

6/18/96

ITEM I

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2
3 MR. CHAIRMAN: The next item on the agenda -- we're going
4 back to Item I -- today is the Virginia Gas and Oil
5 Board on it's own motion will consider the adoption of
6 field rules for the Beatrice mine sealed gob area based
7 upon the existing 80 acre grid. This is docket number
8 VGOB-96/06/18-0545 which was continued from June.
9 We'd ask the parties that wish to address this matter
10 to come forward at this time. Mr. Fulmer, I believe
11 you have some information to provide to the Board. Ms.
12 Riggs will discuss it. I will ask again, are there
13 any parties here wishing to address the Board in this
14 matter today? If you do you may want to come forward
15 at the table and we'll provide you with this inform-
16 ation we are looking at. (Pause.) I'll ask Ms. Riggs
17 to give us a brief to take us back into May, I believe,
18 when we had our hearing. We asked that the order be
19 drafted, that the Board would review and Ms. Riggs will
20 bring us up to date from there.

21 MS. RIGGS: I have the transcript from the last hearing and
22 the Board did take testimony at that time with regard
23 to the establishment of the Beatrice sealed gob unit,
24 the establishment of field rules under 45.1-361.20 to
25 accommodate the mined out area of the Beatrice Mine

1 which is shown on your plat that's attached to the back
2 of these proposed rules. I think the concerns at the
3 time were that this is such a large unit and it
4 involved such massive title search that it didn't lend
5 itself to the ability of one operator to come in and
6 create a single sealed gob unit for purposes of
7 producing this mined out sealed area of the Beatrice
8 Mine. The Board was entertaining the idea of creating
9 allowable productions within the existing 80 acre
10 Oakwood grid that overlaps this unit in order to allow
11 production to proceed on a unit by unit basis rather
12 than having a single sealed gob unit that encompassed
13 the entire sealed mine. After taking testimony the
14 Board asked that I take that transcript and come up
15 with a draft of a set of field rules for the Board's
16 consideration so that the testimony was sort of
17 consolidated into a document that you could look at and
18 review and consider. The draft that you have before
19 you is the result of my effort to take that testimony
20 and put it into some form of a field rule. There were
21 a couple of issues that were addressed in the trans-
22 cript that have not been addressed in the proposed
23 field rules. And one of those has to do with the
24 request that operators be allowed to use allowable from
25 either contiguous or noncontiguous units and allocate

1 them to a particular drilling unit. In other words,
2 unitize drilling units within the sealed gob area.
3 That has not been addressed in here because I don't --
4 I didn't know what direction to go with that really. I
5 guess that raises the other issue of whether or not if
6 you allow that -- the units that are consolidated
7 whether they have to be contiguous or whether allow-
8 ables can be take from noncontiguous units. Mark asked
9 that I forward to him a copy of the draft of the
10 proposed field rules since he and his clients were the
11 ones that put on the testimony to the Board and I am
12 sure that he's had an opportunity to review it and
13 would have comments with respect to what the field
14 rules doesn't contain as opposed to what it does.

15 MR. CHAIRMAN: Mr. Swartz.

16 MR. SWARTZ: Actually, Sandy, I've looked at the order. I
17 think it's pretty straight forward. I really have very
18 limited comments and they, I think, pertain to some
19 discretion in some choices that you all have as a Board
20 and a couple of observations. Basically I think the
21 problem that Sandy identified which was a reason why we
22 came forward and tried to present evidence in support
23 of the field rules here. The basic reason is that
24 title can be incredibly expensive. This is a huge
25 mine. As you heard earlier from either one of the

1 C. Bat or EREC witnesses that just tracing one set of
2 families -- you know, if they happen to have ten
3 children one of those firms spent 500 hours on three
4 percent of an 80 acre or 112 acre unit, I guess. So
5 title here is a huge problem. It's a problem for large
6 companies. It's a problem for individuals that are
7 trying to develop the acreage. So the theory here was
8 lets, if we can, devise a plan that allows 80 acre more
9 manageable units to be developed and I think that this
10 addresses that. The question then came because this is
11 a sealed unit. The mine shaft -- we've just some
12 people here. But this is a shaft mine. The shafts to
13 the mine have been sealed. So essentially this is a
14 container. In theory one hole could drain this
15 container if you pulled on that hole hard enough and
16 long enough. And to prevent unfair drainage, meaning a
17 unit or a well in one corner essentially draining
18 everybody's gas, the solution was to go with allow-
19 ables. I think this is the first time this Board has
20 ever used allowable. I think in the past perhaps some
21 of the problems we've addressed might have been handled
22 with allowables but this is the first time you've
23 chosen to do that. And what that means is that for any
24 given unit that is either voluntarily pooled or forced
25 pooled by Board order the most you can produce out of

