

594

ENTERED

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANTS: Ronald A. Clyborne ("Clyborne"),)
Reserve Coal Properties)
("Reserve"), and Consol Energy, Inc.)
"Unit Operator"))

DOCKET NO.
VGOB 91-0521-0119-01

RELIEF SOUGHT: Issuance of an Amended Supplemental)
Order Amending Prior Orders Affecting)
the Drilling Unit P-35)
located in the Oakwood Coalbed Methane)
Gas Field I, Buchanan County, VA)
(herein "Subject Drilling Unit") to Provide:)
(1) for the Calculation of Those Funds)
Unit Operator Deposited into the Escrow)
Account for VGOB Tract 3 of Subject)
Drilling Unit; (2) to Provide to Applicants)
a Royalty Accounting; and)
(3) Disbursement to Clyborne and Reserve)
in Accordance with Their Royalty)
Agreement Those Funds Deposited by the)
Unit Operator into Subject Drilling Unit's)
Escrow Subaccount for VGOB Tract 3)

REPORT OF THE BOARD

FINDINGS AND ORDER

1. **Hearing Date and Place:** This matter came on for final hearing before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on April 17, 2001 at the Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Abingdon, VA.
2. **Appearances:** Mark Swartz, Esq. of the firm Swartz and Stump L. C. appeared for the Unit Operator; and Sandra B. Riggs, Assistant Attorney General, was present to advise the Board.
3. **Jurisdiction and Notice:** Pursuant to Va. Code §§ 45.1-361.1 *et seq.*, and in particular Va. Code §§ 45.1-361.21 and 45.1-361.22, the Board finds that it has jurisdiction over the establishment and maintenance of an escrow account, with tract subaccounts, for each of the coalbed methane gas drilling units established by the Board through its field rules and subject to a pooling orders, and that the Unit Operator is required to deposit, as applicable, those funds specified in Va. Code § 45.1-361.21.D., 45.1-361.22.A.2, 45.1-361.22.A.3 and 45.1-361.22.A.4 into the applicable escrow tract subaccounts. Further, the Board finds that: (1) while it does not have jurisdiction to resolve conflicting claims to the ownership of the Coalbed Methane Gas produced by the Unit Operator from wells located on Subject Drilling Unit, and (2) while it does not have jurisdiction to interpret voluntary agreements by and between the Gas owners/claimants and/or the Unit Operators or to abridge or contravene the provisions of such agreements, (3) pursuant to Va. Code § 45.1-361.22.A.5, the Board does have jurisdiction and authority to disburse funds from the Escrow Account provided the Board has been provided with (a) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between the conflicting claimants or (b) an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein.

4. **Prior Proceedings:**

- 4.1. On May 31, 1991, the Board executed its order pooling all interests in the Subject Drilling Unit for the production of occluded natural gas produced from coalbeds and rock strata associated therewith (herein "Gas") in accordance with the provisions of Va. Code §§ 45.1-361.21 and 45.1-361.22 (herein "Pooling Order"). The Pooling Order was filed with the Clerk of the Circuit Court of Buchanan County on May 31, 1991 in Deed Book 375 at Page 483. The Board designated Consol, Inc. (n/k/a Consol Energy, Inc.) as the Unit Operator of the Subject Drilling Unit. The Pooling Order was amended and supplemented by the Board's Supplemental Order Regarding Elections executed on August 23, 1993 which was filed on August 31, 1993 in Deed Book 413 at page 199 ("Supplemental Order"). On January 3, 1994 the Board entered its Amended Supplemental Order Regarding Elections which was filed with the Clerk of the Court on January 7, 1994 in Deed Book 417 at Page 333 ("First Amended Supplemental Order"). On February 6, 2001 the Board entered a Revised Supplemental Order Regarding Elections which was filed with the Clerk on February 15, 2001 in Deed Book 519 at Page 373 (herein the Pooling Order, the Supplemental Order, and the First Amended Supplemental Order and the Revised Supplemental Order are collectively referred to as the "Pooling Order").
- 4.2 To the extent claims to the Gas were in conflict, pursuant to Va. Code § 45.1-361-22 payments attributable to said conflicting claims/interests were ordered deposited by the Unit Operator into the escrow account established by the Pooling Order (herein "Escrow Account"). According to the Pooling Order, the oil and gas interests of Clyborne and the coal interests of Reserve in half of a 0.14-acre tract, n/k/a VGOB Tract 3 of Subject Drilling Unit, were in conflict and became subject to the escrow requirements of the Pooling Order.
- 4.3 The Unit Operator's Affidavit Regarding Escrow and Supplemental Order, a copy of which is attached to and made a part of the Revised Supplemental Order, stated under oath:
- "That after the pooling hearing held in the captioned matter, Ronald Clyborne and Reserve Coal Properties entered into a royalty split agreement; that by the terms of said agreement escrow regarding the conflicting claims of Ronald Clyborne and Reserve Coal Properties is no longer required;"
- 4.4 By letter dated February 13, the Board gave notice to the Unit Operator, Reserve, Clyborne and the Escrow Agent that on its own motion it would take the Affidavit referred to in Paragraph 4.3 above under consideration at its hearing on March 19, 2001 and consider whether to: (1) amend the Pooling Order to provide for the disbursement of all funds on deposit in the Escrow Account to Clyborne and Reserve in accordance with the terms of their split agreement, (2) close the Escrow Account since the only royalties being escrowed were those attributable to Tract 3, and (3) delete the requirement that the Unit Operator place future royalties attributable to Clyborne's and Reserves' Conflicting Gas Interests in Tract 3 in the Escrow Account. Further, the Board order the Unit Operator to file with the Board a complete accounting of funds it had placed on deposit in the Escrow Account. At the March 19, 2001 hearing of this matter, it was continued until April 17, 2001.
- 4.5 The Unit Operator filed the attached accounting for Subject Drilling Unit's Escrow Account with the Board ("Accounting").
- 4.6 On June 4, 2001 the Unit Operator filed with the Board an Affidavit entitled "Affidavit of Pocahontas Gas Partnership (herein "Designated Operator") Regarding Settlement Agreement Reached by Conflicting Claimants to Royalty Payable on Production from or Allocated to . . . Tract 3, Unit P-35..., and Escrow Pertaining to Said Tract(s) in the Subject Drilling Unit.", a copy of which is attached hereto (herein "Affidavit"). The Affidavit clarified that the oil and gas ownership in half of VGOB Tract 3 is held by Ronald A.

