19          BENNY WAMPLER: Well, there's nothing...in that  
20 tract, tract 4, if you look on what I gave you, the Meade  
21 family, as you say you represent, are the only ones listed  
22 there. If you go to tract 6, it's the Meade family or the  
23 Hagen heirs. Is that correct, Mr. Hall?

24

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1           DON HALL: Yes, sir. Yes, sir.

2           BERNARD MEADE: Yeah, that's the tract I'm talking  
3 about now.

4           BENNY WAMPLER: Okay.

5           BERNARD MEADE: That's the one they leased out to  
6 other people. That's it.

7           BENNY WAMPLER: They're not...they're not showing  
8 any of that here.

9           BERNARD MEADE: Well, right here---

10          BENNY WAMPLER: Have you leased out to any other  
11 people?

12          BERNARD MEADE: Right here it is.

13          DON HALL: We've leased to people that are listed  
14 in tract 6 or haven't leased them.

15          BERNARD MEADE: I've got the map of it right here  
16 where it lays and it goes right where you got right here.  
17 They said it was because of this number.

18          JIM KISER: I think what he's trying to say is we  
19 have the undivided interest within those two tracts wrong  
20 according to him. I think that's what he's trying to say.

21          BERNARD MEADE: That's what I'm talking about. The  
22 interest is wrong where you leased it to other people, it's  
23 wrong.

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1           JIM KISER: He's saying out of those six people  
2 that those...the way we have the undivided interest depicted,  
3 the way we have split up is incorrect.

4           BERNARD MEADE: No, you leased it to other people  
5 is what I'm talking about. The tract...I've got the tract  
6 right here and I've got the other stuff with it. They're---

7           BENNY WAMPLER: In tract...in tract 4 and tract 6?

8           BERNARD MEADE: Yeah. The one that they leased out  
9 was the first tract.

10          JIM KISER: That's a whole different tract, Mr.  
11 Meade. This lease doesn't have anything to do with your  
12 tract.

13          BERNARD MEADE: Well, I...I...that right there  
14 don't. It's this tract right here. That's the one we leased  
15 the 13 acres. Look on that right there and see if that don't  
16 say 13 acres on it. We leased 13 acres. It tells you right  
17 there---

18          JIM KISER: It's says 12.29---

19          BERNARD MEADE: Right there it is. Right there.

20          JIM KISER: That's the Salyers in tract 5.

21          BERNARD MEADE: If you look it says 12.29. That  
22 one right there. That's the one they leased out. It's the  
23 lease that has got the same property that I'm arguing about  
24

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1 and they're trying to twist it. Right here it is if you want  
2 to check it out. They're not telling you correct on it.  
3 They'll tell you one tract and this is another tract. Both  
4 of it right here calls...this one here calls for 13 acres and  
5 the lease I signed calls for 13 acres.

6 BENNY WAMPLER: Can you add any light to it?

7 KEITH WISHOUN: Yeah. I think what...he's claiming  
8 to have ownership in both the 13 acre tract, tract 4, and  
9 tract, is it 5?

10 BERNARD MEADE: Now, leave tract 5 out of it.  
11 That's where you're confusing the 4.

12 KEITH WISHOUN: And what we could find on tract 4  
13 was the 13.45 acres---

14 BERNARD MEADE: Right.

15 KEITH WISHOUN: ---on record.

16 BERNARD MEADE: And who owned it?

17 JIM KISER: Margaret Meade, Bernard Meade, Carl  
18 Meade, Shirley Meade, Donald Meade and William Meade.

19 BERNARD MEADE: All right. Why did they lease it  
20 to these people here?

21 JIM KISER: Because it's a different tract.

22 BERNARD MEADE: It's not done it. That's what I'm  
23 telling you. See, that's what...no, right here...I've got  
24

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1 right here on the map and there both. I've got it right here  
2 on both of them.

3 JIM KISER: Do you want me to tell you who owns  
4 that tract? Clifford Williams, Quinten Freeman, Martha  
5 Freeman, Carman Milly, G. T. Smith, Lewis Salyer, Gary  
6 Salyer, Shirley Osborne, Rita Matthews, Rita Joe Salyer and  
7 Joe Salyer.

8 DON HALL: Who's that lease...who's that lease---?

9 JIM KISER: That lease is from Joe Salyer and Gary  
10 Salyer.

11 BERNARD MEADE: Right here. If you read these---.

12 BENNY WAMPLER: No, we don't need to see it.

13 BERNARD MEADE: It says 13 acre---.

14 BENNY WAMPLER: We're not going to make that  
15 determination.

16 BERNARD MEADE: It says 13 acres on it. My lease  
17 I've got right here says 13 acres on it. Now, that's what  
18 I'm telling you. They're trying to confuse you with the  
19 other part up there. This has got the same page book, same  
20 page, same number of book in both leases. That's where  
21 they're trying to confuse you. They don't want to straighten  
22 it out. That right there, if the lease ain't right on it,  
23 they shouldn't be allowed to do it.

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1           BILL HARRIS: Excuse me a second, are you saying  
2 both of those have the same page number and the book number.

3           BERNARD MEADE: Both of these have got the same  
4 page number in all of them, book number and page number, both  
5 of them has.

6           BILL HARRIS: Well, I think that would be the  
7 courthouse. Wouldn't the Clerk of the courthouse---

8           BERNARD MEADE: No, it's what---

9           BILL HARRIS: No, no, no. Wouldn't the Clerk of  
10 the courthouse address that problem if they are misnumbered.

11          BERNARD MEADE: Well, they didn't mess...when he  
12 leased it, he numbered it that way.

13          BILL HARRIS: Well, no, the page number---

14          BERNARD MEADE: They told me he did. Right here it  
15 is. This is in the lease. Now, this is not in the deed.  
16 This is in the lease. He took the page numbers off our lease  
17 and put it on his lease, the book number and page number.  
18 I've got it right here in both leases if you'd look at it.  
19 It was made...the deed was made in 1942. It has been in the  
20 family every since. That's what I'm talking about. Every  
21 time you mention it, he's giving you all another tract there  
22 because they don't want to straighten it out. If they lease  
23 something, they should lease the people that own it.

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1           BENNY WAMPLER: Well, they've offered without any  
2 obligation to the Board to work with you on a clarification  
3 of that.

4           BERNARD MEADE: On that...on that 13 acres?

5           BENNY WAMPLER: It's not really...it's not really  
6 their responsibility to do that. I can tell you that. Based  
7 on the testimony before the Board, in my opinion, they've  
8 testified to what they need to. You haven't presented proof  
9 to counter what they have.

