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COLO. OIL & GAS CONS. COM.

) CAUSE NO. 1

) Docket 12-11-10

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BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

IN THE MATTER OF THE PAYMENT OF  
PROCEEDS FOR WELLS OPERATED BY SNYDER  
OIL CORPORATION, LOCATED IN VARIOUS  
SECTIONS OF TOWNSHIP 4 NORTH, RANGE  
64 WEST, 6TH P.M.

PURSUANT TO NOTICE to all parties in  
interest, the above-entitled matter came duly on  
for hearing at the offices of the Colorado Oil and  
Gas Conservation Commission, Room 801, 1120 Lincoln  
Street, Denver, Colorado 80203, on Wednesday,  
December 20, 1996.

BEFORE:

CHAIRMAN LOGAN MacMILLAN

VICE CHAIRMAN ALLAN HEINLE

COMMISSIONER CAROLINE BLACKWELL

COMMISSIONER BRUCE JOHNSON

COMMISSIONER CLAUDIA REBNE

COMMISSIONER MARLA WILLIAMS

COMMISSIONER MIKE MATHESON

Richard Griebeling, Director

Brian Macke, Deputy Director

Patricia Beaver, Manager of Commissioner Affairs

1 CHAIRMAN MacMILLAN: The next matter  
2 before us is Cause No. 1, Docket No. 12-11-10, in the  
3 Wattenberg Field. The applicant, Maria Owens, through  
4 her attorney, Dante Zarlengo, has requested a payment  
5 of proceeds decision for wells operated by Snyder Oil  
6 Corporation located in various sections of Township 4  
7 North, Range 64 West. Protestant in this matter is  
8 Snyder Oil Corporation, through their attorney, Cheryl  
9 Howell. This matter has been continued to this  
10 hearing from the November hearing.

11 A motion to enforce settlement agreement  
12 filed by -- there has been a motion to enforce a  
13 settlement agreement filed by the protestant.  
14 Response to the motion to enforce the settlement  
15 agreement has been filed by the applicant. There was  
16 a prehearing conference held, and there are  
17 stipulations that have been provided from that  
18 prehearing conference. Could we have the applicant,  
19 well, let's see, do we want to have the attorneys for  
20 both the applicant and the protestant to step forward  
21 and state the stipulations from the prehearing to get  
22 a concurrence on that on the record, and then have  
23 opening statements from those and then we'll bring  
24 people forward.

25 MR. ZARLENGO: That would be fine.

1 Mr. Dante Zarlengo. We have labeled the written  
2 stipulation that Mrs. Owens and I have signed as our  
3 Exhibit A. So, we intend to put that into evidence as  
4 our very first exhibit. And, as I said, we have  
5 reduced to writing those things that we were able to  
6 reach an agreement upon the other day. So, that was  
7 the procedure that I had in mind, subject to counsel's  
8 agreement, of course, your agreement.

9 CHAIRMAN MacMILLAN: Ms. Howell, have  
10 you had a chance to review their Exhibit A?

11 MS. HOWELL: Yes, I have, and I have  
12 signed it, so we have a written stipulation, which is  
13 what he is referencing.

14 CHAIRMAN MacMILLAN: Would one of you  
15 want to review the components of that?

16 MR. ZARLENGO: I believe we have both  
17 reviewed the document extensively. We actually put  
18 the final touches on it no more than a couple of hours  
19 ago. I will go ahead and distribute the exhibits.  
20 That will be the first one, so Mrs. Howell and the  
21 commissioners can begin.

22 CHAIRMAN MacMILLAN: What I am  
23 interested in is an oral summary for the  
24 commissioners. Do either of you care to do that?  
25 Have you had a chance to review this, Lori?

1 MS. COULTER: No, I haven't. None of us  
2 have seen your stipulation, although you keep  
3 referring to -- we really need to know what the  
4 contents of that is, and we would prefer that, you  
5 know, you do somewhat of an opening statement so that  
6 we can get a rundown on what the issues are going to  
7 be, what's been agreed to already, and --

8 MR. ZARLENGO: My plan was to go ahead  
9 and distribute a package of exhibits to each of you,  
10 the first of which would be this written stipulation,  
11 and then begin my opening remarks.

12 MS. COULTER: Okay. That's fine.

13 MR. ZARLENGO: Is that acceptable to  
14 everyone?

15 CHAIRMAN MacMILLAN: Okay.

16 MS. COULTER: Just, we're not ready to  
17 move to have those submitted into evidence. Then, the  
18 other question I have, is, has this motion to enforce  
19 settlement agreement been withdrawn? I just need to  
20 know, for the record.

21 MS. HOWELL: Essentially, yes. You  
22 advised us through Trisha that you didn't believe the  
23 commission had the jurisdiction to enforce a  
24 settlement agreement, and so we decided not to pursue  
25 it further, just move on to the merits.



1 MS. COULTER: All right. Thanks.

2 MR. ZARLENGO: As I said earlier, my  
3 name is Dante Zarlengo. I am the attorney for the  
4 applicant in this case.

5 COMMISSIONER MATHESON: Move the stack  
6 to us, if you wish. Any which one.

7 MS. BEAVER: Let me have the original.

8 COMMISSIONER MATHESON: Pass them down.

9 MR. ZARLENGO: With that, I will begin  
10 my opening remarks. This involves a situation where  
11 there were a number of wells that had been drilled by  
12 Snyder and, in some cases, a few wells that were  
13 drilled by Snyder's predecessor company called Petro  
14 Quest. Mrs. Owens owns an overriding royalty interest  
15 of record, we'll attempt to show, in each of those  
16 wells. The wells involved are the wells set forth on  
17 Exhibit A to A20, Exhibit A, if you will, to this  
18 stipulation of facts and issues that we have  
19 previously been discussing.

20 With respect to these wells, there has  
21 been no proceeds of production distributed, for the  
22 most part, to Ms. Owens, to her interest. There were  
23 some small payments made on various wells. Those are  
24 reflected on Exhibit A, and have likewise been  
25 stipulated to. The other component of the case, the

1 gross proceeds from the well are also set forth on  
2 Exhibit A and the date of first sales is set forth on  
3 Exhibit B, and the applicable interest rate. Should  
4 the commission find that Ms. Owens is entitled to be  
5 paid at this time, under statute, is summarized on  
6 Exhibit C. These items have been agreed upon and  
7 stipulated to. So we don't need to spend time on  
8 those details.

9                   This is a situation where Ms. Owens  
10 began dealing with Snyder as far back as 1988. She  
11 had questions with respect to certain division orders  
12 that were given to her on some of the wells at that  
13 time. Those questions were never completely answered  
14 until 1995. There were other questions that came up  
15 on other wells with respect to which she received a  
16 division order, and those questions were never  
17 answered effectively until we filed this application  
18 just this year. You will notice that Exhibit A  
19 reflects the amount of money involved. Exhibit B  
20 reflects the date of first sales. All of these wells  
21 have been on-line for longer than the statutory period  
22 involved. For most of these wells, we intend to  
23 show -- one of the things we have not been able to  
24 stipulate to is on what wells have there been division  
25 orders submitted with respect to Ms. Owens' interest.

1 We intend to show that only on a few of these wells  
2 was Ms. Owens' interest ever even recognized to the  
3 point where they would submit to her a division order.  
4 Her funds have been in suspense, as reflected on  
5 Exhibit A, and it was only after we filed this  
6 application as to most of the issues raised that she  
7 learned that her money was in suspense; that she had  
8 learned that these wells had been drilled, only last  
9 spring, and she learned the reason why her money was  
10 in suspense, or what we think are the reasons why her  
11 money is in suspense.

12 So, the first key point is that we feel  
13 that there was an inappropriate amount of  
14 communication on Snyder's part with respect to this.  
15 When things drag on for years and years, questions  
16 aren't answered, when wells are drilled for a two-,  
17 three-, four-year period of time, with no one even  
18 recognizing the interest, or advising the person that  
19 well had been drilled, or asking them to sign a  
20 division order or pointing out that their interests  
21 might have had a problem, we don't think that's  
22 appropriate.

23 The second issue is whether or not  
24 there's reasonable doubt as to this title. We will  
25 put on some evidence which will show the source of

1    this title and which will show what we believe  
2    Ms. Owens' owns in these wells. It's important for  
3    the commission to realize that she claims a larger  
4    interest than what is reflected on Exhibit A, but, for  
5    purposes of this hearing, she is only requesting to be  
6    paid on a part of that interest. The amount is  
7    reflected on Exhibit A, and the reason for that is  
8    that there are other disputes between Ms. Owens and  
9    Snyder to her larger interest, if you will. We're  
10   willing to leave those for a different day. We will  
11   solve those in a different manner, but with respect to  
12   the matter now before the commission, she is only  
13   seeking to be paid on what she considers her minimum  
14   interest, or the interest that she thinks she owns  
15   free of any title defect. So, that's really what the  
16   issues are. And that's what we have been able to  
17   stipulate to.

18               We have calculated out the interests  
19   that we believe she's due and we will have Mr. Swinney  
20   testify to that. So, that concludes my opening  
21   remarks. Are there any questions up to this point?

22               CHAIRMAN MacMILLAN: Not hearing any,  
23   thank you. Mrs. Howell.

24               MS. HOWELL: Commissioners. It's our  
25   position in this case that the statute in question is

1 aimed at a situation where someone -- where an oil  
2 company doesn't pay a person, period, for no good  
3 reason at all, and that's not what happened here. The  
4 statute -- the language of the statute itself states  
5 that it doesn't apply or that the commission isn't  
6 going to order somebody to pay if there's a reasonable  
7 doubt by the payor as to the payee's clear title to an  
8 interest in proceeds. And that's what we believe is  
9 the case here; that there are title problems with  
10 regard to these overriding royalty interests; and, for  
11 that reason, Ms. Owens has not yet been paid the  
12 amount she's claims.