1 that unit is 350 million cubic feet. It's at Paragraph
2 at the bottom of Page 2. I think that's consistent
3 with the testimony that you heard last time. The
4 question, moving from protecting correlative rights so
5 that no one unit can take more than 350 million cubic
6 feet, we further got to what I would describe as an
7 economic issue and you may or may not know. Dennis was
8 here then. When we have pooled sealed gob units in the
9 past there have been limitations that the Board has
10 placed on my client in terms of the number of wells
11 that they can utilize to drain that unit. The idea
12 being, again, it's a sealed a container. What's a
13 reasonable number of wells to produce a sufficient
14 amount of gas over some reasonable period of time so
15 that you're not loading costs into the unit and passing
16 those potentially to people unfair so that the unit
17 would make economic sense. We've kind of got the
18 reverse situation here and what we suggested to you all
19 that you needed to consider was that it would be
20 unreasonable from an economic standpoint if there had
21 to be a well in every one of these 80 acre units
22 because from a physics standpoint or a geology stand-
23 point wells have a capability of draining a much larger
24 area than an 80 acre unit. So our proposal, as I
25 recall it, was if you have allowables you should

1 develop some means of permitting an operator with a
2 well in one unit to take the 350 million allowable
3 assigned to that unit, to voluntarily pool another unit
4 in the mine or in this area. It doesn't have to be
5 contiguous. It could be anywhere. And provide notice
6 to some one, whether it's Mr. Fulmer's office or you
7 office, here's a voluntary unit and I'm claiming the
8 350 million assigned to that and to do that so that you
9 could have eight or ten units or perhaps even more
10 drained by a well bore -- one well bore and the
11 allowables. And that's our proposal. I think -- you
12 may not agree with me but I think that the allowables
13 -- the imposition of an allowable per unit and the fact
14 that that would be a condition here solves the problem
15 of how many units could an operator assign to a given
16 well bore. Because until all -- the physics again.
17 Until all of the units allowables have been claimed
18 there is in theory the gas is still in place. You're
19 not taking more than any given unit's share. So I
20 think what the order does not do -- what you need to
21 address is how does an operator with a well bore in one
22 unit notify the Board or the Inspector and say, "I have
23 another unit that I have voluntarily pooled and I would
24 like to claim the 350 -- start producing the 350
25 million allocated to that unit through this well bore."

1 Is it something that people need to come back to the
2 Board for? Is it something you would feel comfortable
3 simply on the notice basis? And then the next issue is
4 there will be situations where it won't be a voluntary
5 unit. You may have 50 percent of the unit leased and
6 you need to pool the other 50 percent. In situations
7 like that people are going to have to come back to the
8 Board in a forced pooling situation. So I'm not sure
9 you need to address that. You can address -- those
10 will be here. There's no way around it. But certainly
11 in terms of a voluntary unit what do you feel comfort-
12 able with as a mechanism for people to go on record "we
13 are producing or we want to produce the allowable
14 assigned to this given unit and we have pooled it on a
15 voluntary basis." The last thing that addresses in
16 the draft order that Sandy has prepared -- that really
17 addresses Paragraphs -- some revisions of Paragraphs F
18 and H on the last page. I would also comment that
19 Sandy's order of Paragraph H at Lines 4 and 5 -- seem
20 to me and I'm not sure she intended this -- looks like
21 it would expect the pooling of multiple units at the
22 same time. I don't really see why we would have to do
23 -- it says, "That where however such owners have not
24 agreed to so pool their interests and to develop
25 either single or multiple drilling units" I don't

1 think it's relevant that an owner in a drilling unit
2 that needs to be force pooled doesn't want you to pool
3 some other unit.

4 MS. RIGGS: Uh-huh.

5 MR. SWARTZ: I'm not sure that's what you intended, but it's
6 capable of being read that way and you need to --

7 MR. CHAIRMAN: Clarify that.

8 MS. RIGGS: Okay.

9 MR. SWARTZ: I have Claude Morgan here today and Les
10 Arrington who would be available to answer questions
11 with regard to basically the two issues I've raised.
12 I'm here, too, I suppose, but those are the two
13 concerns I have.

14 MR. CHAIRMAN: Mr. Ratliff, do you have anything that you
15 want to address the Board? Let me first just get you
16 to state your full name for the record.

17 MR. RATLIFF: I'm Wyatt Ratliff, president of Ratliff Gas
18 Company. I have the only permitted well within this
19 Beatrice Mine area. I want to object to placing a
20 limit on the amount of production and I have a state-
21 ment here. I'd just like to read it to the Board.
22 "Please be advised that it is our position at Ratliff
23 Gas Company, Incorporated that any such cap or limit-
24 ation upon the production of Ratliff #1 well would
25 violate the vested rights both of Ratliff Gas Company,

1 Incorporated as in the well and in the production
2 therefrom along with a violation of the vested rights
3 of the royalty owners. As the Board is well aware, no
4 law or regulation can be enacted to adversely affect
5 vested rights. Both Ratliff Gas Company, Incorporated
6 and its royalty owners have a vested right in the full
7 production at whatever the maximum allowable rate could
8 be in Ratliff Gas Company's #1 well. Any regulation by
9 the establishment of uniform field rules or otherwise
10 which interfere with this vested right held by Ratliff
11 Gas Company and its royalty owners violates both
12 statutory protections and constitutional protection
13 both United States and Virginia Constitution by
14 operating to take away the right to produce as much
15 gas as that well is capable of producing." That's my
16 only statement. That's what I have.