10          BERNARD MEADE: I would if you'd look at it instead  
11 of taking their word for it.

12          BENNY WAMPLER: We make...we cannot make those  
13 kinds of determination. You're asking us to make an  
14 ownership determination without agreeing---

15          BERNARD MEADE: No, I was wanting you to make them  
16 go to the courthouse and get the records and do it.

17          BENNY WAMPLER: The gentleman just testified he did  
18 that, sir.

19          BERNARD MEADE: Not did it. That's what I'm  
20 telling you, he didn't do it. See, every time you mention  
21 it, he's giving you the number of the upper tract and not the  
22 13 acres. He's giving you the 22 acre tract. Now, ask them  
23 again about the 13 acre tract and see what they say. Ask

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1 them who owns it.

2 BENNY WAMPLER: Who owns the 13 acre tract? It's  
3 13.1 I believe you said.

4 KEITH WISHOUN: 13.45, I think. I'm not for sure.  
5 Bernard Meade, Carl Meade, Jimmy Meade, and Margaret Meade  
6 Bolling.

7 BERNARD MEADE: Now, that's what I'm telling you  
8 about now. Why did they lease it to somebody else?

9 BENNY WAMPLER: And that tract...wait just a  
10 second. That tract is what, tract 4?

11 KEITH WISHOUN: Yes.

12 BENNY WAMPLER: Okay. And that's listed on what I  
13 gave you. That's what before the Board.

14 BERNARD MEADE: What, this right here? Right.

15 BENNY WAMPLER: No, tract 4 with the people listed  
16 are all Meades. That's all we have before us. You're saying  
17 they leased it to somebody else. That's not identified here.

18 BERNARD MEADE: I know. It is right here. What  
19 I'm trying...they still ain't---

20 BENNY WAMPLER: That's not before this Board.

21 BERNARD MEADE: He give you...he didn't give you  
22 the 13 acre tract.

23 BENNY WAMPLER: Well---

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1                   BERNARD MEADE: He's giving you the 22 acre tract  
2 every time. Ask him if that's the 13 acre tract he's giving  
3 to you.

4                   BENNY WAMPLER: He just testified it's the 13.,  
5 what, 45?

6                   KEITH WISHOUN: .45 acre tract, yes.

7                   BERNARD MEADE: All right. Right here...right here  
8 in their lease where he leased it to the other people.  
9 That's what I'm telling you. He's telling you wrong. If  
10 you'll read that right there, that's 13 acres in that right  
11 there. If he leased...I asked him why he had done it.

12                   BENNY WAMPLER: Let Mr. Kiser look at it.

13                   BERNARD MEADE: He has done looked at it.

14                   BENNY WAMPLER: He's a lawyer. Tell us what it is.

15                   BERNARD MEADE: I asked him how come he do that, he  
16 said, well, they said they owned it. See, it has got the  
17 page number and everything on that. That's the 13 acre tract  
18 and not the other tract.

19                   JIM KISER: All right, Mr. Meade's lease says 13.45  
20 acres and it lists two source deeds, okay, 58/511 and  
21 214/290. Mr. Salyers lease, it says lease from Gary Salyers  
22 and Sonya Salyers---.

23                   DON HALL: Which is tract 5.

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1           JIM KISER: ---which is tract 5 on our Exhibit B.  
2 It says it's 12.29 acres.

3           BERNARD MEADE: What does the other one say?

4           JIM KISER: 13.45.

5           BERNARD MEADE: They...they...that's what it is.  
6 But this right here tract...that's what it is on this right  
7 here.

8           (Mr. Kiser reviews the information.)

9           BERNARD MEADE: Now, am I right or are they right?

10          JIM KISER: Well, I don't know. I mean, you've got  
11 a pink line drawn around this tract.

12          BERNARD MEADE: That's...that's around...that's  
13 around the whole box...that's around the whole family. Right  
14 here is the 13 acre tract. Right there where it goes across  
15 that. (Inaudible). Now, what does it say on that?

16          JIM KISER: Okay, again, the Board does not have  
17 jurisdiction over ownership.

18          BERNARD MEADE: Now, we don't---.

19          JIM KISER: Well, wait a minute, let me finish. We  
20 have an interest in getting this right. If...we will  
21 continue to work this...both the proceeds from these...all  
22 the proceeds from both of the tracts are going to be escrowed  
23 because of conflicting claims situation. We will be glad to

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1 continue to work with you and sit down with you and try to  
2 explain this title to you to your satisfaction. If you're  
3 not happy at that point, then you can file suit in Dickenson  
4 County Circuit Court. That's the way you remedy that. It's  
5 not here. I don't know what else to say.

6 BERNARD MEADE: Well, I don't mind that there what  
7 you're talking about. But that's what I can't figure out why  
8 they leased it to other people...leased from other people. I  
9 just put two there that's the same acreage and all.

10 BENNY WAMPLER: It's a different tract, Mr. Meade.

11 BERNARD MEADE: No, the same tract. That's what  
12 they're doing. It's the same tract 13. acres. He read it  
13 there, didn't you? Both of them are 13...I mean, 12.  
14 something acres, both tracts.

15 JIM KISER: No.

16 BERNARD MEADE: The other is 22...22 acres. It  
17 can't be the other tract, both of them.

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

20 (No audible response.)

21 BENNY WAMPLER: Do you have anything further, Mr.  
22 Kiser?

23 JIM KISER: Mr. Chairman, we'd ask the application  
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1 be approved as submitted.

2 BENNY WAMPLER: Is there a motion?

3 BILL HARRIS: Mr. Chairman, is there a way to put a  
4 condition on the approval, something that actually would be  
5 in writing. I mean, I don't know if we have any method to do  
6 that.

7 BENNY WAMPLER: Well, what condition are you  
8 looking---?

9 BILL HARRIS: Well, I'm just...I'm just...well, I'm  
10 not sure what I'm---

11 JIM KISER: You don't have any jurisdiction over  
12 ownership.

13 BENNY WAMPLER: See, the ownership is the issue.  
14 How can...you know, that's the reason I asked for the  
15 conditions. If it goes to ownership, the ownership issue is  
16 between these two parties, right. It's not before this  
17 Board. That's what I was trying to tell Mr. Meade. I...I  
18 can appreciate you feel---

19 BERNARD MEADE: Well, you have the right to not  
20 approve it.

21 BENNY WAMPLER: Well, that's true.

22 BERNARD MEADE: Right.

23 BENNY WAMPLER: That's true.

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1           BERNARD MEADE: That's true.

2           JIM KISER: I question that. If the only issue is  
3 ownership---.

4           BERNARD MEADE: I wouldn't approve it...unless you  
5 not approve it until it is done.

6           BENNY WAMPLER: If we have---.

7           BERNARD MEADE: You can do that.

8           BENNY WAMPLER: We have to make a decision.

9           BERNARD MEADE: I know you have to make a decision.  
10 I said though you can not approve it until they can  
11 straighten it up. That's...you're right in that.

12           BENNY WAMPLER: Well, that depends. Even that  
13 depends. Nevertheless.

14           BERNARD MEADE: The only thing I'm getting at, them  
15 leasing it to other people that don't own it. If you get  
16 paid (inaudible) that way, we ain't going to get nothing out  
17 of it. They're going to get it all. That's what I was  
18 getting at.