13 We believe that the statute doesn't  
14 cover this type of situation. An oil company like  
15 Snyder faces a risk of liability when it comes to  
16 paying out money on oil and gas production. And if  
17 there's a question as between, you know, more than one  
18 person as to who owns what, you can't just go pay that  
19 money. You have to stop and say, well, you know, we  
20 have a title problem here, there's, you know,  
21 uncertainty, some sort of problem with regard to the  
22 interest. And, in that situation, the company can't  
23 just go ahead and pay the money because of the  
24 liability that they would incur. And the statute  
25 recognizes that, with the exception regarding clear

1 title. The reasons that Snyder had reasonable doubt  
2 in this situation, I would briefly mention. First of  
3 all, the title opinions that Snyder obtained when it  
4 drilled these wells, most of the wells in question  
5 were either drilled in 1994, and I think the bulk of  
6 money that's at issue are the wells in Section 16 and  
7 36, and, again, they were mostly drilled in 1994.

8 Snyder obtained title opinions from  
9 lawyers from various firms across the city, and said,  
10 you know, please tell us who owns what in these lands.  
11 When they got those opinions back, the opinions talked  
12 about override conveyances to Maria Owens and to  
13 several other people who all apparently worked at  
14 Petro Quest at one time. Between those four people,  
15 the title opinions said there are questions as to who  
16 owns what. There are questions to what the total  
17 amount is that these four people together owned, and  
18 for that reason, you -- Snyder should go out and get a  
19 stipulation of interest among these four people.  
20 Stipulation of interest is, as you may well know, is a  
21 document where parties enter into an agreement and say  
22 here's what I own, and I agree that anything other  
23 than that, I don't claim, and I convey to other  
24 people. It solves problems of records. It's a  
25 written document. It's recorded in the county records

1 to clear up problems that may exist.

2                   These wells break down into several  
3 packages, and the wells are grouped in packages,  
4 because they have similar chains of title. And the  
5 Package 3 and 4 wells are several wells in which Maria  
6 Owens was being paid. She had been sent division  
7 orders, she was being paid, and on May 27 of '95, she  
8 sent a letter to Snyder saying, I don't agree with the  
9 number that you have calculated. I revoke my division  
10 order, and, you know, I attach hereto the way I  
11 calculate my interest. And it was at that point that  
12 Snyder put those interests in suspense. And that's  
13 standard operating procedure in oil companies, if  
14 somebody revokes their division orders and says, you  
15 know, I own something different. That creates a  
16 question as to who owns what and creates a risk, and  
17 so, it was Ms. Owens' own actions with respect to the  
18 Package 3 and 4 wells that caused those wells to be --  
19 payments stop being made in probably sometime after  
20 May 27 of '95.

21                   Something we'll mention some today are  
22 superseding and replacing assignments. And what  
23 happened is that there were some assignments from  
24 Petro Quest to Mr. Swinney and then from Mr. Swinney  
25 out to Ms. Owens and three other people. But then,

1 later, another set of assignments would be made that  
2 were similar to the first set, but not the same,  
3 exactly, and at the bottom, they said these  
4 assignments supersede and replace the prior  
5 assignments. But they were only signed by the grantor  
6 so, the -- as if I convey something to another person,  
7 and then I do -- and record that, and then I do  
8 another assignment, say I am conveying to that  
9 person -- I change it a little, but I don't have that  
10 person sign it. That doesn't work. And so -- and  
11 there were a number of these superseding and replacing  
12 assignments that were placed of record, causing more  
13 confusion as to what the interests were in these  
14 particular leases. There's correspondence from the  
15 four people that I mention, these -- it's Ms. Owens,  
16 Lawrence Hartnett, Janet Swinney, now, Janet McIntosh,  
17 and Richard Swinney. Different of these people have  
18 written to Snyder and said, you know, I claim this, I  
19 claim that, and the fact is that it's a very confusing  
20 situation. You know, the title opinions show that,  
21 the volume of paper that we have all brought in here  
22 today and that has been generated prior to today shows  
23 that, and even the correspondence from the applicant  
24 shows that, because the situation continues to change.

25 The statute that you are asked to apply



1 today requires, prior to bringing an action, that the  
2 parties give the payor written notice by certified  
3 mail of failure to make payment, and then give 20 days  
4 to respond in writing. Gives the oil company 20 days  
5 to respond.

6 Well, that demand letter was sent out in  
7 June 26, I think, of '95, by Mr. Zarlengo. If you  
8 compare the interests that are claimed in that demand  
9 letter to the interests that are claimed in the  
10 application, they are different. There are wells on  
11 the application that weren't on the demand letter. In  
12 almost every instance, there's -- either that well  
13 wasn't on the demand letter or that interest that  
14 appears to be claimed is different. And so, that sort  
15 of demonstrates what Snyder's been going through here,  
16 which is they get a letter, they try to figure it out,  
17 it's a confusing situation, they get a different  
18 letter, they try to figure it out, and, so, it's not  
19 as though this is a clear-cut situation where Snyder  
20 just said, forget it, you know, I don't feel like  
21 paying. It's a title problem. It's a continuing  
22 shifting of the position of the applicant, and, you  
23 know, we certainly wish that all of this time hadn't  
24 gone by, but it's not as though there wasn't a reason  
25 for it.

1                   And so, finally, we would just say that  
2 we have two witnesses here today. Pete Wall is a  
3 title lawyer, oil and gas lawyer, in town, who wrote  
4 some of the opinions in question, and he will talk  
5 about title issues. Then Leon Hinton, from Snyder,  
6 will talk about his experience with trying to figure  
7 out what interests Ms. Owens owns.

8                   And as Mr. Zarlengo mentioned, this idea  
9 of a minimum interest claimed in the application is  
10 true. That the application showed a smaller interest  
11 than had ever been claimed before by Ms. Owens, but  
12 that was also the first time that that interest was  
13 claimed, which was the application that was filed  
14 September, also, of '95, so it was -- that was the  
15 first time she said okay, okay I will take this  
16 smaller interest. Up until then, the argument had to  
17 do with other things, so the fact that time went by, I  
18 don't think, tells you that much when what was going  
19 on was about something other than now what is before  
20 the commission. And, essentially, we believe that  
21 it's very clear that Snyder has that -- there is a  
22 reasonable doubt by Snyder as to clear title to an  
23 interest in these proceedings. Thank you.

24                   MS. COULTER: Couple of questions for  
25 you, for both attorneys, actually. Are you asking us

1 to determine title?

2 MR. ZARLENGO: I am -- I intend to show  
3 that this is an interest that's owned, and we have  
4 stipulated that there is some interest that's of  
5 record in Ms -- vested in record of Ms. Owens. The  
6 way I see the issue is whether or not that interest is  
7 subject to quote, unquote, reasonable doubt. So,  
8 we're not asking you to adjudicate anybody's title.  
9 What we are asking you to do is to have Snyder pay  
10 us -- without putting words in Ms. Howell's mouth, she  
11 obviously feels that they fall within the setting of  
12 the statute as to whether there's a reasonable doubt  
13 to this interest. We don't feel there is a reasonable  
14 doubt, and we'll try to present evidence to that fact.

15 MS. COULTER: I am a little bit  
16 confused, but, because, our statutory authority 34-60  
17 118(5), which I know you guys are familiar with,  
18 indicates that you don't have to comply with the  
19 payment deadlines if there's a reasonable doubt as to  
20 title.

21 MR. ZARLENGO: Correct.

22 MS. COULTER: Now, if today we go  
23 through and we say there was no reasonable doubt as to  
24 title, or there was reasonable doubt as to title, is  
25 this going to resolve your guys dispute, or are you

1 still going to have a title issue?

2 MR. ZARLENGO: It will not resolve the  
3 dispute as to the actual interest owned by Ms. Owens.  
4 As I said, there is a larger interest that she  
5 actually feels she owns. We feel we have to go to  
6 court to get that determined, should it come to that.  
7 What -- all we're seeking here is that we would like  
8 to -- the commission to find that there's no  
9 reasonable doubt for this portion of the title. We  
10 can get paid the money in suspense, continue to get  
11 paid in the future as to this portion of her interest.  
12 Does that answer your question?

13 MS. COULTER: I would like to hear what  
14 Ms. Howell has to say about it. It seems a little  
15 ridiculous for us to say that delay was reasonable or  
16 not reasonable, if you guys are still fighting about  
17 title.

18 MS. HOWELL: Well, as Mr. Zarlengo has  
19 said, we have been advised that Ms. Owens intends to  
20 pursue this larger interest that she claims in court.

21 MS. COULTER: So, that's a separate  
22 forum.

23 MS. HOWELL: That hasn't been filed. We  
24 don't know, but we have been told she intends to do  
25 that with regard to this lesser interest. Our

1 position is that the same issues are all wrapped up in  
2 this, and they are saying that they are not, that  
3 there's no title problem to the small interest. We're  
4 saying, no, the same title problem that's been out  
5 there the whole time applies to whatever piece of it  
6 you look at. So that's what I think the real dispute  
7 is here.

