

April 26, 2010

VIA HAND DELIVERY

FILED/ACCEPTED

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

APR 26 2010

Federal Communications Commission
Office of the Secretary

EX PARTE OR LATE FILED

Re: Notification of *Ex Parte* Communication
MB Docket Nos. 09-182, 06-121 and 02-277
MM Docket Nos. 01-235, 01-317, and 00-244

Dear Ms. Dortch:

This is to advise you, in accordance with Section 1.1206 of the FCC's rules, that on April 20, 2010, the representatives of Media General ("Media General") listed on Attachment A hosted the individuals from the Commission listed on Attachment B for a tour and meeting at "The News Center," Media General's facilities in Tampa, Florida. "The News Center" combines under one roof many of the operations of Media General's co-owned television station, WFLA-TV; its local newspaper, *The Tampa Tribune*; its local website, TBO.com; and its local Hispanic weekly newspaper, *Centro*.

The tour began with brief introductions of the participants and brief remarks from George Mahoney, Vice President, Secretary, and General Counsel of Media General. Mr. Mahoney noted that in the previous week the *Bristol Herald Courier*, Media General's newspaper in Bristol, Virginia, had won a Pulitzer Prize for public service for its reporting on the mismanagement of natural gas royalties owed to thousands of Virginia landowners. Mr. Mahoney explained that the newspaper is located in one of Media General's convergence markets and that the greater resources available in the market because of the presence of multiple news outlets, including a television station, helped provide the newspaper's staff with the ability to develop its multi-part award-winning series. FCC participants were given a copy of the newspaper series, which is enclosed.

John Schueler, Market Leader, Florida, and President of Media General's Florida Communications Group, then provided a PowerPoint presentation, which gave background on the Tampa Bay market and "The News Center." (A copy was provided to the FCC participants, and one is also attached.) Following the PowerPoint presentation, the participants toured the floor just above and overhanging the "Multimedia Desk," a large circular area where employees of the news outlets sit in close proximity to each other, so they can communicate "tips" about breaking local news stories in a way that will best meet community needs. The participants were also shown the location of the newspaper's editorial board offices, which are separate from the

news operations. The tour then went through the newsroom, the very specialized "Weather Center," and WFLA-TV's news studio.

As part of the tour, Messrs. Don North, News Director of WFLA-TV; Duke Maas, Managing Editor of *The Tampa Tribune*; and Loren Omoto, Online Content Director for TBO.com, discussed three examples showing how convergence has helped improve the delivery of breaking news, enterprise reporting, and investigative reporting. These examples included their collaboration to cover the recent shooting of a local policeman, investigation of the misuse of tax dollars by a local agency, and an enterprise project entitled "Putting Tampa Bay Back to Work." The police story first broke in the late evening news on WFLA-TV with additional content provided overnight on TBO.com and in an in-depth story in *The Tampa Tribune* the next day. TBO.com also continues to offer "Life, Death and the Badge," an online database and resource honoring law enforcement officers who have been killed in the line of duty. The second featured example -- the investigation of a local workforce agency intended to help employment but that misused funds in feeding its own staff -- resulted in the resignation of the agency's president and the passage of state-wide legislation to prevent recurrence of the problem. "Putting Tampa Bay Back to Work" was a multi-part enterprise reporting effort designed to help individuals who are out of work in the Tampa Bay area, which suffers from unemployment at a rate above the national average. The FCC participants were provided with copies of the newspaper articles published as part of the project, and copies are included with this filing.

Orlando Nieves, General Manager of Hispanic Initiatives for Media General's Florida Communications Group, provided background on Media General's launch of *Centro*, a Spanish-language publication that the company started first as a website to serve the various nationalities that make up Tampa Bay's Hispanic community. When the website proved successful, Media General started a weekly print edition of *Centro*; it now has a circulation of 40,000. The participants were given a copy of *Centro* for the week of April 16-22, 2010. A copy is attached to the first two of the multiple copies of this report, which has been lodged in the Secretary's Office.

In very brief remarks, Denise Palmer, Publisher and President of *The Tampa Tribune*, commented that the current regulatory system is "broken," and repeal of the newspaper/broadcast cross-ownership rule will allow the marketplace to function in a manner that will supply better and more local news. Such relief is particularly justified, she noted, in light of growing competition, especially from unregulated media, and resulting decreases in newspaper circulation and television viewership. Without reform, localism is jeopardized, not only in large markets like Tampa but in smaller and medium sized markets throughout the country.

In a question and answer session at the end, Media General responded to inquiries about the level of competition in the market and its own market share. Media General confirmed that the "pie" -- available advertising revenues -- is not growing in Tampa. Media General answered questions about the News Center work force, noting that initially the number of news employees increased with convergence, but, due to recent economic conditions, the number has decreased. Media General explained that all its journalists are now trained as multimedia content providers. Media General was asked how it was integrating "social media" into its news operations.

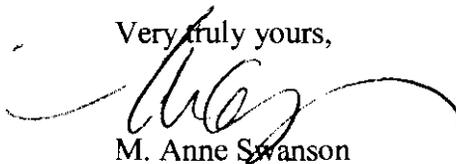
April 26, 2010

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Mr. Koehn provided examples, including about a situation in which social media allowed better coverage of a disciplinary matter at a local school. Media General's representatives also addressed the additional fact-checking and sourcing required when reporters rely on content provided through "social media." Finally, Mr. Omoto addressed how the Tampa properties are beginning to make use of mobile media in reaching area residents.

As required by Section 1.1206(b), two copies of this letter are being submitted for each of the above-referenced dockets.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. Anne Swanson", with a long, sweeping flourish extending to the right.