19           DONALD RATLIFF: I move to approve, Mr. Chairman.

20           BERNARD MEADE: And I asked them to straighten it  
21 out at Big Stone and he told he wasn't straighten it out.  
22 That's if I wanted to put some clause in it.

23           BENNY WAMPLER: I have a motion to approve. Is  
24

1 there a second?

2 BILL HARRIS: I'll second.

3 BENNY WAMPLER: The motion is second. Any further  
4 discussions?

5 (No audible response.)

6 BENNY WAMPLER: All in favor, signify by saying  
7 yes.

8 (All members signify by saying yes.)

9 BENNY WAMPLER: Opposed, say no.

10 (No audible response.)

11 BENNY WAMPLER: You have approval.

12 JIM KISER: Thank you.

13 JIM KISER: We'll get with you.

14 BERNARD MEADE: I doubt it.

15 JIM KISER: Well.

16 BERNARD MEADE: I'm looking forward to it.

17 JIM KISER: All right.

18 BENNY WAMPLER: He'll work...he said...they  
19 volunteered to work with you and I believe they will. I hope  
20 it works out.

21 BERNARD MEADE: If they don't, what happens?

22 BENNY WAMPLER: Well, you'll have to go to Court,  
23 you know, if---

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1           JIM KISER: You'll have to go to Dickenson County  
2 Circuit Court.

3           BERNARD MEADE: No, I'll tell you what I'll do,  
4 I'll wait until they start the well drilling and then I'll  
5 stop it. I can do that, too.

6           JIM KISER: You can always try that.

7           BERNARD MEADE: Yeah, I know I can. I've seen that  
8 done before.

9           BENNY WAMPLER: Well, we hope you'll work together.  
10 You know, let's take the attitude you'll going to work  
11 together.

12           BERNARD MEADE: I tried to work with him down there  
13 and he told me said we ain't going to do nothing.

14           BENNY WAMPLER: Well, they're saying now they will.  
15 So, hopefully, that will work out.

16           BERNARD MEADE: But if they don't, I will go to  
17 Court.

18           BENNY WAMPLER: Mr. Wilson, you had...at the last  
19 meeting, you were asked to present...to report back to the  
20 Board on A-37 production. Do you have that information?

21           BOB WILSON: Yes, sir, that was S-37A that was...if  
22 you recall, there was a question raised because the people  
23 who owned property in that area had requested production  
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1 reports. The production reports they had gotten showed  
2 production coming from a well named S-37A, which the operator  
3 properly and correctly said had not been drilled. We went  
4 back and checked our records. On November of 2001, we got a  
5 report of production shown as being under file number BU-  
6 36...I'm sorry, BU1636, which coincided with well number S-  
7 37A. Since it was a permitted location, but it hadn't been  
8 drilled, that production was added at that one time only  
9 during the month...for the month of November of 2001 as 5,310  
10 mcf. When we checked, we found that the production that had  
11 been attributed to that should actually have been attributed  
12 to file number BU1637 rather than BU1636. So, it was  
13 basically an error in the submission of  
14 production...submission of the entry of production. We now  
15 since that time have instituted a system whereby we  
16 check...the stuff is automatically checked for any kind of  
17 errors of this sort and would be automatically brought to our  
18 attention when we run our electronic checks on it. At that  
19 time, that was not in place. So, the testimony as given by  
20 the operator was correct. There was no S-37A well drilled.  
21 The source of the confusion was an incorrectly entered  
22 production for one month in 2001. I have not yet notified  
23 Mr. Glubiack, who was the attorney present at that time. I

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1 plan to do that to let him know that we have corrected this  
2 situation and let him know what the source of it was.

3 BENNY WAMPLER: Do you plan to do that in writing?

4 BOB WILSON: Yes, sir.

5 BENNY WAMPLER: If you will, just copy the Board  
6 when you do that, please---

7 BOB WILSON: I will do that.

8 BENNY WAMPLER: ---so we'll have that. The Board  
9 has copies of the minutes from the last meeting. Is there  
10 any additions or corrections? Otherwise, I'd ask for a  
11 motion to approve.

12 BILL HARRIS: So moved.

13 BENNY WAMPLER: Motion to approve. Is there a  
14 second?

15 JIM McINTYRE: Second.

16 BENNY WAMPLER: Motion and second. Any further  
17 discussion?

18 (No audible response.)

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

21 (All members signify by saying yes.)

22 BENNY WAMPLER: Opposed, say no.

23 (No audible response.)

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1           BENNY WAMPLER: You have approval. Thank you. I'd  
2 ask Mr. Swartz and Mr. Kiser to stay around. I appreciate  
3 you doing that. You know, any of the other parties that wish  
4 to join in this discussion. I thought it would be certainly  
5 timely for the Board to be anticipating a Supreme Court  
6 ruling on the Ratliff case as it's referred...typically  
7 referred to. What is the correct style?

8           JIM KISER: Harrison Wyatt.

9           MARK SWARTZ: Yeah.

10          BENNY WAMPLER: But anyway.

11          MARK SWARTZ: There's a bunch of...well, actually  
12 Ratliff is the plaintiff.

13          BENNY WAMPLER: Right. But anyway, we thought in  
14 anticipation of a ruling that we might have some discussion  
15 and it would be interesting to hear from you, Mr. Swartz and  
16 Mr. Kiser, on what you anticipate resulting from, let's say,  
17 a favorable ruling upholding Judge Williams.

18          MARK SWARTZ: It's kind of hard to handicap that  
19 case. You know, Elizabeth McClanahan is on the Supreme Court  
20 these days. Some of you may not know this, but Elizabeth  
21 actually...she used to appear before this Board regularly.  
22 She worked for Penn Stuart. I think she probably still lives  
23 in Abingdon.

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1           SHARON PIGEON: She's on the Court of Appeals.

2           MARK SWARTZ: She's on the Court of Appeals?

3           JIM KISER: Yeah. Which has jurisdiction only over  
4 workers comp and family law.

5           MARK SWARTZ: You're kidding. I thought she was up  
6 on the other court.

7           JIM KISER: No.

8           MARK SWARTZ: All right. Well, that changed.  
9 Okay.

10          JIM KISER: I was going to say when did that  
11 happen.

12          MARK SWARTZ: Okay. All right. Well, somebody  
13 told me that or at least I misunderstood them. I---.

14          BOB WILSON: Breaking news.

15          MARK SWARTZ: Yeah. I...you know, it is tough to  
16 start over in the Court of Appeals unless you've got somebody  
17 that's really interested in it, which was where I was headed  
18 with that. I don't see that Virginia has ever been, you  
19 know, on the forefront of...of any kind of energy law. I  
20 mean, when you're practicing law, you're even looking in West  
21 Virginia, you know, and West Virginia has a limited body of  
22 case law, but compared to Virginia has a huge amount of  
23 mineral law decisions. So, I think, you know, this Court is

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1 probably not real...is not going to be real familiar with  
2 energy issues. It is tough to overcome factual things which  
3 kind of make their way up. So, you know, the way this case  
4 came out of the Circuit in Grundy and has made it up there,  
5 the odds are that unless some unusual thing happens, they are  
6 going to affirm this thing.