8           And one thing I would like to clear up,  
9 when we talk about the fact that there are agreed  
10 numbers, stipulated numbers, which are listed on  
11 there, in going through and trying to settle the case,  
12 analyze the case, Snyder came up with some numbers as  
13 to what they thought was the most likely  
14 interpretation of the documents. And that's what they  
15 offered to the other side to say, you know, let's go  
16 forward with these numbers, but still with the title  
17 requirements as to what we have to do to make this  
18 clean, but talk these numbers. And so, that's the  
19 nature of the agreement as to the interests. It's a  
20 conditional agreement.

21           MS. COULTER: Just for clarification,  
22 you don't have an agreement with respect to title on  
23 the wells that are before us today, or you do?

24           MS. HOWELL: We don't have an agreement  
25 as to whether the title -- whether there's an issue as

1 to clear title. Does that answer --

2 MS. COULTER: Let me try and explain  
3 this. You know, we can order payment of proceeds, and  
4 one of the issues that's before us is about this  
5 delay, and whether or not that delay was a reasonable  
6 result of title dispute. So, if we come back to you  
7 today and we say, that delay was reasonable or not  
8 reasonable, are you guys just going to walk out of  
9 here, Snyder, for instance, and say, well, this was or  
10 was not reasonable. We still don't have to pay,  
11 because there's a title dispute. That's, I mean, why  
12 should we determine this, if that's what you are going  
13 to do?

14 MR. ZARLENGO: In effect, what we want  
15 the commission to decide, that any title dispute that  
16 exists between the parties is not of such a nature  
17 that it affects this minimum interest. So, regardless  
18 of how the existing title dispute between the parties  
19 is resolved, she owns at least this interest, or she  
20 is entitled to be paid on at least this interest.

21 MS. COULTER: Interest for which  
22 Ms. Howell has indicated to me title is disputed.

23 MR. ZARLENGO: She feels there's a  
24 reasonable doubt even to this interest. We feel that  
25 the title objections that have been raised to us,

1 regardless of how much those are decided between us,  
2 Ms. Owens still owns this amount, free of those title  
3 defects. She owns a minimum amount. That's what we  
4 call that.

5 MS. COULTER: So, would both parties  
6 agree that the interests that we're working on today,  
7 with respect to whether or not that delay is  
8 reasonable, is in dispute, the title to those wells  
9 are in dispute?

10 MR. ZARLENGO: By dispute?

11 MS. COULTER: By dispute, that,  
12 Ms. Howell, do you agree that Ms. Owens has title to  
13 the wells that we're going to determine payment of  
14 proceeds on today?

15 MS. HOWELL: We agree that there have  
16 been assignments to Ms. Owens, but we don't agree that  
17 she has clear title. We say that, you know, that  
18 she's got something, she and these other three people  
19 together have something; but we need curative  
20 documents, a stipulation of interest between them to  
21 make it -- before she has clear title to the interest  
22 she claims.

23 MS. COULTER: So, it's difficult for  
24 this commission, then, to determine what payment of  
25 proceeds is going to be when there's a dispute already

1 as to the division of the title of those wells, and  
2 we're not the body to be determining title. You come  
3 before us and you ask us, was the delay reasonable.  
4 Was it -- was there a dispute as to title, is that  
5 delay reasonable, and we say, well, maybe it was,  
6 maybe it wasn't, depending on how the commission comes  
7 down, but Ms. Howell still has a right to walk out of  
8 here and say, fine, there might have been a delay, but  
9 there still is no title. We still don't know what  
10 that title interest is.

11 MR. ZARLENGO: With respect to that, I  
12 would simply answer, as to this minimum interest that  
13 we're seeking to be paid on, what the commission would  
14 find, what I think would result would be that there is  
15 not a reasonable doubt of such a nature that would  
16 preclude payment to Ms. Owens at this particular point  
17 in time and into the future. The title dispute that  
18 exists does not preclude her from being paid as to  
19 this particular interest. And that fits under the  
20 statutory authority, because the commission has to  
21 decide whether or not there's a reasonable doubt as to  
22 this portion of her title. And that's really the  
23 issue. Is there reasonable doubt of such a nature  
24 that would preclude her from being paid. That's what  
25 we're asking you to actually decide, and there could



1 be other types of title disputes, there could be other  
2 types of things that aren't resolved here, and  
3 perhaps, in the greater scheme of things, most of the  
4 issues won't be resolved here. But, in the meantime,  
5 our position is that, as to this minimum interest, the  
6 nature of the disputes between us is not of the kind  
7 that would preclude her being paid. And I think that  
8 that's exactly what the statute speaks to.

9 It speaks in terms of, is there a  
10 reasonable doubt. There are lots of title defects  
11 that arise, as I think we all know. I will try to  
12 show during the case, that our technical title has  
13 defects, but they don't preclude people from being  
14 paid. As industry standard, it's really more -- that  
15 is what really more where we're going to, I think.  
16 That's what the statute contemplates. Can we pay  
17 these people or is the title dispute of such a nature  
18 that they can't be paid.

19 MS. COULTER: See, that's -- let me just  
20 look at 3 here. I am looking at 3, it says compliance  
21 with the payment of proceeds shall be suspended when  
22 payments are withheld for a period of time due to the  
23 following reasons: One of those is whether or not  
24 there's a reasonable doubt as to title, as to clear  
25 title. So, essentially, you know, we're here to

1 determine whether or not the delay was reasonable.  
2 And I am saying, if we even say, okay, we come down  
3 with the determination that the delay was reasonable,  
4 the delay was not reasonable, and you still walk out  
5 of here with the title dispute,

6 MR. ZARLENGO: In the meantime, she's  
7 being paid. That's the whole point. We can resolve  
8 our title issue any way we wish. In the meantime, the  
9 commission has found, under the statute, that that  
10 particular condition was -- condition did not exist,  
11 and under general industry standards, the doubt is not  
12 reasonable, or of such a nature that would preclude  
13 her from being paid.

14 MS. COULTER: The only thing we can  
15 determine is doubt as to delay, to the effect of that  
16 delay and whether or not there should be a penalty  
17 period during that delay. So, she shows a reasonable  
18 doubt as to title, the delay -- this section can't  
19 have been complied with until that's cleared up, so  
20 the only --

21 MR. ZARLENGO: That's correct.

22 MS. COULTER: -- the only thing we  
23 prove, reasonable doubt, and walk out, but we're not  
24 going to determine title.

25 MR. ZARLENGO: Or you could find that

1 any doubt that exists is not of such a nature that  
2 would preclude payment of this interest, in which  
3 event we also go out and solve our title problem. In  
4 the meantime, Ms. Owens is being paid.

5 MS. COULTER: It seems a little --  
6 Carolyn, maybe you want to comment on this.

7 COMMISSIONER BLACKWELL: I guess I am a  
8 little bit confused on what kind of doubt could be  
9 insignificant in determining whether or not Ms. Owens  
10 has a clear title. I am not really sure what that  
11 evidence might be.

12 MR. ZARLENGO: Two things. The title  
13 defects that have been identified to us at this point,  
14 and again only recently, we believe, are of such a  
15 nature that they only -- that regardless of how they  
16 are resolved, Ms. Owens owns this minimum interest.  
17 So she ought to be paid until they are resolved.  
18 That's our whole point. Specifically, there are a  
19 series of assignments in this title whereby the issue  
20 is whether or not the interests, the overriding  
21 royalty assigned is to be proportionately reduced to  
22 the working interest owned by the owner of the oil and  
23 gas lease. If I own the oil and gas lease, I own 50  
24 percent of it, I give you a 3 percent overriding  
25 royalty, am I giving you 3 percent of production or am

1 I giving you three times a half. That's one of the  
2 issues. In a simplified situation, all I want to be  
3 paid for is three times a half. I would own that  
4 regardless of who's right about whether or not my  
5 interest is 3 or half a 3.

6 That, in the simplest terms, is what  
7 we're here to do today. And I think this commission  
8 has ample authority to decide, well, there may be some  
9 problems, there may be this or that, that is involved  
10 in this, but, you own at least this much, Ms. Owens.  
11 They may have a reason to suspend part of that 3  
12 percent, because there's a dispute as to whether it's  
13 3 or half of a 3. But they don't have a reason to  
14 suspend the half that you own, regardless of how the  
15 dispute is resolved.

16 The second point, in answer to your  
17 question, is this: There are many title requirements.  
18 For example, someone owns a mineral interest. They  
19 die, they're a resident of Nebraska, all of the hoops  
20 are jumped through, everything is done perfectly in  
21 Nebraska. Technically, one needs to come to Colorado  
22 and do what we call an ancillary probate. If the  
23 interest is small enough, the oil company will, in  
24 some cases, decide, yeah, that's a title defect. Yes,  
25 someone other than the heirs could claim against the

1 estate, conceivably but, the risk is so small and  
2 interest is so small, we're going to pay you anyway.  
3 Or we'll pay you on what we call an indemnification  
4 basis. We will pay you. If it's wrong, you owe us  
5 the money back. Those are two issues. This is the  
6 interest she holds, regardless. We intend to try to  
7 show that, and if there is a title doubt, it's not a  
8 reasonable doubt as contemplated by the statute, with  
9 respect to which would preclude payment. Not every  
10 title defect raises a reasonable doubt under the  
11 statute as to preclude payment. In the example I just  
12 gave, the ancillary probate under industry standard  
13 probably would not preclude payment, even though it  
14 might be a technical title problem. Or unreleased  
15 oil and gas leases that are ten years old, you can't  
16 find the people to get them re-released.

17 MS. COULTER: I can't really say there's  
18 a problem, if I understand your second point, and it's  
19 determining that -- you just said to me we are going  
20 to determine what the percentage of her interests is.