M. Anne Swanson

Attachments

cc w/o attach. (by email):

Mr. Steven Waldman
William T. Lake, Esquire
Robert H. Ratcliffe, Esquire
Jennifer Tatel, Esquire
Krista Witanowski, Esquire
Kristi Thompson, Esquire
Ms. Janice Wise
Ms. Vanessa Lemmé

Attachment A – Media General Representatives

George L. Mahoney

Vice President, General Counsel and Secretary, Media General

John R. Schueler

Market Leader, Florida, and President of Media General's Florida Communications Group

Denise Palmer

Publisher and President, *The Tampa Tribune*

Don North

News Director, WFLA-TV

Duke Maas

Managing Editor, *The Tampa Tribune*

Loren Omoto

Online Content Director, TBO.com

Ken Koehn

Assistant Managing Editor, *The Tampa Tribune*

Orlando Nieves

General Manager of Hispanic Initiatives for Media General's Florida Communications Group

Susan Newman

Executive Producer, Content Coverage and Convergence, WFLA-TV

Catherine Helean

Vice President, Marketing, Media General's Florida Communications Group

M. Anne Swanson

Dow Lohnes PLLC

Teresa Colling

Colling Swift & Hynes

Attachment B – FCC Participants

Mr. Steven Waldman

William T. Lake, Esquire

Robert H. Ratcliffe, Esquire

Jennifer Tatel, Esquire

Krista Witanowski, Esquire

Kristi Thompson, Esquire

Ms. Janice Wise

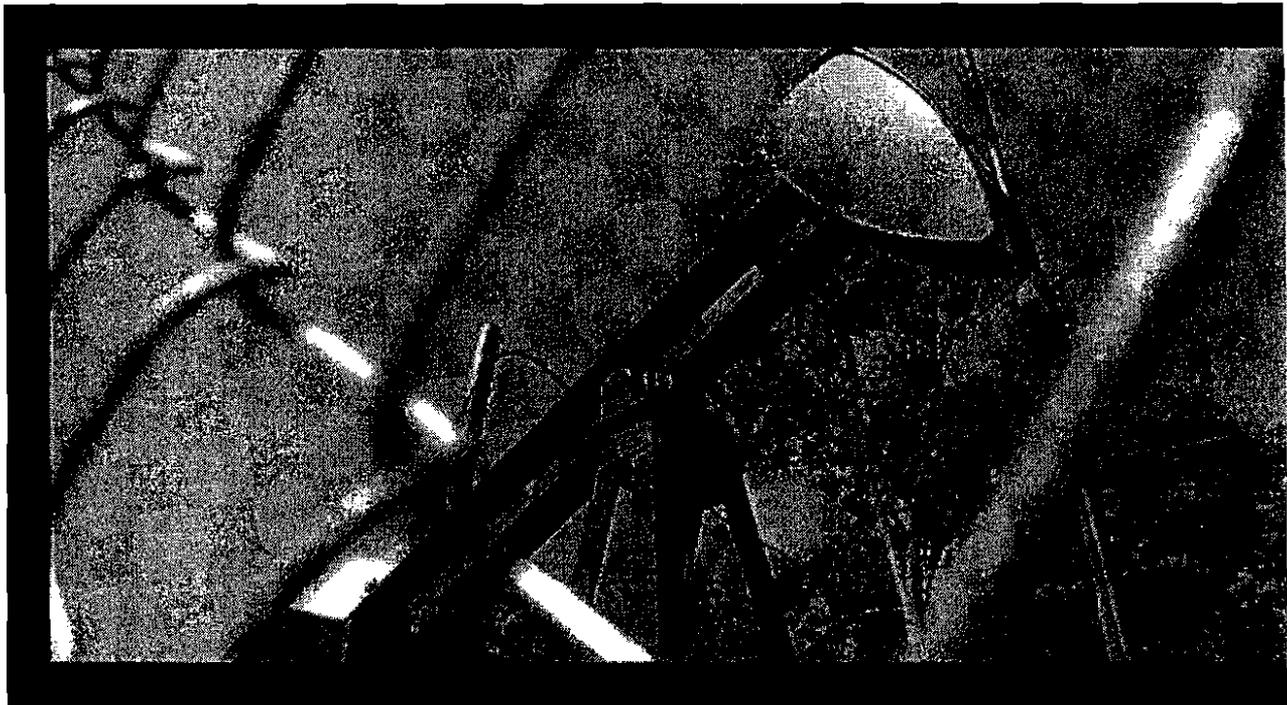
Ms. Vanessa Lemmé



Friday, April 16, 2010 |

Bristol, VA 73° Feels Like: 73° [ClearView Warnings/Advisories](#)

:::: A series on the conflicts over Southwest Virginia's natural gas wealth ::::



By Daniel Gilbert

Beneath the surface of seven Southwest Virginia counties lie pools of natural gas worth more than a billion dollars a year. Some of this gas belongs to landowners forced by the state to lease their mineral rights to private energy corporations to develop. But instead of putting royalties into the pockets of mineral owners, the state funnels thousands of dollars every month into an escrow fund that royalty owners cannot monitor or access without clearing enormous legal hurdles.

While the system has vastly expanded production of

Articles in this series

- [Part One: The money prison](#)
- [Part Two: No right of refusal](#)
- [Part Three: The Virginia Supreme Court Weighs In](#)
- [Part Four: Coal Goes on the Offensive](#)
- [Part Five: From Crisis to Sustained Loss](#)
- [Part Six: What is Missing From Escrow?](#)
- [Part Seven: An Audit Long Delayed](#)
- [Part Eight: Sue, Split or Do](#)

natural gas in Virginia, it has devoted scant resources to ensuring that companies make the required payments into escrow, which in recent years has ballooned to more than \$24 million. The result is that companies can produce gas for years without ever filing the necessary paperwork for royalties to be escrowed, and virtually no one notices that hundreds of individual accounts in escrow each month receive no deposits even though the corresponding gas wells are producing gas, a *Bristol Herald Courier* investigation finds.