7 BENNY WAMPLER: Yeah.

8 MARK SWARTZ: They may tinker with it some. I  
9 think there was some opportunities they probably do need to  
10 tinker with it.

11 JIM KISER: On the frac issue.

12 MARK SWARTZ: Well, yeah, there's some...I mean---.

13 JIM KISER: That's apparently where all the  
14 questions come from.

15 MARK SWARTZ: Well, and Judge Williams really...I  
16 had an opportunity...I was...I was initially in that case  
17 representing a collection of defendants, but I got out of  
18 that case. So it went forward just against the landowner  
19 and...but I had an opportunity to try and get involved in the  
20 final order process and I really, really tried to get the  
21 Judge to not use the term surface owner. I just could  
22 not...he made some other changes that, I think, cleaned it up  
23 some, but he would not abandon the use of that term, which I

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1 think is incredibly confusing to people, and I think has  
2 caused, you know, a fair amount of turmoil in Southwest  
3 Virginia in terms of lawyers either intentionally or  
4 unintentionally taking advantage of what I would call a  
5 misnomer. I mean, it's very clear in that decision that the  
6 plaintiffs, not all of them, but most of them, at least the  
7 original plaintiffs, but the ones that wound up in the hunt  
8 at the end, that they all had mineral interests.

9           JIM KISER: Fee less coal.

10           MARK SWARTZ: Yeah. Yeah. So, you know, you can  
11 call them surface owner because maybe they happen to own  
12 surface, but they prevailed in the case, in the rationale of  
13 Judge Williams clearly, you know, you can see that in his  
14 decision. They prevailed on that case because they were  
15 mineral owners. And the...you know, essentially he went for  
16 the argument that gas is gas and coal is coal. I mean, you  
17 know, to be sort of simple minded about it, but I mean, the  
18 United States Supreme Court went for that argument in the  
19 Amoco case, which I think has a certain amount of appeal.  
20 I've always felt like it did.

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22           Now, the question...you know, let's assume that  
23 that case survives on appeal and that the decision

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1 essentially is if you have a severance that is effective to  
2 sever coal without oil and gas, okay, or you have a severance  
3 of oil and gas that is effective to sever all of the oil and  
4 gas, I think the holding coming out of this case will  
5 probably be if one of those two things has occurred, you're  
6 off and running. You know, the problem is...you know, I was  
7 listening to Peter Glubiack, and I was dealing with him  
8 initially in that case, the Ratliff case, suggesting that  
9 there might be some way to go from that kind of decision,  
10 which is pretty fact specific, to the collection of deeds. I  
11 mean, Landon Wyatt happened to be on the receiving end of a  
12 bad severance deed. I mean, that was an unusual situation in  
13 that the history of the drafting in this part of the world  
14 back when it mattered, there were a bunch of Philadelphia  
15 lawyers drafting severance deeds and documents that got  
16 recorded in West Virginia and Virginia back in the, you know,  
17 later 1700s and early 1800s that accomplished most of the  
18 transactions that we're now struggling with, and the mining  
19 rights and the severance deeds were pretty artfully drawn.  
20 You know, there weren't a bunch of jack-legs drafting those.  
21 When you look at the collection of deeds, it is possible to  
22 say...I think, you know, Les or anybody who does title work  
23 would agree with me. You look at, you know, a hundred deeds

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1 and there are going to be fifty that look a lot alike, maybe  
2 even more, because, you know, maybe there wasn't a form, but  
3 these people were conversing. So you're going to have  
4 commonality of deeds. Then you're going to have scribblers  
5 mistakes where stuff gets left out, okay, of those deeds.  
6 You know, it's like when you have a day that you leave out  
7 something important, you know. It's not a period, it's a  
8 word.

9           So, you're going to have X number of deeds that you  
10 could argue if a case ever got decided on. On one of those  
11 deeds, maybe that would carry the day on a group of deeds.  
12 My recollection of this particular deed is it's not one of  
13 ...or this transaction is it's not one of the common  
14 transactions. It's really, you know, Landon Wyatt's title is  
15 pretty good. The reason we know that is we have a lot of  
16 leases from him. I think he's got 16 of 18,000 acres in the  
17 trust. So there's a lot of land there. We've done a lot of  
18 title for him, and this just happens to be one where the ball  
19 got dropped, you know, a couple of hundred years ago in terms  
20 of the severance. So, you know, this case does not seem to  
21 me to be the kind of case where people could even argue very  
22 credibly that it's going to be outcome determinative on a lot  
23 of deeds, because I think the majority of deeds do not look

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1 like this. If there's ever a case decided where one of the  
2 deeds that seems very common is the subject of the  
3 litigation, then I think the people who have similar deeds  
4 are going to have a pretty easy time going into court. It's  
5 not going to totally be a rubber stamp, but you're not going  
6 to be starting from scratch, but I don't see that here.

7           JIM KISER: It would certainly have more  
8 precedential value than this case would.

9           MARK SWARTZ: Yeah. I mean, this case has some  
10 precedential value. I mean, part of it---

11           JIM KISER: Depends on what they do with it.

12           MARK SWARTZ: Yeah.

13           JIM KISER: It's got some problems.

14           MARK SWARTZ: Yeah. I mean, if they...if the  
15 Supreme Court actually takes the rationale that was used to  
16 resolve the case below, and adopts that but really gives it a  
17 more full blown analysis, then this case is going to be  
18 important when you're looking down the road at the citing of  
19 their cases, because if they really flesh out the gas is gas  
20 argument or something like that, or don't...I mean, you know,  
21 we sort of need to see where they're headed here, but if they  
22 give us a pretty good discussion of their analysis and either  
23 put their seal of approval on Williams' decision or not, you

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1 know, that's going to...it could be a pretty important  
2 decision in terms of sorting through what comes down the road  
3 in the future. So we need to see that, but just on the four  
4 corners of these deeds, it's not real helpful. I totally  
5 disagree with Peter's view that anybody in the Commonwealth  
6 can develop a mechanism to resolve title issues short of a  
7 settlement or litigation. I mean, I just don't see...and  
8 you're out of that.

9 JIM KISER: I'll agree with you.

10 MARK SWARTZ: There's just no---.

11 JIM KISER: They're not going to be able to run to  
12 you short of a court order adjudicating ownership or some  
13 agreement between the parties, just like it is now.