21 MR. ZARLENGO: We -- I am saying that  
22 this is the interest.

23 MS. COULTER: Does Ms. Howell agree to  
24 that interest?

25 MR. ZARLENGO: Ms. Howell's position, I

1 think, is that the interest that we are claiming here,  
2 we think there's reasonable doubt as to that interest.  
3 I am saying there's not a reasonable doubt to that  
4 interest. The quantum of the interest is not subject  
5 to dispute here. Maybe that's the point that I need  
6 to make. Is that right?

7 MS. HOWELL: I think that's right. We,  
8 to come up with the numbers that are primarily in that  
9 amended Exhibit A, is the one interpretation of the  
10 documents that Snyder thinks is, you know, probably  
11 most logical. But, still title, a stipulation of  
12 interest, you know, a document that fixes it to make  
13 it so needs to be obtained, and that's what we're  
14 saying here is, you know, we have said this before.  
15 We need a stipulation of interest, then we'll pay you.  
16 We don't have a stipulation of interest, and, so, it's  
17 not so much a dispute as to that number, you know, if  
18 we had the right document from the parties. But we  
19 feel that a document is needed because of existing  
20 title problems, which, you know, cause this reasonable  
21 doubt and why it hasn't been paid to date.

22 MR. ZARLENGO: My point is, and my  
23 example as to the half of the 3, that reasonable doubt  
24 doesn't apply. They can suspend, it's clear, the  
25 other half, clearly there's a dispute as to that.

1 CHAIRMAN MacMILLAN: Allan.

2 COMMISSIONER HEINLE: I guess I have got  
3 a question for you. Is this providing partial  
4 payments or full payments? It seems like that's  
5 somewhat at the heart of the matter here, is if --

6 MS. COULTER: You know, if the parties  
7 agree that there is a certain amount of interest that  
8 Ms. Owens owns and whether or not the delay in payment  
9 of proceeds has been reasonable as a result of the  
10 continuing dispute, then I think we can proceed on  
11 this matter. But, it would seem after the fact or a  
12 bit premature for us to say -- to determine whether or  
13 not a delay was reasonable and then have you guys  
14 still go out and fight about interest. So, if you  
15 agree that there's a certain portion of interest, and  
16 it sounds like your documents are based on some sort  
17 of stipulation as to what interest in proceeds is  
18 available, then I think we can proceed.

19 MS. HOWELL: We adopted one approach of  
20 spreading the documents to come up with a number to  
21 try to work this out with them, and we were willing to  
22 say, you know, those numbers we'll agree to, if you  
23 get this document to clean things up. And so, it's  
24 kind of tied together. We don't dispute those  
25 numbers, but that was always conditioned on the need

1 for having a document to clear it up. Which is, you  
2 know, because we think there's reasonable doubt. So,  
3 and I think part of the question on, can you really  
4 split interest up and argue about an undisputed part  
5 versus an -- the whole thing, not really. That's what  
6 we think. I mean, the first time that this, quote,  
7 undisputed smaller amount was demanded was last  
8 summer, and then more specifically in the application,  
9 and as I have said, we would show today, the fight to  
10 date, or, I shouldn't say, fight, but, going back and  
11 forth between the parties to date has been, you know,  
12 the bigger interest, so you are going to hear  
13 something about that, because when they say, you know,  
14 you haven't done anything since 1980 something, this  
15 claim to the smaller interest only occurred recently.

16 MR. ZARLENGO: The reason it only the  
17 occurred recently, we didn't know what the title  
18 defects were. Once we found out what they were, we  
19 realized they ought to be able to pay us on part of  
20 this. That, in the simplest terms is what happened.

21 MS. COULTER: They are not agreeing to  
22 the part of the title interest that you want us to  
23 determine whether or not it's been an inappropriate  
24 delay. They are still -- even that partial interest  
25 is still in dispute.



1                   CHAIRMAN MacMILLAN: That's a question I  
2 have here also. Ms. Howell, can you tell me, in the  
3 stipulations of Exhibit A, presented by the applicant,  
4 what Part B means to you?

5                   MS. HOWELL: Right. Essentially, the  
6 way it's worded, is that she is claiming this  
7 interest. That it's possible that she does own that  
8 interest, is our position, but, we would need a  
9 curative document. We have a reasonable doubt as to  
10 whether she owns it, and that's why she hasn't been  
11 paid. Does that answer your question?

12                  MS. COULTER: You know, I think this is  
13 even clearer. It's, you know, it's not -- it's  
14 reasonable doubt as to ownership. It appears to me  
15 that we're going to be resolving the title dispute.

16                  MR. ZARLENGO: Let me make this point.  
17 The issue before the commission is not who owns it.  
18 The issue before the commission is whether or not her  
19 ownership has some cloud upon it of a sufficient  
20 nature to rise to the statutory level.

21                  MS. COULTER: Of delay?

22                  MR. ZARLENGO: Of delay.

23                  MS. COULTER: Right.

24                  MR. ZARLENGO: But, we don't expect for  
25 you to determine title. I don't think you have to do

1 that to give us the relief we want. There's no third  
2 party claiming this interest.

3 MS. COULTER: How are we supposed to  
4 calculate award if we don't know what the interest is?

5 MR. ZARLENGO: Well, that's the point of  
6 the stipulation. You can use these numbers to  
7 calculate the award.

8 MS. COULTER: But how can we  
9 calculate -- even calculate award when she is saying  
10 the basis of title for these numbers remains in  
11 dispute?

12 MR. ZARLENGO: Well, the commission will  
13 have found that the nature of the dispute is such that  
14 the payment of proceeds can go forward as to these  
15 interests, so those are the interests you use to  
16 calculate.

17 CHAIRMAN MacMILLAN: There are three  
18 questions here. Commissioner Heinle, Commissioner  
19 Matheson and Commissioner Blackwell and Commissioner  
20 Johnson.

21 COMMISSIONER HEINLE: Just a follow-up  
22 with my question. When we talk about title in here,  
23 are we talking about full title or partial title?  
24 Because what it sounds like is that we have got part  
25 of a number that somebody may be agreeing to, but not

1 necessarily the title to that number, or partial title  
2 to that number.

3 MS. COULTER: That's the problem. It's  
4 like we have numbers stipulated to that are still  
5 based on a title, even if a little portion of a title,  
6 that remains in dispute between the parties.

7 COMMISSIONER HEINLE: When we talk about  
8 this title, when this statute talks about title, it  
9 talks about title in the total.

10 MS. COULTER: It talks about title to  
11 the interest. If the parties could stipulate to what  
12 that interest is, I say, let's go for it. But they  
13 are not. They have indicated here's the numbers that  
14 we are willing to agree to. If the interest -- the  
15 title interest is determined by the commission as  
16 correct, as to whether or not there's a reasonable  
17 doubt as to that --

18 CHAIRMAN MacMILLAN: Mr. Zarlengo, hold  
19 on.

20 MR. ZARLENGO: I am sorry.

21 MS. COULTER: Mrs. Howell has indicated,  
22 you know, sure, these are the numbers they would agree  
23 to if the interest wasn't in dispute. And her  
24 stipulation -- these stipulations agreed to by the  
25 parties says applicant claimed an ownership.

1 Reasonable doubt as to such ownership may be proven at  
2 the hearing by respondent,' and I assume that means  
3 ownership of the interest, which is still in dispute  
4 between the parties; is that correct?

5 MS. HOWELL: I guess what I envisioned  
6 that the hearing would focus on, whether Snyder  
7 reasonably hasn't paid to date, because they had  
8 reasonable doubt as to title. Now, if the answer to  
9 that were, yes, then I would, you know, we would leave  
10 and perhaps be able to work out something else between  
11 the parties to get it worked out. I don't know. If  
12 the answer is no, there was no reasonable doubt, then  
13 I had envisioned that Snyder would have to pay the  
14 amounts based on the interest shown in this -- in the  
15 document -- in the application. So, I guess we are  
16 agreeing to those interests, but subject to our caveat  
17 that we really think that you can't look at the  
18 interests alone without the question of does other  
19 stuff have to be done. Do we have a reasonable doubt?  
20 So, I mean, I think if the commission determined the  
21 reasonable doubt question --

22 MS. COULTER: You guys are going to go  
23 out and resolve the title question after this. How  
24 can you expect this commission to come up with a  
25 specific number, you know, if we do say the delay

1 wasn't reasonable, when you are determining what the  
2 interest is after the fact. It's just --

3 MS. HOWELL: Yeah. I don't feel that  
4 you have to look beyond -- behind the numbers that we  
5 have on that sheet, except it's kind of an all or  
6 nothing thing. Either there's a problem to those  
7 numbers or there's no problem, is the way I have  
8 looked at it.

9 CHAIRMAN MacMILLAN: Commissioner  
10 Matheson.

11 COMMISSIONER MATHESON: I understand  
12 that we are just at the point here of deciding whether  
13 or not we can hear this matter, but, what I am  
14 understanding is that we, as a commission cannot sort  
15 out title problems.

16 MS. COULTER: That's correct.

17 COMMISSIONER MATHESON: And you, today,  
18 are not providing a stipulation of interest from the  
19 other parties on this smaller amount percentage of  
20 interest.

21 MS. HOWELL: You mean, the other three  
22 people that I have mentioned?

23 COMMISSIONER MATHESON: Correct.

24 MS. HOWELL: That doesn't exist, to  
25 date.

1 COMMISSIONER MATHESON: Have you sought  
2 that document from those folks?

3 MS. HOWELL: Perhaps this question would  
4 be better for Mr. Zarlengo here.

5 There has been some discussion between  
6 the people in this room about trying to get that  
7 document and the indication is that also it would be  
8 difficult to be obtained. That's what we have been  
9 told.