Search our Database for information on escrow accounts, with balances each month, current to October 2009.

| | |
|--------------------------|----------------------|
| Unit ID | <input type="text"/> |
| Operator | <input type="text"/> |
| VGOB ID | <input type="text"/> |
| Accounting Period | <input type="text"/> |
| Search | |

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**Please note that you must choose an accounting period for each search. If you wish to see the details of an account, please click on the account name from the secondary search results. Online database created by Heather Provencher | TriCities.com*

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Virginia Gas and Oil Board votes to audit \$24M escrow fund (12/15/09)

Series on Virginia Natural Gas Escrow Fund draws praise, criticism(12/16/09)

Natural gas escrow audit's scope remains an open question (12/21/09)

Corporations correct balances in gas royalty escrow fund (12/27/09)

Legislative action? Lawmakers seek ways to distribute gas funds (12/27/09)

Richlands lawyer challenges Virginia Gas and Oil Act (1/3/10)

Va. bills seek release of natural gas money to landowners (1/14/10)

Attorney withdraws gas law challenges (1/15/10)

Va. House leader seeks to probe natural gas ownership (1/16/10)

Board approves contract to audit gas royalties in escrow (1/20/10)

Proposed bills would ensure landowners receive mineral royalties (1/24/10)

House committee passes gas royalty arbitration bill (2/4/10)

For gas royalties in limbo, a bad year (2/6/10)

Gas royalty bills advance, minus audit (2/11/10)

Arbitration bill raises old concerns of fairness (2/12/10)

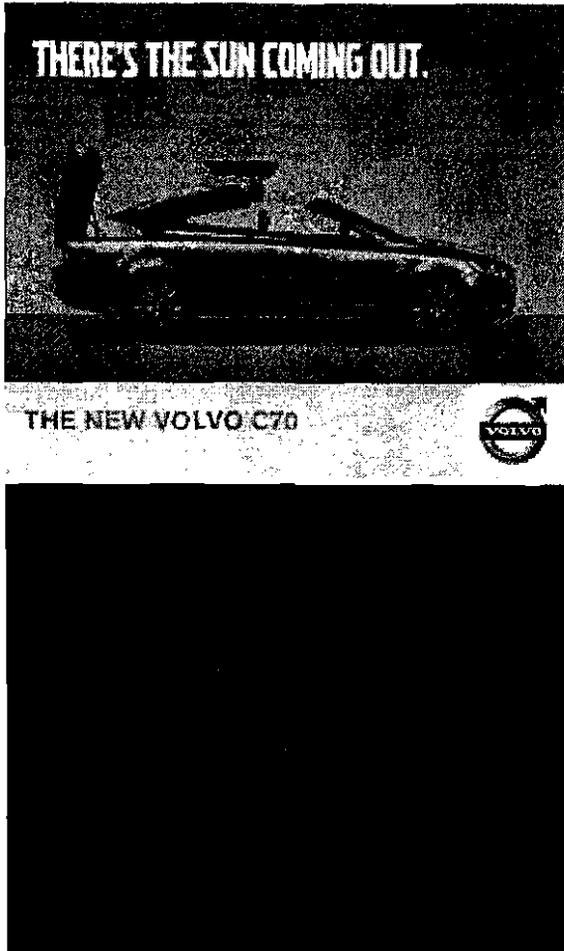
Bill aimed at freeing gas royalties poised to pass (2/23/10)

Deal sought to free gas royalties trapped in escrow (3/3/10)

Bill: Gas royalty arbitration would be voluntary (3/4/10)

Gas royalty legislation gets an early test (3/17/10)

Overdue royalty payments continue; some accounts missing



(3/28/10)

Dig Deeper: *Resources and links for more information*

Do I have money in escrow? How to use our database and determine if you may have money in escrow.

View the members of and contact information for the Virginia Gas and Oil Board

Graphics:

Hydraulic Fracturing

The Corporate Players

How Forced Pooling works



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Money made from Southwest Va. gas wells isn't reaching people it should



David Crigger | Bristol Herald Courier

A pump pulls gas from a well in Southwest Virginia

Related Links

FOR MORE INFORMATION, including a database of accounts associated with wells, click [here](#).

By [Daniel Gilbert](#) | Reporter / Bristol Herald Courier

Published: December 6, 2009

Updated: December 20, 2009

[» 6 Comments](#) | [Post a Comment](#)



Every month, a bank in Roanoke receives checks for thousands of dollars belonging to people who might never cash them.

The checks are royalty payments for people whose mineral rights the state of Virginia has leased – against their will or without their knowledge – to private energy corporations. These payments represent the financial crumbs of natural gas production in Southwest Virginia – a multibillion-dollar industry that in 2008 produced enough gas every second to heat the average home for 16 days.

But instead of reaching the pockets of mineral owners, the money is funneled into an opaque state-run escrow fund, where it has accumulated with scant oversight for nearly 20 years. As of October, the fund held more than \$24 million – and that isn't everything it should hold.

An untold number of people in the region, throughout the state and across the country have a claim to this money through their ancestors' deeds. Some are entitled to hundreds of thousands; others just pennies. But they are linked by this common dilemma: They receive no accounting of their royalties in escrow, and they face enormous legal barriers in collecting them.