14 MARK SWARTZ: And the hurdle there is the  
15 Constitution of the United States and the Constitution of the  
16 Commonwealth. I mean, so it's not some trivial problem. You  
17 know, the Constitutions are central to our way of life,  
18 central to property issues. You just cannot take property  
19 from people willy-nilly. And the Constitution...both  
20 Constitutions specifically address that. The Constitution of  
21 Virginia, the Constitution of West Virginia, any state that  
22 I'm aware of, there are some pretty stringent mechanisms you  
23 got to pursue to take property rights, or to change property

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1 rights. You just can't...you know, we're not going to have  
2 Commissioners or referees, or some kind of process that you  
3 guys can devise for people to come in, it's not going to  
4 happen.

5           JIM KISER: He thinks you're going to establish  
6 some magistrate or some---

7           MARK SWARTZ: Well, his problem is he looks at  
8 this, you know, as a money making opportunity, which is...I  
9 mean, you know, lawyers look at collections of cases as money  
10 making opportunities, but if you have to litigate everyone of  
11 them, you know, especially if you live seven or eight hours  
12 away, you know, it begins to be not very attractive. You  
13 know, it's how do you want to spend the rest of your life.  
14 So, you know, if you can find...I mean, the mass toward  
15 litigation and that kind of stuff has made cases which  
16 individually made no economic sense for lawyers has made  
17 them...has aggregated them and lawyers see an opportunity to  
18 make money there. If there is an opportunity to aggregate  
19 these cases in a court, and there is a law firm or collection  
20 of firms that are willing to do that, you know, I could see  
21 that happen.

22           Now, whether or not the Virginia courts, which I  
23 perceive to be incredibly conservative, okay, whether or not  
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1 they would entertain something like that, I would question.  
2 But I would think that at some point, some ingenious, you  
3 know, practitioner is going to say, hey, I could package  
4 fifty deeds that look similar, file a declaratory judgment  
5 action, see if I can pursue that almost as, you know, on  
6 behalf of everybody at one time. I don't know. But you're  
7 going to need a litigated outcome, and I don't see the...I  
8 don't see the flood gates open. You may get a lot of phone  
9 calls, you know, but you get a lot of phone calls. We all  
10 do.

11 JIM KISER: Well, I still see a lot of problems  
12 with this case because the way the decision out of Circuit  
13 Court was written calling the plaintiffs surface owners  
14 instead of fee less coal owners, and because the way the---

15 MARK SWARTZ: Or mineral owners.

16 JIM KISER: ---or mineral owners because of the way  
17 the frac issue was handled, if they just completely...if they  
18 don't uphold part of that and modify or overrule part of  
19 that, and I think there was some attempt apparently Glubiack  
20 at oral argument to restrict this particular situation, the  
21 gob situation, which would make more sense. Who's going to  
22 have the right to frac the coal to produce the gas? They're  
23 going to have to deal with that somehow or you're not going

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1 to be able to produce CBM except in a gob situation, right?

2 MARK SWARTZ: I guess I---.

3 JIM KISER: Apparently that's where all the  
4 questions came from. In defense of the Virginia Supreme  
5 Court, from people that I've talked to that were at both  
6 arguments, they did a heck of a lot better job apparently  
7 than the West Virginia Supreme Court did in that Moss case.  
8 From what I understand, they were completely confused up  
9 there.

10 MARK SWARTZ: Well, geez...I mean, I---.

11 JIM KISER: I mean, the leased...apparently at  
12 least one of the justices in the Virginia situation  
13 understood the problems with the lower decision. I mean,  
14 because of the language in the severance deed in this case,  
15 the analysis of whether coalbed methane is gas...belongs to  
16 the gas estate or the coal estate was probably reasonably  
17 solid and I agree with Mark. I have always been a gas is gas  
18 person, obviously. But because they ruled that...because the  
19 plaintiffs were deemed to be surface owners and the lower...  
20 the Circuit Court decision said as surface owners, they don't  
21 have any right to frac the coal, you got problems.

22 MARK SWARTZ: I mean, it's---.

23 JIM KISER: So I think the interesting part will be

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1 how they handle that issue.

2           MARK SWARTZ: Except the reality is, and always has  
3 been, I mean, the coal owners and gas owner/operators have  
4 always had to work together.

5           JIM KISER: Yeah.

6           MARK SWARTZ: So I sort of looked at that as like,  
7 yeah, I mean, it's an issue---.

8           JIM KISER: And they apparently touched on...  
9 several of the judges touched on the accommodation principle  
10 and all that.

11           MARK SWARTZ: It's something that, you know, people  
12 have been really excited about over the years and I just  
13 felt that it was like so what, you know. The problem...the  
14 West Virginia case is a huge problem. I mean---.

15           JIM KISER: Well, they just ran from the ownership  
16 issue.

17           MARK SWARTZ: Well, the judge made some findings of  
18 fact, which...and you can't blame the judge...I mean there  
19 was testimony in the record apparently, but in that case,  
20 there was some testimony that was, shall I say, from an  
21 engineering standpoint and a regulatory standpoint, you know,  
22 utter bullshit, and the judge went for it and it was part of,  
23 you know, what he based his decision on. Oh, well, you know,

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1 I mean, things like that happen.

2 JIM KISER: Besides what in that particular case, a  
3 large part, I think, of the lower court decision in McDowell  
4 County was based upon the fact that they basically caught the  
5 defendants in a bald face lie.

6 BENNY WAMPLER: Well, I guess, here the way I see  
7 it, we're going to have people, certainly if it gets  
8 published that it's upheld, because it's...all the press was  
9 surface owners own the gas and all this.

10 MARK SWARTZ: Right.

11 JIM KISER: Yeah.

12 BENNY WAMPLER: We'll have all these folks out here  
13 that own land will be wanting the Board to pay out whatever  
14 is in escrow, you know.

15 MARK SWARTZ: Well, one thing that's going to have  
16 an impact on all of us is, I think we're going to start  
17 pooling surface owners like crazy probably. I mean that  
18 could happen because they're going to be in here asserting  
19 claims.

20 BENNY WAMPLER: We've always added them. Anytime  
21 anybody has come forward, we've added them. As you know,  
22 that's been the position of the Board.

23 MARK SWARTZ: Right.

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1           JIM KISER: The first time I read Williams'  
2 decision, I thought, "oh, my God, he's gone back to the  
3 migratory gas act."

4           BENNY WAMPLER: Yeah.

5           MARK SWARTZ: Well, not really. He didn't intend  
6 to.

7           JIM KISER: No, he didn't intend to.

8           MARK SWARTZ: I'm concerned people are going to  
9 show up on our doorstep here---

10          BENNY WAMPLER: Yeah.

11          MARK SWARTZ: ---you know, and say, I'm a surface  
12 owner, I got a dog in the hunt.

13          BENNY WAMPLER: What I'd...what I'd like to do is  
14 get in a position to a press release time to come out on  
15 behalf...you know, just saying from the Gas and Oil office  
16 that, you know, in order to bring claims before the Board  
17 regarding this case, this is what you need, and I guess what  
18 I'd like to hear from you now is what you think we should  
19 have coming before us.