17 MR. CHAIRMAN: Thank you, Mr. Ratliff. If the Board has
18 questions are you willing to answer any questions?

19 MR. RATLIFF: Yes, I will.

20 MR. CHAIRMAN: Does the Board have any questions for Mr.
21 Ratliff at this time?

22 MR. KING: I have a question. Mr. Ratliff, I've not been a
23 member too long but you have appeared. You are the
24 only producing well in this Beatrice Mine?

25 MR. RATLIFF: As far as I know I am the only permitted well

1 that is producing in this Beatrice Mine.
2 MR. KING: Are you maybe saying that there is being produced
3 other than permitted?
4 MR. RATLIFF: Yes.
5 MR. KING: I wanted that to be in the record. Am I not
6 correct, Mr. Chairman, that this is the old Island
7 Creek mine that now belongs to Consol? Is that
8 correct?
9 MR. CHAIRMAN: Do you --
10 MR. FULMER: On the Beatrice Mine I've got the maps and
11 records here, if that would help you.
12 MR. CHAIRMAN: You might want to do that. This is the old
13 Beatrice Mine. Consol will have to speak to ownership
14 of it.
15 MR. SWARTZ: I'm not sure it's that simple. But Island
16 Creek has purchased it by a entity that is in the
17 Consol family.
18 MR. KING: So actually the coal rights belong to Consol?
19 MR. SWARTZ: I doubt that. I'm sure that the leases are in
20 an Island Creek entity to the extent that they're still
21 in effect and I assume they are. The problem you have
22 when you buy -- when you acquire mineral companies
23 there are typically restrictions in the leases on
24 transfer. So you normally are pretty much in a
25 position where you have to keep corporate form and wind

1 up buying stock. So it is unlikely that these property
2 assets found their way into a -- directly into a Consol
3 company. They're probably still help -- it's been a
4 while since this transaction, but they're probably
5 still held by Island Creek or subsidiary companies of
6 the Island Creek family.

7 MR. KING: Could I follow that a little further to ask then
8 -- we're addressing now methane gas production?

9 MR. SWARTZ: Right.

10 MR. KING: And that could belong to a whole bunch of people
11 that we --

12 MR. CHAIRMAN: We don't know who owns it. We haven't made
13 any determinations as far as the Board as to who might
14 own the gas.

15 MR. KING: But I think what -- if I'm correct, Sandy's
16 trying to address that here with this maybe.

17 MR. CHAIRMAN: Not as to ownership. This is trying to
18 address the unit so that it might enable that entire
19 unit to be -- that entire pool of gas to be developed.

20 MR. KING: To be pooled?

21 MR. CHAIRMAN: To be developed.

22 MS. RIGGS: If there were conflicting claims within any
23 particular unit they would still have to come back to
24 the Board for a pooling application similar to what you
25 heard earlier today where they identify all the owners

1 and either get voluntary leases which would be a
2 voluntary unit or come before the Board and pool the
3 interests within that unit to force pool and give the
4 notice and all the due diligence that we heard about
5 today. So the parties receive the notice at the time
6 of the pooling of the individual squares -- the
7 individual units.

8 MR. SWARTZ: See, basically to have a voluntary unit you
9 have to lease the acreage twice. You've got to lease
10 the coal side of it and you've got to lease the oil and
11 gas side of it. So, I mean, for 100,000 acres of real
12 land you're going to wind up with well over 100,000
13 acres of leases. And the situation here is when
14 Consol purchased the stock of an entity that owned
15 Island Creek they also purchased the stock of entities
16 that were the corporate partners indirectly in Buchanan
17 Production Company which is the oil and gas lessee. So
18 to some extent they were acquiring both sides of that
19 transaction. But there are many, many units where a
20 piece of the oil and gas is not leased or a piece of
21 the coal is not leased. So really for every 80 acre
22 unit potentially you have to lease 160 acres to have a
23 voluntary unit.

24 MR. GARBIS: Did you say this was approximately 100,000
25 acres?

1 MR. SWARTZ: No. This mine is 6,100 roughly. It's in the
2 order. The Oakwood Field is a little over 100,000.
3 MR. GARBIS: I'm talking specifically this Beatrice Mine
4 area.
5 MR. SWARTZ: This unit that encompasses the mine -- what
6 paragraph was that in, Sandy? Les, help us out here.
7 MR. CHAIRMAN: It's in Paragraph F on Page 2. It says 6,180
8 acres.
9 MR. GILLUM: What is the value of that gas? It says 123,600
10 million cubic feet. That's what, 250 million dollars
11 worth of gas, is that right? At two dollars?
12 MR. SWARTZ: Potentially.
13 MR. GILLUM: So this is a big issue.
14 MR. SWARTZ: Wait a minute. Let me see.
15 MR. CHAIRMAN: It should be more than that. About double
16 that.
17 MR. SWARTZ: Yeah.
18 MR. GARBIS: So essentially there's 123,000 million cubic
19 feet from Page 2?
20 MR. SWARTZ: Well --
21 MR. CHAIRMAN: That was the testimony that we received.
22 MR. SWARTZ: Right. Just to give you an idea, if the gas in
23 the unit that Mr. Ratliff has in his well were to trade
24 at two dollars at 1,000 -- the allowable is 350 --
25 there's \$700,000 worth of gas in that thing. At times

1 earlier this year gas was trading up around four
2 dollars. Today it's trading around a buck and forty.
3 It's a lot of money per unit even at this stage of the
4 game.