The escrow fund is an obscure, untidy legacy of state lawmakers' determination to develop Virginia's most abundant gas, coalbed methane, without tackling the thorny question of who owns it. In passing the 1990 Virginia Gas and Oil Act, the legislature created a kind of eminent domain, known as forced pooling, that authorizes gas companies to produce gas belonging to others and to pay royalties into escrow when they cannot find mineral owners or if the gas ownership is in dispute.

But the state has done little to monitor the gas industry's compliance, and the billion-dollar energy conglomerates don't always make the required payments into escrow. Of about 750 active individual accounts in escrow, between 22 percent and 55 percent received no royalty payments during months when the corresponding wells produced gas over an 18-month period, a *Bristol Herald Courier* investigation has found.

The job of regulating the industry officially belongs to the Virginia Gas and Oil Board, a governor-appointed body that meets monthly in Lebanon, Va., and whose seven members serve six-year terms and receive \$50 a hearing. The board is composed of a retired college professor, two college administrators, a former cattle farmer, a representative of the coal industry, a representative of the gas and oil industry, and a state energy official from the Department of Mines, Minerals and Energy who acts as board chairman.

But the real work of ensuring that gas companies follow through with payments into escrow, fielding inquiries from mineral owners about the royalties they cannot see, and sorting out mind-numbingly complex ownership questions for close to 1,000 separate production units falls to just two employees of the Division of Gas and Oil.

That level of staffing, combined with the lack of any audits or compliance checks in the DGO's data-collection systems, means that gas operators are essentially on the honor system. The DMME, the DGO's parent agency, has acknowledged discrepancies between production and escrow deposits and vows it is taking steps to fix the problems and improve its ability to chart compliance.

The two corporations that dominate natural gas production in Virginia don't deny they've made mistakes, but they credit any missing royalty payments to accidental oversights and the complexity of mineral ownership in Southwest Virginia.

The escrow account

There are two primary scenarios that require gas companies to escrow royalties. The first arises when the well operator cannot locate mineral owners entitled to a share of production and then successfully petitions the board to lease those owners' rights.

The second scenario kicks in when different people own the coal and the gas for the same tract of land – a common occurrence in Southwest Virginia, where many landowners sold the coal beneath their surface a century ago. Splitting a mineral estate like this has created a conflict between the coal owner and the gas owner over who is entitled to royalties from coalbed methane – a gas developed by fracturing and stimulating the coal seam that accounted for 80 percent of all gas produced in Virginia in 2008.

The DGO in June estimated that 83 percent of royalties held in escrow belongs to owners in dispute over coalbed methane ownership.

The legal conflict over coalbed methane reached the state Supreme Court in 2004, when justices unanimously upheld a lower court ruling that a gas owner who sold only coal retained full rights to coalbed methane. But that hasn't made it easier for other gas owners to retrieve their royalties from escrow.

To do this, state law requires a gas owner to sue to prove ownership, or agree to split royalties with a coal owner – generally a corporation. These requirements effectively force mineral owners to give up a portion of their royalties, either to an attorney or to a coal company, and the process can drag on for years.

Until one of those two conditions is met, gas well operators are required to deposit royalty payments into escrow, where the supporting documentation – including gas volume, sale price and any deductions taken out of the royalty – is sent to a bank branch in Roanoke, electronically imaged, archived and virtually never examined.

Some of the time, the escrow fund works as intended and disburses checks to royalty owners who have a court order or a split agreement. Most of the time, it functions like the banking equivalent of an oubliette – a money prison where royalties languish until they are presumed abandoned. Since the Virginia high court's ruling in 2004, the value of the escrow fund has tripled, state records show.

Wachovia Bank, now part of Wells Fargo, manages the escrow fund and generates monthly reports that list the deposits, interest and balance for some 950 individual sub-accounts, active and inactive. Each sub-account corresponds to one or more wells that are producing gas that belongs to owners who are unknown or whose ownership is in dispute.

In such a case, any gas that a well produces should generate a royalty payment into escrow.

Discrepancies

The *Herald Courier* compared gas corporations' deposits into escrow with production numbers they reported for the corresponding wells between January 2008 and June 2009 – a period that included historically high prices for natural gas. The analysis revealed:

- On average, 30 percent of sub-accounts in escrow each month received no royalty payments even though they corresponded to wells producing gas.

- For 10 of the 18 months, 190 sub-accounts received no deposits even though the corresponding wells produced gas.
- For all 18 months, 94 sub-accounts received no deposits even though the corresponding wells produced gas.
- Gas operators sometimes failed to submit the necessary paperwork for royalties to be escrowed, meaning that some wells have produced for years and no royalties have been deposited into escrow, creating the false impression that they are inactive.
- The escrow fund is rife with accounting and administrative errors, including duplicate sub-accounts, overpayments and inactive accounts that should have been closed out.

Some of the production and escrow discrepancies could be explained by changes in the status of a well, such as when a coalbed methane well becomes part of a larger unit and a separate account is created to receive royalties. Other missing payments are the result of "clerical errors," according to officials with the Division of Gas and Oil and for gas corporations.

"There have been mistakes, as far as things slipping through the cracks," acknowledged a senior executive for EQT Corp., the Pittsburgh-based corporate parent of Equitable Production Co.

Partly to blame was a computer glitch that held payments in suspense until they reached a \$50 threshold, said Kevin West, EQT's managing director of external affairs.

"We're not making any excuses," West said, adding that EQT will deposit outstanding royalties into the state escrow fund with interest. "In this case, a mistake was made, and we're glad it was pointed out so that we could get it fixed."

Officials for CNX Gas Co., a subsidiary of Canonsburg, Penn.-based Consol Energy, refused to get into a "well-by-well discussion."