20          MARK SWARTZ: They need a---.

21          JIM KISER: Same thing they need now.

22          MARK SWARTZ: I would encourage them to have a deed  
23 of consequence. You know, and there are really only a couple

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1 of kinds of deeds that matter.

2 BOB WILSON: But not to come to us with that.

3 JIM KISER: No, I don't think...they still have got  
4 to come to you with one of two things, an agreement between  
5 the conflicting claimants to split it, or an order from the  
6 court adjudicating the ownership.

7 MARK SWARTZ: Yeah.

8 JIM KISER: I don't think anything has changed as  
9 far as you're concerned.

10 MARK SWARTZ: Well, except, you know, even from the  
11 standpoint of not just coming and darkening your doorstep,  
12 but making a claim against, you know, revenue from a unit.  
13 They need a deed that has some significance, you know. And a  
14 deed, to me, of significance would be a deed that just on its  
15 face transfers an oil and gas interest. That would be the  
16 simplest to them.

17 BENNY WAMPLER: But you all are going to be  
18 involved in that. If they're coming here for payout, your  
19 companies are going to be involved in that agreement or not  
20 agreement of that, right?

21 MARK SWARTZ: Right, right. But, I mean...but to  
22 even get to...you know, your press release, you know, I---.

23 BENNY WAMPLER: Right.

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1           MARK SWARTZ: It might not be---.

2           JIM KISER: If they come to my client and say,  
3 "Because of this, you've now got to pay me this money," I'm  
4 going to advise my client to say, "They're going to have to  
5 sue us."

6           MARK SWARTZ: We generally don't go there because  
7 we don't want to be sued. I'd rather be a sweetheart and not  
8 be sued or a tough guy---.

9           JIM KISER: What are you going to tell them? What  
10 are you going to tell them, "Take your deed to the Board?"

11          MARK SWARTZ: We'll pool you as a surface owner---.

12          JIM KISER: And pay them what?

13          MARK SWARTZ: ---escrow the money and these other  
14 people are going to be wild and they're going to sue you. I  
15 mean, that's what we tell people, because if you pay out  
16 their money, you're going to be on the rec---.

17          JIM KISER: We're not going to pay out their money.

18          MARK SWARTZ: Well, then, I mean...you're just  
19 going to be on the receiving end of a lot of irritated  
20 people. You know, there's a mechanism---.

21          JIM KISER: Then we're going to file a Rule 11.

22          LESLIE K. ARRINGTON: Don't you think the surface  
23 owner issue, though, is...it's going to have to have some

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1 sort of oil, gas, mineral, something tied to it. It's not  
2 just going to be surface.

3 MARK SWARTZ: Oh, yeah. Yeah.

4 LESLIE K. ARRINGTON: It's just not just going to  
5 be surface.

6 MARK SWARTZ: The problem is we've had people in  
7 the past that can't demonstrate that. You know, they come in  
8 and raise hell with us.

9 JIM KISER: I'm hoping what the Supreme Court will  
10 do is take a good hard look at the Amicus brief that Fogle  
11 filed and sort of use that as a blueprint as to how to decide  
12 this case. I've got some pretty good indications that they  
13 did read it.

14 BENNY WAMPLER: Who filed it?

15 JIM KISER: A law firm in Richmond on behalf of the  
16 Virginia Oil and Gas Association.

17 BENNY WAMPLER: Oh, okay.

18 JIM KISER: But the Association had a lot of input  
19 into it, and it's a pretty logical reasoned argument. I  
20 don't know if anybody here has read it, or I can get it to  
21 people.

22 SHARON PIGEON: I'd like to have it.

23 JIM KISER: I'm hoping that they'll draw on that,  
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1 and from what I understand, Jim Kibler, who represents VOGO  
2 was at the oral argument and he sort of has...or thought he  
3 had an idea who would be writing the opinion and that  
4 particular Justice apparently, you know, was focusing on the  
5 surface owner and frac issue question in his questions to  
6 both parties. And I still see that as...I mean, the  
7 ownership issue is still going to be fact specific, in my  
8 opinion, depending upon the severance deeds and the documents  
9 in the chain of title. But I don't think for your all's  
10 purposes, which I think is...and I understand why you wanted  
11 to have this session, but I think for your all's purposes,  
12 nothing has changed; and I don't think whatever...however  
13 this decision comes down, other than harassment and sort of  
14 pain in the you-know-what, I don't think absent an agreement  
15 or absent a court order, that they should be able to get in  
16 front of you. That's...I hold firm to that position.

17 BENNY WAMPLER: You know, we'll certainly be  
18 challenged. It will be...you know, a lot of folks  
19 anticipated it, of course, but a lot of folks, they'll have  
20 to pay their miscellaneous petition---.

21 JIM KISER: I mean, your jurisdiction hasn't  
22 changed.

23 BENNY WAMPLER: Right. Right. The question is, do  
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1 we take their money for something like that?

2 BOB WILSON: My---.

3 JIM KISER: Oh, you mean their application fees.

4 BOB WILSON: My thought---.

5 JIM KISER: I'd say no.

6 BOB WILSON: ---very coincidental to what Jim says  
7 that it states in the law...the Statute states exactly under  
8 what conditions the Board can consider disbursement of funds.  
9 There are only two ways, either an ownership decision out of  
10 the court, or an agreement among the parties. And I guess  
11 that's where we'd like to get to is that when my phone rings,  
12 which it will, that's what we tell people, that we're still  
13 bound by that Statute and this court decision, I don't see  
14 how it can come down as affecting anything other than those  
15 specific titles that they're dealing with. It's not going to  
16 be a broad decision that's going to say that every surface  
17 owner owns the gas or anything of that sort.

18 MARK SWARTZ: That's the easy problem. I agree  
19 with you.

20 BOB WILSON: Right.

21 MARK SWARTZ: That's the easy problem. I'm looking  
22 at the other end of the telescope. I'm looking at people  
23 saying, "I should have been pooled in this unit that was  
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1 pooled ten years ago."

2 BENNY WAMPLER: Right.

3 MARK SWARTZ: Or, "I saw a publication notice in  
4 the paper for, you know, an 80 acre unit. I saw the map and  
5 I live in that 80 acres and I didn't get notice of this  
6 hearing. I'm a surface owner and I'm claiming the gas."

7 BOB WILSON: Then we're going to send them back to  
8 you.

9 MARK SWARTZ: I understand that, but we're going to  
10 see them. We're either going to have...you know, your choice  
11 as the company at that point is to rely on your title work  
12 and tell the people, "I'm not joining you." History has been  
13 in front of this Board is if they happen to show up at a  
14 hearing after we've told them that, you're going to join them  
15 because you're not going to adjudicate their title and you're  
16 not going to say, "Your title claim is ridiculous." You're  
17 just going to say, "You're making a claim of title." There's  
18 a decision going way back when, which I was responsible for  
19 on the other direction, which says that...that you guys made,  
20 you know, which says that a inventive claim, okay, was  
21 nevertheless a claim and needed to be honored, because the  
22 Statute just says, you know, you've got to protect claimants,  
23 not good claimants, indifferent claimants, or bad claimants.