5 MR. GILLUM: I have a question. You have a permitted well
6 over the 6,180 acres?

7 MS. RIGGS: In one 80 acre unit.

8 MR. GILLUM: But it's over. It lies within the 600,180
9 acres?

10 MR. CHAIRMAN: Right.

11 MR. GILLUM: And you're paying royalty to these people or
12 someone's receiving royalty on the 80 acres, is that
13 correct?

14 MR. RATLIFF: On the 80 acres.

15 MR. GILLUM: What does your well produce?

16 MR. RATLIFF: It's just now going into production. We are
17 supplying a small community that I live in, 50 homes or
18 less. The gas production in last month was 21,000
19 cubic foot.

20 MS. RIGGS: I think the pooling order on that unit you
21 estimated your reserves to be 350 --

22 MR. RATLIFF: Up to 500 million.

23 MR. GARBIS: You say your average monthly withdrawal is
24 about 21,000 cubic --

25 MR. RATLIFF: No, sir. I didn't say that. That is what

1 last month's was. In the winter time that's when all
2 the production goes up. Right now there's no furnaces
3 on.

4 MR. GARBIS: What would you estimate as an annual figure.

5 MR. RATLIFF: I can't calculate it. I'm not sure because we
6 just went on the line December 9th of this last year.

7 MR. GARBIS: Mr. Ratliff, I recall when you and I had
8 discussion last two months ago. I think somehow that
9 you had -- that your present use is something like 80
10 or 90 years.

11 MR. RATLIFF: We plan one of these days hopefully to put
12 this gas in a pipeline. We just right now are putting
13 it in the community. The community has been served by
14 this well since 1972. We did not have a valid permit
15 until a couple of years back to do what we were doing.
16 We got the well permitted and went under forced
17 pooling and then I was not a public utility and
18 therefore could not put the gas back in the homes. Now
19 we do have a public utility that handles it for us and
20 it's back in our homes in our community homes. The
21 well is capable -- probably one of the best wells in
22 the State of Virginia. It probably is sitting in the
23 best position of any well in Buchanan County, but we
24 don't want to limit production to 350 million cubic
25 feet. We are against that one. Ratliff has one well

1 in it.

2 MR. GARBIS: Mr. Ratliff, with all due respect, if I recall
3 our conversation last time -- if I recall correctly and
4 correct me if I am wrong but I think your problem was
5 not really one of production, however one of transport-
6 ation.

7 MR. RATLIFF: Transportation.

8 MR. GARBIS: And, of course, if it transportation that is
9 something that you as an independent business man have
10 to work out with other parties.

11 MR. RATLIFF: That's right.

12 MR. GARBIS: So I don't think that needs to be -- correct me
13 if I am wrong, members of the Board -- that's not a
14 part of our purview. I'm sure you understand that you
15 may have a look at from your position that you want to
16 have this thing capped, but even if it were capped I
17 think you're looking at a very large number of years.
18 I think depending on what estimates you're going to use
19 that 70 or 90 years -- potentially even more than that
20 -- of production which I think is very reasonable. But
21 you have to understand that from a larger sense we are
22 charged with looking at a reasonable means for other
23 individuals. Just speaking for myself, I don't think
24 we can grant exceptions to somebody as yourself in a
25 case where we have other people with their rights that

1 would have to be looked into.

2 MR. RATLIFF: I understand.

3 MR. GARBIS: And I think really the issue in your case is
4 more one of transportation and really not of produc-
5 tion.

6 MR. RATLIFF: This well -- I disagree with you on how many
7 years -- is capable of producing in excess of one
8 million cubic feet per day. Now, you figure that up in
9 days and see how long it would be.

10 MR. GARBIS: Well, I'm sure that other companies can come in
11 there and equal that. I mean, they have the right to
12 do that, don't they? Couldn't somebody else come in
13 there? As a matter of fact, I'm sure if I got a topo
14 map I could sit there and come up with a number of
15 places where you could equal or double or triple that.

16 MR. RATLIFF: I can't answer that.

17 MR. GARBIS: The fact that it's capable is a moot point in
18 my personal opinion. I mean, what it's capable of --
19 but there has to be some regulatory bounds in how we're
20 going to bound this problem.

21 MR. RATLIFF: I understand. But this well has been in
22 production now since 1972. Part of the years it was
23 not permitted and now it is permitted. And when you
24 take away vested rights the person that's going to be
25 faced with the liability is the State of Virginia. I

1 want to point that out to you.

2 MR. CHAIRMAN: Mr. Chairman, any other questions of Mr.
3 Ratliff.

4 MR. GILLUM: I have one question. Have you -- you're paying
5 the royalty to these people and your estimated reserve
6 on this 80 acre being 500 million -- is that right --
7 cubic feet? That's just an estimate?

8 MR. RATLIFF: Yes, sir.

9 MR. GILLUM: Well, is there any provision -- let's just say
10 that is nothing is ever done here and you've pumped
11 your 500 million cubic feet. Is there any provision
12 for these other people for royalties or -- I mean, does
13 your situation address only those people on that 80
14 acre tract?