"Each well and each unit has its own set of characteristics, and without going into the history on each well, I think it's impossible to portray an accurate picture of what happened in a particular well," said Cathy St. Clair, a CNX spokeswoman.

She added, "I don't think you can infer that because a well had no deposits that deposits should have been made."

In response to the *Herald Courier's* analysis, the Department of Mines, Minerals and Energy issued a statement that it has "been aware of the discrepancies between reported production and deposits to the escrow account" and "has taken a number of steps to fix the problems. Your questions have been addressed to DMME in the middle of this work."

The agency also acknowledged that companies have failed to file the required paperwork for royalties to be escrowed – a misdemeanor offense that is punishable by a \$10,000 fine for every day of the violation, according to state law. In a case where the paperwork is four years late – the *Herald Courier* identified several – the DMME could impose a fine of \$14.6 million per case.

It is unclear whether the agency will impose any fines. Queried about enforcement, a DMME spokesman wrote that the agency will only pursue civil penalties "in cases where we raise such issues

with the operator, if the operator fails to be responsive.”

The reaction of board members – those actually in charge of administering the escrow fund, with ultimate authority over how to enforce state regulations – ranged from concern to disinterest; some did not respond to requests for comment, or refused to do so.

“Any appearance of wrongdoing or alleged discrepancy regarding the escrow account should be investigated by the Virginia Gas and Oil Board,” Katie Dye, a public member from Buchanan County, e-mailed the newspaper.

When presented with the *Herald Courier*’s findings, Bruce Prather, the board member who represents the gas and oil industry, referred a reporter to the Division of Gas and Oil.

“We don’t generate our own business on that board. It’s brought before us,” he said.

Asked if the discrepancies concerned him, Prather said, “I’ve heard of this in the past,” and suggested that a court would be a more appropriate venue to address the irregularities.

“That is where something like this ultimately is going to end up,” he said.

Coming Monday: *Jamie Hale thought he had a choice about whether to lease his gas to an energy corporation. He was wrong.*

dgilbert@bristolnews.com | (276) 645-2558

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Reader Reactions

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[Flag Comment](#) Posted by captrips25 on December 07, 2009 at 8:43 am

For generations the people of SWVA have toiled for table scraps and provided valuable resources for OTHERS.

While the rest of Virginia prospers and grows we become more impoverished.

This is nothing short of economic rape. Where is OUR reparations for the abuse and theft sanctioned by the state? When will WE see that which is rightfully ours?

My family has lived here longer than the United States has existed. Family cemeteries that are full of history and American patriots are being moved by evil corporations so they can blast away the mountain and hallowed resting places of our ancestors to get to the coal below them.

Damn these evil people who desecrate and destroy our home and birthright and walk away leaving nothing but poverty!

END THE RAPE OF APPALACHIA NOW!

[Flag Comment](#) Posted by heydude on December 06, 2009 at 9:44 pm

There alot of people that have not heard a thing from these gas companys, who will help them?

[Flag Comment](#) Posted by tmullins on December 06, 2009 at 3:08 pm

Yet another tale of 3rd world Appalachia's progress and prosperity. Politician's and Profit Machines come ahead of people.

<http://www.wisecountyissues.com>

[Flag Comment](#) Posted by abdgranny on December 06, 2009 at 2:26 pm

Maybe while the paper is investigating the gas companies this well, maybe they want to check out Appalachian Power. It's been my experience that they do the land owners the same way. Different case, same results. It's all money that the big companies can keep,if no one questions them.

[Flag Comment](#) Posted by BP on December 06, 2009 at 1:54 pm

As a retired senior editor of major eastern newspapers, I have watched with dismay the decline in the quality of journalism in this country. I had begun to fear that superb work like this series had vanished forever. Keep up the good work. You've renewed an Old Pro's faith in good newspapering.

[Flag Comment](#) Posted by lswark on December 06, 2009 at 1:44 pm

Talk about David and Goliath: Daniel Gilbert and this newspaper have taken on a multibillion-dollar industry and state government agencies that have run roughshod over individuals' rights for decades.

Now it's time for public officials to confront and resolve this issue of ownership, get this \$24 million out of escrow and to its rightful owners—the landowners of SW Virginia, their descendants and heirs.

Congratulations!

Lois Sutherland Wark
Las Cruces, New Mexico

Page 1 of 1

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Friday, April 16, 2010 |

Bristol, VA 73° Feels Like: 73° ClearView Warnings/Advisories

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Siphoning natural gas profits from under the feet of landowners



David Crigger/Bristol Herald Courier

Jamie Hale looks over a ridge to his property in Buchanan County, Va. Several gas wells boarder his property and draw the gas from under his feet.

Related Links

REPORT: The 1990 Virginia Coal and Energy Commission

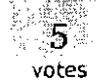
FOR MORE INFORMATION, including a database of accounts associated with wells, click here.

By Daniel Gilbert | Reporter / Bristol Herald Courier

Published: December 7, 2009

Updated: December 7, 2009

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PART TWO OF AN EIGHT PART SERIES

The low hiss from a rusty pipeline is the sound of an energy corporation sucking coalbed methane from beneath Jamie Hale's property.

On a hot August day, the gas is flowing out of the well at the rate of 1.2 cubic feet per second – producing in one day enough gas to satisfy the heating and cooking needs of the average American home for more than a year. The well – one of seven that surround Hale's 40-acre property in Buchanan County, Va. – coaxes the colorless, odorless gas to the surface by pumping water and sand at high pressure into the coal seam.

As the gas reaches the surface, it is shunted into a small pipeline, whisked off to a treatment facility, prepped for passage on an interstate pipeline to be sold to a utility provider, and ultimately delivered to homes and businesses in Virginia and other states.