10 COMMISSIONER MATHESON: So we would then  
11 be faced, as the commission, with the possibility that  
12 we could perhaps agree that this smaller interest is,  
13 in fact, clear title, but you guys could walk out,  
14 those other folks could be quite upset, dispute it and  
15 off you go and once again. I don't know. This is how  
16 I am seeing it.

17 MS. HOWELL: That's our position.

18 CHAIRMAN MacMILLAN: Commissioner  
19 Matheson, you suggested that question may be best  
20 referred to Mr. Zarlengo. Would you like to pose that  
21 same question to him?

22 COMMISSIONER MATHESON: I was posing it  
23 to him. Mrs. Howell was speaking. Please go ahead.

24 MR. ZARLENGO: There has been some  
25 communication between my client and the other two



1 people with respect to that particular part of the  
2 problem. Those particular people feel that they don't  
3 wish to participate. They don't wish to have anything  
4 to do with it. It's going to be very difficult for us  
5 to get them to sign the type of title curative  
6 document that Ms. Howell is requiring. Having said  
7 that, let me expound for a second, if I can, with  
8 respect to these assignments that went to these three  
9 different people. There was a different percentage on  
10 different lands to the three different people as to  
11 each one. All we want is the lowest one. Regardless  
12 of which set of these assignments one considers  
13 effective, my client got at least the lowest interest.  
14 That's the position that I would like to have the  
15 opportunity to prove today. And that's, I think, ties  
16 in with what I said before. Having said that, also, I  
17 must say that we feel that we would like to go  
18 forward, based upon what we feel our interest is, on  
19 that theory. And that what the other people claim  
20 isn't really before the commission because we would  
21 like to have the opportunity to show that she has  
22 this, regardless, so the people wouldn't complain  
23 about what you did.

24 CHAIRMAN MacMILLAN: Does that help,  
25 Commissioner Matheson?

1                   COMMISSIONER MATHESON: I suppose we  
2 could attempt this. Probably ought to get after it.  
3 I sure don't want to get into trying to figure out  
4 what title is what. And, you know, so --

5                   MR. ZARLENGO: The burden would be on us  
6 to show that this interest is not subject to claim  
7 by --

8                   COMMISSIONER BLACKWELL: I guess,  
9 Mr. Zarlengo. As I understand your situation, you  
10 will, after leaving this commission, have some remedy  
11 with regard to a portion of the interest, but,  
12 nevertheless, you will still go forward, then, with  
13 your title action to determine -- a quiet title action  
14 or some sort of other judicial remedy to clarify the  
15 larger interests involved.

16                   So, my question for you is, since that  
17 seems inevitable, and it seems, from a judicial  
18 economy standpoint, and from the standpoint of  
19 utilizing your resource of this commission, that your  
20 whole remedy, your whole dispute could be resolved in  
21 that forum and wouldn't you then, from that forum,  
22 also, get, if you were entitled to interest from a  
23 particular date, it seems to me you could be made  
24 whole at that stage, and I am wondering why this  
25 commission should be interjected at this point since



1    you -- it seems to me you do have a forum in which you  
2    could be completely made whole, and so I guess I am  
3    unclear on where we fit in and what the purpose of our  
4    involvement is in this.

5                   MR. ZARLENGO:   Okay.   Two points.   First  
6    of all, we want to make sure we have our bases covered  
7    with respect to this language about jurisdiction of  
8    the commission in the statute, in the event we do have  
9    to go to court with this, that's Point 1.   That, to my  
10   mind, is a little bit unclear, and I don't want the  
11   case thrown out because we didn't want to go to the  
12   commission first.

13                   More to the point, much more important  
14   point is this.   Our position is that there is no  
15   reason why we should have to go to the time, delay and  
16   expense of a judicial proceeding in order to get paid  
17   for this interest.   If we can prove that we own this  
18   interest, and if we can prove that there's no  
19   reasonable doubt as to this -- as to the title, this  
20   commission has ample jurisdiction, under the statute,  
21   to grant us the partial relief we seek.   And we don't  
22   feel we should be forced to the long, extended and  
23   expensive process of going to court when we can get  
24   partial relief here, and, frankly, much quicker and  
25   less expensive than if we have to go to court.   And we

1 feel that, in the meantime, while we resolve the rest  
2 of these issues, there's no reason why we should have  
3 to fight over this particular little interest that we  
4 have here in court. Because if given the opportunity  
5 today, we intend to prove that this interest isn't --  
6 that we own this regardless of what else happens, with  
7 respect to the title, and we shouldn't have to go to  
8 court to clear up this interest, and we think we  
9 should be afforded this partial relief.

10 But the reason we're here trying to get  
11 at least partial relief is because, quite frankly,  
12 it's quicker and less expensive than having to go to  
13 court. And we'll go to court, if we have to, over the  
14 big interest. In the meantime, there's no reason why  
15 we should have to adjudicate this interest before a  
16 judge, if we can prove to you that the interest really  
17 is -- that we do own at least this much, and that  
18 there's no reasonable doubt as to it.

19 MS. COULTER: See, that's the problem.  
20 We're given legislative authority, you know, very  
21 definitely, by our statutes, and it indicates what,  
22 exclusively, the jurisdiction we have over payment of  
23 proceeds. One of those is not determination of title.  
24 And, unfortunately, the way the statute reads to me,  
25 is once you determine title, you are entitled to a

1 payment of proceeds. Now, are you entitled to a  
2 penalty on that because there was an unreasonable  
3 delay due the fact that somebody was inappropriately  
4 contesting title. That's where we come in. We can  
5 say, what do you mean? They showed you title right  
6 away and here's your penalties and interest, and go  
7 away, but, the problem is, you haven't decided that  
8 interest yet. We don't have jurisdiction to decide  
9 that interest.

10 MR. ZARLENGO: Well, Ms. Coulter, if I  
11 might, I don't think the statute anticipates we have  
12 to acquire title before we come before this commission  
13 for relief. We ought to be able to have the  
14 opportunity to show that we own the interest and they  
15 ought to have the responsibility to show that that  
16 interest is subject to doubt. That's what the statute  
17 says.

18 MS. COULTER: A prerequisite to our  
19 ordering payment of proceeds is that we know what the  
20 other ownership interest is. And I am sympathetic  
21 with you completely about this is an easier forum to  
22 work in. It's a lot less expensive. But  
23 unfortunately, you know, we're really,  
24 jurisdictionally, we're a little bit stuck in this  
25 area. Without stipulation from you guys as to what

1 the interest is, I don't believe we can proceed on  
2 this matter.

3 MR. ZARLENGO: That's why I -- that's  
4 what I thought we had.

5 MS. COULTER: That's not what the  
6 stipulation reads.

7 CHAIRMAN MacMILLAN: Okay. Let me get  
8 Commissioner Johnson's questions, and then I am not  
9 sure we're asking the proper party, personally.  
10 Commissioner Johnson, your question.

11 COMMISSIONER JOHNSON: I am not an  
12 attorney. So, you are asking me --

13 CHAIRMAN MacMILLAN: No. You had raised  
14 your hand to ask a question.

15 COMMISSIONER JOHNSON: Yes. Because it  
16 looks like, to me, I have, even though the question  
17 has been asked directly to both of them, it still  
18 appears to me there isn't a direct black and white  
19 answer, and before we can go forward, we have to  
20 establish title, even to that small interest. We have  
21 no jurisdiction over that. It appears to me that's a  
22 black and white issue. So, we can't put the cart in  
23 front of the horse. We have got to put the horse in  
24 front of the cart. We don't have jurisdiction to do  
25 that. Once that is established, either by stipulation

1 or by some other vehicle, then, to me, it's real clear  
2 then we can say, hey, is this delay reasonable or  
3 unreasonable. Isn't this the way -- and from my  
4 experience in real estate practice, that you have got  
5 to have title first.

6 CHAIRMAN MacMILLAN: Commissioner Rebne,  
7 did you -- you had a question, did you not.

8 COMMISSIONER REBNE: I got my question  
9 answered.

10 CHAIRMAN MacMILLAN: Commissioner  
11 Heinle, if you wait for just a moment. Mrs. Howell.

12 MS. HOWELL: I think the ball's in their  
13 court, as I see it.

14 MS. COULTER: It's a jurisdictional  
15 issue. It can be in our court too. If you would like  
16 to make a motion, we would listen.

17 CHAIRMAN MacMILLAN: Let me ask my  
18 question of Ms. Howell.

19 MS. COULTER: I am sorry.

20 CHAIRMAN MacMILLAN: My understanding,  
21 from comments in your opening statement, that you are  
22 willing to use the interests that are provided here in  
23 Exhibit A as interests of the applicant in this case;  
24 is that correct?

25 MS. HOWELL: May I confer for just one

1 moment?

2 CHAIRMAN MacMILLAN: We'll adjourn for  
3 five minutes. You can come back and answer the  
4 question. Nature may call.

5 (Recess.)

6 CHAIRMAN MacMILLAN: Can we reconvene?

7 COMMISSIONER REBNE: I have a --

8 CHAIRMAN MacMILLAN: Mrs. Howell.

9 MS. HOWELL: Could I ask you to repeat  
10 the question?

11 CHAIRMAN MacMILLAN: Yes. My  
12 understanding was, from comments made in your opening  
13 statement, that the numbers that exist here in Exhibit  
14 A had actually been offered up by Snyder to the  
15 applicant as to what the applicant's interest may be  
16 in this case. Is that accurate?

17 MS. HOWELL: That is correct,  
18 Commissioner.

19 CHAIRMAN MacMILLAN: Is it then fair to  
20 say that you would stipulate to these interests as  
21 presented in Exhibit A?