15 MR. RATLIFF: That's it. Yes.

16 MR. GILLUM: So the other landowners or gas owners would
17 essentially get nothing if some of this gas came from
18 their property. I guess it would be presumed that some
19 of this gas comes from everybody's property. Is that
20 right?

21 MR. RATLIFF: Gas is migratory. So it can be here today,
22 somewhere else tomorrow and gone today and come back
23 next week.

24 MR. GARBIS: I have a question of Ms. Riggs, if I may. This
25 6,180 acres, basically if we divide that into 80 acre

1 tracts it would be roughly 77 units.

2 MS. RIGGS: Right.

3 MR. GARBIS: What I heard testimony from was that you're
4 suggesting that perhaps the number of wells could be
5 different from the number of units.

6 MS. RIGGS: But you would not need 77 wells. If you were
7 going on the premise of that area would could be
8 drained by one well it would be larger than 80 acres.
9 So what they are asking is the ability to consolidate
10 acreage to create larger drilling units and take the
11 allowables from the consolidated units so that they
12 don't have to drill uneconomic wells.

13 MR. GARBIS: Maybe we need to increase the size of the
14 acreage. Maybe 80 acres is not the right --

15 ME. SWARTZ: You could. I think the reason to keep the 80s
16 was two-fold. It's an existing unit structure. So you
17 don't have to do any mapping. Secondly, it's very
18 doable in terms of title costs.

19 MR. GARBIS: Well, you have to do the title cost regardless.

20 MR. SWARTZ: But you can do it on an incremental basis.

21 Essentially what I'm saying is I see Ratliff -- he's
22 done his title. He's finally escrowing with regard to
23 royalty on that. When he's getting up to a point where
24 he's going to go past his 350 million if that ever
25 happens, he can do title on their 80 acre unit or lease

1 it up and get a voluntary unit, petition the Board to
2 apply those allowables to that well bore and go on with
3 his life. I mean, in a very simple way for him --
4 that's what I'm asking that everybody would have the
5 right to do. But the whole point of these field rules,
6 and I think you guys are focusing on that, is to make
7 sure that the twelve and a half percent royalty which
8 is a significant amount of money get spread to all the
9 potential people who ought to benefit from it. That's
10 why you engage in this kind of an exercise. From an
11 operator's standpoint -- from my client's standpoint
12 they are going to pay twelve and a half percent royalty
13 99 percent of the time because they don't own this
14 stuff in fee. It's a cost of doing business and an
15 operator just needs to bear that in mind and pony up
16 the royalty. The reason for -- so it's the cost of
17 doing business. But the reason for this field rule in
18 particular here is to spread that royalty income stream
19 equally to all royalty owners in this 6,100 acres.
20 That's the point.

21 MR. CHAIRMAN: Now let me ask you a question. When you talk
22 about being able to bring into this one unit where
23 you're draining units that are not contiguous that are
24 voluntary units or potentially pooled, but specific-
25 ally on the voluntary units that can, in effect, create

1 a checker board and then you'd have the pooled units.
2 What would be the plan to develop those that would have
3 to be pooled then? How we would ensure that they ever
4 got developed or that those people got paid.

5 MR. SWARTZ: The engineering testimony is appropriate and I
6 think Claude was relatively conservative. If you've
7 got up to 77 roughly units and you've got 35 left
8 there's 35 times 350 million in the ground. This isn't
9 like the conventional wells that you heard about this
10 morning where you said there's a ten percent chance of
11 hitting gas in this formation. There's no such thing
12 as a dry hole coalbed methane unless something horrible
13 happens, unbelievable. So unless the gas content data
14 is just completely wrong -- and we've got enough
15 experience in this field to suggest that this is, in
16 fact, the content here, perhaps even conservatively.
17 If there are 35 units left there's a lot of gas left
18 and there's an economic incentive for somebody to put a
19 hole in one of those units and start doing what we're
20 talking about.

21 MR. GILLUM: But I think the question is well taken because
22 probably what you're going to do is you're going to go
23 to those areas that you can lease up quickly instead of
24 going to this other gentleman this morning who had 500
25 man hours you're probably going to go someplace where

1 it's relatively easier. I mean, I would.

2 MR. SWARTZ: Right.

3 MR. GARBIS: So therefore the correct question is once you
4 have all the easy ones that are leased up you can come
5 in there and how do we insure that tougher ones --
6 there might be a reason why we would do when a more
7 logical --

8 MR. SWARTZ: Well, let's think about economic opportunity.
9 If gas prices are around two dollars and you're talking
10 at \$700,000 in revenue a unit, you've got an existing
11 well. So you've got no capital in terms of well costs.
12 You've got an infrastructure to market the gas. Unless
13 your title -- if your title was \$200,000 potentially
14 you would do that to recover the additional 700,000.
15 The economics of this to me will drive development.
16 There's not an opportunity to cherry pick here which I
17 think is your concern -- to just put a bad word on it.
18 I don't see it. It doesn't happen.