The company draining Hale's coalbed methane is CNX Gas, a subsidiary of Pittsburgh-based Consol Energy and the largest gas producer in Virginia. In 2008, CNX operated 3,000 wells in Southwest Virginia and raked in gross income of \$4.65 billion from its national operations.

Hale, 37, drives trucks and operates a silo at a power plant in Buchanan County, the largest gas-producing county in the state. His wife is a teacher's aide, and they have a daughter in high school.

The Hales are entitled to a share of the proceeds from their gas, but since the wells rimming the family land began producing in 1998, they have not received a penny.

Instead, CNX cuts a check for the royalties it owes the Hales – and countless others whose gas it produces – and transmits the money into a state-run escrow account that landowners cannot monitor or access without clearing enormous legal and administrative hurdles.

Hale himself triggered this scenario by refusing to lease his gas to CNX, unaware that Virginia did not give him that choice.

"I didn't realize they could take your gas without a lease," he said.

"A shot in the arm"

In 1990, the Virginia legislature resolved that it could not allow stubborn individuals to hamper the development of coalbed methane – an abundant resource whose peculiar characteristics had prevented it from being commercially produced. Up to this point, state law provided that surface owners like Hale owned all the migratory gases beneath the surface of their land, unless they had previously sold the rights to their gas.

This statute had been unpopular with gas corporations eager to exploit the coalbed gas; they feared that doing so could trigger civil penalties for taking gas owners' property, according to a 1990 report by the Virginia Coal and Energy Commission.

The question of coalbed methane ownership is particularly nettlesome in Southwest Virginia, where many landowners sold the coal from beneath their land but retained gas rights. Splitting the mineral estate has created a conflict between the gas owner and the coal owner, each of whom lay claim to a gas that is produced by fracturing and stimulating the coal seam.

Further complicating the ownership question is that at the time most landowners sold their coal, no one knew that coalbed methane – long known as “miner’s curse” for its lethally explosive properties – would turn out to be a valuable commodity.

The General Assembly in 1990 was in a mood to stimulate development, and it had a reason to act quickly. A federal tax credit for alternative fuels was expiring at the end of the year, and industry lobbyists argued that corporations could not profitably develop coalbed methane without the benefit of the tax credit.

“The production of this gas represents a potential ‘shot in the arm’ to the economy of Southwest Virginia,” the commission wrote in its 1990 report to the General Assembly.

The legislature devised a way to develop the commonwealth’s coalbed methane resources while skirting the thorny question of ownership. The 1990 Gas and Oil Act created one regulatory body, the Virginia Gas and Oil Board, which would apply a loose grid over the gas fields and create square units of generally 60 to 80 acres for coalbed methane wells. Whenever different people owned the gas and the coal for a single tract of land, gas operators would be required to escrow royalties according to the owners’ interest in the unit until they reached an agreement or a court determined ownership.

This seemingly elegant solution paved the way for a massive expansion of coalbed methane production in the state’s most economically depressed region. But the 1990 law has another kind of legacy, too.

By requiring a royalty owner to sue for ownership or split proceeds with a conflicting claimant, the law set up an asymmetrical, David-versus-Goliath type of legal conflict that pits an individual owner against an energy conglomerate.

If Jamie Hale wants to retrieve his coalbed methane royalties from escrow, he’ll have to sue the coal company that owns the coal beneath his 40 acres. Or he’ll have to give up some of his royalties to the corporation.

Neither option looks good to Hale.

“They just came in here and started taking our gas, and there’s nothing that a poor man can do about that, honestly,” he said. “I may never get nothing.”

And Hale is several steps ahead of many mineral owners: He knows what he owns.

“We do not have an inkling”

Theresa Brents lives in Stuarts Draft, Va., some 250 miles from the two large tracts of land she inherited from her grandparents in Buchanan County.

About 12 or 13 years ago, Brents agreed to lease her mineral rights beneath 150 acres to CNX Gas. She's never received a royalty payment and had never heard of the Virginia Gas and Oil Board's escrow fund until contacted by a reporter in October.

"I've wondered about that, but not ever pursued the issue," the retired librarian said by phone. "You get this paperwork that basically says there's going to be a hearing, but it's not cost effective or generally time effective when you don't know what's going on. It's a fairly complicated matter, and I figured it was probably not worth it."

According to Gas and Oil Board records, Brents owns the gas beneath 28 percent of the acreage in unit W-9 – an 80-acre square; a coal company owns the coal, and the corresponding sub-account in escrow contains \$150,000.

Gas still flows from the original well in W-9, but the unit no longer exists as such; it is now part of a larger unit known as a gob, where multiple wells siphon coalbed methane from a mined-out panel of coal. The change in the well status required a new sub-account in escrow, in which Brents owns gas rights to 9 percent of the acreage. That account contained almost \$75,000 as of October.

And these are only two units in which Brents has an interest; her two tracts of land almost certainly spill into other units, meaning she is entitled to royalties from gas production there, too.

When informed of how much money is in escrow, Brents said, "Oh, my goodness. Oh, my word."

She would like to figure out how to collect her royalties, she said, "But I'm not even sure where to start."

She is far from alone.

The number of people entitled to royalties in escrow stretches across the country, but even local residents and state agencies are oblivious to what they own, let alone how to collect it.

Shirley Keene, of Raven, Va., and her siblings are regulars at Virginia Gas and Oil Board hearings, and have been more or less disgruntled with gas industry practices since 1993.

By her calculation, CNX has 28 producing wells on her family's two tracts of land – one 43 acres and the other 15 acres. Over the years, the Keene heirs have hired three attorneys to help them get their royalties out of escrow – so far, without success.