22 MS. HOWELL: (No response.)

23 CHAIRMAN MacMILLAN: Why would you make  
24 an offer -- why would you make an offer based on these  
25 interests without, you know, stipulating that those

1 are the interests that you are willing to agree to for  
2 this particular hearing?

3 MS. HOWELL: When we made that offer, it  
4 was coupled with a requirement that we obtain a  
5 document that cleared up some problems. So, we agree  
6 that she -- that she owns something. This is what we  
7 think is most likely what she owns. But, we have  
8 said, we need a document between you and these other  
9 people that says how much each of the people own, to  
10 have clear title, and so we felt what we were doing in  
11 the stipulation was saying, we're not going to argue a  
12 lot about how these numbers are calculated, but we  
13 will argue about whether it was reasonable for us to  
14 say we need another document to fix the title to get  
15 to these numbers. We know how we got to the numbers,  
16 but, we think that there's curative -- or documents  
17 that need to fix what's of record in order to make the  
18 payment.

19 CHAIRMAN MacMILLAN: And are those  
20 curative documents something -- is that your request,  
21 for other interests outside the applicant in this case  
22 before this commission, or are they strictly to cure  
23 the interests of the applicant to the numbers in  
24 Exhibit A? More specifically, are you asking the  
25 applicant in this case to provide curative evidence

1 for other people's interests or for the applicant's  
2 interests?

3 MS. HOWELL: We believe it's for the  
4 applicant's interests, because there is uncertainty  
5 between the four people. It's true that the other  
6 three people get pulled into it, to some extent, that,  
7 to some extent, we had hoped it would happen  
8 simultaneously that the four would say, here's how the  
9 interest is divided up between us. Because there  
10 is -- so, yes, I would say, yes, it is required for  
11 her interest alone. But what we were requiring would  
12 have fixed the other interests as well.

13 CHAIRMAN MacMILLAN: Irrespective of the  
14 other interests, that's what I want to segregate.  
15 That isn't part of what I view is before us now. I  
16 find it inconsistent that the numbers that you offered  
17 now, excuse me, numbers of -- that you offered  
18 previously, previous to this, that are now being  
19 offered up as an exhibit, are now being questioned by  
20 you to the point that you can't stipulate that those  
21 weren't the interests involved, if we chose to hear  
22 this case. That's a statement that doesn't  
23 necessarily need a response, but I personally find  
24 that inconsistent.

25 MS. COULTER: Not if they are requesting



1 us to determine title or ownership, which I think is  
2 before us. It's not inconsistent, because people can  
3 stipulate. If you say, I have ownership, then this is  
4 what I am owed. If you don't say, I have ownership,  
5 then I am owed nothing, and so I think that's where  
6 Ms. Howell, why she presented the information the way  
7 she presented it, so --

8 CHAIRMAN MacMILLAN: Before we go too  
9 much further and Commissioner Rebne, I think you had  
10 some questions, but, before we do that, can I get a  
11 perspective from Ms. Beaver, who heard this matter  
12 administratively, offered suggestions and had  
13 consultation from the attorney general's office, on  
14 what your perspective of was on where -- what it is  
15 that the commission could or could not do with regard  
16 to this specific case.

17 MS. BEAVER: Well, we had a prehearing  
18 conference in an attempt to narrow the issues that  
19 were going to be before you today. And what I  
20 understood with respect to the title interest is that  
21 there was -- that there could be a stipulation to at  
22 least the minimum amount of interest that Ms. Owens  
23 owned. And that's part of why we went forward with  
24 the prehearing conference, because, that was something  
25 I thought both parties were in agreement to. That it

1 may not be the exact amount, there may in fact be  
2 less, or, excuse me, more that's owed, but at least  
3 this was the minimum. And having that minimum title  
4 interest, then the commission could go forward to  
5 determine amount of payment and possible interest on  
6 those payments, attorney's fees, costs, that sort of  
7 thing.

8 CHAIRMAN MacMILLAN: Was an exhibit like  
9 Exhibit A presented to you for the prehearing meeting  
10 that you had?

11 MS. BEAVER: Well, there was certainly  
12 no stipulation at that time. I did see what I think  
13 is the same spreadsheet, and then I know Exhibit B was  
14 included in the application. It may have been amended  
15 since -- I think it has been amended, actually, since  
16 it was in the application. But, something similar to  
17 Exhibit B was what I looked at.

18 CHAIRMAN MacMILLAN: It was your  
19 understanding at the time that you heard these matters  
20 that the interests, as indicated in the near --  
21 central column of Exhibit A were ones that both  
22 parties had suggested were interests that could  
23 reasonably be applied to the specific properties  
24 listed.

25 MS. BEAVER: I won't say they appeared

1 exactly as they do here, but I understood they were  
2 using a spreadsheet to work off the interests, the  
3 minimum interest, and that they were going to, if need  
4 be, modify those, but probably not just leave them as  
5 were to be able to stipulate to them. That's what I  
6 understood.

7 CHAIRMAN MacMILLAN: Okay. Fine. Thank  
8 you. Are there other questions of Ms. Beaver from the  
9 other commissioners? Okay. Commissioner Rebne.

10 COMMISSIONER REBNE: My questions just  
11 go back to even the minority partial interest. On all  
12 of these properties between the three or four parties  
13 that have overriding royalty interests, is every  
14 overriding royalty owners' interest in suspense?

15 MR. ZARLENGO: The answer to that  
16 question, if I may, is twofold. First of all, I need  
17 to make a point which I failed to make earlier. To  
18 the effect that the issue between the two or three or  
19 four parties, and how we divide up this one interest  
20 between these people, only affects some of the wells  
21 here, what we identified on exhibits as Package 1 and  
22 Package 2 wells. It does not affect Package 3, 4 and  
23 5 wells. That problem doesn't exist there. So,  
24 that's the first point.

25 With respect to the question you have

1 asked, I should also point out that Mrs. Owens  
2 interests is being paid in other wells in the same  
3 spacing unit as Package 2 and Package 5 wells. That  
4 other operators are paying Mrs. Owens on the same  
5 identical title chain, same documents, on leases in  
6 the same vicinity. And that to answer your question  
7 specifically, as to several of these wells,  
8 Ms. McIntosh, one of these three or four people is in  
9 pay status. We have evidence to show that. And we  
10 have -- we have intended to present evidence to show  
11 all of those things.

12 COMMISSIONER REBNE: Would that then not  
13 indicate there is a question about title, even to the  
14 extent of the minimum -- I mean, is there any  
15 complications?

16 MR. ZARLENGO: Well, what my response is  
17 to that is, if there's a question for the title, why  
18 are they paying her on the identical title, No. 1,  
19 which they are, isn't another operator paying her on  
20 identical title. Why is one of the so-called three or  
21 four people being paid on the identical title if  
22 there's a reasonable doubt as to what this title is.  
23 I need to say that those payments are all being made  
24 on bigger interests, in some cases, much bigger  
25 interests. And, again, that's part of what we

1 intended to show, to prove today.

2 And to just answer your question, my  
3 understanding of what we were stipulating to was that  
4 this is an interest that you can be paid on, unless  
5 Snyder can show that there is a reasonable doubt as to  
6 whether or not you are entitled to be paid. It's not  
7 the same as saying there's a reasonable doubt to your  
8 title. Just a reasonable doubt as to whether or not  
9 you are entitled to be paid for that interest, and my  
10 understanding, the deal I thought we made, from my  
11 perspective, from our perspective, was, Snyder was  
12 saying, yes, Ms. Owens, you can be paid on this  
13 interest unless we can show, to the commissioners'  
14 satisfaction, that there's a reasonable doubt that  
15 you're entitled to be paid on this interest.

16 The way I read the statute is that the  
17 whole issue of reasonable doubt as to title is sort of  
18 in the mode of an affirmative defense. We don't have  
19 to pay you within the time period because we had a  
20 doubt about it. But that we had agreed, yes,  
21 Mrs. Owens, you can be paid for this interest, unless  
22 we can show that there -- that we had a reason for not  
23 paying you. And that having been said, I think I  
24 should be given the opportunity to show what our  
25 ownership is, some of the things I talked about

1 earlier, and then put the burden on Snyder, which I  
2 think is where it belongs, under the statute, to show  
3 a reason why we should not be paid. That's really the  
4 issue, is whether or not Snyder can show a reason why  
5 we shouldn't be paid.

6 COMMISSIONER REBNE: Why if -- what I am  
7 concerned about is if there's -- if you can't even get  
8 a document by the other overriding royalty owners as  
9 to the minimum interest -- that's what the stipulation  
10 is -- there's potentially an argument about that  
11 minimum, even, why couldn't you get that document  
12 executed by the parties if it is just a minimum and  
13 that interest isn't -- is not in question?

14 CHAIRMAN MacMILLAN: Can I suggest,  
15 Commissioner Rebne, that as I view it, it is part of  
16 what the applicant wants to be able to argue here.

17 MR. ZARLENGO: That's exactly what I was  
18 going to say. Mr. Chairman, given the opportunity, we  
19 will show that we have really don't need that as to  
20 this particular interest. For example, there's  
21 letters in the file that they have that show very  
22 clearly where the other two people said this is what I  
23 own, this is what I own, it's not inconsistent with  
24 what we're claiming. That would be the issue that we  
25 would have to show, that they would have to show why

1 they need that. We would have to dispute that, if  
2 we're allowed to go forward.