19 MR. GARBIS: To take the cream off the top.

20 MR. SWARTZ: Because you can only take 350. Now, if there
21 are ten units left there's ten times 350.

22 MR. GARBIS: Tom, how do you feel about this?

23 MR. FULMER: As far as allowables -- and this again is going
24 to something that the Board has never approached and
25 never wants to say or never wants to approach is

1 production unitization. That's what you're talking
2 about here. That's spread upon all persons who are
3 involved within that production unit. We've been
4 hinting around in several different cases in the Board
5 but that's exactly what you're talking about. Once you
6 have something depleted -- once you have a unit that's
7 producing from a common source then everybody is
8 producing from that common source. So the question is
9 should one be able to produce more than another and the
10 answer has always been no. They produce equally. And
11 that's where you get to allowables, only in that case.

12 MR. GARBIS: I was specifically speaking of was in the case,
13 as we say, cherry picking or as I say take the cream
14 off the top, taking the easier ones, is that going to
15 be a problem? We're talking about the financial
16 incentive at 700,000 for an 80 acre tract. I think
17 there's some pretty strong dollars there. We just want
18 to make sure that everything that's to be had is taken
19 out and that we don't -- that's nothing left behind.

20 MR. SWARTZ: I understand.

21 MR. FULMER: In this manner I don't believe you're going to
22 be able to cherry pick that much. There's not that
23 much to cherry pick.

24 MS. RIGGS: Well, in none of the other field rules that
25 we've done where we've put down the grid like this

1 have we ever said it's got to be developed in a
2 particular sequence. That's generally left up to the
3 economics of the operator's operation to dictate. So
4 there's no precedent and being that you could only take
5 allowables and consolidate them in increments of 80.
6 In other words, you couldn't take part of the unit and
7 take part of that unit's allowables and consolidate.
8 It has to be total 80 acre units. You have to have the
9 whole unit in order to take that allowable and use it
10 to another well. You don't get the splintering of the
11 field. You keep it in very uniform units. Plus if
12 someone's unit was not being developed there's nothing
13 that stops them from coming before this Board and
14 getting named operator or finding an operator and
15 getting their acreage produced. I mean, it's the same
16 thing you run into in any field. The operator picks
17 and chooses where their well is going to be and as long
18 as it's within a legal location that the Board's laid
19 down generally that's the only requirement. We don't
20 tell them in what sequence their drilling program
21 should be or --

22 MR. SWARTZ: Another thing that would drive location here,
23 for example, is proximity to existing pipeline and
24 gathering lines. So there are all kinds of consider-
25 ations in a unit such as this that have nothing to do

1 with geology but infrastructure. So there are good
2 reasons to have flexibility with regard to well
3 locations.

4 MR. GARBIS: Another question getting back to the original
5 in front of us. How do I know that 350 is a good
6 number? Has that been established? Are we convinced
7 that 350 -- for the total number of cubic feet are we
8 convinced that that's the right number? Should it be
9 more or less? What's the implications if we want more?

10 MS. RIGGS: Well, the testimony that we have thus far is the
11 one well that is currently producing in the unit, when
12 they came before the Board and applied that was the
13 number they established as their estimate and that's
14 Mr. Ratliff's well. Then the production over the life
15 of the well, he set it at 350 and then the testimony we
16 had at the June 18th hearing from an operator who's
17 operating in the general vicinity that has some
18 experience, that's what you have before you so far,
19 that evidence from those two sources.

20 MR. GARBIS: Is that enough? Is that a creditable number?

21 MS. RIGGS: That's probably all that's out there in terms of
22 -- until you actually drill. This morning they came in
23 and asked for a provisional drilling unit because they
24 didn't have enough data to be able to establish those
25 kinds of things. Until you actually start drilling the

1 and see what the production is all you can do is
2 take adjacent areas that have been produced and use
3 them sort of like comparable sells in an evaluation
4 process and say very similar coal seam, very similar
5 circumstances, this is what we have experienced in the
6 past which is, I think, what Consol did. And then Mr.
7 Ratliff's been producing over a period of some years
8 now and that's his opinion of where the number is. So
9 between those two that's all you have, I think.

10 MR. CHAIRMAN: Plus you have the notice that the Board's
11 done to all parties that were considering this and
12 there were other operators here and in the call for
13 anyone wishing to address the Board -- I mean, we've
14 attempted at least to exhaust the body of knowledge
15 that would be out there right now on this.

16 MR. FULMER: Mr. Chairman, the only thing I'd like to
17 mention when you're talking about figures on produc-
18 tion from a well, in regards to testing of an individ-
19 ual well as what it's capable of producing you're
20 assuming that that well is in a virgin reservoir and
21 you're producing at virgin reservoir pressure. In this
22 case you're putting a hole into a void and you could
23 pump it at any rate you wanted to. You could lower it.
24 You could increase it. You could get all kinds of
25 figures of what the potential may or may not be on a 30

1 day test. You could produce at a high end or it could
2 produce at a low end. You can manipulate figures in
3 this instance. So that's the problem you're dealing
4 with here. What is the correct number? I don't think
5 any two or three people could agree what the correct
6 number would be.

7 MR. KING: Mr. Chairman, is it possible that one well could
8 draw all of the methane out of that area?

9 MR. SWARTZ: If you let it go for 150 years.

10 MR. CHAIRMAN: For a long enough time and big enough funds
11 you could pretty much calculate how long it would take.

12 MR. KING: It is not the mandate of this Board, though, to
13 make sure that the people that have some rights are
14 protected?