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1 I really see the problem as the other end of this deal, that  
2 there's going to be...there are going to be claims of  
3 entitlement not to a payout, but to be listed on the escrow  
4 account as a potential beneficiary in a tract.

5 BENNY WAMPLER: I think you'll have both.

6 MARK SWARTZ: And I see that as the problem that,  
7 you know, we're actually going to have....that's not easy,  
8 that, you know, the way I look at everybody's obligation. I  
9 mean, you know, we can send them packing, but if they show up  
10 here, they're going to be in the unit. We kind of take the  
11 attitude that if they're making that kind of approach to us  
12 and talking loud and long, and we have a reasonable  
13 expectation that our explanation hasn't satisfied them, we're  
14 going to name them, which is what we've done in the past.  
15 We've got one unit we have 256 surface owners that we name  
16 every time because they've got a bunch of lawyers in their  
17 family that are very aggressive about it. Where are we  
18 headed? We got to do it. So that's the thing I'm worried  
19 about. Well, not worry, but, I mean, that's coming.

20 JIM KISER: We just have to have confidence and  
21 hope that the Virginia Supreme Court is wise enough and savvy  
22 enough to clean that up in its decision. I've got to believe  
23 they are.

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1           MARK SWARTZ: But one would hope they're not going  
2 to use the word surface owner in their decision. I mean,  
3 that...but, you know---.

4           BENNY WAMPLER: Well, the thing is, it's already  
5 been used and if they simply uphold it---.

6           JIM KISER: I don't think they're going to simply  
7 uphold it.

8           BENNY WAMPLER: If they do, though, we know.

9           MARK SWARTZ: Yeah. Well, just to share one  
10 concept with---.

11          BENNY WAMPLER: Sure.

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13          MARK SWARTZ: ---you because I've got a case that  
14 involves something along this line. I was doing some  
15 research the other day because a law firm got a hold from the  
16 State of West Virginia a list of 25,000 people that my client  
17 had sold cars to over the last five years and sent them all a  
18 postcard saying, "They cheated this guy, they probably  
19 cheated you. Why don't you give me a call." So, I sued  
20 those lawyers over that and I'm just having a ball with this  
21 case because it involves First Amendment and tortuous  
22 interference. It's sort of a cutting edge case. When doing  
23 research on this case, I discovered that more lawsuits are

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1 commenced in the United States as a result...the majority  
2 now, as a result of lawyer advertising and seining or  
3 trolling for clients than for a client deciding he's actually  
4 got a problem and going to a lawyer. You know, we've gone  
5 from, should we let lawyers advertise at all, because they  
6 have Constitutional free speech rights as well, to the  
7 complete...the entire landscape has changed. So you're sort  
8 of seeing the tip of the iceberg with these town meetings and  
9 the newspaper articles and the BS that we've had today, and  
10 if the word "surface owner" makes it out of this opinion, you  
11 know, I think it's reasonable to assume that, you  
12 know...because that's where it's...ATLA and other trial  
13 lawyers' associations give seminars. You can go to seminars  
14 to learn how to do mass mailings to torment car dealers or  
15 the Virginia Gas and Oil Board or whatever, you know. So, I  
16 mean, I see this is sort of falling into that sort of  
17 approach that people have developed in our society, getting  
18 business. Don't be surprised.

19 JIM KISER: Money for nothing.

20 SHARON PIGEON: They've already run the ads for the  
21 meetings, so we know that's---

22 MARK SWARTZ: Yeah. The way things sort of look.  
23 It'll be interesting. But I think, you know, on the bright  
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1 side, you know, if they do give a well reasoned opinion, I  
2 think it will give all of us a lot of guidance when we're  
3 looking at the cases in the future, we're looking at deeds  
4 and we're looking at relationships, to sort of handicap where  
5 that will be heading in court, and right now we don't have  
6 that guidance. It'll be a big step in the right direction, I  
7 think. It will cause some problems, but I think in general,  
8 it needed to happen.

9 BENNY WAMPLER: Any Board members have any specific  
10 questions? I really appreciate, on behalf of the Board, you  
11 gentlemen, all of you, taking time to stay with use today and  
12 talk about this. I think it's certainly---

13 MARK SWARTZ: It's interesting. You know, it'll be  
14 interesting to see what they do.

15 BENNY WAMPLER: The ruling, as we all know it, is  
16 apparently eminent. They're saying the first week of March.

17 JIM KISER: Yeah, I've heard March 6th.

18 BENNY WAMPLER: Somewhere in that neighborhood, so  
19 it's not far away. Certainly when we come back next month  
20 we'll probably have it and maybe a room full of people, or a  
21 building full of people.

22 BOB WILSON: I'd like to ask these guys one  
23 question. Do you think that a favorable ruling would have  
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1 any kind of retroactive effect on the people who do have  
2 split agreements now, or had split agreements prior to this  
3 ruling and them being paid under those agreements?

4           MARK SWARTZ: A lot of times the Court...there is  
5 probably case law in Virginia as to whether or not changes in  
6 the law are retroactive as a matter of course. I would think  
7 that there's case law on that. Because normally if it's  
8 going to be retroactive as opposed to prospective, the Court  
9 addresses that in the decision. Let's just, for the sake of  
10 argument, assume that this could apply back in time, then  
11 there's going to be statute of limitations analysis because  
12 you can have...give you an example. Let's assume you got a  
13 contract with somebody and you've had a contractual  
14 relationship for 20 years and you decide 20 years down the  
15 road you want to sue them for violating some term of the  
16 contract they've been using for 20 years. Well, you can only  
17 reach back as far as the Statute goes. So on the one hand,  
18 is this retroactive at all? And normally I would say it  
19 would not be.

20           JIM KISER: I would say it would not.

21           MARK SWARTZ: You know, I haven't done the  
22 research, but most states, you know, when this issue has come  
23 up, and I can't say I'm aware of the law in the Commonwealth,

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1 but in other states where I've practiced, it's generally not  
2 the case that it's retroactive. And if you want something  
3 retroactive, you need to ask and it's not routinely granted  
4 for obvious reasons. And even if it were retroactive, you're  
5 going to have some other issues.

6 BENNY WAMPLER: And I don't recall it being  
7 requested in this case in anything I've seen.

8 MARK SWARTZ: Neither do I, you know, but---.

9 SHARON PIGEON: But that question goes to when  
10 you're changing the law whether it's retroactive or  
11 prospective only, not when they're first declaring the law.