3 CHAIRMAN MacMILLAN: Let me take a break  
4 here from the rest of the questions. Obviously, you  
5 both made opening statements, but I think I get a  
6 significant read from the commissioners that there's  
7 some question as to whether we can even hear this  
8 matter because of questions related to title,  
9 ownership. And I want to get a feel from the  
10 commissioners on whether they think that this case is  
11 that clear-cut or not, in order to -- that we hear it.  
12 In other words, is this the proper forum for it?

13 Are there questions that commissioners  
14 have of the attorney general or either of the  
15 attorneys for the parties here before you want to make  
16 comments on whether we can hear this case or not?  
17 Commissioner Matheson.

18 COMMISSIONER MATHESON: You know where I  
19 am coming from. I am not an attorney. I know very  
20 little about title. I am giving you a question here  
21 that the statute has contemplated to a degree that we  
22 have to at least be able to sort out this clouding  
23 issue. Not sort out -- either you have a clear title  
- 24 or you don't have clear title, something to that  
25 effect. Otherwise, how can we evaluate whether or not

1 payment was withheld adequately. Now, applicant can  
2 come in and say we think we own this, and we should be  
3 paid. And the oil company can then say, well, there's  
4 some concerns and therefore we withheld payments.  
5 Isn't it our job to at least sort out to the point of  
6 deciding whether or not that cloud exists. That's  
7 really the only issue. And so then we perhaps could  
8 hear this thing.

9 Now if, these guys come up with --  
10 applicant comes along and says, here's our interest, I  
11 guess, here's some documentation, and Snyder says,  
12 well, perhaps there is a cloud and shows that when --  
13 we can do that sort of thing. Maybe we're not -- we  
14 can proceed. I guess what I am getting at, in my  
15 view -- help me out if you think I am wrong.

16 MS. COULTER: Let me see if I can  
17 explain this. The whole phrase about, you know,  
18 reasonable doubt as to title occurs under section --  
19 has to deal with, you know, giving penalties for  
20 failure to pay on time. So, essentially, the scenario  
21 I anticipate before this commission, according to  
22 statute, would be Mr. Owens comes in and says, here's  
23 my title interest, and the other party agrees to that  
24 interest, but look how long it took them to agree to  
25 what my interest was. And was that agreement -- was



1    their failure to agree reasonable or was it not.  If  
2    it was not reasonable, we penalize them for  
3    withholding payment of proceeds.

4                   COMMISSIONER MATHESON:  So that we're  
5    not deciding about the cloud issue at all.  We're just  
6    deciding whether or not, while they were sorting it  
7    all out, whether or not it was a reasonable act that  
8    occurred and so, until such time as some clarity to  
9    the title issue occurs, we can't decide whether or not  
10   the processes that they went through to get to that  
11   point were reasonable or not.

12                   MS. COULTER:  That's correct.

13                   COMMISSIONER MATHESON:  Okay.  Geez.  I  
14   don't know if we can hear this thing.

15                   CHAIRMAN MacMILLAN:  Commissioner Rebne.

16                   COMMISSIONER REBNE:  If we had a  
17   stipulation that more clearly said --

18                   MS. COULTER:  What's the interest.

19                   COMMISSIONER REBNE:  Where Snyder did  
20   agree that, now, there's no doubt they agree this  
21   number is such, then could we -- it would be partial.

22                   MS. COULTER:  If they want to agree.

23                   COMMISSIONER REBNE:  If it's partial  
24   interest we could.

25                   CHAIRMAN MacMILLAN:  Let me interject.

1 The attorneys have talked about partial interest. I  
2 wish they hadn't used that terminology at all. If, in  
3 fact, Exhibit A is an exhibit that reflects the  
4 interest by both parties on what the agreement is at  
5 this point in time, that's what we're here for. I  
6 don't care about what's going to happen in the future.  
7 To me, the question, have the parties agreed to this  
8 and are these the numbers, and the whole question of  
9 partial interest or minimum interest, or something  
10 sometime in the future, only complicates the issue for  
11 this commission right now. There are the numbers that  
12 are here. And let's not worry about partial stuff  
13 now. Let's find out if the parties are willing to  
14 agree or not. Commissioner Johnson.

15 COMMISSIONER JOHNSON: It's my  
16 understanding that, what I heard that interest is --  
17 this providing the title is determined, if they can  
18 show a document that substantiates this, then these  
19 figures are valid. I mean, to me, that's the issue.  
20 And they are asking us to determine whether or not  
21 this title exists, which, to me, is a very black and  
22 white title issue. We can't get to this until we  
23 establish title, and that's not our jurisdiction.

24 Now, I am very sympathetic, because I  
25 got into a situation like this personally, where an

1 oil -- particular oil company, not this oil company,  
2 was trying to withhold payment because of a perceived  
3 title difference, and they did until I was able to  
4 substantiate via deed to title. So, yes, I was  
5 harmed, but then they paid and, yet, on the other  
6 hand, I look at the Snyder's point of view here, it  
7 costs them more money the longer they delay this  
8 thing. It should be in their best interests to clean  
9 this up sooner rather than later, but that's not our  
10 issue. Our issue, first of all, is this -- the title,  
11 that's what they are asking us to start with, and I am  
12 saying we can't do it.

13 CHAIRMAN MacMILLAN: Commissioner  
14 Heinle.

15 COMMISSIONER HEINLE: I guess, if the  
16 stipulation was clear as to the interests, I would say  
17 proceed, let's hear testimony and rule as to whether  
18 there's any reasonable doubt as to title.

19 CHAIRMAN MacMILLAN: Commissioner  
20 Blackwell.

21 COMMISSIONER BLACKWELL: I am not so  
22 sure that a stipulation between these two parties  
23 would be sufficient. I think that what we might need  
24 is a document of the sort that Commissioner Rebne  
25 referred to that would clarify for us the interests of

1 the other parties as well. So, if we had that, then I  
2 will feel comfortable in going forward, but I am not  
3 comfortable with the going forward with just the  
4 stipulation on this.

5 CHAIRMAN MacMILLAN: Why would the  
6 interests of other parties assist you?

7 COMMISSIONER BLACKWELL: It seems to me  
8 that's necessary to establish that this is the  
9 interest of the applicant, in these wells.

10 CHAIRMAN MacMILLAN: Would all of those  
11 interests then have to add up to 100 percent? You  
12 need to find out --

13 COMMISSIONER BLACKWELL: That's how I  
14 see it.

15 CHAIRMAN MacMILLAN: -- title interest.

16 COMMISSIONER BLACKWELL: That's how I  
17 see it.

18 COMMISSIONER JOHNSON: It goes back to  
19 title.

20 COMMISSIONER BLACKWELL: I have heard  
21 some reference to some letters where the other  
22 interest owners refer to their interest. It's all  
23 very consistent and whatnot. I am not sure that's  
24 enough to go forward.

25 CHAIRMAN MacMILLAN: Commissioner

1 Heinle.

2 COMMISSIONER HEINLE: Would it be  
3 possible to proceed with Packages 3, 4 and 5? Were  
4 those not the packages to which the testimony was the  
5 third party agreements or arrangements, or whatever  
6 they are, are straightforward, there's nobody else  
7 involved other than Ms. Owens. Did I understand --  
8 that's what I understood from what Mr. Zarlengo said.

9 MS. COULTER: If they stipulate to that  
10 interest.

11 COMMISSIONER HEINLE: For those  
12 packages.

13 MS. COULTER: For the title interests in  
14 those packages.

15 MR. ZARLENGO: Should I answer?

16 CHAIRMAN MacMILLAN: Yes. If you would,  
17 please.

18 MR. ZARLENGO: The answer to your  
19 questions are yes and yes. Those tracts do not  
20 involve the third party, No. 1, and it would be  
21 possible to go forward just with respect to those  
22 tracts. If I might, just for a second.

23 CHAIRMAN MacMILLAN: I think,  
24 Mr. Zarlengo, it's important to get a response from  
25 Ms. Howell. The question was, Ms. Howell, is it

1 possible that Snyder would stipulate to Packages 3, 4  
2 and 5?

3 MS. HOWELL: Let me just check my notes  
4 on one of those.

5 CHAIRMAN MacMILLAN: Ms. Owens, would  
6 you like to do this with Mr. Zarlengo?

7 MS. OWENS: Yes. Because it's my  
8 interest and I want to make sure what it is you want  
9 me to stipulate to, because I am not stipulating to  
10 anything that I don't agree to.

11 (Discussion had off the record.)

12 MS. HOWELL: Commissioner.

13 CHAIRMAN MacMILLAN: Yes.

14 MS. HOWELL: Our preference with regard  
15 to the Package 3, 4 and 5 wells would be to have the  
16 commission continue the matter and see if we could  
17 work it out with the other people, because, we  
18 actually think we have -- probably could settle, if we  
19 just took those interests separately. But, so, that  
20 would be our preference.

21 CHAIRMAN MacMILLAN: I understand.  
22 Mr. Zarlengo, you have had an opportunity, I  
23 understand, to talk with your clients. And are you  
24 willing to -- the question I believe from Commissioner  
25 Heinle was would the parties be willing to stipulate

1 to Packages 3, 4 and 5 to be able to go forward with  
2 this proceeding?

3 MR. ZARLENGO: We're willing to  
4 stipulate that this is -- that Ms. Owens owns this  
5 interest. She might own a larger interest, but she  
6 owns this interest.

7 CHAIRMAN MacMILLAN: Understood.

8 MR. ZARLENGO: And as I said, I thought  
9 that that's the deal we had in the first place, was  
10 that you could be paid for this unless we can show  
11 there's a cloud.

12 CHAIRMAN MacMILLAN: Right. And  
13 Ms. Howell, it is accurate, then, that you would be  
14 willing to stipulate that the interest for Packages 3,  
15 4 and 5 are as listed in Exhibit A at this point in  
16 time.