Keene, disabled from a car accident six years ago, has never seen an accounting of what goes into escrow. After 16 years, she has no notion of what her share of the escrow proceeds are.

"We do not have an inkling whatsoever of what we have in there," she said in a recent interview. "I don't even know how to go about it."

Neither does the Virginia Department of Corrections, which – in addition to running the Keen Mountain Correctional Center in Buchanan County – owns gas rights to 47 percent of the acreage in unit W-9.

"We don't have anyone who oversees our mineral interests, and we would have the Attorney General's Office look over our contract," said department spokesman Larry Traylor. "We're not even sure the documents exist."

Traylor's agency has some bureaucratic kin in W-9, where the Virginia Department of Transportation owns the gas to 3 percent of the unit's acreage. VDOT owns another 3 percent in unit AY-101 – whose corresponding escrow sub-account holds only \$34. It is impossible to know what should be in that account because CNX, the unit operator, never filed the necessary paperwork to escrow royalties. The gas company refused to comment on specific wells.

Asked whose job it is to oversee VDOT's mineral interests, Ken Brittle, the agency's district administrator for Southwest Virginia, said, "We don't have a person."

Both VDOT and VDOC referred a reporter to the Office of the Attorney General, where a spokesman pointed to the Department of Mines, Minerals and Energy. There, the director of the Division of Gas and Oil answered, "Each agency is independently responsible for their land management responsibilities."

"People are getting royalties"

Bureaucratic quandaries aside, an architect of the Virginia Gas and Oil Act recently said the legislation accomplished its intent.

Tommy Hudson, who runs the Richmond lobbying firm W. Thomas Hudson & Associates, was part of the 1989-90 task force that proposed the 1990 act. When asked if he was surprised that the 20-year-old question of coalbed methane ownership persists, he called it an "interesting question."

"I think the legislature set up a mechanism that will drive all parties to the negotiating table and allow a valuable resource to be developed," Hudson, who is president of the Virginia Coal Association, said by phone.

It is unquestioned that the 1990 act expanded coalbed methane production and supercharged the mineral severance taxes that local governments receive.

In one year, 1990-91, severance taxes from natural gas production in Wise County quintupled, county records show. In Russell County, gas severance taxes have risen steadily to nearly \$2 million in 2009, and Buchanan County last year banked more than \$5 million from a methane tax.

As for the question of coalbed methane ownership, Hudson said, "Perhaps the fact that there has been no final resolution shows you that it has worked as intended. People are getting royalties and apparently [. . .] there are no disputes that have risen to the point of being final and litigated."

Hudson was unaware of the \$24 million parked in escrow that royalty owners are not getting. He also seemed unaware that the ownership of coalbed methane has been litigated at length, and that the Supreme Court of Virginia has ruled on it.

The state's highest court in 2004 determined that a surface owner who sold only coal retained the rights to all other minerals, including coalbed methane. And it is that ruling that keeps people like Jamie Hale and Shirley Keene away from the negotiating table, hardening their conviction that they own 100 percent of the royalties from their coalbed methane.

Coming Tuesday: *How a long-awaited state Supreme Court decision came – and changed nothing.*

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saywhat,

I read and saw on the News sometime back where Phillip Pucket went to bat for the land and mineral rights owners but had very little if any success. The Oil and Gas companies control our elected officials and have them in their pockets.

[Flag Comment](#) Posted by saywhat on December 07, 2009 at 11:29 am

Words can not begin to explain my feelings on this.

Another case of the government legalizing the theft of private property.

Where are the politicians who are for the people on this one????

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Captive assets: conflict over gas rights traps royalties in escrow accounts



MARK GORMUS|RICHMOND TIMES DISPATCH

Representing individual land owners, Aylett, Va., attorney Peter Glubiak won a 2004 Supreme Court of Virginia decision over a North Carolina-based coal company. The ruling awarded landholders royalties on 100 percent of the coalbed methane underlying their property.

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FOR MORE INFORMATION, including a database of accounts associated with wells, click [here](#).

By [Daniel Gilbert](#) | Reporter / Bristol Herald Courier

Published: December 8, 2009

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3



In 2000, a country lawyer named Peter Glubiak listened to his secretary's story of an energy giant draining coalbed methane gas from her family's land, and of the royalties that were locked up in a state-run escrow account.

The source of Ann Graham's dilemma, Glubiak realized, was a question that legislators ducked when they passed a 1990 law to spur the development of coalbed methane gas: the all-important question of ownership.

Until passage of the Virginia Gas and Oil Act, no one in the state had given much thought to who owned a gas that clings weakly to a coal seam, long considered nothing but dangerous to miners for its explosive properties. By creating a legal mechanism for energy corporations to commercially produce coalbed methane, the General Assembly dramatically raised the stakes of that question – particularly when different people owned the coal and the gas rights for the same tract of land.

A circuit court's decision could tip millions of dollars in royalties one way or the other, Glubiak calculated, and either result would unquestionably end up in front of the Supreme Court of Virginia.

As it turned out, that projection proved half true.

In Buchanan County Circuit Court, Glubiak argued that Graham and another family, the Ratliffs, had severed only the coal from their land and owned all of the gas beneath it, including coalbed methane. Opposing him was a North Carolina-based coal company, Harrison-Wyatt, represented by J. Scott Sexton, a prominent mineral lawyer out of Roanoke, Va.

Glubiak prevailed in the trial court and in 2004, the Supreme Court of Virginia unanimously affirmed the lower court's decision.

Citing common definitions of coal at the time the Ratliffs sold the mineral, the Supreme Court held that the "title to the [coalbed methane] did not pass to the coal owner," and ruled that the Ratliffs were entitled to all royalties in escrow and future royalties from gas beneath their land. About a year later, the family collected their royalties from escrow and began receiving monthly royalty checks for 100 percent of their interest in the gas.