12 MARK SWARTZ: But you would have to do that  
13 research. I mean, this is not an easy question.

14 SHARON PIGEON: No. It's got at least those two  
15 sides to it.

16 JIM KISER: I would be surprised if it had a  
17 retroactive effect.

18 MARK SWARTZ: Oh, man, people will be screaming if  
19 it is.

20 BOB WILSON: That would definitely affect any funds  
21 that the Board had paid out in the past. I mean, split  
22 agreements, if there was no---.

23 BENNY WAMPLER: No eminent agreement---.

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1           JIM KISER: Then you get to the third party and  
2 they'll holler discovery rule as to the Statute.

3           BENNY WAMPLER: You know, here again, we have to  
4 speculate a certain amount, but I appreciate your willingness  
5 to do that. It helps us to---

6           JIM KISER: Let's just hope they write a good  
7 decision.

8           SHARON PIGEON: Yeah.

9           BENNY WAMPLER: Well, we certainly hope so. Thank  
10 you very much, appreciate it.

11          MARK SWARTZ: All right.

12          BENNY WAMPLER: You got anything?

13          BOB WILSON: Yes, I have one other item of business  
14 for the Board very briefly. First of all, I want to tell  
15 each of you guys, you three guys, how much I appreciate you  
16 coming today because I know each of you had something else.  
17 I really appreciate you changing your plans.

18                 The contract with the escrow agent will be up as of  
19 the end of this fiscal year, which is the end of June.

20 The...I guess, the contract was signed at the end of the  
21 calendar year, but it was put into a fiscal year situation.

22 We have the ability to renew that contract for another five  
23 year period without having to go out for new submittals or

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1 anything. And we would need to get started with that fairly  
2 soon. The staff recommendation, my recommendation, would be  
3 that we go to now Wachovia as opposed to First Union, and  
4 request the continuance of this relationship under the same  
5 terms that we had it under for the original five years.  
6 There are provisions under the contract whereby either we or  
7 they can make changes if it's...if it is renewed. We would  
8 suggest that we attempt to renew it under the exact terms  
9 that we have now. We'd like to see what the Board thinks and  
10 would like to get a decision today such that we can go ahead  
11 and make contact and get this process started. We're not  
12 late by any means, but we don't want to get to the end of  
13 June. If we can't renew, we'll need to put out another  
14 request for proposals to...like another agent under different  
15 terms or whatever.

16 DONALD RATLIFF: I assume we're satisfied with the  
17 work that's being done.

18 BENNY WAMPLER: I was going to ask Anita just from  
19 a customer standpoint. You work with them a lot. Do you  
20 they were okay to work with?

21 ANITA TESTER: Well, the only problem I have is a  
22 lot of times...like this past week, I've left a couple of  
23 messages just to try to get a letter to tell them officially

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1 we need to change our checks from First Virginia to Wachovia  
2 and still don't have an answer. So I sent an email yesterday  
3 for Les asked again did I hear from them. So, a lot of times  
4 when I call, there's a delay in getting a call back. I  
5 haven't done any disbursements in a while. I'm getting ready  
6 to do some next month.

7 LESLIE K. ARRINGTON: Not next month, but the  
8 following month.

9 ANITA TESTER: Yeah.

10 BENNY WAMPLER: Bob, your experience in dealing  
11 with them?

12 BOB WILSON: Well, it's no secret to anybody for a  
13 while that we had some really rough spots when we first got  
14 started, and my major source of my recommendation is the fact  
15 that if we go to a new agent, we're going to go through that  
16 again because this is not a simple deposit and return  
17 relationship. It's a service contract that performs certain  
18 functions for us, and to get another institution started with  
19 that, again, we got to go through the same problems we had in  
20 the past. I don't have problems getting information back for  
21 the last couple of years myself. Now originally, we did. We  
22 had...as a matter of fact, we had to go to Philadelphia and  
23 have a face to face meeting with them and lay down some

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1 ground rules before we ever got our situation straightened  
2 up. But I think overall right now, we're in good condition.  
3 The reporting is going well. We're able to get the  
4 information we need. They're not...we're not always their  
5 top priority and sometimes we do have to badger them to get a  
6 little information back. I had a number of instances where  
7 somebody other than us...when I call, I'm representing the  
8 Board. They tend to get back to me pretty quickly because  
9 they signed the contract with the Board. I've had to  
10 intervene a few times for outside parties, trying to get  
11 information, try to push it along myself. But I don't think  
12 we have insurmountable problems right now and I think the  
13 type of problems that Anita has, and I know she has them from  
14 time to time, as do others, maybe we can try to stir up a  
15 bit.

16 BENNY WAMPLER: Well, if the Board approves a five  
17 year renewal, could you not include that in your renewal,  
18 that we want more response to our customers?

19 BOB WILSON: Absolutely, we have...we have the  
20 ability to add---

21 BENNY WAMPLER: Get that in writing from them so we  
22 can make sure we can hold them accountable to it.

23 SHARON PIGEON: I'd like to---

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1           JIM McINTYRE: Increased interest, increase  
2 management fees.

3           SHARON PIGEON: I'd like to interject, if we're  
4 thinking about changing escrow agents, and we do have this  
5 case where we have some potential impact on escrow funds,  
6 this might not be the best time to be doing it.

7           BENNY WAMPLER: So your recommendation is a five  
8 year extension, is that correct?

9           BOB WILSON: Yes, sir.

10          BENNY WAMPLER: And with that, we could get  
11 something in writing, a commitment from them for improved  
12 service for our customers and ourselves?

13          BOB WILSON: I see no reason why we couldn't do  
14 that under the leeway we have as a contracting  
15 agent...agency.

16          BENNY WAMPLER: Any other questions from members of  
17 the Board or comments?

18           (No audible response.)

19          BENNY WAMPLER: Is there a motion?

20          DONALD RATLIFF: I move that we pursue and go  
21 forward.

22          JIM McINTYRE: I'll second it.

23          BENNY WAMPLER: Motion and second to negotiate with  
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1 Wachovia for a five year extension. All in favor, signify by  
2 saying yes.

3 (All members signify by saying yes.)

4 BENNY WAMPLER: Opposed, say no.

5 (No audible response.)

6 BENNY WAMPLER: You have unanimous approval.

7 BOB WILSON: Thank you. I will approach this as a  
8 renewal under the same general terms that we have now. If  
9 those terms change, we will bring it back before the Board  
10 for any kind of changes that need to be made.

11 BENNY WAMPLER: Thank you. Any other business from  
12 members of the Board?

13 (No audible response.)

14 BENNY WAMPLER: Thank you. That concludes the  
15 meeting.

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17 STATE OF VIRGINIA,

18 COUNTY OF BUCHANAN, to-wit:

19 I, Patricia G. Church, Court Reporter and Notary  
20 Public for the State of Virginia, do hereby certify that the  
21 foregoing hearing was recorded by me on a tape recording  
22 machine and later transcribed under my supervision.

23 Given under my hand and seal on this the 5th day of  
24

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1 March, 2004.

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NOTARY PUBLIC

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4 My commission expires: August 31, 2007.

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