Clyborne, the party to the Royalty Split Agreement, and not Clyborne, Inc. as originally reflected in the Pooling Order.

5. **Findings:**

5.1. Va. Code 45.1-361.22.5 provides:

The Board shall order payment of principal and accrued interests, less escrow account fees, from the escrow account to conflicting claimants within thirty days of receipt of notification of (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them or (ii) an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein. The amount to be paid to the conflicting claimants shall be determined based on the percentage of ownership interest of the conflicting claimants as shown in the operator's supplemental filing made part of the pooling order that established the escrow account, the operator's records of deposits attributable to those tracts for which funds are being requested, and the records of the escrow account for the coalbed methane gas drilling unit. The interests of any cotenants who have not entered into an agreement shall remain in the escrow account.

5.2 The Unit Operator has certified and represented to the Board that:

- (1) Reserve is the sole owner of half of the coal estate underlying VGOB Tract 3 of the Subject Drilling Unit;
- (2) Clyborne is the sole owner of half of the oil and gas estate underlying VGOB Tract 3 of the Subject Drilling Unit;
- (3) that together Reserve and Clyborne claim to have and own, in the aggregate, the following Gas royalty interest in Subject Drilling Unit by virtue of their respective ownership interests in Tract 3:

VGOB Tract #	Acres in Unit	Percent Of Unit	Escrowed Fund Attributable to Reserves'/Clyborne's Conflicting Interests in Tract 9 as of 02/23/01
3	0.07	0.0875	\$1,132.80

- (4) that Reserve and Clyborne have entered into an agreement whereby they have agreed to split on a 50/50 basis royalties attributable to their conflicting claims to coalbed methane gas, including but not limited to their conflicting claims to ownership of half of the coalbed methane gas underlying VGOB Tract 3 of Subject Drilling Unit and their conflicting claims to bonuses and/or royalties deposited by the Unit Operator in the Escrow Account which are attributable to said tract.

6. **Relief Granted:**

For the reasons set forth in Paragraph 4 and 5 above, and based upon the Accounting, the Escrow Agent is ordered to: (1) disburse fifty percent (50%) of the funds on deposit in the VGOB Tract 3 escrow subaccount as of the date of disbursement to Reserve Coal Properties, P. O. Box 947, Bluefield, VA 24605; (2) disburse fifty percent (50%) of the funds on deposit to the VGOB Tract 3 escrow subaccount as of the date of disbursement to Ronald A. Clyborne, 9325 Olympic View Drive, Edmonds, WA 98020, and (3) since Tract 3 is the only tract being escrowed, once said funds are disbursed to close the Escrow Account. The Exhibits E and EE to the Pooling Order are deleted in toto and replaced with the Exhibit E and EE attached to the Affidavit. Further, the Supplemental Order

filed in this cause is hereby modified to delete the requirement that payments attributable to Clyborne's and Reserve's conflicting coalbed methane gas ownership interests in VGOB Tract 3 be deposited by the Unit Operator into the Escrow Account. To the extent not specifically granted herein, any other or further relief is denied.