"When we got the Supreme Court ruling in the Ratliff case, my hope was that this would evolve into a pretty lucrative practice," Glubiak said in a recent interview. "Very disappointingly, it has not."

In the five years since Glubiak's high court victory, millions of dollars from coalbed methane royalties have flowed into the Virginia Gas and Oil Board's escrow fund, tripling its balance. Despite the Harrison-Wyatt precedent, those royalties are no easier to extract from escrow today than before the court rulings.

Already tested

Four days after the Supreme Court's decision, the Department of Mines, Minerals and Energy issued a statement making it clear that the ruling changed nothing in how it regulated coalbed methane production.

The case “specifically applies to three particular tracts of land in Buchanan County,” the state agency wrote.

Not only did the DMME and the Virginia Gas and Oil Board lack the authority to determine coalbed methane ownership, the agency wrote, “neither the Virginia courts nor the legislature has addressed this ownership issue other than on the basis of analysis of individual deeds.”

In other words, the board still would escrow royalties from coalbed methane production whenever the coal and the gas were separately owned for the same tract of land. For a surface owner who had severed only the coal from his land to collect coalbed methane royalties, he would have to fight Glubiak’s fight all over again.

This is incomprehensible to many landowners who, like Ann Graham and the Ratliffs, own the gas under their land.

Force-pooled owner Jamie Hale has read his deed and the Supreme Court’s opinion that gave Graham and her family 100 percent of the coalbed methane.

“My case is identical to hers,” Hale said as he drove with a reporter through the mountainous 40 acres he owns, where seven wells are draining coalbed methane.

“Now we’re told we have to prove something we’ve already proved. Why should we have to hire a lawyer to prove what already belongs to us?” he asked. “If you do hire an attorney, you might as well take a split agreement. I really don’t know where to go or what to do.”

Shirley Keene is an heir to two tracts of land that contain 28 gas wells. She has always believed she and her family should receive 100 percent of the royalties from coalbed methane, she said recently.

“When the Ratliffs won their case, then we knew that it was ours,” Keene said. “If Ratliff had turned the other way, you would never have heard a word from us.”

At his home outside Richmond, Va., Graham Tiller and his wife have been waiting on a decision that will settle, once and for all, who owns coalbed methane.

Tiller, 77, is a Dickenson County native with an interest in more than 700 acres. His great-grandfather sold the coal and left him, in the eyes of the state, in conflict over coalbed methane with the current coal owner, Range Resources.

“I can’t afford a lawsuit by myself, but I’m not going to give it to them,” Tiller, who retired as a utilities coordinator for ICI, a chemical company in Hopewell, Va., said of splitting with the company. “If I had plenty of money, I’d have done had a lawsuit with them.”

The DMME’s logic – in continuing to escrow royalties when coalbed methane ownership is in dispute – escapes several state legislators.

“I think the Supreme Court’s already tested that,” Sen. William Wampler, a Bristol Republican, said when asked about the lingering controversy over coalbed methane ownership.

“If you are a small royalty owner, and you have \$500 in escrow, how do you have the financial resources to claim those dollars when that probably doesn’t even cover attorney fees?” Wampler asked. “If we have \$25 million in escrow, that’s a lot of money. I don’t know why the DMME wouldn’t hire a

dedicated person to contact the names of those who have been force pooled.”

The answer is that once royalties go into escrow, members of the Virginia Gas and Oil Board have their hands tied; the board can only release funds from escrow with a court order, or an agreement between people who dispute coalbed methane ownership.

One legislator believes the board should not be placing coalbed methane royalties in escrow at all.

“It should never go into escrow,” Sen. Philip Puckett, a Lebanon Democrat, said in an interview.

This might run counter to his personal interest: In a recent twist, the bank that employs Puckett, First Bank & Trust, has won the contract to manage the escrow fund for the next four years beginning in January.

Puckett repeatedly has said that if an individual has a deed similar to the Ratliffs’ – severing only the coal – then the owner should be able to present that to the board and claim the royalties. The senator is looking into the possibility of amending the Virginia Gas and Oil Act to codify the Supreme Court’s ruling.

“Most of our people can’t afford to go to court,” Puckett said.

But suing for ownership remains virtually the only way for a surface owner to collect 100 percent of the coalbed methane royalties.

Leveraging a precedent

The coal industry likewise has taken the stance that coalbed methane ownership hinges on the language of specific deeds, and the Harrison-Wyatt decision did not conclusively resolve the ownership question.

In private, though, at least one major corporation acknowledged the significance of the Supreme Court’s ruling, and waived its claim to coalbed methane royalties, according to correspondence obtained by the *Bristol Herald Courier*.

In 2004, a few weeks after the Supreme Court ruling, an agent of three heirs with substantial landholdings in Dickenson and Buchanan counties contacted the energy company with whom they had previously agreed to split coalbed methane royalties down the middle.

Charlie Bartlett, a consulting geologist and agent for the 1,000-acre William Baker estate, wrote to the president of Pine Mountain Oil and Gas and requested 100 percent of the royalties.

On June 9, 2004, Richard Brillhart, then president of Pine Mountain, contacted the operator of the coalbed methane wells on the Baker land about Bartlett’s request.

“Given the close similarity of the language in the severance deed at issue and the severance deeds analyzed by the Virginia Supreme Court, it appears that, at this point in time, Pine Mountain would not be successful in a claim for the coalbed methane on this tract,” Brillhart wrote.

Brillhart waived his company’s claim to the gas produced by six wells; the next month, he waived a claim to royalties from two additional wells.