15 MR. CHAIRMAN: It is.

16 MR. KING: I think maybe this is what Sandy's tried to do
17 here, isn't it?

18 MR. CHAIRMAN: I think the two areas that we've been talking
19 around but not dealing directly that Mr. Swartz raised
20 is 1) Given the fact that we go with the rest of the
21 things that are in this order whether or not we're
22 going to allow -- how does an operator that has an
23 approved well in a unit bring voluntary units to that
24 well in order to produce out of that one instead of
25 having to stick a straw down in four more places -- in

1 the bladder, if you will -- and then also how do they
2 get permission to go to the involuntary. Those would
3 all have to come to the Board. We know that. The
4 question of the first one is do we want those before
5 the Board as well.

6 MR. SWARTZ: I think there needs to be some mechanism. The
7 other part -- if you don't want to see us on a volun-
8 tary unit we feel like we need to provide some notice
9 to you all or to the DGO that we have another voluntary
10 unit, name it, that we're claiming allowable because we
11 give the production reports to Mr. Fulmer's office and
12 we need some mechanism so that he can track what the
13 allowables on a given well are, if there are multiple
14 units combined. That's another problem.

15 MR. CHAIRMAN: I don't want to sway the Board, but just as
16 an individual member of the Board my opinion is we are
17 better off to have them all come before the Board at
18 least initially in -- since this is a new venture for
19 the Board and the Board's looking at and you're not
20 going to have 77 and we'll have an opportunity to
21 continue to raise concerns, if we have concerns, or see
22 issues or hear from people that have issues about it
23 and deal with it on an ongoing basis.

24 MS. RIGGS: The other issue would be should these field
25 rules be adopted as provisional rules pending gathering

1 of additional information that would allow the refine-
2 ment of some of these figures.

3 MR. SWARTZ: I don't have a position on either of those
4 issues as stated. If the Board wants the operators to
5 come back to increase -- to allocate additional
6 allowables I have no problem with that. There just
7 needs to be a mechanism.

8 MR. CHAIRMAN: Okay.

9 MR. SWARTZ: And obviously that takes care of the notice
10 There would be a petition to utilize allowables or
11 something which is fine. With regard to whether or not
12 these field rules are provisional, they need to happen.
13 If you are more comfortable making them provisional you
14 can do that. As it was brought up earlier on the other
15 hand, if you make them non-provisional you can always
16 revisit them anyway. That's your call.

17 MR. GAREIS: The next question I had was how do we ascertain
18 with some decree of confidence that an operator when
19 they get to the 350 number that that's actually what
20 the number is?

21 MR. SWARTZ: There's a production reporting requirement.
22 Assuming that the operators report their metered
23 production Mr. Fulmer's office has an opportunity to
24 track that.

25 MR. GILLUM: What happens when they reach 350?

1 MR. SWARTZ: They need to stop unless they --
2 MR. GILLUM: Seal the well?
3 MR. SWARTZ: You can just turn it off. You can shut a well
4 in.
5 MR. GILLUM: This is my first meeting so maybe I don't
6 understand. But it appears to be that you've got the
7 one unit that's exception to everything else at this
8 time. There may be other units. Why can't you pool
9 the unit or any well that goes on a particular 80 tract
10 that takes it's 350, those guys get their royalty and
11 the balance spills over into a pool? Is that too
12 complicated or --
13 MR. CHAIRMAN: You mean if you produce more than the 350?
14 MR. GILLUM: Yeah. That way if Ratliff produces 350
15 million, his people get their twelve and a half
16 royalty --
17 MR. SWARTZ: My clients would go nuts if they could do that
18 and I will tell you why. We could drill one well.
19 Once we got past the 350 we would just take the twelve
20 and a half percent, send it to an escrow agent, we'd
21 never have to do any title. All of it would just
22 achieve to the State because nobody would ever do the
23 title. I mean, in theory it would preserve the funds
24 but no one would ever have a financial incentive to
25 identify the people who are entitled to the funds and

1 all the money would achieve to the State.

2 MR. GILLUM: but it appears to me we're talking about so
3 much money if these numbers are accurate that it would
4 be adequate resources to.

5 MR. SWARTZ: My clients wouldn't spend the money under those
6 circumstances because they're not entitled to the
7 funds. So the claimants and/or some collection of
8 lawyers who foresee that as a new booming business -- I
9 suppose if you created a 100 million dollar fund you'd
10 have a lot of people claiming it. But at least from an
11 operator's standpoint that would be a dream come true
12 because you'd do title on an 80 acre unit and you could
13 just forget about it. You might be right that ultim-
14 ately the fund would be larger enough that people would
15 be -- how long does it take to SG to the State here?

16 MS. RIGGS: It depends on whether or not it commences
17 running from the time ownership is determined under a
18 conflicting claimant situation. It could be forever.

19 MR. SWARTZ: So people would have a lot of time to sort it
20 out then potentially.

21 MR. FULMER: The uniform disposition act requires five
22 years.

23 MS. RIGGS: The problem you have with coalbed methane but
24 not the problem is there's never been a court determin-
25 ation of who owns it. Therefore, the statute provides

1 this escrowing pending that ultimate determination of
2 ownership. So in addition to unknowns and unlocatables
3 you have the coal and gas and oil. Everything goes
4 into escrow on the royalty side and until that deter-
5 mination is made that X owns then I don't think the
6 five year starts to run.