7. **Conclusion:**

Therefore, the requested relief and all terms and provisions set forth above in Paragraph 6 above be and hereby are granted and IT IS SO ORDERED.

8. **Appeals:**

Appeals of this Order are governed by the provisions of Va. Code § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court and that whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo.

9. **Effective Date:** This Order shall be effective on the date of its execution.

DONE AND EXECUTED this 3rd day of October, 2001, by a majority of the Virginia Gas and Oil Board.

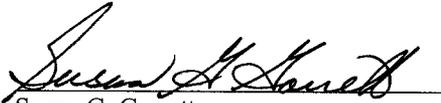

Chairman, Benny R. Wampler

DONE AND PERFORMED this 9th day of October, 2001, by an Order of this Board.


B. R. Wilson
Principal Executive to the Staff
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA)
COUNTY OF WISE)

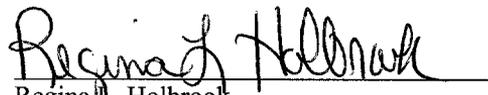
Acknowledged on this 3rd day of October, 2001, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Susan G. Garrett
Notary Public

My Commission expires: July 31, 2002

COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 9th day of October, 2001, personally before me a notary public in and for the Commonwealth of Virginia, appeared B. R. Wilson, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Regina L. Holbrook
Notary Public

My commission expires: July 31, 2002

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

IN RE:

Disbursement of escrowed funds by reason of royalty split agreement made by Ronald A. Clyborne and Reserve Coal Properties/Consolidation Coal Company, et al., regarding their conflicting claims in CBM Units O-40, P-35 and P-40 (hereinafter "Subject Drilling Units") VGOB-93-0420-0361, VGOB-91-0521-0119, and VGOB-93-0216-0330

AFFIDAVIT OF POCAHONTAS GAS PARTNERSHIP (herein "Designated Operator") REGARDING SETTLEMENT AGREEMENT REACHED BY CONFLICTING CLAIMANTS TO ROYALTY PAYABLE ON PRODUCTION FROM OR ALLOCATED TO TRACT 2, UNIT O-40, TRACT 3, UNIT P-35, AND TRACT 9, UNIT P-40, AND ESCROW PERTAINING TO SAID TRACTS IN THE SUBJECT DRILLING UNITS

Leslie K. Arrington, being first duly sworn on oath, deposes and says:

That your affiant is employed by CONSOL Energy Inc. as a Gas Engineer and is duly authorized to make this affidavit on behalf of POCAHONTAS GAS PARTNERSHIP, the designated operator,

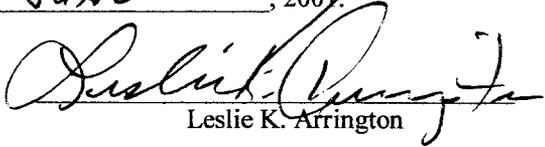
That when the Subject Drilling Units were pooled by Orders of the Virginia Gas and Oil Board, the oil and gas fee owner in Tract 2, Unit O-40, Tract 3, Unit P-35, and Tract 9, Unit P-40, was incorrectly identified as Clyborne, Inc.

That Mr. Ronald A. Clyborne has previously assigned some of his mineral interests to Clyborne, Inc., but said assignments did not pertain to the Subject Drilling Units.

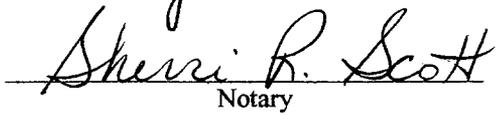
That annexed hereto and incorporated by reference are corrected Exhibits E and EE. Note that Tracts 10 and 11 in Unit O-40, which were included in the Exhibits recorded with the initial supplemental order, were inadvertently omitted from Exhibit E when the second supplemental order was entered. This omission has been corrected by the inclusion of the omitted tracts in the annexed Exhibits.

That this affidavit is made and the annexed Exhibits are submitted to correct the record regarding the ownership of the oil and gas fee in the tracts at issue and allow disbursement to the proper claimants pursuant to the terms of their royalty split agreement.

Dated at Tazewell, Virginia, this 4th day of JUNE, 2001.


Leslie K. Arrington

Taken, subscribed and sworn to before me by Leslie K. Arrington as Gas Engineer of CONSOL Energy Inc., on behalf of the corporate Designated Operator, this 4th day of June, 2001.


Notary

My commission expires: 11/30/01.

Exhibit E
UNIT P-35
Docket # VGOB 91-0521-0119
List of Conflicting Owners/Claimants that require escrow

Acres in Unit	Percent of Unit	Lease #
---------------	--------------------	---------

There are no further conflicts.