17 MS. HOWELL: Yes. We are willing to.

18 CHAIRMAN MacMILLAN: Okay. Due to the  
19 hour, now, and obviously we haven't even got into the  
20 meat of the matter, I think the suggestion to continue  
21 the matter until next month has particular merit. If,  
22 in fact, we continue this matter, it gives the parties  
23 an opportunity to also discuss and come up with  
24 stipulation on interests in Packages 1 and 2. Is that  
25 of interest to the parties?

1 MR. ZARLENGO: Well, we have attempted  
2 to work this out before. I would say that, as to the  
3 nature of the stipulation, we would be willing to make  
4 the stipulation that I felt we had already made, as I  
5 said, and we would be willing to stipulate to the  
6 numbers.

7 CHAIRMAN MacMILLAN: They are as  
8 represented in your Exhibit A.

9 MR. ZARLENGO: Those are the numbers we  
10 are claiming for purposes of this proceeding, yes.

11 CHAIRMAN MacMILLAN: Ms. Howell.

12 MS. HOWELL: I apologize if it seems  
13 that I am, you know, saying this, the same thing over  
14 and over again, or not solving the problem here. I do  
15 think that there is -- we are willing to stipulate  
16 that these are the numbers she is seeking; that if the  
17 commission were to find that it's unreasonable to  
18 require a stipulation, then that's what she would be  
19 paid on. But, I have to admit that I agree that that  
20 does move into a title issue, if -- I had been  
21 thinking that the commission can just determine the  
22 reasonable doubt, but, to some extent, in deciding  
23 whether any kind of stipulation of interest document  
24 to fix things is required, it does relate, to some  
25 degree, to the title issue. I am not trying to be



1 obtuse.

2 CHAIRMAN MacMILLAN: You are not. That  
3 is exactly the issue. That is exactly the issue.

4 MS. HOWELL: So, I think I feel that we  
5 can't go any further than what we have said before,  
6 which is we will stipulate to these numbers, but only  
7 on the condition that we believe, to really get to  
8 those numbers, we need another document, a document  
9 that we can record in the county records. And so,  
10 we're not arguing how to calculate those numbers. But  
11 we are saying that we need something else.

12 CHAIRMAN MacMILLAN: Thank you. Mrs.  
13 Coulter.

14 MS. COULTER: You know, I would suggest,  
15 I think, in the interests of judicial economy, as it  
16 exists under an administrative level, that this whole  
17 matter could be heard if you guys could stipulate to  
18 your interest within the next 30 days and reappear. I  
19 think that would work out. If the title interests  
20 aren't resolved in 30 days as to certain aspects of  
21 this application, or certain packages, those will be  
22 dismissed for lack of jurisdiction. That's about all  
23 we can do. So, I would hope that documents could be  
24 exchanged and provided in the next 30 days, and that  
25 you could come before us with what your title

1 interest. If you don't believe that, then,  
2 Mrs. Owens, you need to go to district court with this  
3 matter.

4 MS. OWENS: That's what I would like for  
5 you to do, is tell me I need to do that.

6 MS. COULTER: If you don't believe you  
7 are going to be able to resolve the title issue, just  
8 to tell you, we can't hear that title issue.

9 MS. OWENS: We will say that and go to  
10 court.

11 MS. COULTER: You can -- we can not  
12 resolve title issues before this -- I guess that's not  
13 within our jurisdiction. If that's the position your  
14 client is taking, we could entertain the motion to  
15 dismiss this matter for lack of jurisdiction, so you  
16 could proceed and not have an administrative matter  
17 sitting before you before you proceed to district  
18 court.

19 CHAIRMAN MacMILLAN: Commissioner  
20 Johnson.

21 COMMISSIONER JOHNSON: Packages 3, 4 and  
22 5 are not a title issue, that then we would have  
23 jurisdiction over those packages.

24 COMMISSIONER MATHESON: If they agreed  
25 that that is what we were talking about.

1 CHAIRMAN MacMILLAN: That's exactly the  
2 point.

3 COMMISSIONER JOHNSON: Back to title.

4 CHAIRMAN MacMILLAN: And it may be  
5 possible, then, to fashion the motion to continue with  
6 the parties consent -- with both parties consent. It  
7 may be possible to fashion a motion to continue, as  
8 Commissioner Heinle subjected. Those properties  
9 included from Packages 3, 4 and 5, with the  
10 understanding that the parties stipulate the interests  
11 presented in Exhibit A also are accurate and the  
12 interests in Parts 1 and 2 are in sufficient question  
13 that this commission would not have jurisdiction to  
14 hear them unless the parties would stipulate to those  
15 interests. Is that clear?

16 MS. OWENS: Could you just define the  
17 word "accurate" for me. What do you mean by  
18 "accurate"?

19 CHAIRMAN MacMILLAN: Very simply,  
20 accurate is what both parties agree to.

21 MS. OWENS: Here and in the future.

22 CHAIRMAN MacMILLAN: Here, right now.  
23 Right now.

24 MS. OWENS: No rights or claims to any  
25 additional interests in the future.

1 CHAIRMAN MacMILLAN: At this point in  
2 time.

3 MS. OWENS: Okay. Is he telling me what  
4 I think he is telling me?

5 MR. ZARLENGO: No.

6 CHAIRMAN MacMILLAN: Ask the question.  
7 We can only --

8 MS. OWENS: Can I just tell you what I  
9 think the problem is? Okay. What's in 3, 4 and 5 is  
10 a much smaller number than I feel I have legal title  
11 to.

12 COMMISSIONER REBNE: Then you have a  
13 title question.

14 MS. OWENS: What I thought I was doing  
15 here was saying I would agree, Snyder, that this is  
16 the minimum interest I own in 3, 4 and 5. That's why  
17 I thought was here before you today. Okay. I intend  
18 to pursue my larger interest after I pursue 3, 4 and 5  
19 here today. Now, if you are telling me that Snyder  
20 and I have to agree to the interests that I claim that  
21 I own before this commission, it won't happen here. I  
22 can tell you that right now.

23 CHAIRMAN MacMILLAN: Okay. You are  
24 bringing up to me a significant point. As discussion  
25 has gone here, with the advice of the attorney

1 general, and, to me, clear direction from the statute  
2 on what it is that we can and cannot hear, we can't  
3 resolve issues of title. Your interest, as  
4 Commissioner Johnson said, is a critical part of that  
5 title. If you don't agree to what those interests  
6 are, we don't have the jurisdiction to resolve that  
7 for you, that then goes to court. And if it pleases  
8 the, both parties, then, with what it is that you  
9 presented us in opening arguments, and other  
10 conditions that you have now stated verbally, which is  
11 you don't agree to these interests, that raises  
12 sufficient question on the title of the property that  
13 we don't have jurisdiction. And we will dismiss this  
14 matter because of lack of jurisdiction in the area,  
15 which may be what it is that you are interested in to  
16 be able to take the next step. Have I overstated  
17 that?

18 COMMISSIONER BLACKWELL: I am ready to  
19 make a motion that we dismiss this matter for lack of  
20 jurisdiction.

21 COMMISSIONER MATHESON: I would second  
22 it, but we amend -- we dismiss it without prejudice.

23 MS. COULTER: I would tell you what.  
24 That's not really necessary. Once jurisdiction is  
25 cured, they have the right to come back before the

1 commission.

2 COMMISSIONER MATHESON: Very good.

3 Thank you. Second.

4 CHAIRMAN MacMILLAN: I have a question  
5 of both parties. Are you clear on what the -- clear  
6 on what the motion of Commissioner Blackwell is?

7 MS. HOWELL: Absolutely.

8 MR. ZARLENGO: Absolutely. A motion to  
9 dismiss the entire matter.

10 CHAIRMAN MacMILLAN: The entire matter  
11 for lack of jurisdiction. Is the applicant clear on  
12 the motion?

13 MS. OWENS: We can't agree on title.

14 COMMISSIONER BLACKWELL: That's what I  
15 am hearing.

16 MS. OWENS: You got that right.

17 CHAIRMAN MacMILLAN: Okay.

18 MS. HOWELL: Yes.

19 CHAIRMAN MacMILLAN: Any further  
20 discussion?

21 (Whereupon the vote was called.)

22 CHAIRMAN MacMILLAN: Motion is carried.  
23 Matter is dismissed because of lack of jurisdiction --  
24 for lack of jurisdiction. Thank you.

25 COMMISSIONER MATHESON: Good luck.

1 MS. OWENS: Thank you.

2 (Whereupon this portion of the

3 proceedings were concluded.)

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## 1 CERTIFICATE

2  
3 STATE OF COLORADO ) ss  
4 CITY AND COUNTY OF DENVER )  
5

6 I, Harriet S. Weisenthal, Certified  
7 Shorthand Reporter and Notary Public for the  
8 City and County of Denver, State of Colorado,  
9 do hereby certify that the foregoing proceedings  
10 were taken in shorthand by me at 1120 Lincoln  
11 Street, Denver, Colorado on the 20th day of  
12 December, 1995, and was reduced to computer-aided  
13 typewritten form under my supervision;

14 That the foregoing is a true  
15 transcript of the proceedings had; that I am  
16 neither attorney nor counsel, nor in any way  
17 connected with any attorney or counsel for any  
18 of the parties to said action or otherwise  
19 interested in the event;

20 IN WITNESS WHEREOF, I have hereunto  
21 set my hand and affixed my notarial seal  
22 this day of February, 1996.  
23 My Commission expires October 15,  
24 1997.  
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