7 MR. SWARTZ: Also I'm thinking maybe you're going to have
8 some due process problems and notice problems because
9 there are people that are locatable and have determin-
10 able interests. And I think from a constitutional
11 standpoint that we might all have some problems doing
12 that. I mean, from an operator's standpoint it would
13 be a very attractive alternative but I'm not sure we
14 can do it.

15 MR. CHAIRMAN: If I could kind of illustrate something just
16 for the Board's information. I'm not saying this is an
17 accurate position, but if you look at the sealed area
18 and say this is it, what I believe is being requested
19 here for us to make a determination on is that if you
20 have a well in this unit and you have a voluntary unit
21 here, here and here you could pool those three times
22 that 350 and bring out here. So you would just kind of
23 start Xing these off. As you had those 77 you'd have
24 four coming out of there, for example, or you could
25 have pooled unit that you'd bring in. You drill here

1 and then you bring in two other pooled and one volun-
2 tary unit into the next one. So you may end up with
3 fifteen to twenty wells. Is that, in essence, the
4 understanding that everybody has of it?

5 MS. RIGGS: And once you use a unit's allowable that unit no
6 longer can ever have a well in it.

7 MR. CHAIRMAN: That's right. So we have that decision to
8 make. Is that acceptable? The mechanism would be
9 whether or not they would come before the Board for
10 that or would the Board want them to go to the Inspect-
11 or for that rather than come to the Board on a volun-
12 tary unit. That's an issue. And then the next one
13 would be do you want these field rules to be provision-
14 al subject to change as we develop additional inform-
15 ation or do you want them to be final field rules which
16 are also subject to change based on the Board's
17 discovery of additional information at any point in
18 time of notice. And also whether or not the rest of
19 the draft order is acceptable to the Board. The motion
20 would need to -- if we're at the point of making one
21 would need to encompass those things. Is there
22 anything else that I've overlooked?

23 MR. GARBIS: Why don't we take them one at a time and vote
24 on them?

25 MR. CHAIRMAN: Okay. Let's deal with just the draft order

1 as it's drafted now which would include the 350
2 allowable. Let's don't deal with whether it's pro-
3 visional or final. Let's just consider is this
4 language acceptable to the Board, yes or no, and I'll
5 ask for a motion on that if it is.

6 MR. GARBIS: I would advance a motion the 350 be used as the
7 marker or as presented here in this proposal.

8 MR. CHAIRMAN: As a cap on production.

9 MR. GARBIS: A cap on production at 350.

10 MR. KING: I second the motion.

11 MR. CHAIRMAN: A motion and a second and the rest of the
12 language in the order acceptable. A motion and a
13 second. All in favor say yes. (ALL AFFIRM.) Opposed
14 say no. (NONE.) The next item would be the mechanism
15 that the operator would come to the Board for a
16 voluntary unit in order to bring those voluntary units
17 -- I was trying to think of a good term to use -- pool
18 those units as we previously discussed into that one
19 producing unit.

20 MS. RIGGS; To allocate the allowables of a voluntary unit
21 to a unit with a well.

22 MR. CHAIRMAN: That's what I was looking for. Right. To
23 allocate. Do you want that to come to the Board or do
24 you want the Inspector to handle those?

25 MR. GARBIS: I think that should come to the Board until

1 we get a feel for how those things can be sorted out.

2 MR. KING: I second the motion.

3 MR. CHAIRMAN: A motion and a second. Further discussion?

4 All in favor signify by saying yes. (ALL AFFIRM.)

5 Opposed say no. (NONE.) And then finally should this
6 be a provisional or final order of field rules.

7 MR. GRANT: Mr. Chairman, I move that this be a provisional
8 rule.

9 MR. CHAIRMAN: We have a motion for a provisional order.

10 MR. GARBIS: I'll second that motion.

11 MR. CHAIRMAN: A motion and second. Further discussion?

12 All in favor signify by saying yes. (ALL AFFIRM.)

13 Opposed say no. (NONE.) Have we missed anything? All
14 right. Thank you.

15 MR. FULMER: Mr. Chairman, something that bothered me in
16 talking about the amount of allocation per unit --

17 MR. CHAIRMAN: Could you speak up just a little bit.

18 MR. FULMER: Something that bothers me when you're talking
19 about the allocation per unit and somebody's been
20 saying 350 million cubic feet, that ain't right.

21 MR. CHAIRMAN: MMCF.

22 MR. FULMER: That's what I'm saying. That's not million
23 cubic feet, is it?

24 MR. CHAIRMAN: Well, it's in accordance with the order.

25 MR. FULMER: 350 million thousand cubic feet.

1 MR. SWARTZ: It's 350 million cubic feet, right?
2 MR. FULMER: Okay. Go ahead. It's just the way it was
3 coming to me. I'm sorry.
4 MR. CHAIRMAN: Anything further on this? Further discuss-
5 ion? Okay. That concludes that discussion. It's
6 12:00. Do you want to finish the last two or go to
7 lunch? Finish? Okay.
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