Exhibit EE
UNIT P-35
Docket # VGOB 91-0521-0119
List of Conflicting Owners/Claimants with Royalty Split Agreements

	Acres in Unit	Percent of Unit
<u>Tract #3, 0.14 Acres</u>		
<u>COAL FEE OWNERSHIP</u>		
Franks Estate et al.	0.14 acres	0.17500%
(2) Consolidation Coal Company (1/2 Jawbone & bel.) P.O. Box 947 Bluefield, VA 24605	0.07 1/2 of 0.14 acres	0.0875%
<u>OIL & GAS FEE OWNERSHIP</u>		
Franks Estate et al.	0.14 acres	0.17500%
(2) Ronald A. Ciyborne 9325 Olympic View Drive Edmonds, WA 98020	0.07 1/2 of 0.14 acres	0.0875%

UNIT P-35
 VGOB 95-0521-0119

VGOB Tract #					
ILM Tract #	3	Check Total	+ / - Net Income	Balance	Bank Balance
Check Date	3.6 acres				
1/25/94	\$4.58	\$4.58	\$0.00	\$4.58	
2/25/94	\$5.56	\$5.56	\$0.00	\$10.14	
3/25/94	\$4.37	\$4.37	\$0.00	\$14.51	
4/25/94	\$6.30	\$6.30	\$0.00	\$20.81	
5/25/94	\$6.78	\$6.78	(\$10.00)	\$17.59	\$17.59
6/25/94	\$4.34	\$4.34	\$0.03	\$21.96	\$17.62
7/25/94	\$4.10	\$4.10	\$0.05	\$26.11	\$17.67
8/25/94	\$6.00	\$6.00	\$0.26	\$32.37	\$40.81
9/25/94	\$8.44	\$8.44	\$0.00	\$40.81	\$40.81
10/25/94	\$5.78	\$5.78	(\$0.15)	\$46.44	\$40.66
11/25/94	\$0.36	\$0.36	\$0.08	\$46.88	\$40.74
12/25/94	\$0.00		\$0.05	\$46.93	\$40.79
1/25/95	\$4.05	\$4.05	\$0.09	\$51.07	\$40.88
2/25/95	\$31.92	\$31.92	(\$9.77)	\$73.22	\$73.22
3/25/95	\$3.80	\$3.80	\$0.22	\$77.24	\$73.44
4/25/95	\$0.62	\$0.62	\$0.23	\$78.09	\$73.67
5/25/95	\$0.17	\$0.17	\$0.23	\$78.49	\$73.90
6/25/95	\$1.42	\$1.42	\$0.22	\$80.13	\$74.12
7/25/95	\$3.76	\$3.76	\$0.23	\$84.12	\$74.35
8/25/95	\$3.86	\$3.86	\$0.30	\$88.28	\$74.65
9/25/95	\$0.17	\$0.17	\$0.17	\$88.62	\$88.62
10/25/95	\$0.00	\$0.00	\$0.36	\$88.98	\$88.98
11/25/95	\$1.34	\$1.34	\$0.36	\$90.68	\$89.34
12/25/95	\$2.74	\$2.74	\$0.30	\$93.72	\$89.64
1/25/96	\$6.67	\$6.67	\$0.00	\$100.39	
2/25/96	\$16.36	\$16.36	\$0.20	\$116.95	\$116.95
3/25/96	\$38.07	\$38.07	\$0.60	\$155.62	\$117.55
4/25/96	\$51.32	\$51.32	\$0.29	\$207.23	\$207.23
5/25/96	\$43.49	\$43.49	(\$9.63)	\$241.09	\$241.09
6/25/96	\$17.58	\$17.58	(\$9.60)	\$249.07	\$231.49
7/25/96	\$12.41	\$12.41	\$1.21	\$262.69	\$262.69
8/25/96	\$11.59	\$11.59	(\$9.33)	\$264.95	\$253.36
9/25/96	\$20.77	\$20.77	\$1.15	\$286.87	\$286.87
10/25/96			(\$9.28)	\$277.59	\$277.59
11/25/96			\$0.91	\$278.50	\$278.50
12/24/96	\$29.67	\$29.67	(\$0.17)	\$308.00	\$308.00
1/25/97			(\$8.34)	\$299.66	\$299.66
2/25/97	\$62.89	\$62.89	\$0.88	\$363.43	\$363.43
3/25/97	\$43.63	\$43.63	(\$9.81)	\$397.25	\$397.25
4/24/97			(\$7.96)	\$389.29	\$389.29
5/23/97	\$25.95	\$25.95	\$1.18	\$416.42	\$416.42
6/25/97			(\$8.68)	\$407.74	\$407.74
7/25/97			\$2.14	\$409.88	\$409.88
8/25/97					